

## SUPPORTING STATEMENT FOR INFORMATION COLLECTION RENEWAL

OMB CONTROL NUMBER 3038-0093

### Justification

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

The Commission's regulations §§ 40.2, 40.3, 40.4, 40.5 and 40.6 provide procedures for the submission of rules and rule amendments by designated contract markets, swap execution facilities, derivatives clearing organizations, and swap data repositories. They establish the procedures for submitting the "written certification" required by Section 5c of the Act. In connection with a product or rule certification, the registered entity must provide a concise explanation and analysis of the submission and its compliance with statutory provisions of the Act. Accordingly, new rules or rule amendments must be accompanied by concise explanations and analyses of the purposes, operations, and effects of the submissions. This information may be submitted as part of the same submission containing the required "written certification."

The explanation and analysis is necessary for regulatory purposes. Product and rule submissions sometimes include minimal supporting analyses and, in certain cases, no evidentiary basis for certifications of compliance at all. Without prompt receipt of supporting information, staff must expend significant resources and time to replicate an existing analysis or to otherwise independently establish a product or rule's compliance with applicable law. The regulations permit registered entities to support product and rule certifications in the manner that is most effective and least costly under the circumstances.

Regulation 40.10 also contains submission procedures for certain risk-related rules proposed by a systemically important derivatives clearing organization ("SIDCO"). The SIDCO regulations require, among other things, 60-days advance notice of proposed rules that may materially affect the nature or level of risk presented by the SIDCO. The information collections required by § 40.10 should be only minimally burdensome for registered entities.

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 requested information is essential to the staff's review of submissions and the Commission's oversight of each registered entity's self-regulatory actions. Staff generally conducts a due diligence review of new submissions and makes an independent determination concerning the registered entity's compliance with the Act and regulations thereunder.

For new products, registered entities must submit information complying with either § 40.2 or § 40.3 as follows:

- § 40.2 requires: (1) a concise explanation and analysis of the new product and its compliance with applicable law (with appropriate references to data sources) and (2) a certification that the submission was posted on the registered entity's website at the time of filing.
- or-
- § 40.3 requires: (1) a concise explanation and analysis of the new product and its compliance with applicable law (with appropriate references to data sources) and (2) a certification that the submission was posted on the registered entity's website at the time of filing.

These regulations, as discussed, are necessary to the Commission's administration of the Act, which requires new contracts to, among other things, not be susceptible to manipulation. Without explanations and analyses of new submissions and certain certifications concerning prices and pricing sources, the Commission cannot effectively exercise its oversight responsibilities under the Act.

For general rules and rules implementing changes to the terms and conditions of products, registered entities must comply with either § 40.5 or § 40.6 as follows:

- § 40.5 requires: (1) an explanation and analysis of the purpose, operation, and effect of the proposed rule change; and, for each submission amending the terms and conditions of a previously certified contract and (2) a certification that the submission was posted on the registered entity's website at the time of filing..
- § 40.6 requires two submissions: (1) a concise explanation and analysis of the operation, purpose, and effect of the rule submission; (2) a certification that the submission was posted on the registered entity's website at the time of filing.

These regulations, as discussed, are contemplated by the statute and necessary to the Commission's administration of the Act.

For certain risk management rules of SIDCOs, registered entities must comply with § 40.10 as follows:

- § 40.10 requires two submissions: (1) an advanced notice of any proposed rule changes that may materially affect the nature or level of risks presented by a systemically important derivatives clearing organization; and (2) if requested, supplementary information that is necessary for the Commission's staff to review in order to assess the effect of any proposed rule changes.

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

The Commission's regulations require all submissions to be submitted to the Commission electronically. The Commission intends to continue its practice of publishing all incoming submissions on its website and has developed an improved web portal at [cftc.gov](http://cftc.gov) that expedites both Commission and public review of submissions. The Commission facilitates submissions and public comment on such submissions through the Commission's website.

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.

The regulations require registered entities to submit certain information—product terms and conditions, explanations of the cash market and other aspects of the product and its compliance with applicable law, rule changes and explanations of the operation, purpose and effect of such changes, and notices of the certain risk management rules that is not available from any other source and generally is specific to the registered entity.

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.

This collection of information will not have a significant impact on a substantial number of small entities.

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

The Commission's Part 40 regulations do not require the submission of information on a periodic basis. Rather, submissions are required only at such time that registered entities seek to list new products or adopt new rules or rule amendments. The frequency of the required submissions depends on the frequency that registered entities seek to take one or more actions that require a filing with the Commission.

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

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

This does not apply.

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

This does not apply.

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

This does not apply.

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

This does not apply.

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

This does not apply.

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

This does not apply.

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

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

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

This does not apply.

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

The Commission requested comment on the information collection in its Notice in the *Federal Register* at 80 FR 33491 (June 12, 2015). No public comments were received.

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

The Commission maintains regular contact with regulated entities.

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

This does not apply.

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

This question does not apply.

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

The Commission does not provide respondents with an assurance of confidentiality beyond that provided by applicable law. Additionally, the Commission adheres to the restrictions on data release provided by § 8(a)(1) of the CEA.

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

The regulations covered by the collections do not require the giving of such sensitive information, as that term is used in Question 11.

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

- Indicate the number of respondents, frequency of response, annual hour burden and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than ten) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.
- If the request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-I.
- Provide estimates of annualized cost to respondents for the hours burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 13.

See Attachment A.

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

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

estimate, agencies may consult with a sample of respondents (fewer than ten), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.

- Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.

See Attachment A.

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

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

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

This question does not apply.

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

This question does not apply.

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

This question does not apply.

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

No exceptions exist.





**Attachment A**

**Provisions Common to Registered Entities Under 745 of the Dodd-Frank Act  
Estimated Annual Hour and Cost Burden of the Collection of Information**

| Est'd #<br>of<br>Covered<br>Entities | # of<br>Annual<br>Reponses<br>from each<br>entity | Est'd Avg.<br># of Hrs.<br>to Burden<br>Hours<br>Report | Est'd Total<br>Annual<br>Burden Hrs. | Est'd Annual<br>Total<br>Costs<br>(\$) |
|--------------------------------------|---|---|--------------------------------------|--|
| 70                                   | 100   | 2   | 14,000                               | \$ 980,000                             |

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