

SUPPORTING STATEMENT FOR NEW AND
REVISED INFORMATION COLLECTIONS

Ownership and Control Reports, Forms 102/102S, 40/40S, and 71

OMB CONTROL NUMBER 3038-0103

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.

The Commodity Futures Trading Commission (“CFTC” or “Commission”) is adopting new rules and related forms (the “final rules”) to enhance its identification of futures and swap market participants.¹ The final rules modify the Commission’s large trader reporting rules (also referred to herein as the “reporting rules”), which are contained in parts 15 through 21 of the Commission’s regulations.² The reporting rules are currently structured to collect information with respect to positions in “open contracts,”³ including: (1) information necessary to identify persons who hold or control “reportable positions”⁴ in open contracts (via current Form 40); and (2) information necessary to identify “special accounts”⁵ (via current Form 102). The final rules modify the current reporting rules and forms as they pertain to positions in open contracts. Specifically, the Commission is expanding the reporting rules and forms so that they may also be used to identify newly-defined “volume threshold accounts,”⁶ regardless of whether such activity results in reportable positions. Volume threshold accounts could reflect, without limitation, trading in futures, options on futures, swaps, and any other products traded on or subject to the

¹ Ownership and Control Reports, Forms 102/102S, 40/40S, and 71. Capitalized terms used without definition herein have the meaning assigned to them in the final rules. The final rules are based on proposals outlined in the Notice of Proposed Rulemaking: Ownership and Control Reports, Forms 102/102S, 40/40S, and 71, 77 FR 43968 (July 26, 2012) (the “NPRM”).

² 17 CFR 15 through 21. The final rules generally relate to parts 15, 17, 18 and 20 of the Commission’s regulations.

³ “Open contract” means any commodity or commodity option position “held by any person on or subject to the rules of a board of trade which have not expired, been exercised, or offset.” See §§ 1.3(t) and 15.00(n).

⁴ A “reportable position” is defined in § 15.00(p) as “any open contract position that at the close of the market on any business day equals or exceeds the [Commission’s reporting levels specified in § 15.03].”

⁵ A “special account” is defined in § 15.00(r) as “any commodity futures or option account in which there is a reportable position.”

⁶ “Volume threshold accounts” are defined in the final rules as individual trading accounts that trigger volume-based reporting thresholds on a reporting market that is a registered entity under §§ 1a(40)(A) or 1a(40)(D) of the Commodity Exchange Act (“CEA” or “Act”) (i.e., a designated contract market (“DCM”) or a swap execution facility (“SEF”).

rules of a DCM or SEF. Volume threshold accounts associated with DCMs and SEFs will be required to be reported by clearing members, as discussed in sections V(B) and VII of the final rules.

The amendments to the reporting rules and forms will achieve three primary purposes. First, they will expand and subdivide current Form 102 into a new Form 102 ("New Form 102"), partitioned into three sections: section 102A for the identification of position-based special accounts ("Form 102A," or "New Form 102A"); section 102B for the collection of ownership and control information from clearing members on volume threshold accounts associated with DCMs or SEFs ("Form 102B," or "New Form 102B"); and section 102S for the submission of 102S filings for swap counterparty and customer consolidated accounts with reportable positions ("Form 102S," or "102S filings"). Second, the amendments will enhance the Commission's surveillance and large trader reporting programs for futures, options on futures, and swaps through a variety of enhancements, including: requiring the reporting on Form 102A of the trading accounts that comprise each special account; requiring the reporting of certain omnibus account information on Form 71 ("Form 71" or "New Form 71") upon special call by the Commission;⁷ updating Form 40 ("New Form 40"); and integrating the submission of 102S and 40S filings into the general Form 102 and Form 40 reporting program. Finally, the rules provide for the electronic submission of Forms 102, 40, and 71 through either a web portal or secure FTP transmission.

As noted in the NPRM,⁸ on July 21, 2010, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act").⁹ The Commission's current reporting rules, and those adopted in the final rules, are primarily implemented by the Commission pursuant to the authority of §§ 4a, 4c(b), 4g, and 4i of the CEA.¹⁰ Section 4a of the CEA, as amended by the Dodd-Frank Act, requires the Commission to set and enforce speculative position limits with respect to both futures and swaps.¹¹ Section 4c(b) gives the Commission plenary authority to regulate transactions that involve commodity options.¹² Section 4g(a) of the CEA requires, among other things, each futures commission merchant ("FCM"), introducing broker, floor broker, and floor trader to file such reports as the

⁷ Information regarding the owners and controllers of volume threshold accounts reported on Form 102B and that are identified as omnibus accounts ("omnibus volume threshold accounts") will be collected by the Commission directly from originating firms, via Form 71.

⁸ See NPRM *supra* note 1 at 43971.

⁹ See Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act may be accessed at <http://www.cftc.gov/LawRegulation/OTCDERIVATIVES/index.htm>.

¹⁰ 7 U.S.C. 1 *et seq.* In addition, CEA § 8a(5) authorizes the Commission to promulgate such regulations as, in its judgment, are reasonably necessary to effectuate any provision of the CEA or to accomplish any of the purposes of the CEA. 7 U.S.C. 12a(5). The final rules are also consistent with the purposes enumerated in CEA § 3(b), which states that the CEA seeks to ensure the financial integrity of regulated transactions and to prevent price manipulation and other disruptions to market integrity. 7 U.S.C. 5(b).

¹¹ 7 U.S.C. 6a.

¹² 7 U.S.C. 6c(b).

Commission may require on proprietary and customer transactions and positions in commodities for future delivery on any board of trade in the United States or elsewhere. In addition, § 4g(b) requires registered entities to maintain daily trading records as required by the Commission, and § 4g(c) requires floor brokers, introducing brokers, and FCMs to maintain their own daily trading records for each customer in such manner and form as to be identifiable with the daily trading records maintained by registered entities. Section 4g(d) permits the Commission to require that such daily trading records be made available to the Commission.¹³ Lastly, § 4i of the CEA mandates the filing of such reports as the Commission may require when positions taken or obtained on designated contract markets equal or exceed Commission-set levels.¹⁴ Collectively, these CEA provisions warrant the maintenance of an effective and rigorous system of market and financial surveillance.

Title VII of the Dodd-Frank Act amended the CEA to establish a comprehensive new regulatory framework for swaps and security-based swaps. The legislation was enacted to reduce risk, increase transparency, and promote market integrity within the financial system by, among other things: (1) providing for the registration and comprehensive regulation of swap dealers and major swap participants; (2) imposing clearing and trade execution requirements on standardized derivative products; (3) creating robust recordkeeping and real-time reporting regimes; and (4) enhancing the Commission's rulemaking and enforcement authority with respect to, among other parties, all registered entities and intermediaries subject to the Commission's oversight.

As part of the Commission's rulemaking program implementing the Dodd-Frank Act,¹⁵ the rule changes adopted in the final rules also include swaps-related considerations in connection with the Commission's large trader reporting rules for swaps, enacted in 2011.¹⁶ New CEA § 4t acknowledges the Commission's authority to establish a large trader reporting system for swaps that the Commission has determined perform a significant price discovery function; accordingly, the swaps-related considerations in the rules adopted in the final rules also rely in part on the Commission's authority in CEA § 4t.¹⁷ Similarly, new CEA § 4s(f) requires swap dealers and major swap participants to make such reports as required by the Commission by rule or regulation regarding the transactions and positions of the registered swap dealer or major swap participant.¹⁸ In addition, new CEA § 5h(f)(10) requires SEFs to report to the Commission, in a form and manner acceptable to the Commission, information that the

¹³ 7 U.S.C. 6g(a)-(d).

¹⁴ 7 U.S.C. 6i.

¹⁵ See generally, <http://www.cftc.gov/LawRegulation/DoddFrankAct/index.htm>.

¹⁶ 17 CFR 20.5(a) and (b) contain the 102S and 40S filing requirements. Final part 20 was published in the Federal Register on July 22, 2011. See Commission, Large Trader Reporting for Physical Commodity Swaps, 76 FR 43851 (July 22, 2011) ("Large Trader Reporting for Physical Commodity Swaps").

¹⁷ 7 U.S.C. 6t.

¹⁸ 7 U.S.C. 6s(f).

Commission determines to be necessary or appropriate for the Commission to perform its duties under the CEA.¹⁹

The rulemaking will create new information collection requirements via §§ 17.01, 18.04, 18.05, and 20.5. Currently, OMB control number 3038-0009 covers, among other things, the collection requirements arising from current §§ 17.01, 18.04, and 18.05.²⁰ Also, OMB control number 3038-0095 covers, among other things, the collection requirements arising from current § 20.5.²¹ Accordingly, the Commission has established a new OMB control number (3038-0103) for the purpose of consolidating the collections into a common control number. Collection requirements arising from §§ 17.01, 18.04, 18.05, and 20.5 will be covered by 3038-0103. Once the collections covered by control number 3038-0103 become operational, OMB control number 3038-0009 will no longer cover collection requirements arising from §§ 17.01, 18.04, and 18.05. In addition, OMB control number 3038-0095 will no longer cover collection requirements arising from § 20.5. The remaining collection requirements covered by 3038-0009 and 3038-0095 will not be affected.

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 benefits to the Commission of reporting through a dedicated ownership and control report (“OCR”) were discussed in proposed rulemakings that preceded the final rules—specifically, the Advanced Notice of Proposed Rulemaking published in July 2009²² (the “2009 Advanced NPRM”), the Notice of Proposed Rulemaking published in July 2010²³ (the “2010 OCR NPRM”) and the subsequent NPRM, published in 2012. Section IV of the final rules discusses the history of the previous OCR rulemakings in more detail.

As discussed in section I(B) of the final rules, the rules will enhance the Commission’s current trade practice and market surveillance programs for futures and options on futures, and facilitate surveillance programs for swaps, by expanding the information presently collected on current Forms 102 and 40, and introducing a new information collection for omnibus volume threshold accounts in New Form 71.²⁴ The rules will also help implement the 102S and 40S filing requirements adopted in connection with the Commission’s part 20 rules addressing large

¹⁹ 7 U.S.C. 7b-3(f)(10).

²⁰ 17 CFR 17.01, 18.04 and 18.05.

²¹ 17 CFR 20.5.

²² See Commission, Advanced Notice of Proposed Rulemaking: Ownership and Control Report, 74 FR 31642 (July 2, 2009).

²³ See Commission, Notice of Proposed Rulemaking: Ownership and Control Report, 75 FR 41775 (July 19, 2010).

²⁴ See section V of the final rules for a discussion of New Form 71 and omnibus volume threshold accounts.

trader reporting for physical commodity swaps (discussed below).²⁵ Ultimately, the final rules will significantly enhance the Commission's ability to identify participants in the derivatives markets and to understand relationships between trading accounts, special accounts, reportable positions, and market activity. This will enable the Commission to better deter and prevent market manipulation; deter and detect abusive or disruptive trading practices (such as marking the close, "wash trading," or money passing); and better perform risk-based review and surveillance between related accounts.

