



## COMMODITY FUTURES TRADING COMMISSION

### Agency Information Collection Activities: Proposed Revised Collection, Comment Request: “Swap Data Recordkeeping and Reporting Requirements”

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice.

**SUMMARY:** The Commodity Futures Trading Commission (“CFTC” or “Commission”) is announcing an opportunity for public comment on the revision of an information collection by the agency. Under the Paperwork Reduction Act of 1995 (“PRA”), Federal agencies are required to publish notice in the *Federal Register* concerning each revised collection of information and to allow 60 days for public comment. The Commission recently adopted a final rule amending requirements for swap data recordkeeping and reporting. This notice solicits additional comments on certain estimated costs and burdens associated with the amended requirements.

**DATES:** Comments must be submitted on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** You may submit comments, identified by “Swap Data Recordkeeping and Reporting Requirements, OMB Control No. 3038-0096,” by any of the following methods:

- The Agency’s web site, at <http://comments.cftc.gov/>. Follow the instructions for submitting comments through the web site.
- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail above.

Please submit your comments using only one method. All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to <http://www.cftc.gov>.

**FOR FURTHER INFORMATION CONTACT:** Meghan Tente, Acting Deputy Director, Division of Market Oversight, Commodity Futures Trading Commission, (202) 418-5785, email: [mtente@cftc.gov](mailto:mtente@cftc.gov), and refer to OMB Control No. 3038-0096.

**SUPPLEMENTARY INFORMATION:** Under the PRA, 44 U.S.C. 3501 *et seq.*, Federal agencies must obtain approval from the Office of Management and Budget (“OMB”) for each collection of information they conduct or sponsor. “Collection of Information” is defined in 44 U.S.C. 3502(3) and 5 C.F.R. 1320.3 and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the *Federal Register* concerning each proposed information collection including each proposed revision or extension of an existing information collection, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

*Title:* Swap Data Recordkeeping and Reporting Requirements (OMB Control No. 3038-0096). This is a request for comment on a currently approved information collection.

*Abstract:* The collection of information is needed to ensure that the CFTC and other regulators have access to swap data as required by the Commodity Exchange Act, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act

(“Dodd-Frank Act”). The Dodd-Frank Act directed the CFTC to adopt rules providing for the reporting of data relating to swaps.

On September 17, 2020, the Commission adopted a rulemaking amending its part 45 regulations.<sup>1</sup> In the release accompanying the final rule, the Commission included some estimated costs and burdens that were not included in the proposal and made corrections to some of its previous estimates. The Commission explains these cost and burden estimates below and invites comment on any new or revised estimates.

#### 1. Amendments to Regulation 45.3

Amended § 45.3 creates costs for swap data repositories (“SDRs”), swap execution facilities (“SEFs”), designated contract markets (“DCMs”), and reporting counterparties to update systems for reporting required swap creation data reports. For the proposal, the Commission estimated SDRs, SEFs, DCMs, and reporting counterparties would incur a one-time initial burden of 10 hours per entity to modify their systems to adopt the changes, for a total estimated hours burden of 17,320 hours. The cost per entity was estimated to be \$722.30 for a total cost across entities of \$1,251,024. The Commission additionally estimated 5 hours per entity annually to perform any needed maintenance or adjustments to reporting systems, at a cost of \$361.15 per entity and \$625,512 across entities.<sup>2</sup> The Commission re-evaluated the analysis in the final rule and instead used a wage estimate of between \$48 and \$101<sup>3</sup> per hour and revised its

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<sup>1</sup> The Commission proposed the amendments to Part 45 in February 2020. Swap Data Recordkeeping and Reporting Requirements, 75 FR 21578 (Apr. 17, 2020) (the “Proposal”). The final rule was published in the Federal Register on November 25, 2020.

<sup>2</sup> The PRA section of the Proposal included one-time and ongoing burden hour estimates for entities to modify their systems. The associated cost estimates referenced above were included in the related Supporting Statement filed with OMB for the Proposal.

