

**SUPPORTING STATEMENT FOR NEW AND
REVISED INFORMATION COLLECTIONS**

Registration of Swap Dealers and Major Swap Participants

OMB CONTROL NUMBER 3038-0072

Justification

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.

OMB Control Number 3038-0072 covers three information collections: the forms by which swap dealers (“SDs”) and major swap participants (“MSPs,” and, together with SDs, “Swaps Entities”) register with the Commodity Futures Trading Commission (the “Commission”) (1st IC); the alternative provided under Commission regulations for submission of a fingerprint card for foreign natural persons (“2nd IC”); and the process for requesting cross-border comparability determinations (“3rd IC”).

Commodity Exchange Act (“CEA”) Section 4s(a) (7 U.S.C. 6s(a)) makes it unlawful for an SD or MSP to act as such unless registered with the Commission. CEA Section 4s(b) (7 U.S.C. 6s(b)) requires that registration of SDs and MSPs be accomplished by filing an application in such form and manner as provided by the Commission, containing such information as the Commission considers necessary concerning the applicant’s business. Pursuant to regulations adopted by the Commission pursuant to CEA Section 4s(b) (“Swaps Entity Registration Regulations”),¹ SDs and MSPs are required to register on Form 7-R and principals listed by SDs and MSPs must submit Form 8-R. Commission Form 7-R (for firms) and Form 8-R (for natural persons) request information about the applicant that is necessary to assess the applicant’s fitness to engage in business in the registration categories referenced above, subject to regulation and oversight by the Commission.²

Commission Regulation 3.21(e) provides generally that, in lieu of submitting a fingerprint card for a foreign natural person who has not resided in the U.S. since the person’s 18th birthday, a swap dealer or major swap participant may certify that a criminal history background check of such foreign natural person has not revealed any matter that would statutorily disqualify him or her from being registered or listed as a principal.

Commission Regulation 23.23 addresses the cross-border application of the registration thresholds and certain requirements applicable to SDs and MSPs, and establishes a formal process for requesting comparability determinations from the Commission to permit substituted compliance with such requirements.

¹ 77 FR 2613 (Jan. 19, 2012)

² Entities and individuals withdraw from registration (or from listing as a principal) on Forms 7-W and 8-T, respectively.

2. Indicate how, by whom, and for what purpose the data would be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

The information received pursuant to the Swaps Entity Registration Regulations are analyzed by Commission staff and form a basis for recommendations to the Commission concerning approval of registration, compliance with the CEA's requirements, or whether the Commission should take any action regarding lack of compliance with the CEA. The certification received pursuant to Regulation 3.21(e) enables the Commission to assure that a person listed as a principal of a swap dealer or major swap participant is fit to be a principal, in circumstances where a fingerprint card cannot be practicably obtained and submitted for FBI review. The application submitted pursuant to Regulation 23.23 enables the Commission to determine whether foreign regulatory requirements provide an appropriate basis for permitting substituted compliance with Commission regulations.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.

Information is required to be submitted electronically.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.

SDs and MSPs are distinct classes of registrants; and as such, the required information is not available from any other source. CEA Section 4s(c) requires registration of SDs and MSPs regardless of whether the person also is a depository institution or is registered with the Securities and Exchange Commission. If an SD or MSP is already registered with the Commission, or if an applicant seeks to register in more than one capacity, it is just a matter of checking off the box on the screen of the requisite electronic, online form.³ The information for 2nd IC and 3rd IC is solely in the control of the SD or MSP seeking to avail itself of the respective regulations.

5. If the collection of information involves small business or other small entities (Item 5 of OMB Form 83-I), describe the methods used to minimize burden.

³ These forms are available on the website of the National Futures Association ("NFA"), a registered futures association to whom the Commission previously has delegated processing responsibility for existing categories of registrants under the CEA. The Commission has delegated to NFA the authority to process registration forms filed by SDs and MSPs. The forms have been amended to permit SDs and MSPs to comply with the Swaps Entity Registration Regulations.