The final rules respond, in part, to the increased dispersion and complexity of trading in U.S. futures markets following their transition from localized, open-outcry venues to global electronic platforms. Although electronic trading has conferred important informational benefits upon regulators, the resulting increases in trading volumes, products offered, and trader dispersion have created equally important regulatory challenges. Effective surveillance now requires automated analysis and pattern and anomaly detection involving millions of daily trade records²⁶ and hundreds of thousands of position records²⁷ present in the surveillance data sets received daily by the Commission.²⁸ Although the final rules are partly driven by these developments in the U.S. futures markets, the rules will also facilitate the creation of a robust surveillance program for swaps that adequately captures information with respect to swap market participants.

In order to perform effective surveillance, the Commission must receive data sets that contain a sufficient number of reference points for the Commission to uncover relationships between related accounts, and analyze information based on surveillance criteria that are frequently evolving in response to market events. The collection of additional information regarding trading accounts and traders will enable the Commission to perform more efficient and effective surveillance. In particular, the OCR data collection will enable the Commission to link transaction-level data that it receives (which includes trading account numbers, but not traders' names) to position-based data (which includes large traders' names, but not their trading account numbers), as explained below.

As discussed in the NPRM²⁹ and in section I(B) of the final rules, "Commission staff utilizes two distinct data platforms to conduct market surveillance: the Trade Surveillance System ('TSS') and the Integrated Surveillance System ('ISS'). Broadly speaking, TSS captures transaction-level details of trade data, while ISS facilitates the storage, analysis, and mining of

²⁵ See section V of the final rules for a discussion of the 102S and 40S filing requirements. See also 17 CFR 20.5(a) and (b). Final part 20 was published in the Federal Register on July 22, 2011.

²⁶ For example, in November 2011, the Commission received an average of 7.4 million trade records per day from electronic trading on DCMs.

²⁷ For example, in November 2011, the Commission received an average of 617,000 position records per day from reporting firms and exchanges.

²⁸ Daily trade and position records are provided to the Commission pursuant to §§ 16.02 and 17.00, respectively. For further discussion of the Commission's large trader reporting program, see sections III(A) and (B) of the final rules.

²⁹ See NPRM *supra* note 1 at 43970.

large trader data from a position perspective. One important component of TSS is the Trade Capture Report ('TCR'). Trade Capture Reports contain trade and related order data for every matched trade facilitated by an exchange, whether executed via open-outcry, electronically, or non-competitively. Among the data included in the TCR are trade date, product, contract month, trade time, price, quantity, trade type (e.g., open outcry outright future, electronic outright option, give-up, spread, block, etc.), executing broker, clearing member, opposite broker and clearing member, customer type indicator, trading account numbers, and numerous other data points." The OCR data collection addresses a gap in the current system by providing common reference points between TSS and ISS data. New Form 102A, for example, is structured to collect special account numbers,³⁰ trading account numbers that comprise the special account, and the names of owners and controllers of both special accounts and such trading accounts, thereby linking TSS data to ISS data.³¹

The data collection will also help the Commission to better identify and categorize individual trading accounts and market participants that trigger position or newly-created volume-based reporting thresholds. For example, New Form 102A will require reporting firms to identify the constituent trading accounts of each reported special account. In this manner, New Form 102A will ensure a new level of interoperability between the Commission's TSS trade data and ISS large trader data, and will permit Commission staff to quickly reconstruct trading for any special account. In addition to linking the two databases, New Form 102A will identify both the owners and controllers of such constituent trading accounts, thereby providing the Commission with a new lens through which to identify and surveil market activity that might otherwise appear unrelated to the Commission's surveillance programs.

New Form 102B will, for the first time, require identification of trading accounts based solely on their total trading volume during a single trading day. This new information collection will enhance the Commission's trade practice surveillance program by revealing connections of ownership or control between trading accounts that otherwise appear unrelated in the TCR. More generally, it will facilitate Commission efforts to detect and deter attempted market disruptions that may occur even in the absence of large open positions that are reportable on New Form 102A. Finally, the automated collection of OCR information via electronic forms, rather than through ad-hoc, manual processes, will permit both the Commission and market participants to administer the reporting programs more efficiently and effectively.

³⁰ As discussed in section III(A) in the final rules, a special account is a commodity futures or option account that has a reportable position, based on reporting levels set by the Commission. A special account number is a unique account identifier assigned by an FCM, clearing member, or foreign broker to a special account. See 17 CFR 17.00(g)(2)(iii) and 17 CFR 17.01(a). Special account numbers are included in ISS data. The special account number does not correspond to the trading account number reported on the Trade Capture Report. Accordingly, the special account number is not sufficient to link TSS data to ISS data.

³¹ The final rules do not amend the current reporting requirements with respect to ownership information, in connection with both position reporting pursuant to § 17.00 and Form 102 reporting pursuant to § 17.01. For a complete discussion of the reporting requirements with respect to ownership information, see section V(A)(i) of the final rules.

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.

During the comment period of the NPRM, the Commission's data and technology staff worked with potential reporting parties and other market participants to address the information technology standards associated with the rules proposed by the NPRM.³² Following these discussions, the Commission established two submission methods for the reporting forms required by the final rules: (a) a web-based portal and (b) an XML-based, secure FTP data feed. The NPRM contemplated that certain forms (Forms 40/S and 71) could be submitted only via the web portal. By contrast, in order to provide additional flexibility to reporting parties, the final rules provide that reporting parties may submit each of the new or revised forms through either the web-based portal or the FTP data feed. The Commission is offering two filing methods for each form because it anticipates a wide range of technological capabilities among reporting parties (varying based on the relative size and experience of a given reporting party). Reporting parties will be able to select the submission method that works best with their existing data and technology infrastructure and the number of filings they expect to make. Those reporting parties electing to submit information through the FTP data feed are advised in the final rules to contact the Commission, which will provide the necessary technical information to establish the data feed. Following the publication of the final rules, the Commission intends to publish a data compliance guidebook with detailed instructions for the two submission methods.

In addition, the Commission is creating a reference database so that respondents will not need to enter contact information each time they manually complete a 102A, 102B or 102S through the web portal. For example, the respondent would enter the account number for the applicable form, and the web portal page would automatically populate the contact information for that account number which the respondent had most recently provided.

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.

Information that will be collected via New Form 102B and Form 71 is not presently collected by the Commission for any other purpose, or available for public disclosure through any other source. Portions of information collected via New Form 102 and New Form 40 are currently available via existing Form 102 and Form 40; however, existing Form 102 and Form 40 will be replaced and eliminated once the new forms are operational, thereby eliminating any overlap. See also the discussion in Question 8 below of the instructions in the reporting forms that allow reporting parties to omit data that has previously been reported to the CICI Utility or another CFTC-accepted LEI provider.

³² Summaries of these discussions are available through the Commission's website at: <http://comments.cftc.gov/PublicComments/CommentList.aspx?id=1247>

5. 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.

As discussed in section VIII(C) of the final rules, the rules with respect to Forms 102 and 71 will not have a significant economic impact on a substantial number of “small entities” for purposes of the Regulatory Flexibility Act (the “RFA”). The final rules also require certain reporting traders to complete and submit New Form 40 upon special call by the Commission. Some of these reporting traders may be “small entities” under the RFA. In 2012, the Commission received approximately 3,123 completed Form 40s, from a total population of approximately 10,000 reporting traders. Of these 3,123 Form 40s, approximately 2,500 were completed by institutions, a portion of which could potentially be small entities under the RFA. For example, the Commission has received comments on its Dodd-Frank Act rulemakings indicating that certain entities that may be required to comply with the reporting and recordkeeping requirements in the final rules have been determined by the Small Business Administration to be small entities. In particular, the Commission understands that some not-for-profit electric generators, transmitters, and distributors that may be required to comply with the final rules have been determined to be small entities by the Small Business Administration, because they are “primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and [their] total electric output for the preceding fiscal year did not exceed 4 million megawatt hours.”³³

The Commission believes that, due to the limited number of institutions likely to receive a New Form 40 request in any given year, as well as the limited nature of the New Form 40 reporting burden, the final rules with respect to New Form 40 will not have a significant economic impact on a substantial number of small entities. New Form 40 will not be required on a routine and ongoing basis, but rather will be sent by the Commission on a discretionary basis in response to the reporting of an account that reaches a minimum position or volume threshold. In 2012 the Commission made Form 40 requests to only 25 percent of all reporting traders that could potentially be small entities; furthermore, some of these reporting traders were not in fact small entities. As a result, New Form 40 should be expected to affect only a small subset of the entities that may be small entities under the RFA. In addition, New Form 40 is not lengthy or complex, and will require reporting traders to provide only limited information to the Commission. As discussed in the final rules, the Commission estimates that a reporting trader submitting New Form 40 via the web-based portal will require only three hours, on an annualized basis, to complete the form.

The final rules regarding revised § 18.05 will also impose books and records obligations upon a new category of market participants—specifically, certain owners and controllers of a volume threshold account or a reportable sub-account, in connection with trading on a DCM or SEF. Such owners may be small entities under the RFA. The Commission does not believe that the obligation to maintain books and records under revised § 18.05 will impose significant costs on the additional small entities subject to the recordkeeping requirements of such section. The

³³ Small Business Administration, Table of Small Business Size Standards (Nov. 5, 2010). See also the regulatory flexibility analysis regarding such entities in 77 FR 1182 at 1240 (January 9, 2012), 77 FR 2136 at 2170 (January 13, 2012), and 77 FR 2613 at 2620 (January 19, 2012).

Commission expects that such account owners may largely rely on the books and records that they maintain in the ordinary course of business to fulfill the requirements of revised § 18.05. The Commission also expects that a portion of the account owners subject to revised § 18.05 are subject to the position-based recordkeeping requirements of current § 18.05,³⁴ and will not incur significant costs expanding their recordkeeping practices to comply with revised § 18.05. To the extent that certain small entities are required to modify their practices to comply with the volume-based recordkeeping requirements of revised § 18.05, the Commission believes that the resulting economic burden will be appropriate, because this requirement will: (a) ensure that (i) owners and controllers of volume threshold accounts and reportable sub-accounts and (ii) owners and controllers of reportable positions are subject to equivalent recordkeeping obligations under § 18.05, and therefore maintain books and records in a consistent format; and (b) promote the Commission's surveillance and investigatory functions to better deter price manipulation and other disruptions of market integrity.

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.

As discussed in response to Question 8 below, the Commission extended certain reporting deadlines in the final rules in response to comments, where the Commission determined that such extended deadlines would not compromise the objectives of OCR reporting. If the collection were conducted less frequently than required by the final rules, however, the Commission may not be able to identify related accounts as efficiently or effectively; as a result, situations such as abusive trading between related accounts and attempted manipulations or congestion could persist and potentially impact market prices.

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;**
 - As discussed in response to Question 8 below, respondents are required to report information to the Commission via the new and amended forms pursuant to the filing schedule set forth in revised Part 17 and Part 20.
- **requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it:**
 - This question does not apply. The final rules provide for electronic reporting.