<sup>3</sup> Hourly wage rates for this aspect came from the Software Developers and Programmers category of the May 2019 National Occupational Employment and Wage Estimates Report produced by the U.S. Bureau of Labor Statistics, available at [https://www.bls.gov/oes/current/oes\\_nat.htm](https://www.bls.gov/oes/current/oes_nat.htm). The 25th percentile was used for the low range and the 90th percentile was used for the upper range (\$36.89 and \$78.06, respectively). Each number was multiplied by an adjustment factor of 1.3 for overhead and benefits (rounded to the nearest whole dollar) which is in line with adjustment factors the CFTC has used for similar purposes in other final rules adopted under the Dodd-Frank Act. *See, e.g.*, 77 FR at 2173 (using an adjustment factor of 1.3 for overhead and other benefits). These estimates are intended to capture and reflect U.S. developer hourly rates market participants are likely to pay when complying with the changes. Individual entities may, based on their circumstances, incur costs substantially greater or less than the estimated averages.

estimate of the one-time initial cost per SDR to be in a range of \$144,000 to \$1,010,000 for PRA purposes, based on 3,000 to 10,000 hours of work per SDR.<sup>4</sup> Using these revised estimates, the Commission estimated an average estimated cost of \$577,000 per SDR to update their systems, or estimated capital/start-up costs of \$1,731,000 across all 3 SDRs.

With regard to reporting entities, the PRA section of the proposal inadvertently did not include any estimates of initial costs to update systems for SEFs, DCMs, and reporting counterparties. In the final rule, the Commission estimated that SEFs, DCMs, and reporting counterparties will incur a one-time initial cost per reporting entity in a range of \$24,000 to \$73,225 per reporting entity, with each reporting entity spending approximately 500 to 725 hours on the updates.<sup>5</sup> Rather than base the Commission's PRA estimates of the total upfront implementation cost for reporting entities on arithmetic averages, the Commission recognized that reporting entities are already subject to existing swaps data reporting and recordkeeping obligations pursuant to Part 45, so it is likely that reporting entities will only need to reprogram their existing reporting systems, instead of building new reporting systems, to comply with the final rule. Furthermore, through the Commission's eight years of experience in administering Part 45, the Commission believes that the 1,732 reporting entities are a relatively consistent group, such that most entities that are currently reporting entities under Part 45 will continue to be reporting entities under the final rule, and few entities that are not currently reporting entities under Part 45 will become reporting entities under the final rule. Because most reporting entities will only need to reprogram their existing reporting

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<sup>4</sup> The lower estimate of \$144,000 represents 3,000 working hours at the \$48 rate. The higher estimate of \$1,010,000 represents 10,000 working hours at the \$101 rate. The PRA section of the final rule incorrectly stated that the \$1,010,000 estimate at the higher end of the range was based on 5,000 working hours. However, in response to a comment indicating that the commenter expected its costs to be 8,000 to 10,000 developer hours, the Commission expanded the range of potential costs per SDR to between \$144,000 and \$1,010,000 for PRA purposes.

<sup>5</sup> The lower estimate of \$24,000 represents 500 working hours at the \$48 rate. The higher estimate of \$73,225 represents 725 working hours at the \$101 rate.

systems, the Commission believes that the upfront cost to reporting entities to implement the final rule will be on the lower end of the range, closer to \$24,000 than to \$73,225. Therefore, the Commission based its PRA estimates on a more realistic split of 90%/10% between existing reporting entities and new reporting entities, which resulted in a weighted average cost of \$28,923 per reporting entity ( $\$24,000 \times 0.9 + \$73,225 \times 0.1$ ), or a total upfront implementation cost of \$50,094,636 for the 1,732 reporting entities.

Together, the Commission estimated the total aggregate upfront implementation cost in the final rule to be \$51,825,636 (\$50,094,636 for reporting entities and \$1,731,000 for SDRs). The Commission does not expect any ongoing costs for SDRs or reporting entities after the initial builds.

## 2. Amendments to Regulation 45.4

The Commission amended § 45.4, which requires reporting counterparties to report data to SDRs when swap terms change and daily swap valuation data. The PRA section of the Proposal estimated that proposed § 45.4 would apply to 1,705 respondents, with 97,341 reports per respondent, .004 average hours per report, and a gross annual reporting burden of 664,479 hours. In the final rule, the Commission expanded the daily valuation data reporting requirement for SD/MSP reporting counterparties to report margin and collateral data in addition to valuation data. This is a change from the Proposal, in which the Commission proposed requiring derivatives clearing organization (“DCO”) counterparties to report the information as well. The frequency of the report will not change for SD/MSP reporting counterparties, but the Commission estimated SD/MSP/DCO reporting counterparties would require more time to prepare each report. However, since all of this information is reported electronically, the Commission expected the increase per report to be small, from .003 to .004 hours per report. Since the Commission is not requiring DCO reporting counterparties to report the information, the Commission revised its estimate to .0035 hours per report. As a result, in the final rule

the aggregate burden under § 45.4 was estimated to apply to 1,705 respondents, with 97,341 reports per respondent, .0035 average hours per report, and a gross annual reporting burden of 581,419 hours.

