

SUPPORTING STATEMENT FOR NEW INFORMATION COLLECTIONS

Part 20 – Large Trader Reporting for Physical Commodity Swaps

OMB CONTROL NUMBER 3038-NEW
(RIN 3038-AD 17)

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.

On July 21, 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) went into effect.¹ Title VII of the Dodd-Frank Act amends the Commodity Exchange Act (“Act” or “CEA”)² to establish a comprehensive new regulatory framework for swaps and security-based swaps. On November 2, 2010, the Commodity Futures Trading Commission (“CFTC” or “Commission”) proposed the subject large trader Reporting Rules that, in addition to establishing recordkeeping requirements, require routine swaps position reports from clearing organizations, clearing members and swap dealers and apply non-routine reporting requirements to large swaps traders.³ The Reporting Rules were adopted by the Commission on July 22, 2011.⁴ The Reporting Rules (to be codified in new part 20 of the Commission’s regulations) were adopted primarily pursuant to sections 4t, 4a and 8a(5) of the Act.

Section 4t of the Act authorizes the Commission to establish a large trader reporting system for significant price discovery function swaps. All swaps subject to the Reporting Rules are linked to futures contracts listed on fully regulated commodity futures exchanges (a “designated contract market” or “DCM”) and are significant price discovery function swaps. Section 4a of the CEA, as amended by the Dodd-Frank Act, directs the Commission to establish position limits, as appropriate, for physical commodity swaps. The Commission currently has no surveillance program in place that would allow it to set and enforce position limits. Swaps position reports are a necessary component of an effective surveillance program and necessary for the implementation of all surveillance based regulatory programs (including market, financial and trading surveillance programs). Accordingly, the Commission is adopting the subject swap reporting requirements pursuant to its authority in sections 4t and 4a of the CEA, and section 8a(5) of the Act, a general rulemaking authority provision that allows the Commission to

¹ See Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

² 7 U.S.C. 1 *et seq.*

³ 75 FR 67258, November 2, 2010. Comments and ex parte communications list available at <http://comments.cftc.gov/PublicComments/CommentList.aspx?id=889>.

⁴ 76 FR 43851.

promulgate such regulations as, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes of the CEA.

New part 20 of the Commission's regulations requires clearing organizations and any persons that are "reporting entities" to file swaps position data with the Commission. The Reporting Rules collect clearing member reports from clearing organizations. The Reporting Rules also require position reports from reporting entities for principal and counterparty positions in cleared and uncleared physical commodity swaps. Reporting entities are those persons that are either "clearing members" or "swap dealers" that are otherwise not clearing members. For purposes of part 20, reporting parties are required to submit data on positions on a futures equivalent basis so as to allow the Commission to assess a trader's market impact across differently structured but linked derivatives instruments and markets.

The following is a list of differences between the proposed rulemaking and the final Reporting Rules. The Commission anticipates no change in burden and cost estimates from those discussed in the proposed Reporting Rules:

- The Commission has determined to utilize, on a transitional basis and until final definitional regulations become effective, a definition of "swap" that is based on the reference to "commodity swap" within the definition of "swap agreement" in part 35 of the Commission's regulations. Swap market participants have relied on the definition of "swap agreement" for exempting transactions from the CEA since 1993. As a result, market participants have an understanding of the general nature of the definition of commodity swap. The swaps that would be subject to the Reporting Rules would be the same under both definitions.
- The proposed regulations identified three categories of swaps that would be economically equivalent to DCM contracts ("paired swaps") and thereby subject to reporting under the Reporting Rules: (1) swaps directly or indirectly linked to the price of a referenced DCM contract; (2) swaps directly or indirectly linked to the price of the same commodity for delivery at the same location as that of a referenced DCM contract; and (3) swaps based on the same commodity as that of a referenced DCM contract which are deliverable at different locations that nonetheless have the same supply and demand fundamentals as the referenced DCM contract's delivery point. The first two categories of the definition of economically equivalent swaps are appropriately tailored and objectively defined. To further the objectives of clear applicability of the regulations and the submission of accurate reports, as well as to lower the burden on reporting entities by limiting the set of reportable swaps, the Commission has amended the definition to remove the third category.
- The proposed Reporting Rules defined a reportable position as fifty or more in "paired swaps or swaptions" positions, as defined in regulations 20.1 and 20.2, on a futures equivalent basis in any one futures equivalent month. The Reporting Rules, as amended and finalized, allow reporting entities to identify a reportable position as all positions on a gross basis in a consolidated account (as described in regulation 20.4(a)) that are based on the same commodity, so long as this approach is