³⁴ 17 CFR 18.05.

- **requiring respondents to submit more than an original and two copies of any document;**
 - This question does not apply. The final rules provide for electronic reporting.
- **requiring respondents to retain records other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;**
 - For the purpose of enforcing the provisions of § 5(d)(17) of the CEA and the Commission's regulations thereunder, Commission rule 17 CFR § 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 two years of the five-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."
- **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 question does not apply. The final rules do not require any statistical surveys.
- **requiring the use of a statistical data classification that has not been reviewed and approved by OMB;**
 - This question does not apply. The final rules do not require the 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**
 - This question does not apply. The final rules do not require a pledge of confidentiality.
- **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 will protect proprietary information in accordance with the Freedom of Information Act and 17 CFR part 145, "Commission Records and Information." In addition, § 8(a)(1) of the CEA strictly prohibits the Commission, unless specifically authorized by the CEA, 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.”³⁵ The Commission is also required to protect certain information contained in a government system of records according to the Privacy Act of 1974, 5 U.S.C. 552a.

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.

A copy of the NPRM is attached. The NPRM was published in the Federal Register at 77 FR 43968 (July 26, 2012). In response to the NPRM, the Commission received a total of eight comment letters from thirteen interested parties.³⁶ Several of the topics that were most frequently discussed by commenters, including topics related to the cost and burden of the proposed rules, are summarized below. This summary is based on section VII of the final rules, which contains a complete discussion of all comments received in response to the NPRM, and the Commission’s response to each comment.³⁷

Summary of Final Rules

Part 15

§ 15.00(t) —Control.

³⁵ 7 U.S.C. 12(a)(1).

³⁶ The following parties submitted written comments:

1. CME Group Inc. (“CME”)
2. Futures Industry Association (“FIA”)
3. ICE Futures U.S., Inc. (“ICE”)
4. North American Derivatives Exchange, Inc. (“Nadex”)
5. The National Rural Electric Cooperative Association, the Large Public Power Council, and the Electric Power Supply Association (collectively, “Joint Electric Association”)
6. John Hazelwood Estate (“Hazelwood”)
7. Sheila Bailey-Waddell (“Waddell”)
8. Ron Troncatty (“Troncatty”)

All NPRM comment letters (“CL-2012”) are available through the Commission’s website at: <http://comments.cftc.gov/PublicComments/CommentList.aspx?id=1247>

³⁷ All references in this Question 8 to proposed rules or other proposed measures refer to proposals contained in the NPRM. All references in this Question 8 to the Commission adopting certain rules, modifying the reporting forms, or taking other actions in response to comments refer to actions taken pursuant to the final rules.

Proposed § 15.00(t) added “control” to the list of defined terms in § 15.00.³⁸ The Commission’s proposed definition, which applied only to special accounts (New Form 102A) and consolidated accounts (Form 102S), defined control as “to actually direct, by power of attorney or otherwise, the trading of a special account or a consolidated account.” FIA commented that it would be difficult and/or meaningless to provide the requested control information, because the individuals responsible for trading an account within a special account or a volume threshold account can change often, even within the same trading day.³⁹ Furthermore, “in the case of algorithmic trading programs, there likely will not be an identifiable individual who ‘actually directs the trading’ of the program. For this reason, FCMs do not currently collect this information.”⁴⁰ FIA recommended removing the requirement to identify account controllers on Forms 102A and 102B.

Pursuant to the final rules, the Commission is adopting proposed § 15.00(t) without modification. At the same time, the Commission is modifying the instructions on Form 102 in response to comments that discussed the difficulty of identifying individuals that exercise control on a transient basis.

§ 15.00(v)—Direct market access.

Proposed § 15.00(v) defined direct market access (“DMA”) as “a connection method that enables a market participant to transmit orders to a DCM’s electronic trade matching system without re-entry by another person or entity, or similar access to the trade execution platform of a SEF.” Proposed Forms 102A and 102B required an FCM to indicate whether a trading account or volume threshold account has been granted DMA to the trade matching system or the respective reporting system of the applicable reporting market. FIA, CME and ICE commented that the definition of DMA was overbroad, and FIA predicted that “virtually all customers for which a Form 102 would be required to be filed will have been granted DMA.”⁴¹ CME commented that DMA data is not related to account ownership and control, the focus of the final rules, but rather to connectivity.

In response to CME’s comment regarding the relevance of DMA information, the Commission has concluded that the OCR reporting forms are not the appropriate vehicle for reporting information regarding connectivity. The Commission is therefore not adopting proposed § 15.00(v), and will not include a question regarding DMA in Form 102.

§ 15.00(x)—Volume threshold account.

³⁸ The definition of “control” in 17 CFR § 15.00 is based upon the definition of “controlled account” in § 1.3(j) of the Commission’s regulations.

³⁹ CL-2012-FIA supra note 36 at 5.

⁴⁰ CL-2012-FIA supra note 36 at 6.

⁴¹ CL-2012-FIA supra note 36 at 6. CL-2012-CME supra note 36 at 2-3. CL-2012-ICE supra note 36 at 2.

Proposed § 15.00(y) (re-ordered in the final rules as § 15.00(x)) defined volume threshold account as any trading account that executes, or receives via allocation or give-up, reportable trading volume on or subject to the rules of a reporting market that is a board of trade designated as a contract market under § 5 of the CEA or a swap execution facility registered under § 5h of the CEA.

In the case of a give-up trade, this NPRM definition was intended to require reporting by: (i) the carrying firm of the original executing account; (ii) the carrying firm of any intervening account(s); and (iii) the carrying firm of the account to which the give-up trade was ultimately allocated. In response to this question, CME commented that volume-based accounts should be reported at the carrying broker level, and noted that, “this is where the account ownership and control information resides, not at executing brokers.”⁴²

The Commission is adopting proposed § 15.00(y) (re-ordered in the final rules as § 15.00(x)) with one modification. The definition of volume threshold account is being scaled back in the final rules, to capture a smaller number of volume threshold accounts than under the NPRM proposal. The definition is being modified to: “any trading account that **carries** reportable trading volume on or subject to the rules of a reporting market that is a [DCM or SEF].”⁴³ This change will reduce the number of reportable volume threshold accounts in the case of a give-up trade:

- In a give-up scenario, this definition will require reporting by the carrying firm of the account to which the trade is ultimately allocated. Reporting will not be required, however, by the carrying firm of the original executing account, or by the carrying firm of any intervening account(s) prior to the account to which the trade is ultimately allocated.
- In a non-give-up scenario, there will be no change to the number of reportable volume threshold accounts. Under both the original and revised definition, reporting will be required by the carrying firm of the account in which the trade is both executed and cleared.

§ 15.04—Reportable trading volume level.

Proposed § 15.04 provided that reportable trading volume for a trading account is trading volume of 50 or more contracts, during a single trading day, on a single reporting market that is a board of trade designated as a contract market under § 5 of the CEA or a swap execution facility registered under § 5h of the CEA, in all instruments that such reporting market designates with

⁴² CL-2012-CME *supra* note 36 at 4.

⁴³ Based on comment letters received in response to various proposed OCR rulemakings, the Commission understands that, in the case of a give-up trade, the industry regards the account to which a give-up trade is ultimately allocated as the only “carrying” account in the give-up process. On this basis, the Commission does not view the original executing account of a give-up trade, or any intervening account(s) prior to the account to which the give-up trade is ultimately allocated, as “carrying” accounts in the give-up process.

the same product identifier (including purchases and sales, and inclusive of all expiration months). The 50-contract RTVL identifies approximately 85 percent of trading volume in approximately 90 percent of the products sampled by the Commission over a six-month sample period.

Four entities provided comments on the reportable trading volume level (“RTVL”). FIA, CME and ICE commented that the RTVL, as proposed, would generate an excessive amount of data that may not be meaningful to the Commission’s trade practice and market surveillance programs.⁴⁴ FIA and ICE both recommended that the Commission phase in a descending RTVL until the optimum level is reached.⁴⁵ CME recommended that the RTVL should be changed to 250 contracts bought or sold during a calendar week.⁴⁶ More specifically, Nadex commented that the proposed 50-contract reportable trading volume level would capture too many retail customers that are trading contracts with very small notional values.⁴⁷ Nadex recommended that a different RTVL should be applied to contracts with small notional values, as compared to contracts with larger, traditional notional values.

As explained in more detail in section VII of the final rules, the Commission is adopting proposed § 15.04 without modification. The 50-contract RTVL is calibrated to identify a critical mass of the trading accounts active in Commission-regulated markets, measured not only by the percentage of trading volume for which those accounts are responsible, but also by the absolute number of accounts identified. The Commission regards each type of measurement as equally important to its objectives in the rulemaking. The 50-contract RTVL also facilitates a fundamental purpose of volume-based reporting on Form 102B: to identify trading accounts based solely on their trading volume, independently of such accounts’ contribution to open interest.

The final rules apply the same RTVL (50 contracts) to volume threshold accounts associated with both DCMs and SEFs. Because the RTVL is based on the Commission’s experience with DCMs, the NPRM asked for comment whether the 50-contract RTVL was also appropriate for the reporting of accounts associated with SEFs— and if not, what changes would be appropriate for reporting with regard to SEFs. The Commission did not receive any comments in response to this question. As a result, the Commission will apply the same RTVL (50 contracts) to volume threshold accounts associated with both DCMs and SEFs in the final rules, as contemplated by the NPRM.

Part 17

§ 17.01(a)—Identification of special accounts (via 102A).

⁴⁴ CL-2012-FIA supra note 36 at 8. CL-2012-CME supra note 36 at 3. CL-2012-ICE supra note 36 at 6.

⁴⁵ CL-2012-FIA supra note 36 at 8. CL-2012-ICE supra note 36 at 6.

⁴⁶ CL-2012-CME supra note 36 at 3.

⁴⁷ CL-2012-Nadex supra note 36 at 2-3.

Proposed § 17.01(a) required reporting parties to identify special accounts on New Form 102A, and referred reporting parties directly to the new form for the required data points.

Efficiency of Forms

FIA and CME both commented that the use of multiple reporting forms (*i.e.*, the 102A, 102B and 102S) to capture similar information is inefficient and unnecessary.⁴⁸ In order to eliminate redundant requests on the forms for contact information, FIA suggested creating a “Reporting Contact Reference Database,” where contact information would be stored once for each special account number.⁴⁹ CME recommended that “the Commission’s systems can and should use a common set of reference data so that a previously identified account does not need to be re-reported based upon a different trigger.”⁵⁰

In response to comments regarding the efficiency of the electronic submission process, the Commission is creating a reference database so that respondents will not need to enter contact information each time they manually complete a 102A, 102B or 102S through the web portal. For example, the respondent would enter the account number for the applicable form, and the web portal page would automatically populate the contact information for that account number which the respondent had most recently provided.