Amended § 45.4 creates costs for SDRs and reporting counterparties to update systems for reporting required swap continuation data. For the proposal, the Commission estimated SDRs and reporting counterparties would incur a one-time initial burden of 10 hours per entity to modify their systems to adopt the changes to § 45.4, for a total estimated hours burden of 17,050 hours. The cost per entity was estimated to be \$722.30 for a total cost across entities of \$1,231,522. The Commission additionally estimated 5 hours per entity annually to perform any needed maintenance or adjustments to reporting systems, at a cost of \$361.15 per entity and \$615,761 across entities. However, the Commission re-evaluated the analysis for the final rule and realized that since the costs relate to reporting certain swap data elements, they are covered in the start-up and initial costs for § 45.3 described above. To avoid double-counting, the Commission removed the estimates for § 45.4.

## 2. Amendments to Regulation 45.5

Amended § 45.5 creates costs for entities that were previously required to generate Unique Swap Identifiers (“USIs”) to update their systems to generate Uniform Transaction Identifiers (“UTIs”). The PRA section of the Proposal estimated that SDRs and reporting counterparties required to generate UTIs would incur a one-time initial burden of 1 hour per entity to modify their systems to adopt the changes to § 45.5, for a total estimated hours burden of 940 hours. The Commission additionally estimated 1 hour per entity annually to perform any needed maintenance or adjustments to reporting systems. The related Supporting Statement filed with OMB for the Proposal estimated that the cost per entity for the one-time initial burden would be \$72.23 for a total cost across entities of \$67,896, and an additional cost of \$72 per entity and \$67,680 across

entities annually to perform any needed maintenance or adjustments to reporting systems. The PRA section of the final rule did not make any changes to the Commission's burden hour estimates for SDRs and reporting counterparties to modify their systems to adopt the changes to final § 45.5 in connection with either its estimates of either the one-time initial burden estimate or the burden of ongoing maintenance or adjustments to reporting systems. The final rule also did not change the estimated cost per entity of \$72.23 per entity or a total cost across entities of \$67,896 in connection with the Commission's estimate of the one-time initial burden costs for SDRs and reporting counterparties required to generate UTIs. However, the PRA section of the final rule corrected the estimated cost per entity for ongoing maintenance or adjustment to reporting systems in the supporting statement for the Proposal from a cost of \$72 per entity and \$67,680 across entities to a cost of \$72.23 per entity and \$67,896 across entities for final § 45.5.

With respect to the collection of information, the Commission invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate electronic, or other forms of information technology, *e.g.*, permitting electronic submission of responses.

You should submit only information that you wish to make available publicly. If you wish the CFTC to consider information that you believe is exempt from disclosure under the Freedom of Information Act (“FOIA”), a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the CFTC’s regulations.<sup>6</sup>

The CFTC reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from <https://www.cftc.gov> that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the Information Collection Request will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under FOIA.

*Burden Statement:* Provisions of CFTC Regulations 45.2, 45.3, 45.4, 45.5, 45.6, 45.10 and 45.14 result in information collection requirements within the meaning of the PRA. With respect to the ongoing reporting and recordkeeping burdens associated with swaps, the CFTC believes that SEFs, DCMs, DCOs, SDRs, swap dealers (“SDs”), major swap participants (“MSPs”), and non-SD/MSP/DCO counterparties incur an annual time-burden of 1,226,021 hours. This time-burden represents a proportion of the burden respondents incur to operate and maintain their swap data recordkeeping and reporting systems.

Respondents/Affected Entities: SDs, MSPs, SDRs, DCMs, SEFs, and other counterparties to a swap transaction (*i.e.*, non-SD/MSP/DCO counterparties).

Estimated number of respondents: 1,732.

Estimated average burden hours per respondent: 708.

Estimated total annual burden hours on respondents: 1,226,021 hours.

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<sup>6</sup> 17 CFR 145.9.

Frequency of collection: Ongoing.

Capital or Operating and Maintenance Costs: \$ 51,961,428.

(Authority: 44 U.S.C. 3501 et seq.)

Dated: November 27, 2020.

**Robert Sidman,**

*Deputy Secretary of the Commission.*

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