consistently applied to all consolidated accounts for reporting purposes. This amended definition of a reportable position allows reporting entities to forgo the 50-contract threshold calculation, which may be complex or costly, prior to submitting reports to the Commission.

- The Reporting Rules, as proposed, required the reporting of positions separately by actual swap or swaption accounts, and then by the controller in addition to counterparty and principal positions. In order to streamline the collection of data, the final Reporting Rules do not require reporting by actual swap or swaption account. The final Reporting Rules also only require that counterparty positions be reported by legal counterparty, as opposed to the controller of the legal counterparty's positions.
- In contrast to the rules as proposed, final regulation 20.6 applies a books and records requirement to swap counterparties only if such persons' swaps positions meet or exceed a simplified 50 futures contract equivalent reporting level. Also, final regulation 20.6 provides that persons with swaps positions meeting or exceeding the aforementioned threshold may keep and reproduce books and records for transactions resulting in such swaps positions in the record retention format that such person has developed in the normal course of business. Regulation 20.6 also provides that such persons may keep and reproduce books and records for, among other things, the cash commodity underlying such swaps positions in accordance with the record retention format developed in the normal course of business. In order to clarify the Commission's authority to issue special calls for books and records, the Commission also included an explicit special call provision with respect to paired swaps positions in regulation 20.6(d).
- Lastly, the final Reporting Rules incorporate a flexible implementation schedule which allows Commission staff, through delegated authority, to amend the requirements of part 20 temporarily to accommodate the resources and systems of reporting parties. Including within the flexible implementation framework of the final Reporting Rules is a compliance date for swap dealers that is triggered only after the term "swap dealer" as defined in section 1a of the Act is further defined by final Commission regulations.

The Commission received over 100 comments in response to the proposed Reporting Rules. The Commission directly named and responded to 9 comments in the final Reporting Rules. Only a few of the comments addressed issues related to burdens. The following discusses comments received on reporting burdens and alternative methods of achieving the Commission's regulatory objectives:

- Through the public comment process, alternatives to the Reporting Rules were presented to and reviewed by the Commission. Some commenters indicated that their respective alternatives would provide the Commission with the data it needs and would be less burdensome than the Reporting Rules. Bindicap Comster, the Futures Industry Association ("FIA"), and the Working Group of Commercial Energy Firms ("Working Group") opposed the proposed regulations, and suggested an expanded

Index Investment Data Reports special call reporting mechanism (special calls for the submission of position data) would be a better alternative. The Commission disagrees. The Commission's current Index Investment Data Reports special call is a targeted collection of data. It gathers information related to specific products from a limited set of market participants. The special call was not intended to function as a tool for general surveillance. In order to be able to gather positional data of the quality needed to conduct surveillance, the special call would have to undergo substantial modifications which in effect would convert it into the Reporting Rules.