The Commission has made additional efforts to identify and eliminate any duplicative reporting obligations that may arise from the final rules. For example, New Form 102 requires respondents to provide the legal entity identifiers (LEI) and related information (*i.e.*, names and addresses) of parties reportable on the form. However, if such related information has previously been reported to a CFTC-accepted provider of LEIs (*e.g.*, the CICI Utility), then reporting parties are not required to report it again on New Form 102. This eliminates all duplication between New Form 102 and data currently reported to an LEI provider. Furthermore, in the event the CICI Utility or another CFTC-accepted LEI provider is modified in the future to accept certain supplemental fields required on the forms,⁵¹ then reporting parties will not be required to report these supplemental fields on New Form 102, if the information has previously been reported to such an LEI provider.⁵²

Burden of Collecting Information for Certain Fields

⁴⁸ CL-2012-FIA *supra* note 36 at 3-4. CL-2012-CME *supra* note 36 at 2.

⁴⁹ CL-2012-FIA *supra* note 36 at 4.

⁵⁰ CL-2012-CME *supra* note 36 at 2.

⁵¹ The Regulatory Oversight Committee (ROC) of the Global LEI System (GLEIS) is seeking to modify ISO 17442 LEI, the core standard underlying the GLEIS, in order to collect certain additional information from persons registering to receive an LEI.

⁵² The supplemental fields required on New Form 102 include the name, phone number and email address of certain contact persons required by the reporting forms, among other fields. The footnotes to the reporting forms contain a detailed list of the information that may be omitted from the forms for the reasons described in this paragraph.

CME recommended that the data fields collected on any automated form should be limited to those records that an FCM obtains in its regular onboarding processes.⁵³ FIA recommended that data points that are not currently collected by FCMs be removed from the forms. On a related topic, FIA recommended that the requirement to list the customer or account controller's website be removed, because website addresses are subject to change and FCMs would have no ability to monitor for such changes and update their records.⁵⁴

FIA proposed that the three sections of the proposed 102 be consolidated into a single Form 102, a draft of which is attached to the FIA comment letter (the "FIA consolidated form").⁵⁵ CME expressed support for the FIA consolidated form.⁵⁶

The Commission declines to accept the proposal to create a single, consolidated Form 102 based on the FIA consolidated form. The FIA consolidated form is missing a number of key data fields, the absence of which would undermine the goals of the Commission's data collection effort. However, the Commission is accommodating FIA's comments in a more limited fashion, by clarifying in the instructions to the new forms that the NFA ID and website (the two examples of problematic fields cited by FIA) are only required to be reported to the extent the respondent has this information available in its records.

Sharing of Information with Regulatory and Self-Regulatory Authorities

FIA and CME recommended that the information collected via the revised forms should be made available to "appropriate regulatory and self-regulatory authorities" (FIA) and "relevant SROs" (CME).⁵⁷

The Commission is not modifying the final rules to provide for the sharing of information collected via the forms with the parties proposed by commenters, such as regulatory and self-regulatory authorities. The Commission believes that it would be costly and overly burdensome for the Commission to distribute the collected information to external parties; furthermore, distribution to external parties would not be consistent with the scope of the Commission's responsibilities.

§ 17.02(b)—Section 17.01(a) reports (via 102A).

§ 17.02(b)(2)-(3) (new 102A filings and change 102A filings): Comments

Proposed § 17.02(b)(2)-(3) required firms to file a new Form 102A by 9:00 a.m. ET the following business day after a special account becomes reportable; similarly, changes to a previously submitted Form 102A were required to be reported by 9:00 a.m. ET the following

⁵³ CL-2012-CME supra note 36 at 2.

⁵⁴ CL-2012-FIA supra note 36 at 7.

⁵⁵ CL-2012-FIA supra note 36 at 4 and Exhibit A.

⁵⁶ CL-2012-CME supra note 36 at 2.

⁵⁷ CL-2012-FIA supra note 36 at 8. CL-2012-CME supra note 36 at 3.

business day. FIA stated that obtaining all the information required by Form 102A (including, for example, the trading accounts that comprise a special account) can take several days.⁵⁸ As a result, FIA recommended that the deadline for filing a complete Form 102A or any change update be modified to five business days from the date the account or change becomes reportable.⁵⁹

§ 17.02(b)(4) (refresh 102A filings): Comments

Proposed § 17.02(b)(4) required firms to resubmit the Form 102A every six months for each special account, in order to ensure that the information reported is frequently updated. Refresh updates were also required under this proposed rule on such later date (*i.e.*, later than six months) specified by the Commission or its designee. FIA commented that this timeframe “will impose significant operational and financial burden on reporting firms,” and recommended that refresh updates instead be required every two years.⁶⁰ CME also recommended that refresh updates be required every two years.⁶¹

§ 17.02(b)(3)-(4) (when 102A accounts are no longer reportable): Comments

Proposed § 17.02(b)(3)-(4) provided that an FCM may stop reporting a change update or refresh update with respect to a special account upon notifying the Commission or its designee that the account in question is no longer reportable. FIA stated that “the Commission provides no guidance on when an FCM may reasonably conclude that an account is no longer reportable. A customer may fall below and rise above the reportable position level frequently during the course of its relationship with an FCM.”⁶² FIA therefore recommended that the Commission revise the proposed rule to provide that an FCM may determine that an account is no longer reportable with respect to a particular product if the account remains below the reporting level for a fixed period of time, such as 180 days/six months.⁶³ FIA’s six-month proposal tracks the sunset provision in the NPRM for the reporting of change and refresh updates on Form 102B.⁶⁴

In light of the comments received, the Commission is making the following modifications to § 17.02(b)(2)-(4) and to new Form 102A.

§ 17.02(b)(2)-(3) (new 102A filings and change 102A filings): Commission Response

⁵⁸ CL-2012-FIA *supra* note 36 at 7.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ CL-2012-CME *supra* note 36 at 3.

⁶² CL-2012-FIA *supra* note 36 at 7.

⁶³ CL-2012-FIA *supra* note 36 at 7-8.

⁶⁴ Under the NPRM and the final rules, clearing members may stop providing change and refresh updates on Form 102B for any volume threshold account upon notifying the Commission or its designee that the volume threshold account executed no trades in any product in the past six months on the reporting market at which the volume threshold account reached the reportable trading volume level. See § 17.01(c)(3) and (4) in section IX of the final rules.

New Form 102A requests information regarding both special accounts and the trading accounts that comprise a special account. The Commission is modifying the reporting deadline for new and changed Form 102A filings, specifically with respect to the reporting of non-omnibus trading accounts that comprise a special account. Respondents are required to provide the names of such trading account owners and controllers by 9:00 a.m. the following business day. However, respondents are required to provide the other contact details with respect to such trading account owners and controllers (address, telephone number, etc.) within three business days.⁶⁵

§ 17.02(b)(4) (refresh 102A filings): Commission Response

Refresh filings for special accounts will be required once per year, as opposed to once each six months (as proposed in the NPRM).⁶⁶ In light of this change, the final rules provide that refresh updates are required on such other date specified by the Commission or its designee that

⁶⁵ Specifically, the information marked as ‘Follow-On Information’ in questions 10(ii) and (iii) on New Form 102A may be provided within three business days. All other required fields on New Form 102A must be completed by 9:00 a.m. the following business day. See New Form 102A in the Appendix to the final rules for more information. The Commission is adopting a reporting requirement of three business days as an acceptable intermediate point between one business day (as proposed in the NPRM) and five business days (as requested by FIA, per the preceding summary of comments). The three business day requirement is therefore less burdensome than the one business day requirement proposed in the NPRM. Based on the experience of the Commission’s surveillance group, the Commission believes that the three business day requirement, while longer than the one day proposal in the NPRM, will nonetheless enable the Commission to maintain current databases, including up-to-date contact information that will allow the Commission to contact market participants quickly in the event of significant market events that occur close to the time of reporting. By contrast, based on the experience of the Commission’s surveillance group, the Commission believes that a five business day reporting deadline is too long to perform timely market surveillance, and maintain databases that are sufficiently accurate and current to be useful.

⁶⁶ The Commission is adopting a refresh reporting requirement of once per year as an intermediate compromise between once each six months (as proposed in the NPRM) and once every two years (as requested by FIA and CME, per the preceding summary of comments). The annual refresh requirement is therefore less burdensome than the six month requirement proposed in the NPRM. Based on the experience of the Commission’s surveillance group, the Commission believes that the annual refresh requirement, while longer than the six month requirement proposed in the NPRM, will nonetheless enable the Commission to maintain current databases, including up-to-date contact information that will allow the Commission to contact market participants quickly in the event of significant market events. By contrast, based on the experience of the Commission’s surveillance group, the Commission believes that a two year refresh deadline is too long to perform timely market surveillance and maintain databases that are sufficiently accurate and current to be useful.

is equal to or greater than six months, which is consistent with the alternative deadline language in proposed §§17.02 and 20.5.

§ 17.02(b)(3)-(4) (when 102A special accounts are no longer reportable): Commission Response

In response to FIA's comment, pursuant to the final rules, reporting parties may stop providing Form 102A change updates and refresh updates for a special account if the account is no longer reportable as a special account and has not been reportable as a special account for the past six months. This change is intended to substantively replicate § 17.02(c)(3)-(4), which provide that clearing members may stop providing Form 102B change updates and refresh updates, respectively, upon notifying the Commission or its designee that the relevant volume threshold account executed no trades in any product in the past six months on the reporting market at which the volume threshold account reached the reportable trading volume level.

§ 17.02(c)—Section 17.01(b) reports (via 102B).

§ 17.02(c)(2)-(3) (new 102B filings and change 102B filings)

Proposed § 17.02(c)(2)-(3) required firms to file a new Form 102B by 9:00 a.m. ET the following business day after the account becomes a volume threshold account; similarly, changes to a previously submitted Form 102B were required to be reported by 9:00 a.m. ET the following business day. See the discussion above of the comments received regarding Form 102A filings required by § 17.02(b)(2)-(3), which are also relevant to the new 102B and change 102B reporting obligations.

The Commission is modifying the reporting deadline for new and changed Form 102B filings, specifically with respect to the reporting of non-omnibus volume threshold accounts. Respondents are required to provide the names of non-omnibus volume threshold account owners and controllers reported on 102B by 9:00 a.m. the following business day. Respondents are required to provide the other contact details reported on 102B with respect to such parties (i.e., the address, telephone number, etc. of non-omnibus volume threshold account owners and controllers) within three business days.⁶⁷

§ 17.02(c)(4) (refresh 102B filings).

Proposed § 17.02(c)(4) required firms to resubmit the Form 102B every six months for each volume threshold account, in order to ensure that the information reported is frequently updated. Refresh updates were also required under this proposed rule on such later date (i.e., later than six months) specified by the Commission or its designee. As noted above, FIA commented that this timeframe "will impose significant operational and financial burden on

⁶⁷ Specifically, the information marked as 'Follow-On Information' in questions 5 and 6 on New Form 102B may be provided within three business days. All other required fields on New Form 102B must be completed by 9:00 a.m. the following business day. See New Form 102B in the Appendix to the final rules for more information.

reporting firms,” and recommended that refresh updates instead be required every two years.⁶⁸ CME also recommended that refresh updates be required every two years.⁶⁹

Refresh filings for volume threshold accounts will be required once per year, as opposed to once each six months (as proposed in the NPRM). In light of this change, the final rules provide that refresh updates are required on such other date specified by the Commission or its designee that is equal to or greater than six months, which is consistent with the alternative deadline language in proposed §§17.02 and 20.5.

