SUPPORTING STATEMENT FOR NEW AND REVISED INFORMATION COLLECTIONS

OMB CONTROL NUMBER 3038-0093

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”) was enacted.[[1]](#footnote-1) Title VII of the Dodd-Frank Act amends the Commodity Exchange Act (“CEA”).[[2]](#footnote-2) Section 745 of the Dodd-Frank Act allows registered entities to list new contracts and approve and implement new rules or rule amendments by providing to the Commodity Futures Trading Commission (“CFTC” or “Commission”) a written certification that the new contract, rule, or rule amendment complies with the CEA. Section 745 grants the Commission the authority to stay the certification for up to 90 days when it determines that there exists novel or complex issues that require additional time to analyze, an inadequate explanation by the submitting registered entity, or a potential inconsistency with the CEA or its regulations.

When the Commission stays a rule under the procedure described above, it must provide no less than a 30-day public comment period within the 90-day period in which the stay is in effect. The Commission intends to request that public comments under this section be collected through its website. The collection of public comments in this manner is a new collection of information for which the Commission is now seeking an OMB control number.

The estimated numbers of respondents and projected total annual responses and average number of hours per response are provided in Attachment A.

1. 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.

Section 745 of the Dodd-Frank Act requires the Commission to allow a 30-day public comment when it stays a rule or rule amendment because it has determined that the rule or rule amendment presents a novel or complex issue that requires additional time to analyze, an inadequate explanation by the submitting registered entity, or there is a potential inconsistency with the CEA. The Commission will use the information submitted though the public comments to aid it in determining whether the rule certification complies with the CEA.

1. 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 collection of public comments through the Commission’s website contemplates the use of certain electronic collection protocols such as e-mail. Members of the public who wish to comment on a stay may also submit those comments through a hard copy.

1. 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.

The current regulations of the Commission do not require a 30-day public comment period for rules that are stayed. The Dodd-Frank Act amends the CEA to add this requirement. Accordingly, there are no existing regulations that could be modified to serve a similar purpose.

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

The requirements for the self certification are not complex, and may be satisfied by the completion of a cover sheet with a detailed explanation of the filing. These self-certification rules will not impose a significant economic impact on any entity.

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 purpose of the collection is allow the Commission to quickly place the rule or rule amendment on its website and to provide the public with an opportunity to easily submit comments regarding the stay of a rule or rule amendment. Without the collection through the Commission’s website, the Commission would publish the rule in the *Federal* Register, increasing the delay and costs of compliance under the rules.

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;

This does not apply.

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

This does not apply.

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

This does not apply.

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

This does not apply.

- 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;

This does not apply.

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

This does not apply.

- 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 Commission has adopted Freedom of Information Act regulations, 17 C.F.R. Part 145, which implement the federal statute set forth in 5 U.S.C. §552. Both the Freedom of Information Act and the Commission’s Part 145 regulations make nonpublic information exempt from disclosure by another federal statute, including Section 8(a) of the CEA. See 5 U.S.C. § 552(b)(3) and 17 C.F.R. § 145.5(c).

- 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.

This does not apply.

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 Commission previously requested comment on the information collection in its Notice of Proposed Rulemaking in the *Federal Register*, Provisions Common to Registered Entities at 75 FR 67282, 67290-91 (Nov. 2, 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.

The Commission sought public comment in the recent publication of the 60-day Federal Register Notice – Provisions Common to Registered Entities, 75 FR 67282 (Nov. 2, 2010).

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.

This does not apply.

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 has adopted Freedom of Information Act regulations, 17 C.F.R. Part 145, which implement the federal statute set forth in 5 U.S.C. §552. Both the Freedom of Information Act and the Commission’s Part 145 regulations make nonpublic information exempt from disclosure by another federal statute, including Section 8(a) of the CEA. See 5 U.S.C. § 552(b)(3) and 17 C.F.R. § 145.5(c).

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.

The regulations covered by the collections do not require the giving of such sensitive information, 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.

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.

See Attachment A.

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 Federal Government will expend no additional costs as a result of this collection of

information.

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.

No exceptions exist.

**Attachment A**

**Provisions Common to Registered Entities Under 745 of the Dodd-Frank Act**

**Estimated Annual Hour and Cost Burden of the Collection of Information**

|  |  |  |  |
| --- | --- | --- | --- |
| Est’d # of Covered Entities  (a) | Est’d Avg. # of Hrs. to Burden Hours Report | Est’d Total  Annual  Burden Hrs. | Est’d Annual Total  Costs  ($) |
| 70 | 2 | 14,000 | $ 980,000 |

Estimated Total Annual Burden Hours: 14,000 Annual Burden Hours

1. *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010). [↑](#footnote-ref-1)
2. 7 U.S.C. 1 *et seq.* [↑](#footnote-ref-2)