- The FIA and the Working Group made very general and empirically unsupported arguments that the costs placed by the proposed regulations would be significant and that the Commission significantly underestimated the costs to clearing members and swap dealers. The FIA stated that some of its members believe the costs to be very substantial and in some cases exceeding millions of dollars, while acknowledging that it is difficult to estimate costs with any precision. The Working Group stated that some of its members estimate the total compliance costs to range up to \$80,000 to \$750,000 per year, inclusive of capital costs, and that the upfront costs could be as high as \$1.5 million. The Commission has carefully considered the costs on market participants. In response, the Commission notes that the Reporting Rules are tailored to collect routine reports only from clearing organizations, clearing members, and swap dealers. Based on discussions with potential reporting entities, the Commission has determined that the costs that would be imposed by the regulations on reporting entities is reasonable given the trade capture and information technology resources of such entities and their familiarity with limiting and managing complex price risks. Clearing organizations and clearing members should have appropriate systems in place and currently likely provide or collect market and large trader reports.
- The compliance date for swap dealers that are not clearing members will be delayed until the Commission further defines the term swap dealer. In order to address concerns relating to the ability of reporting entities to comply with the requirements of part 20 by the compliance date set forth in final regulation 20.10(a), final regulation 20.10(c) authorizes the Commission (or staff members delegated with such authority) to permit, for a period not to exceed six calendar months following the effective date of the Reporting Rules, the submission of reports that differ in content, form, or manner from that mandated in part 20, provided that there is a good faith attempt at compliance with part 20.
- In addition, in order to address the possibility of certain “non-financial” firms that may not be able to comply expediently with the requirements of part 20 should they fall within the definition of swap dealer, regulation 20.10(e) allows the Commission to defer compliance for such firms for six calendar months following the effective date of final regulations further defining the term swap dealer. The Commission's consideration of costs and burdens is discussed in more detail below.
- The Electric End User Coalition also argued that the recordkeeping burden imposed by the proposed regulations on commercial entities would be significant. In

particular it argued that the recordkeeping requirements should not apply to end-users and that the Commission should defer to other regulators, specifically the Federal Energy Regulatory Commission (“FERC”), with regard to recordkeeping obligations. In the Commission’s judgment, the recordkeeping requirements for end-users with swaps positions that meet or exceed the relevant thresholds are consistent with requirements under current Commission regulation 18.05. As described above, final regulation 20.6 generally permits commercial firms to keep and reproduce records of positions in the record retention format that such entities have developed in the normal course of business.

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 part 20 Reporting Rules for physical commodity swaps, in conjunction with the Commission’s current large trader reporting system for commodity futures and options, would be used by the Commission to support its market, financial and trading abuse surveillance programs.

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.

The Commission is committed to utilizing technology in order to reduce reporting burdens for respondents. Accordingly, the Commission has provided for the electronic transmission of the required submissions.

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.

Prior to the Dodd-Frank Act, the Commission was prohibited generally from collecting the information it needs to conduct surveillance of physical commodity swaps. Only a comprehensive reporting system, of the type adopted by the Commission, can obtain the data necessary for the effective discharge of daily surveillance.

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.

The part 20 Reporting Rules do not impose daily reporting requirements on small businesses or other small entities. The Commission has previously determined that derivatives

clearing organizations⁵ and futures commission merchants⁶ are not “small entities” for purposes of the Regulatory Flexibility Act (“RFA”). As noted above, a reportable paired swaps position would include fifty or more paired swaps positions in a futures equivalent month. All of the firms covered by part 20 would either have a reportable position or would be clearing organizations or swap dealers. By way of analogy, the Commission had determined that the reporting levels for futures in regulation 15.03 would not affect small entities.⁷ The Commission believes that the reportable account thresholds for swaps are similar to the reporting levels for futures positions and therefore does not believe that the firms covered by part 20 constitute small entities for RFA purposes.

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.

The Commission would not be able to carry out its oversight responsibilities for the swap markets. The collection requirements are essential to the Commission’s mission as mandated by the CEA, in particular, the amendments put forth in the Dodd-Frank Act. The Commission would need the swap reporting data on a daily basis for surveillance purposes. These market activities require surveillance on a daily basis because situations such as attempted manipulations or congestion or the accumulation of large impactful positions can develop rapidly and require equally rapid responses by the Commission. Adequate surveillance would be critically hindered, if transactional and position reports were received on less than a daily basis.

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;

See response to question 6.

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

The Commission generally regulates the trading of commodity derivatives, including futures and swaps, which are used to price a wide range of physical and financial commodity transactions. These transactions are vital to national and international commerce. The exercise of regulatory oversight for the purpose of conducting market surveillance, financial surveillance,

⁵ 66 FR 45604, 45609 (August 29, 2001).

⁶ Policy Statement and Establishment of Definitions of “Small Entities” for Purposes of the Regulatory Flexibility Act, 47 Fed. Reg. 18618, 18619 (Apr. 30, 1982).