These collections of information do not, and will not, have a significant impact on a substantial number of small entities. The required information does not involve any small businesses or other small entities.

6. Describe the consequence to the Federal Program or policy activities if the collection were conducted less frequently as well as any technical or legal obstacles to reducing burden.

If the information required under these collections of information were not collected, enforcement of Commission rules would be adversely affected.

7. Explain any special circumstances that require the collection to be conducted in a manner:

- **requiring respondents to report information to the agency more often than quarterly;**

The Swaps Entity Registration Regulations require respondents to report information to the Commission annually and occasionally. Those regulations do not require respondents to report information to the Commission more often than quarterly. Regulations 3.21(e) and 23.23 do not require multiple reports.

- **requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it:**

In order for the Commission to adequately assess whether a Swaps Entity may be registered, a swaps entity might be required to prepare a written response to a collection of information in fewer than 30 days depending on the exigency of the situation.

- **requiring respondents to submit more than an original and two copies of any document;**

Swaps Entities are required to submit only single copies of applications.

- **requiring respondents to retain records other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;**

The Swaps Entity Registration Regulations do not specifically mandate retention of any registration records. However, Commission rule 1.31 requires that:

"All books and records required to be kept by the (Commodity Exchange) Act or by these regulations shall be kept for a period of five years from the date thereof and shall be readily accessible during the first 2 years of the 5-year period. All such books and records shall be open to inspection by any representative of the Commission or the U.S. Department of Justice."

Regulation 3.21(e) requires the certifying firm to maintain a record that a criminal background check was performed and the nature of the results.

- **in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;**

No statistical surveys are involved.

- **requiring the use of a statistical data classification that has not been reviewed and approved by OMB;**

The requirements do not involve use of any statistical data classification.

- **that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or**

The requirements do not involve a pledge of confidentiality regarding the collection of data.

- **requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

The Commission has procedures to protect the confidentiality of an applicant's or registrant's data. These are set forth in the Commission's regulations at parts 145 and 147 of Title 17 of the Code of Federal Regulations.

8. If applicable, provide a copy and identify the date and page number of publication in the *Federal Register* of the agency's notice required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.

On April 28, 2023, the Commission published in the Federal Register notice of the proposed extension of this information collection and provided 60 days for public comment on the proposed extension, 88 FR 26279 ("60-Day Notice"). The Commission did not receive any relevant comments on the 60-Day Notice.

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping disclosure, or reporting format (if any, and on the data elements to be recorded, disclosed, or reported.

The Commission sought public comments on the collection of information. Commission staff has held meetings with persons outside the agency to discuss the registration process generally.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years - even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

Not applicable. No such circumstances are anticipated.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

This question does not apply.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulations, or agency policy.

The Commission does not provide respondents with an assurance of confidentiality beyond that provided by applicable law. The Commission fully complies with section 8(a)(1) of the Commodity Exchange Act, which strictly prohibits the Commission, unless specifically authorized by the Commodity Exchange Act, from making public “data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers.” The Commission has procedures to protect the confidentiality of an applicant’s or registrant’s data. These are set forth in the Commission’s regulations at parts 145 and 147 of the Code of Federal Regulations.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

This question does not apply. None of the required information is sensitive, as that term is used in Question 11.

12. Provide estimates of the hour burden of the collection of information. The Statement should:

- **Indicate the number of respondents, frequency of response, annual hour burden and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than ten) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size or complexity,**

show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.

- **If the request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-I.**
- **Provide estimates of annualized cost to respondents for the hours burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 13.**

See Attachment A. The Commission continues to estimate a total of 779 respondents across all three information collections, filing a total of 1860 responses. The average hours per response is .37 for 1st IC, 2.5 for 2nd IC, and 40 for 3rd IC, and the total burden hours is 888. Based on the wage and salary tables generated by the Bureau of Labor Statistics (May 2022 National Industry-Specific Occupational Employment and Wage Estimates NAICS 523000 - Securities, Commodity Contracts, and Other Financial Investments and Related Activities) and using a blended hourly rate for time spent by an attorney and a compliance officer (\$81.97), the estimated cost per response is \$30.33 for 1st IC, \$204.92 for 2nd IC, and \$3,278.80 for 3rd IC, and the annualized cost across all three information collections is \$73,005.33.