Part 20

§ 20.5—*Series S filings.*

As with Forms 102 and 40, the Commission proposed to transfer the list of data points required in Form 102S from the relevant regulatory text (i.e., § 20.5)⁷⁰ to the form itself. More specifically, the Commission proposed to eliminate the data points specified in § 20.5(a)(1), and to revise § 20.5(a)(1) to provide that when a counterparty consolidated account first becomes reportable, the reporting party shall submit a 102S filing (“initial 102S filing”). The timing for submitting initial 102S filings would continue to be subject to current § 20.5(a)(3).⁷¹ Finally, the Commission proposed to codify new §§ 20.5(a)(4) and 20.5(a)(5) to require change and refresh updates for Form 102S in the same manner as they are required for Form 102A.

FIA commented on the utility of Form 102S, which requires swap dealers and clearing members to identify and report a swap counterparty or customer consolidated account with a reportable position. FIA stated that the information that will be reported to swap data repositories under part 45 would provide the Commission with access to essentially the same information that proposed Form 102S will require.⁷² FIA commented that “requiring FCMs, and the industry generally, to divert critical operational and financial resources from building the systems necessary to implement the part 45 recordkeeping and reporting requirements to implement this interim solution, would impose an unnecessary operational burden and cost without a significant offsetting benefit.”⁷³ CME commented that “requiring swap reporting as part of OCR, to accomplish reporting that is already being done under part 20- and soon to be duplicated under SDR reporting with new unique legal entity identifiers- is unnecessary and imposes additional unjustified costs on the industry.”⁷⁴

The Commission acknowledges the comments of FIA and CME regarding the Form 102S. Contrary to commenters’ claims, however, SDRs will not, in all cases, be able to provide

⁶⁸ CL-2012-FIA *supra* note 36 at 7.

⁶⁹ CL-2012-CME *supra* note 36 at 3.

⁷⁰ 17 CFR 20.5.

⁷¹ 17 CFR 20.5(a)(3).

⁷² CL-2012-FIA *supra* note 36 at 2-3.

⁷³ CL-2012-FIA *supra* note 36 at 3.

⁷⁴ CL-2012-CME *supra* note 36 at 3.

the ownership and control information requested on 102S. For example, the Commission anticipates that swap dealers and clearing members (the 102S reporting parties) will be able to consistently provide the contact information for owners and controllers of consolidated accounts on the 102S, based on the records these entities maintain. Part 45 reporting, by contrast, is based on counterparty data. This counterparty data may, in some cases, overlap with the owners and controllers of consolidated accounts reported on 102S. However, counterparty data will not, in all cases, overlap with 102S reporting and provide the ownership and control information required by 102S. As a result, the Commission cannot rely on SDR reporting under part 45 as a substitute for 102S.

The Commission is adopting proposed § 20.5(a)(1)-(2) without modification. In response to comments received with respect to § 17.02(b), the Commission is making the following modifications to proposed § 20.5(a)(4)-(5) and to Form 102S:

§ 20.5(a)(5) (refresh 102S filings)

The discussion of § 17.02(b) above contains a summary of the comments received on change and refresh obligations related to the Form 102, which are relevant to Form 102S. In response to FIA's comments, refresh filings for consolidated accounts will be required once per year, as opposed to once each six months (as proposed in the NPRM). In light of this change, the final rules provide that refresh updates are required on such other date specified by the Commission or its designee that is equal to or greater than six months, which is consistent with the alternative deadline language in proposed §§ 17.02 and 20.5.

§ 20.5(a)(4)-(5) (when 102S consolidated accounts are no longer reportable)

Reporting parties may stop providing Form 102S change updates and refresh updates for a consolidated account if the account is no longer reportable as a consolidated account and has not been reportable as a consolidated account for the past six months.

Comments Regarding Cost and Benefit Estimates

The Commission requested comment on a variety of cost and benefit metrics in the NPRM. As a general matter, the Commission requested that commenters provide data and any other information or statistics that they relied on to reach conclusions on the Commission's cost and benefit estimates. The Commission also requested comment, including specific quantitative estimates, on the expected costs related to upgrading or obtaining systems to implement and comply with the reporting requirement under the proposed new and revised forms, as well as the impact of the proposed rules (or the relative impact of any alternative rules) on the § 15(a) factors discussed in the NPRM. Although some commenters stated that the NPRM understated the total cost to the industry, no commenter provided specific quantitative cost or benefit

estimates, or other information to more precisely estimate costs beyond those presented in the NPRM.⁷⁵

In the absence of specific quantitative estimates or alternative cost proposals by commenters, the Commission performed its own analysis in updating the NPRM cost benefit considerations for the final rules. For purposes of the final rules, the Commission has updated the cost estimates that appeared in the NPRM based on the most recent data and statistics available to the Commission. The Commission has also calculated an estimated range of 25 percent below and 25 percent above the estimated total annual industry cost for each form, as indicated in response to Question 12 below. The Commission has applied these ranges because reporting costs will differ among market participants based on a variety of factors, including the state of their current technology systems, and their differing levels of market and reporting experience. The upper end of the ranges also responds to comments stating that the cost estimates in the NPRM understated the total cost to the industry (without expressing by how much, or to what degree).⁷⁶

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.

As discussed in response to Question 2 above, on July 19, 2010, the Commission published for public comment a Notice of Proposed Rulemaking that proposed to collect certain account ownership and control information for all trading accounts active on U.S. futures exchanges and other reporting parties (the 2010 OCR NPRM). The 2010 OCR NPRM proposed to collect this information through a dedicated ownership and control report. In an effort to accommodate comments received in response to the 2010 OCR NPRM, the Commission withdrew the 2010 OCR NPRM, and instead pursued the collection of account ownership and control information through a separate Notice of Proposed Rulemaking, published on July 26, 2012 (the NPRM, discussed above).⁷⁷ The Commission invited all interested parties to submit comments on the NPRM, including comments with respect to costs and benefits, within a designated comment window.

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.

No such circumstances are anticipated.

⁷⁵ See section VIII(B)(vi) of the final rules for additional discussion of comments received by the Commission regarding the costs and benefits of reporting.

⁷⁶ *Id.*

⁷⁷ See NPRM *supra* note 1.

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 will protect proprietary information consistent with the Freedom of Information Act and 17 CFR part 145, "Commission Records and Information." In addition, § 8(a)(1) of the CEA strictly prohibits the Commission, unless specifically authorized by the CEA, 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."⁷⁸ The Commission is also required to protect certain information contained in a government system of records according to the Privacy Act of 1974, 5 U.S.C. 552a.

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 adopted regulations require the giving of sensitive information, as that term is used in this question.

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**

⁷⁸ 7 U.S.C. 12(a)(1).

collection activities should not be included here. Instead, this cost should be included in Item 13 of OMB Form 83-I.

See Attachment A for a table of this hour burden.

Methodology Used to Estimate Costs

As discussed above, the Commission has calculated the total estimated industry cost for submitting each form via FTP or via the web portal. For each form, these calculations represent the total industry cost if all reporting parties submit information via one method—as compared to the total industry cost if all parties submit via the other method. For example, the 102A estimates described in sections VIII(A) and (B) of the final rules represent the total estimated industry cost if all reporting parties submit 102A via FTP (\$1,931,129), or if all parties submit 102A via the web portal (\$5,954,969). The Commission recognizes that, even if it is less expensive for the industry as a whole to submit 102A via FTP, it may be less expensive for certain individual reporting parties to submit 102A via the web portal. This may be due to the limited number of forms these parties expect to submit, their technology infrastructure, or other factors.

To expand on this example, if a new reporting party anticipates that it will submit only two 102A filings per year, it might logically conclude that it would be less expensive to submit its two filings via the web portal than to incur the development costs associated with establishing an FTP link to the Commission. In this instance, the Commission has estimated that the reporting party would incur 20 hours of initial development burden for each of the two records submitted via the web portal, or a total initial development burden of 40 hours. Accordingly, the reporting party may conclude that submitting its 102A filings via the web portal is more cost-effective than submitting the same information via FTP, which the Commission has estimated would require an initial development burden of 264 hours per entity (regardless of the number of forms submitted).⁷⁹

The cost estimates in sections VIII(A) and (B) of the final rules assume that all market participants will start from the same point in developing the systems required to implement OCR reporting. Accordingly, to the extent that current reporting parties leverage their existing reporting systems⁸⁰ to implement OCR reporting, the cost estimates are likely to overestimate actual costs to some degree for such parties.

⁷⁹ In this example, the Commission expects that reporting parties making a small number of filings would choose to submit via the web-based portal, because web submission would be the most cost-effective submission method for such parties. In doing so, they will incur fewer costs than they would if they submitted via FTP, thereby lowering the total costs to the industry. As a result, the simplifying assumption that all reporting parties will submit New Form 102A (along with certain other forms discussed below) via FTP is a conservative assumption, which will tend to overestimate the total industry cost.

⁸⁰ Certain parties that will be required to report under the final rules now provide certain forms under the current reporting system (e.g., the current Forms 102 and 40).

For the reasons discussed in sections VIII(A) and (B) of the final rules, the Commission anticipates that total reporting and recordkeeping costs to the industry are likely to be lower than the sum of the costs associated with each form individually, as the Commission has calculated in the final rules.

Costs and Benefits of Individual Reporting Forms and Reporting and Recordkeeping Requirements

The discussion below considers the anticipated costs to the industry of New Form 102A, New Form 102B, New Form 71, New Form 40, New Form 102S, New Form 40S, and the reporting and recordkeeping requirements of revised § 18.05.

A. New Form 102A

The Commission assumes that each New Form 102A reporting party will submit New Form 102A via secure FTP, which the Commission believes is the more cost-effective of the two filing methods for the industry as a whole. Each FTP submission will likely contain numerous 102A records. The Commission estimates that the total initial development burden will average 264 hours per reporting party. The Commission also estimates that the highly automated nature of this option will virtually eliminate the marginal costs associated with each additional submission or each additional record contained in a submission. Accordingly, the Commission estimates that 102A change and refresh updates will not increase a reporting party's burden when using the FTP submission method. The Commission further estimates that the ongoing operation and maintenance burden will average 53 hours per year no matter how many records are contained in a submission. The total annualized initial development burden and the ongoing operation and maintenance burden (total yearly burden) will equal approximately 106 hours per reporting party.⁸¹

An assessment of Commission data collection efforts demonstrated that the Commission received Form 102 submissions from 260 reporting parties in 2012. The Commission anticipates that it will receive New Form 102A submissions from a similar number of reporting parties each year. Assuming all New Form 102A reporting parties utilize the FTP submission method, the Commission estimates that the total annual industry burden for New Form 102A will equal 27,560 hours. Using an estimated wage rate of \$70.07 per hour,⁸² annual industry costs for 102A filings made pursuant to the FTP submission method are estimated at \$1,931,129.