⁷ Id. at 18620 (excluding large traders from the definition of small entity).

and monitoring of trading for abusive conduct, by necessity, requires the collection of transaction-related and position information on a daily basis.

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

Respondents are required to submit only a single copy to the Commission.

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

Regulation 20.6 would impose recordkeeping and production requirements on reporting clearing organizations, reporting entities, and persons with large swaps positions. Regulation 20.6 would require clearing organizations and reporting entities to keep records of transactions in paired swaps or swaptions, as well as records showing methods used to convert swaps and swaptions into futures equivalents.

Regulation 20.6 would require persons with large swaps positions to maintain books and records showing all records for relevant transactions and positions. In addition, such persons are required to keep books and records on “transactions in the cash commodity” and its products and byproducts, and “all commercial activities” that are hedged or risk-mitigated using paired swaps and swaptions. These recordkeeping requirements are very similar to those in current regulation 18.05.

The recordkeeping duties imposed by regulation 20.6 for clearing organizations and reporting entities are to be in accordance with regulation 1.31. Most pertinently, regulation 1.31(a)(1) requires that these transaction records be kept for five years, the first two of which they “shall be readily accessible.” Such books and records “shall be open to inspection by any representative of the Commission.”

These recordkeeping requirements would allow the Commission to have ready access to records that would enable surveillance staff to reconstruct the transaction history of reported positions. These requirements would ensure that data records submitted to the Commission could be audited. In addition, these records would enable Commission staff to better reconstruct trading activity that may have had a material impact on the commodity derivatives markets.

Large traders that are not clearing organizations or reporting entities can retain records and produce them for inspection using the record retention format that such persons have developed in the normal course of their business operations.

- 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;

The Reporting Rules do not involve statistical surveys.

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

The Reporting Rules do not involve statistical data classifications.

- 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 Reporting Rules do not directly involve any specific pledge of confidentiality regarding the collection of data (see answer to question 10).

- 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 Reporting Rules do require the submission of data involving confidential information or proprietary trade secrets. The Commission would protect sensitive information according to the Freedom of Information Act and 17 CFR Part 145, "Commission Records and Information." In addition, the Commission fully complies with section 8(a) 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."

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 C.F.R. 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.

The Reporting Rules were published for a 30-day public comment period in the Federal Register -- 75 FR 67258 (11/02/2010).

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.

Opportunity for public comment is provided when regulations are proposed or amended. Contact with the reporting entities and market participants is maintained on a continuous and on an ongoing basis to resolve reporting problems and address concerns. The Commission has solicited comments through publication of proposed rules in the Federal Register. Commission staff has met with various entities that could be covered in the swap reporting rulemaking to

discuss the scope of the rulemaking. The Commission would also, on an ongoing basis, solicit public comments through the notice required by 5 CFR 1320.8(d).

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every three 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.

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 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.

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.

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 or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 13.

The part 20 Reporting Rules result in the collection of information on “paired swaps and swaptions” positions as defined in regulation 20.1. Specifically, part 20 provides for three new kinds of reports:

1. Under regulation 20.3, swap “clearing organizations” would provide daily reports of relevant position and clearing data.
2. Under regulation 20.4, “reporting entities” would produce position reports on a daily basis on their own and individual counterparty accounts. Within this class of “reporting entities,” there are two categories of “reporting entities:” (a) “clearing members” and (b) “swap dealers” that are not clearing members. The former category, “clearing members,” would include many firms that are currently registered as FCMs with the Commission. The Commission estimates that a total of 200 clearing member/swap dealer, clearing member only swap dealer only firms transact in physical commodity swaps and thereby may be reporting entities under part 20.
3. Finally, under regulation 20.5, all “reporting entities” would submit identifying information to the Commission on new reportable accounts through a 102S filing on an as appropriate basis, *i.e.* whenever the reportable entity has a new reportable account.