In addition, each Swaps Entity respondent pays a registration fee of \$15,000 with its application, due to the detailed and in-depth review required of each Swaps Entity applicant's documentation, policies, and procedures to determine its initial compliance with the applicable substantive CEA Section 4s requirements, and their corresponding Section 4s implementing Regulations, before the Commission grants the applicant registration. The \$15,000 registration fee represents a very small percentage of a Swaps Entity's operational expenses.

13. Provide an estimate of the total annual cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14).

- **The cost estimate should be split into two components; (a) a total capital and start-up cost component (annualized over its expected useful life) and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major costs factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software, monitoring, sampling, drilling and testing equipment, and record storage facilities.**

- **If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate, agencies may consult with a sample of respondents (fewer than ten), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.**
- **Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.**

Total costs are included in the answer to question 12. No new start-up and maintenance costs are involved.

14. Provide estimates of the annualized costs to the Federal Government. Also provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing and support staff), and any other expense that would not have been incurred without this collection of information. Agencies may also aggregate cost estimates from Items 12, 13, and 14 in a single table.

There are no new annualized costs to the Commission in connection with the information collections.⁴

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB Form 83-I.

The estimates used by the Commission for the 2020 renewal of OMB Control No. 3038-0072 have not changed, and they are not expected to change going forward.

16. For collection of information whose results are planned to be published for statistical use, outline plans for tabulation, statistical analysis, and publication. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

This question does not apply.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

⁴ This is, in part, because the Commission has delegated to NFA the authority to process registration forms filed by SDs and MSPs. Commission staff periodically conducts reviews of NFA's registration processing program, and its review of how NFA is processing the registration forms filed by SDs and MSPs will be folded into the existing review scheme.

This question does not apply.

18. Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submissions," of OMB Form 83-I.

This question does not apply.

Attachment A

Registration of Swap Dealers and Major Swap Participants

1. Information Collection	2. Estimated No. of Respondents	3. Estimated No. of Responses by Each Respondent ⁵	4. Estimated Average No. of Burden Hours per Response ⁶	5. Annual No. of Burden Hours per Respondent (3 × 4)	6. Total Annual Responses (2 × 3)	7. Total Annual Burden Hours (4 × 6)	8. Estimated Cost per Response ⁷	9. Total Annual Cost (6 × 8)
1 st IC – Registration forms for Swap Dealers and Major Swap Participants	772	2.4	.3683 (.37)	0.8839	1853	683	\$30.33	\$56,201.49
2 nd IC - Alternative to Fingerprinting Requirement for Foreign Natural Persons	2	1	2.5	2.5	2	5	\$204.92	\$409.84
3 rd IC - Comparability Determinations for the Group A and Group B Requirements	5	1	40	40	5	200	\$3,278.80	\$16,394
Totals:	779				1860	888		\$73,005.33

⁵ Respondents do not necessarily file a registration form (Forms 7-R, 8-R, 7-W, and 8-T) each year. These registration forms are filed on an “as needed” basis, upon registering or when registration information changes, including withdrawal of registration. Accordingly, the estimate of the number of reports filed annually by each respondent was arrived at by calculating an average number of reports based on the number of respondent and the number of annual responses.

⁶ This number reflects the average number of hours per response across all of the registration forms (Forms 7-R, 8-R, 7-W, and 8-T), which, as previously noted, is consistent with the historical practice of the Commission by addressing the burden estimates in aggregate, rather than separately on a form-by-form basis.

⁷ Assumes a blended average hourly rate of \$81.97 for one compliance officer and one attorney, based on mean hourly rate figures of \$44.31 and \$119.63, respectively, as published by the Bureau of Labor Statistics in the publication *May 2022 National Industry-Specific Occupational Employment and Wage Estimates NAICS 523000 - Securities, Commodity Contracts, and Other Financial Investments and Related Activities*.