⁸¹ All annualized development burden estimates are based on 5 year, straight line depreciation. The 106 hour figure is arrived at by dividing 264 hours (initial development burden per reporting party) by 5 years, which results in an estimated annualized initial development burden of 53 hours per reporting party. 53 hours plus 53 hours (annual, ongoing operation and maintenance burdens per reporting party) equals 106 hours per reporting party.

⁸² 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 \$70.07 per hour is derived from figures from a weighted average of salaries and

The Commission has used the same wage rate of \$70.07 when calculating the cost of submission via both the web portal and FTP. Each submission method will, nonetheless, require a different annual or annualized burden, in terms of hours. This \$70.07 wage rate represents the work of a senior programmer, programmer, intermediate compliance advisor, systems analyst, and assistant/associate general counsel, in the proportions described in the preceding footnote.

Form 102A			
Regulation	Estimated Total Annual Industry Cost	Estimated Low and High Range (25% Below and 25% Above Estimated Total Annual Industry Cost)⁸³	Anticipated Transmission Method⁸⁴

bonuses across different professions from the SIFMA Report on Management & Professional Earnings in the Securities Industry 2011, 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)” (30% weight); “programmer” (29% weight); “compliance advisor (intermediate)” (15%); “systems analyst” (16%); and “assistant/associate general counsel” (10%). The \$70.07 wage rate is a blended rate, such that the Commission has applied the same \$70.07 wage rate when calculating the cost of submission via both FTP and the web-based portal. The NPRM contemplated that Forms 40/S and 71 could be submitted only via the web portal. However, pursuant to the final rules, the Commission is allowing reporting parties to submit Forms 40/S and 71 via FTP as well, with the result that reporting parties may submit all forms either via the web portal or via FTP. In light of this change, the wage rate percentages in the final rules have been updated and slightly modified from the wage rate percentages in the NPRM, to more accurately reflect anticipated labor allocations. The NPRM employed the following wage rate percentages: “programmer (senior)” (30% weight); “programmer” (30% weight); “compliance advisor (intermediate)” (20%); “systems analyst” (10%); and “assistant/associate general counsel” (10%). While the NPRM calculated an estimated wage rate of \$78.61 per hour, the final rules calculate an estimated wage rate of \$70.07 per hour using the 2011 SIFMA statistics and updated wage rate percentages. (Note that the national average of salary and bonuses for the professionals listed above declined between 2010 to 2011, according to the SIFMA report addressing each of those years. The 2010 SIMA report (which is the basis for the wage rate in the NPRM) indicates an aggregate national average of salary and bonuses of \$530,321 for these professionals, while the 2011 SIFMA report indicates an aggregate national average of salary and bonuses of \$510,943.) The Commission has also updated the cost estimates that appeared in the NPRM based on the most recent data and statistics available to the Commission (including, for example, the number of reporting forms received by the Commission in 2012). The NPRM calculated an estimated total annual cost to the industry of \$9,147,061, as compared to an estimated total cost to the industry of \$9,574,296 in the final rules, per section VIII(A) of the final rules. See also note 265 in the final rules.

⁸³ The Commission has calculated an estimated range of 25% below and 25% above the estimated total annual industry cost, due to the fact that reporting costs will differ among market participants based on a variety of factors, including the state of their current technology systems, and their differing levels of market and reporting experience. The upper end of the ranges also

17.01(a)	\$1,931,129	\$1,448,347 - \$2,413,911	FTP
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B. New Form 102B

The Commission assumes that each New Form 102B reporting party will submit New Form 102B via secure FTP, which the Commission believes is the most cost-effective of the two filing methods for the industry as a whole. Each FTP submission will likely contain numerous 102B records. The Commission estimates that the total initial development burden should average 264 hours per reporting party. The Commission also estimates that the highly automated nature of this option will virtually eliminate the marginal costs associated with each additional submission or each additional record contained in a submission. Accordingly, the Commission estimates that 102B change and refresh updates will not increase a reporting party's burden when using the FTP submission method. The Commission further estimates that the ongoing operation and maintenance burden will average 53 hours per year no matter how many records are contained in a submission. The total annualized initial development burden and the ongoing operation and maintenance burden (total yearly burden) equals approximately 106 hours per reporting party.⁸⁵

Because New Form 102B provides a new volume-based reporting structure not found in current Form 102, the Commission is unable to refer to historical reporting statistics to directly estimate the number of New Form 102B reporting parties. Instead, the Commission estimated the number of New Form 102B reporting parties by estimating the number of clearing members associated with trading accounts that the Commission projects will qualify as volume threshold accounts.

- For volume threshold accounts associated with DCMs, the Commission anticipates that it will receive approximately 126,000 New Form 102B submissions from approximately 100 reporting parties annually. Assuming that all such reporting parties utilize the FTP submission method, the Commission estimates that the total annual industry burden for the reporting of such accounts on New Form 102B will equal 10,600 hours.⁸⁶ Using an estimated wage rate of

responds to comments stating that the cost estimates in the NPRM understated the total cost to the industry (without expressing by how much, or to what degree).

⁸⁴ The Commission estimated the total annual industry cost associated with each filing obligation by considering the two distinct filing methods that it will accommodate pursuant to the final rules (web-based submission and FTP submission). The estimated cost of each filing obligation assumes that all reporting parties will file via the less expensive of the two filing methods. However, reporting parties, given their own individualized needs, are assumed to make the most cost-effective choice for them, which may be either of the two methods.

⁸⁵ All annualized development burden estimates are based on 5 year, straight line depreciation.

⁸⁶ The 10,600 hour figure is arrived at by multiplying 106 hours (annualized development burden and ongoing operation and maintenance burden per reporting party) by 100 reporting parties.

\$70.07 per hour, annual industry costs for such filings made pursuant to the FTP submission method are estimated at \$742,742.⁸⁷

- For volume threshold accounts associated with SEFs, the Commission anticipates that it will receive approximately 62,015 New Form 102B submissions from approximately 75 reporting parties annually. Assuming that all such reporting parties utilize the FTP submission method, the Commission estimates that the total annual industry burden for the reporting of such accounts on New Form 102B will equal 7,950 hours.⁸⁸ Using an estimated wage rate of \$70.07 per hour, annual industry costs for such filings made pursuant to the FTP submission method are estimated at \$557,057.⁸⁹

Collectively, annual industry costs for 102B filings made pursuant to the FTP submission method are estimated at \$1,299,799.⁹⁰

Form 102B			
Regulation	Estimated Total Annual Industry Cost	Estimated Low and High Range (25% Below and 25% Above Estimated Total Annual Industry Cost)⁹¹	Anticipated Transmission Method
17.01(b)	\$1,299,799	\$974,849 - \$1,624,749	FTP

C. New Form 71

The Commission assumes that each New Form 71 reporting party (*i.e.*, originators of omnibus volume threshold accounts or omnibus reportable sub-accounts) will complete and submit New Form 71 online via a secure web-based portal provided by the Commission, which the Commission believes is the more cost-effective of the two filing methods for the industry as a

⁸⁷ The \$742,742 figure is arrived at by multiplying 100 reporting parties by 106 hours (equals 10,600 hours) by \$70.07 (equals \$742,742).

⁸⁸ The 7,950 hour figure is arrived at by multiplying 106 hours (annualized development burden and ongoing operation and maintenance burden per reporting party) by 75 reporting parties.

⁸⁹ The \$557,057 figure is arrived at by multiplying 75 reporting parties by 106 hours (equals 7,950 hours) by \$70.07 (equals \$557,057).

⁹⁰ The \$1,299,799 figure is arrived at by multiplying 175 reporting parties by 106 hours (equals 18,550 hours) by \$70.07 (equals \$1,299,799).

⁹¹ The Commission has calculated an estimated range of 25% below and 25% above the estimated total annual industry cost, due to the fact that reporting costs will differ among market participants based on a variety of factors, including the state of their current technology systems, and their differing levels of market and reporting experience. The upper end of the ranges also responds to comments stating that the cost estimates in the NPRM understated the total cost to the industry (without expressing by how much, or to what degree).

whole. The Commission estimates that, on average, New Form 71 will create an annual reporting burden of 8 hours per filing.⁹²

As discussed in section VIII(A) of the final rules, the Commission expects approximately 564 DCM-related New Form 71 filings per year, and 198 SEF-related New Form 71 filings per year.

- Based on an estimated 564 DCM-related New Form 71 filings per year, the Commission estimates an aggregate reporting burden of 4,512 hours annually for such filings via the web-based portal. Using an estimated wage rate of \$70.07 per hour, annual industry costs for such filings made via the web-based portal are estimated at \$316,156.⁹³
- Based on an estimated 198 SEF-related New Form 71 filings per year, the Commission estimates an aggregate reporting burden of 1,584 hours annually for such filings via the web-based portal. Using an estimated wage rate of \$70.07 per hour, annual industry costs for such filings made via the web-based portal are estimated at \$110,991.⁹⁴

Collectively, annual industry costs for New Form 71 filings made via the web-based portal are estimated at \$427,147.⁹⁵

Form 71			
Regulation	Estimated Total Annual Industry Cost	Estimated Low and High Range (25% Below and 25% Above Estimated Total Annual Industry Cost)⁹⁶	Anticipated Transmission Method

⁹² The submission of New Form 71 through the web-based portal does not require initial development expenditures; as a result, the burdens and costs for this form are calculated on an annual basis rather than an annualized basis. In addition, Form 71 does not require change or refresh updates.

⁹³ The \$316,156 figure is arrived at by multiplying 564 anticipated records by 8 hours (equals 4,512 hours) by \$70.07 (equals \$316,156).

⁹⁴ The \$110,991 figure is arrived at by multiplying 198 anticipated records by 8 hours (equals 1,584 hours) by \$70.07 (equals \$110,991).

⁹⁵ The \$427,147 figure is arrived at by multiplying 762 anticipated records by 8 hours (equals 6,096 hours) by \$70.07 (equals \$427,147).

⁹⁶ The Commission has calculated an estimated range of 25% below and 25% above the estimated total annual industry cost, due to the fact that reporting costs will differ among market participants based on a variety of factors, including the state of their current technology systems, and their differing levels of market and reporting experience. The upper end of the ranges also responds to comments stating that the cost estimates in the NPRM understated the total cost to the industry (without expressing by how much, or to what degree).

17.01(c)	\$427,147	\$320,360 - \$533,934	web
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D. New Form 40

New Form 40 Submissions Resulting from New Form 102A. The Commission assumes that each reporting party filing New Form 40 as a result of New Form 102A (*i.e.*, special account owners and controllers) will complete and submit New Form 40 online via a secure web-based portal provided by the Commission, which the Commission believes is the more cost-effective of the two filing methods for the industry as a whole.