In addition to creating these reporting requirements, regulation 20.6 would impose recordkeeping requirements for (1) clearing organizations, (2) reporting entities, and (3) persons with large positions in paired swaps or swaptions. Regulation 20.6(a) would require clearing organizations to maintain all records of transactions in paired swaps or swaptions on clearing organizations, as well as methods used to convert swaps and swaptions into futures equivalents. Regulation 20.6(b) would require reporting entities to maintain all records of transactions in paired swaps or swaptions on clearing organizations, as well as methods used to convert swaps and swaptions into futures equivalents. Large paired swap traders would also have to retain records in paired swaps as well as some related cash market transactional data. These provisions extend those recordkeeping requirements currently applicable to those traders holding reportable

positions in futures contracts, as currently found in regulation 18.05, to those traders holding positions in paired swaps.

The Commission estimates that implementing part 20 would create a total annual reporting and recordkeeping hour burden of 79,503 hours across 705 firms: 5 clearing organizations; 100 clearing member reportable entities (80 of which would be swap dealers and 20 would be non-swap dealer clearing members); 100 swap dealer non-clearing member reportable entities; and 500 firms that would hold reportable accounts in swaps. Based on a weighted average wage rate of \$74.36,⁸ this would amount to an annualized labor cost of \$5.9 million.

Reporting burdens:

1. Regulation 20.3 clearing organization reports would account for 938 of these annual reporting and recordkeeping hours. These hours would be spread across 5 respondents.
2. Regulation 20.4 reporting entity reports would have two separate burden estimates based on the kind of reporting entity providing the report:
 - a. Clearing member (80 clearing member/swap dealers plus 20 clearing member/non-swap dealers) reporting entity reports would create an annual reporting and recordkeeping burden of 25,000 hours spread across 100 respondents.
 - b. Swap dealer non-clearing member reporting entity reports would create an annual reporting and recordkeeping burden of 37,500 hours spread across 100 respondents.
3. Regulation 20.5 reporting entity 102S submissions would create an annual reporting and recordkeeping burden of 1,800 hours spread across 200 firms.
4. 40S submissions by persons with reportable positions under regulation 20.5(b) in paired swaps would create an annual reporting and record keeping burden of 165 hours and would affect 500 firms.

Recordkeeping burdens:

⁸ The Commission staff's estimates concerning the wage rates are based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association ("SIFMA"). The \$74.36 per hour is derived from figures from a weighted average of salaries and bonuses across different professions from the SIFMA Report on Management & Professional Earnings in the Securities Industry 2009, modified to account for an 1800-hour work-year and multiplied by 1.3 to account for overhead and other benefits. The wage rate is a weighted national average of salary and bonuses for professionals with the following titles (and their relative weight); "programmer (senior)" (60% weight), "compliance advisor (intermediate)" (20%), "systems analyst" (10%), and "assistant/associate general counsel" (10%).

5. Regulation 20.6(a) recordkeeping duties for clearing organizations would account for 100 of these annual reporting and recordkeeping hours. These hours would be spread across 5 firms.
6. Regulation 20.6(b) reporting entity recordkeeping duties would have two separate burden estimates based on the kind of reporting entity providing the report:
 - a. Clearing member (80 clearing member/swap dealers plus 20 clearing member/non-swap dealers) reporting entity recordkeeping would create an annual reporting and recordkeeping burden of 2,000 hours spread across 100 respondents.
 - b. Swap dealer non-clearing member reporting entity recordkeeping would create an annual reporting and recordkeeping burden of 2000 hours spread across 100 respondents.
7. Regulation 20.6(c) recordkeeping duties large swaps traders (these firms were previously were not reportable) would create an annual reporting and recordkeeping burden of 10,000 hours spread across 500 firms.

The Commission estimates that the total annualized labor costs associated with complying with part 20 would be approximately \$6.7 million. The wage rate used to determine this figure was \$74.36 per hour. The Commission's estimates concerning the wage rates are based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association ("SIFMA"). The \$74.36 per hour is derived from figures from a weighted average of salaries and bonuses across different professions from the SIFMA Report on Management & Professional Earnings in the Securities Industry 2009, modified to account for an 1800-hour work-year and multiplied by 1.3 to account for overhead and other benefits. The wage rate is a weighted national average of salary and bonuses for professionals with the following titles (and their relative weight) "programmer (senior)" (60% weight), "compliance advisor (intermediate)" (20%), "systems analyst" (10%), and "assistant/associate general counsel" (10%).