As discussed in section VIII(A) of the final rules, the Commission expects approximately 5,250 New Form 40 records filings per year arising from New Form 102A filings. The Commission estimates that each of the 5,250 New Form 40 records will require three hours to complete.⁹⁷ Assuming each such New Form 40 record is provided via the web-based portal, the Commission estimates that the total annual industry burden for reporting on New Form 40, as a result of New Form 102A, will equal 15,750 hours. Using an estimated wage rate of \$70.07 per hour, annual industry costs for New Form 40 filings arising from special accounts are estimated at \$1,103,603.⁹⁸

New Form 40 Submissions Resulting from New Form 102B and New Form 71. The Commission also assumes that each reporting party filing New Form 40 as a result of New Form 102B and New Form 71 (*i.e.*, volume threshold account controllers, persons who own volume threshold accounts, reportable sub-account controllers, and persons who own reportable sub-accounts) will complete and submit New Form 40 online via a secure web-based portal provided by the Commission.

The Commission anticipates that it will receive approximately 13,409 DCM-related New Form 40 filings annually and approximately 5,511 SEF-related New Form 40 filings annually, in each case arising from New Form 102B and New Form 71.⁹⁹ Each such New Form 40 filing is estimated to require three hours.¹⁰⁰ Assuming each such New Form 40 record is provided via the web-based portal:

⁹⁷ The Commission's estimate of three hours per response reflects an initial, one-time burden of 10 hours, annualized over a five-year period, plus an additional hour per year for change updates.

⁹⁸ The \$1,103,603 figure is arrived at by multiplying 5,250 anticipated records by 3 hours (equals 15,750 hours) by \$70.07 (equals \$1,103,603).

⁹⁹ As with 102A records, the Commission estimates that in approximately 25 percent of filings, the owner and the controller of a volume threshold account reported on New Form 102B will be the same, and that accordingly, only one New Form 40 would be required. Similarly, a number of potential New Form 40 reporting parties are likely to own or control both DCM-related and SEF-related volume threshold accounts, but only one New Form 40 would be required.

¹⁰⁰ The Commission's estimate of three hours per response reflects an initial, one-time burden of 10 hours, annualized over a five-year period, plus an additional hour per year for change updates.

- The Commission estimates that the total annual industry burden for reporting on New Form 40, as a result of New Form 102B and New Form 71, will equal 40,227 hours for DCM-related New Form 40 filings. Using an estimated wage rate of \$70.07 per hour, annual industry costs for such filings arising from volume threshold accounts and reportable sub-accounts are estimated at \$2,818,706.¹⁰¹
- The Commission estimates that the total annual industry burden for reporting on New Form 40, as a result of New Form 102B and New Form 71, will equal 16,533 hours for SEF-related New Form 40 filings. Using an estimated wage rate of \$70.07 per hour, annual industry costs for such filings arising from volume threshold accounts and reportable sub-accounts are estimated at \$1,158,467.¹⁰²

Collectively, annual industry costs for New Form 40 filings, as a result of New Form 102B and New Form 71, are estimated at \$3,977,173.¹⁰³

Form 40- Submissions Resulting from (a) New Form 102A and (b) New Form 102B and New Form 71			
Regulation	Estimated Total Annual Industry Cost	Estimated Low and High Range (25% Below and 25% Above Estimated Total Annual Industry Cost)¹⁰⁴	Anticipated Transmission Method
18.04(a)	\$1,103,603	\$827,702 - \$1,379,504	web
18.04(b)	\$3,977,173	\$2,982,880 - \$4,971,466	web

E. New Form 102S

The Commission assumes that each New Form 102S reporting party will submit New Form 102S via secure FTP, which the Commission believes is the more cost-effective of the two filing methods for the industry as a whole. Each FTP submission will likely contain numerous 102S records. The Commission estimates that the total initial development burden will average 264 hours per reporting party. The Commission also estimates that the highly automated nature

¹⁰¹ The \$2,818,706 figure is arrived at by multiplying 13,409 filings by 3 hours (equals 40,227 hours) by \$70.07 (equals \$2,818,706).

¹⁰² The \$1,158,467 figure is arrived at by multiplying 5,511 filings by 3 hours (equals 16,533 hours) by \$70.07 (equals \$1,158,467).

¹⁰³ The \$3,977,173 figure is arrived at by multiplying 18,920 filings by 3 hours (equals 56,760 hours) by \$70.07 (equals \$3,977,173).

¹⁰⁴ The Commission has calculated an estimated range of 25% below and 25% above the estimated total annual industry cost, due to the fact that reporting costs will differ among market participants based on a variety of factors, including the state of their current technology systems, and their differing levels of market and reporting experience. The upper end of the ranges also responds to comments stating that the cost estimates in the NPRM understated the total cost to the industry (without expressing by how much, or to what degree).

of this option will virtually eliminate the marginal costs associated with each additional submission or each additional record contained in a submission. The Commission believes that the timing requirements for 102S filings in current §20.5(a)(3),¹⁰⁵ or any new submission procedures arising from the Swaps Large Trader Guidebook (i.e., frequency of 102S filing submission), will not increase a reporting party's burden when using the FTP submission method. The Commission further estimates that the ongoing operation and maintenance burden will average 53 hours per year no matter how many records are contained in a submission. The total annualized initial development burden and the ongoing operation and maintenance burden (total yearly burden) will equal approximately 106 hours per reporting party.¹⁰⁶

The 102S filing requirements in current § 20.5¹⁰⁷ are nearly identical to the filing requirements for revised 102S; accordingly, the Commission used its experience to date with 102S filings to estimate the number of 102S reporting parties. An assessment of Commission data collection efforts demonstrated that the Commission received Form 102S submissions from 39 reporting parties in 2012. The Commission anticipates that it will receive New Form 102S submissions from a similar number of reporting parties each year. Furthermore, the Commission anticipates that it will receive approximately 2,508 102S records each year. Assuming 102S reporting parties utilize the FTP submission method, the Commission estimates that the total annual industry burden for 102S filing will equal 4,134 hours. Using an estimated wage rate of \$70.07 per hour, annual industry costs for New Form 102S are estimated at \$289,669.¹⁰⁸

Form 102S			
Regulation	Estimated Total Annual Industry Cost	Estimated Low and High Range (25% Below and 25% Above Estimated Total Annual Industry Cost)¹⁰⁹	Anticipated Transmission Method
20.5(a)	\$289,669	\$217,252 - \$362,086	FTP

F. New Form 40S

¹⁰⁵ 17 CFR 20.5(a)(3).

¹⁰⁶ All annualized development burden estimates are based on 5 year, straight line depreciation.

¹⁰⁷ 17 CFR 20.5.

¹⁰⁸ The \$289,669 figure is arrived at by multiplying 39 reporting parties by 106 hours (equals 4,134 hours) by \$70.07 (equals \$289,669).

¹⁰⁹ The Commission has calculated an estimated range of 25% below and 25% above the estimated total annual industry cost, due to the fact that reporting costs will differ among market participants based on a variety of factors, including the state of their current technology systems, and their differing levels of market and reporting experience. The upper end of the ranges also responds to comments stating that the cost estimates in the NPRM understated the total cost to the industry (without expressing by how much, or to what degree).

The Commission assumes that each New Form 40S reporting party will complete and submit its forms online via a secure web-based portal provided by the Commission, which the Commission believes is the more cost-effective of the two filing methods for the industry as a whole. As discussed in section VIII(A) of the final rules, the Commission anticipates that it will receive approximately 2,508 102S records per year, and the Commission estimates that it will make approximately the same number of 40S special calls each year (2,508). Each response is estimated to require three hours,¹¹⁰ resulting in an estimated total annual reporting burden of 7,524 hours. Using an estimated wage rate of \$70.07 per hour, annual industry costs for New Form 40S filings made via the web-based portal are estimated at \$527,207.¹¹¹

Form 40S			
Regulation	Estimated Total Annual Industry Cost	Estimated Low and High Range (25% Below and 25% Above Estimated Total Annual Industry Cost)¹¹²	Anticipated Transmission Method
20.5(b)	\$527,207	\$395,405 - \$659,009	web

G. Expanded Obligation to Maintain Books and Records and Furnish Information to the Commission Under § 18.05

Revised § 18.05 will likely impose a recordkeeping burden on a larger number of persons than current § 18.05. Revised § 18.05 will make four new categories of persons, identified through the volume-based reporting regime, subject to § 18.05: (1) volume threshold account controllers and (2) owners of volume threshold accounts, and upon (3) reportable sub-account controllers and (4) persons who own reportable sub-accounts. The Commission anticipates that additional persons subject to § 18.05 will likely be able to rely on books and records already kept in the ordinary course of business to meet the requirements of the final regulation. This is due, in part, to the fact that § 18.05 requires traders to maintain fairly limited information regarding their trading activity. Section 18.05(a), for example, requires that, “Every trader who holds or controls a reportable futures or option position shall keep books and records showing all details concerning all positions and transactions in the commodity” on certain enumerated trading markets. Furthermore, the Commission assumes that some parties required to maintain books and records pursuant to revised § 18.05 are likely required to maintain books and records under

¹¹⁰ The Commission’s estimate of three hours per response reflects an initial, one-time burden of 10 hours, annualized over a five-year period, plus an additional hour per year for change updates.

¹¹¹ The \$527,207 figure is arrived at by multiplying 2,508 filings by 3 hours (equals 7,524 hours) by \$70.07 (equals \$527,207).

¹¹² The Commission has calculated an estimated range of 25% below and 25% above the estimated total annual industry cost, due to the fact that reporting costs will differ among market participants based on a variety of factors, including the state of their current technology systems, and their differing levels of market and reporting experience. The upper end of the ranges also responds to comments stating that the cost estimates in the NPRM understated the total cost to the industry (without expressing by how much, or to what degree).

current § 18.05, because they hold or control reportable positions (*i.e.*, there will be a certain amount of overlap between these two groups). Accordingly, the Commission believes that revised § 18.05 will not meaningfully increase recordkeeping burdens on persons brought under its scope. As noted in section VII of the final rules, the Commission did not receive any comments regarding the changes to § 18.05 proposed in the NPRM.

The Commission sent 59 special calls pursuant to § 18.05 in 2012, 42 of which were based on trade data reflected in the TCR data feed.¹¹³ Because the volume-based reporting regime is designed to identify designated types of trading activity, the Commission estimates that it will send special calls pursuant to revised § 18.05 to, at a minimum, 42 recipients (*i.e.*, the same number of persons to which the Commission sent special calls in 2012 based on trade data reflected in the TCR). At the same time, the Commission expects that the introduction of volume-based reporting will lead to the Commission sending more special calls than it would otherwise, because this regime will identify new ownership and control relationships and patterns of trading activity. As a result, for purposes of estimating the costs of revised § 18.05, the Commission assumes it will send 25% more special calls in response to trade data than it did in 2012, for a total of 53 special calls per year. These special calls will require a response from approximately 53 individual traders per year.

This estimate reflects only special calls sent pursuant to § 18.05 as a result of information collected via the volume-based reporting regime (*i.e.*, New Form 102B and New Form 71). The estimated 53 recipients of such special calls may include some traders that are already subject to the costs and obligations of current § 18.05. The Commission estimates that each special call response submitted by the new categories of persons subject to revised § 18.05 will take approximately 5 hours, for a total annual reporting burden of 265 hours. Using an estimated wage rate of \$70.07 per hour, annual reporting costs for the new categories of persons that are subject to revised § 18.05 are estimated at \$18,569.¹¹⁴

§ 18.05 Recordkeeping Burden		
Regulation	Estimated Total Annual Industry Cost	Estimated Low and High Range (25% Below and 25% Above Estimated Total Annual Industry Cost)¹¹⁵
18.05	\$18,569	\$13,927 - \$23,211

¹¹³ See section I(B) of the final rules for a discussion of the TCR.

¹¹⁴ The \$18,569 figure is arrived at by multiplying 53 responses by 5 hours (equals 265 hours) by \$70.07 (equals \$18,569).

¹¹⁵ The Commission has calculated an estimated range of 25% below and 25% above the estimated total annual industry cost, due to the fact that recordkeeping costs will differ among market participants based on a variety of factors, including the state of their current technology and recordkeeping systems, and their differing levels of market and reporting experience. The upper end of the ranges also responds to comments stating that the cost estimates in the NPRM understated the total cost to the industry (without expressing by how much, or to what degree).

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 response to Question 12 above.

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 total annualized initial and ongoing cost to the federal government of the final rules will equal approximately \$803,945.¹¹⁶ This figure represents initial

¹¹⁶ The annualized development cost estimates are based on 5 year, straight line depreciation. The \$803,945 figure is arrived at by dividing \$1,744,950 (total initial cost) by 5 years, which results in an estimated annualized initial cost of \$348,990. \$348,990 plus \$454,955 (total annual ongoing cost of software development contractors and equipment maintenance) equals \$803,945.

costs (for software development contractors and the acquisition of equipment) and ongoing costs (for software development contractors and equipment maintenance), as described below.

Initial Costs

The Commission estimates that software development contractors will initially expend approximately 12,770 hours developing data standards, working with potential reporting entities, and preparing CFTC systems to receive and process data. Based upon an approximate average hourly rate of \$135, the Commission estimates that initial development costs for software development contractors will be approximately \$1,723,950. In addition, in order to store and maintain data provide pursuant to the final rules, the Commission estimates that it will initially expend approximately \$21,000 on the acquisition of additional servers and data storage equipment. The total initial cost to the federal government, on a non-annualized basis, is estimated to be \$1,744,950.¹¹⁷

Ongoing Costs

With respect to ongoing costs, the Commission estimates that software development contractors will expend approximately 3,333 hours each year to maintain and support data collected pursuant to the final rules. Based upon an approximate average hourly rate of \$135, the Commission estimates that annual ongoing costs of software development contractors will be approximately \$449,955. In addition, the Commission estimates that it will spend approximately \$5,000 per year on maintenance of servers and data storage equipment. The total annual ongoing cost to the federal government is estimated to be \$454,955.¹¹⁸

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

Item 13 program changes are the result of final rules that require that the new and amended forms be electronically submitted by respondents, and expand the information collected on the forms.

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.

¹¹⁷ The \$1,744,950 figure is arrived at by adding \$1,723,950 (initial development costs for software development contractors) and \$21,000 (acquisition of additional servers and data storage equipment).

¹¹⁸ The \$454,955 figure is arrived at by adding \$449,955 (software development contractors) and \$5,000 (maintenance of servers and data storage equipment).

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

**Question 12; Form 83-I Item 13.
Annual Reporting and Recordkeeping Hour Burden**

OMB Collection File 3038-0103

Applicable CFTC Regulation Section (17 CFR)¹¹⁹	Associated Report	Type of Respondent	Total Number of Respon- dents (13(a))	Total Annual Responses (13(b))	Percentage of Responses Collected Electronically (13(b)(1))¹²⁰	Total Annual Hours Requested (13(c))¹²¹	Current OMB Inventory (13(d))	Differ- ence (13(e))	Total Annualized Costs¹²²
17.01(a)	New Form 102A	FCMs, clearing members, and foreign brokers	260	7,726	100%	27,560	940 ¹²³	26,620 ¹²⁴	\$1,931,129

¹¹⁹ As adopted in the final rules.

¹²⁰ As noted above, the Commission has determined that it will be most cost-efficient for the industry as a whole to submit certain forms by FTP, and other forms through the web-based portal. See sections VIII(A) and (B) of the final rules for additional details.

¹²¹ Represents the hours required in connection with the most cost-efficient submission method for each form, as determined by the Commission.

¹²² Based on 5-year, straight line depreciation.

¹²³ As provided in the supporting statement for collection 3038-0095.

¹²⁴ The variance in burden hours from existing Form 102 is attributable to the burden associated with developing an electronic submission system, as well as an increase in the amount of information requested on the reporting form.

Applicable CFTC Regulation Section (17 CFR)¹¹⁹	Associated Report	Type of Respondent	Total Number of Respon- dents (13(a))	Total Annual Responses (13(b))	Percentage of Responses Collected Electronically (13(b)(1))¹²⁰	Total Annual Hours Requested (13(c))¹²¹	Current OMB Inventory (13(d))	Differ- ence (13(e))	Total Annualized Costs¹²²
17.01(b)	New Form 102B	Clearing members	175	188,015 ¹²⁵	100%	18,550	0	18,550	\$1,299,799
17.01(c)	New Form 71	Originators of omnibus volume threshold accounts or omnibus reportable sub-accounts	762 ¹²⁶	762 ¹²⁷	100%	6,096	0	6,096	\$427,147
18.04(a)	New Form	Special account	5,250	5,250	100%	15,750	1,000 ¹²⁸	14,750 ¹²⁹	\$1,103,603

¹²⁵ For volume threshold accounts associated with DCMs, the Commission anticipates that it will receive approximately 126,000 New Form 102B records annually. For volume threshold accounts associated with SEFs, the Commission anticipates that it will receive approximately 62,015 New Form 102B records annually. Collectively, the Commission anticipates that it will receive 188,015 New Form 102B records annually.

¹²⁶ The Commission estimates that a number of New Form 71 respondents will complete the form more than once because they originate more than one omnibus volume threshold account or omnibus reportable sub-account. However, at this time, the Commission does not possess information that would allow it to determine the frequency of such occurrence. As a result, the Commission has described the upper limit of potential respondents by assuming that each New Form 71 response will be provided by a different respondent.

¹²⁷ The Commission estimates that there will be 198 SEF-related, and 564 DCM-related, New Form 71 filings per year.

¹²⁸ As provided in the supporting statement for collection 3038-0009.

Applicable CFTC Regulation Section (17 CFR)¹¹⁹	Associated Report	Type of Respondent	Total Number of Respondents (13(a))	Total Annual Responses (13(b))	Percentage of Responses Collected Electronically (13(b)(1))¹²⁰	Total Annual Hours Requested (13(c))¹²¹	Current OMB Inventory (13(d))	Difference (13(e))	Total Annualized Costs¹²²
	40	owners and controllers							
18.04(b)	New Form 40	Volume threshold account controllers, persons who own volume threshold accounts, reportable sub-account controllers, and persons who own reportable sub-accounts.	18,920	18,920 ¹³⁰	100%	56,760	0	56,760	\$3,977,173

¹²⁹ The variance in burden hours from existing Form 40 is attributable to the burden associated with developing an electronic submission system, as well as an increase in the amount of information requested on the reporting form.

¹³⁰ The Commission estimates that there will be 5,511 SEF-related, and 13,409 DCM-related, New Form 40 filings (arising from New Form 102B and New Form 71 filings) per year.

Applicable CFTC Regulation Section (17 CFR)¹¹⁹	Associated Report	Type of Respondent	Total Number of Respondents (13(a))	Total Annual Responses (13(b))	Percentage of Responses Collected Electronically (13(b)(1))¹²⁰	Total Annual Hours Requested (13(c))¹²¹	Current OMB Inventory (13(d))	Difference (13(e))	Total Annualized Costs¹²²
18.05	Books and Records	Volume threshold account controllers, persons who own volume threshold accounts, reportable sub-account controllers, persons who own reportable sub-accounts, and traders who own, hold, or control reportable futures	53	53	100% ¹³¹	265	2,700 ¹³²	(2,435)	\$18,569 ¹³³

¹³¹ The special call will provide instructions on the appropriate format in which to submit responses.

¹³² Current OMB inventory for collections made pursuant to existing § 18.05 is described in collection number 3038-0009. However, in the associated supporting statement, the burden arising from existing § 18.05 is aggregated with the burden arising from existing § 18.00. To determine the current OMB inventory for collections made pursuant to existing § 18.05, the Commission assessed the historical number of § 18.05 special call requests made each year. The Commission found that it made approximately 540 § 18.05 special calls each year. Multiplied by five hours per response, the approximate amount of time per response provided in the supporting statement for collection 3038-0009, the current §18.05 OMB inventory equals approximately 2,700 hours.

¹³³ The estimate of \$18,569 represents only the new or incremental costs imposed by the changes to § 18.05.

Applicable CFTC Regulation Section (17 CFR)¹¹⁹	Associated Report	Type of Respondent	Total Number of Respondents (13(a))	Total Annual Responses (13(b))	Percentage of Responses Collected Electronically (13(b)(1))¹²⁰	Total Annual Hours Requested (13(c))¹²¹	Current OMB Inventory (13(d))	Difference (13(e))	Total Annualized Costs¹²²
		or option positions							
20.5(a)	102S Filing	Clearing members and swap dealers	39 ¹³⁴	2,508	100%	4,134	1,800 ¹³⁵	2,334 ¹³⁶	\$289,669
20.5(b)	40S Filing	Clearing members and swap dealers	2,508	2,508	100%	7,524	165 ¹³⁷	7,359 ¹³⁸	\$527,207
Total			27,967	225,742		136,639	6,605	130,034¹³⁹	\$9,574,296

¹³⁴ The Commission notes that the estimated number of 102S reporting entities is lower than the estimate provided in the supporting statement accompanying the Commission's part 20 final rules. The variance in the number of reporting entities is attributable to the Commission's experience with position reports pursuant to part 20 after the part 20 rules were made final.

¹³⁵ As provided in the supporting statement for collection 3038-0095.

¹³⁶ The variance in burden hours from existing 102S is attributable to the burden associated with developing an electronic submission system, as well as an increase in the amount of information requested on the reporting form.

¹³⁷ As provided in the supporting statement for collection 3038-0095.

¹³⁸ The variance in burden hours from the existing 40S filing is attributable to the burden associated with developing an electronic submission system, as well as an increase in the amount of information requested on the reporting form.

¹³⁹ This total represents the net increase in burden hours from the current OMB inventory.