In Attachment A the Commission has provided the key assumptions and calculations used to derive labor burden estimates.

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.

The Commission estimates that the total annualized capital, operational, and maintenance costs associated with complying with the part 20 would be approximately \$32.7 million.⁹ Of this \$32.7 million, \$19.65 million is from annualized capital and start-up costs and \$13.05 million is from operating and maintenance costs. These cost estimates are based on Commission staff's estimated costs to acquire needed equipment and contracted expertise to develop the reports and recordkeeping capabilities required by part 20. The specific figures are based on estimates provided to Commission staff in trade interviews with potentially affected parties.¹⁰

Reporting burdens:

1. Regulation 20.3 clearing organization reports would result in annualized capital/start-up costs of approximately \$50,000 and operating, and maintenance costs of \$50,000.
2. Regulation 20.4 reporting entity reports would have two separate burden estimates based on the kind of reporting entity providing the report:
 - a. Clearing member, involving approximately 100 firms, 80 clearing member/swap dealers plus 20 clearing member/non-swap dealers, reporting entity reports would

⁹ All of the capital cost figures are based on a 5 year, straight line depreciation.

¹⁰ Staff tasked with assisting the Commission in developing the proposed regulations made this recommendation after meeting with or speaking to several outside parties, representing clearing members, swap dealers, swap data service providers, and our sister financial regulators. See http://www.cftc.gov/LawRegulation/DoddFrankAct/ExternalMeetings/otc_meetings.html.

result in \$4 million per year in annualized capital/start-up costs and \$2 million in operating, and maintenance costs.

- b. Swap dealer non-clearing member reporting entity reports involving approximately 200 firms would result in \$6 million per year in annualized capital/start-up costs and \$2 million in operating, and maintenance costs.
3. Regulation 20.5 reporting entity 102S submissions would create operating and maintenance costs of approximately \$1 million spread across 200 reporting entities.
4. 40S submissions by persons with reportable positions under regulation 20.5(b) in paired swaps would result in an annualized \$1.5 million in capital and start-up costs and \$500,000 in operating and maintenance costs spread across 500 firms.

Recordkeeping burdens:

5. Regulation 20.6(a) recordkeeping duties for clearing organizations would result in approximately \$100,000 in operating, and maintenance costs.
6. Regulation 20.6(b) reporting entity recordkeeping duties would have two separate cost estimates based on the kind of reporting entity providing the report:
 - a. Clearing member recordkeeping would create operating, and maintenance costs of approximately \$2 million.
 - b. Swap dealer non-clearing member reporting entity recordkeeping would create operating and maintenance costs of approximately \$2 million.
7. Regulation 20.6(c) recordkeeping duties for persons with large positions in swaps (these firms were previously were not reportable) would create annualized capital/start-up costs of \$1.5 million and operating and maintenance costs of approximately \$10 million.

In Attachment B the Commission has provided the key assumptions and calculations used to derive these figures.

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.

The Commission estimates that the equivalent of approximately 20 new staff members will be needed to process and monitor the reports provided for in the part 20. The staff needed would include industry economists, statisticians, and information technology staff, including computer programmers. These estimates are based on estimated labor costs associated with

processing analogous reports that would be received pursuant to part 20. At an average CT-12 pay grade for Commission employees in Washington, D.C. for 2010, or \$89,844, multiplied by 1.3 to account for overhead and other benefits, each employee would cost the Commission approximately \$116,797 or \$2.24 million per year in labor costs. These costs would be expected to decrease as automated systems are put into place after some 12-18 months after the effective date of the part 20 reports.

In addition, the Commission believes that the total annualized capital, operational, and maintenance costs associated with complying with part 20 would be approximately \$100,000. These estimated expenses are also derived from analogous existing reporting capital and associated processes.

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

This question does not apply.

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.

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.

There are no exceptions to the certification statement. The Commission is able to certify compliance with the provisions of 5 CFR 1320.9.

Attachment A

13. Annual Reporting and Recordkeeping Hour Burden

Part 20 – Large Trader Reporting for Physical Commodity Swaps

OMB Collection File 3038-NEW

Number of Respondents: 705 reporting firms plus 500 recordkeeping firms
 Estimated Average Hours Per Response: 1.58
 % of Responses Collected Electronically: 93.3%
 Estimated Labor Costs: \$5.9 million
 Frequency of Reporting: Daily for respondents and on special call by the Commission for 40S and 102S filings

Type of respondent	Applicable CFTC Regulation Section (17 CFR)	Total Number of Respondents (13(a))	Total Annual Responses (13(b))	Percentage of Responses Collected Electronically (13(b) (1))	Total Annual Hours Requested (13(c))	Current OMB Inventory (13(d))	Difference (13(e))	Explanation of difference Program Change - Program Change (13(f)(1))	Total Annualized Labor Costs
Clearing organization reports	20.3	5	1250	100.0%	937.5	0	937.5	937.5	\$69,715

Clearing member reporting entity reports	20.4	100	25000	100.0%	25000	0	25000	25000	\$1,859,076
Swap dealer non-clearing member reporting entity reports	20.4	100	25000	100.0%	37500	0	37500	37500	\$2,788,614
Clearing organization recordkeeping	20.6(a)	5	5	100.0%	100	0	100	100	\$7,436
Clearing member reporting entity recordkeeping	20.6(b)	100	100	100.0%	2000	0	2000	2000	\$148,726
Swap dealer non-clearing member reporting entity recordkeeping	20.6(b)	100	100	100.0%	2000	0	2000	2000	\$148,726

Large swap traders	20.6(b)	500	500	100.0%	1000	0	10000	10000	\$743,630
102S Filings	20.5	200	3600	25.0%	1800	0	1800	1800	\$133,853
40S Filings	20.5	500	500	25.0%	165	0	165	165	\$12,270

Attachment B

14. Annual Reporting and Recordkeeping Cost Burden

Part 20 – Large Trader Reporting for Physical Commodity Swaps

OMB Collection File 3038-NEW

Number of Respondents: 705 reporting firms plus 500 recordkeeping firms

Estimated Annual Annualized Capital, Operating, and Maintenance Costs: \$32.7 million

Frequency of Reporting: Daily for respondents and on special call by the Commission for 40S and 102S filings

Type of respondent	Applicable CFTC Regulation Section (17 CFR)	Total Number of Respondents	Total Annualized Capital/Start-up Costs (14(a))	Total Annual Costs (Operating & Maintenance) (14(b))	Total Annualized Cost Requested (14(c))	Current OMB Inventory (14(d))	Difference (14(e))	Average Annual Capital + O&M Costs
Clearing organization reports	20.3	5	\$50,000	\$50,000	\$100,000	\$0	\$100,000	\$20,000.00
Clearing member reporting entity reports	20.4	100	\$4,000,000	\$2,000,000	\$6,000,000	\$0	\$6,000,000	\$60,000.00
Swap dealer non-clearing	20.4	100	\$6,000,000	\$2,000,000	\$8,000,000	\$0	\$8,000,000	\$80,000.00

member reporting entity reports								
Clearing organization recordkeeping	20.6(a)	5	\$0	\$100,000	\$100,000	\$0	\$100,000	\$20,000.00
Clearing member reporting entity recordkeeping	20.6(b)	100	\$0	\$2,000,000	\$2,000,000	\$0	\$2,000,000	\$20,000.00
Swap dealer non-clearing member reporting entity recordkeeping	20.6(b)	100	\$0	\$2,000,000	\$2,000,000	\$0	\$2,000,000	\$20,000.00
Large swap traders	20.6(b)	500	\$1,500,000	\$10,000,000	\$11,500,000	\$0	\$11,500,000	\$11,500.00
102S Filings	20.5	200	\$0	\$1,000,000	\$1,000,000	\$0	\$1,000,000	\$5,000.00
40S Filings	20.5	500	\$1,500,000	\$500,000	\$2,000,000	\$0	\$2,000,000	\$4,000.00