

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.

In 2013, the Commodity Futures Trading Commission (“CFTC” or “Commission”) adopted rules and related forms (the “OCR rules”) to enhance its identification of futures and swap market participants.¹ The OCR 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 were 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 old Form 40); and (2) information necessary to identify “special accounts”⁵ (via old Form 102). The OCR rules modify the prior reporting rules and forms as they pertain to positions in open contracts. Specifically, the Commission expanded the reporting rules and forms so that they may also be used to identify “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 rules of a DCM or SEF. Volume threshold accounts associated with DCMs and SEFs are required to be reported by clearing members, as discussed in sections V(B) and VII of the OCR rules.

¹ Ownership and Control Reports, Forms 102/102S, 40/40S, and 71, Final Rule, 78 FR 69178 (Nov. 18, 2013). Capitalized terms used without definition herein have the meaning assigned to them in the OCR rules.

² 17 CFR 15 through 21. The OCR 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 § 15.00(x) 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”)).

The amendments to the reporting rules and forms achieve three primary purposes. First, they expand and subdivide Form 102, which is partitioned into three sections: section 102A for the identification of position-based special accounts (“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”); 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 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 upon special call by the Commission;⁷ updating 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.

The reporting rules adopted in the OCR rules are primarily implemented by the Commission pursuant to §§ 4a, 4c(b), 4g, and 4i of the CEA.⁸ Section 4a of the CEA, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”),⁹ requires the Commission to set and enforce speculative position limits with respect to both futures and swaps.¹⁰ Section 4c(b) gives the Commission plenary authority to regulate transactions that involve commodity options.¹¹ 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 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.¹² Lastly, § 4i of the CEA mandates the filing of such reports as the Commission may require when positions taken or obtained on DCMs equal or exceed

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”) are collected by the Commission directly from originating firms, via Form 71.

⁸ 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 OCR 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).

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. 6a.

¹¹ 7 U.S.C. 6c(b).

¹² 7 U.S.C. 6g(a)-(d).

Commission-set levels.¹³ 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. As part of the Commission's rulemaking program implementing the Dodd-Frank Act,¹⁴ the rule changes adopted in the OCR rules include swaps-related considerations in connection with the Commission's large trader reporting rules for swaps, enacted in 2011.¹⁵ 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 OCR rules also rely in part on the Commission's authority in CEA § 4t.¹⁶ Similarly, 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.¹⁷ In addition, CEA § 5h(f)(10) requires SEFs to report to the Commission, in a form and manner acceptable to the Commission, information that the Commission determines to be necessary or appropriate for the Commission to perform its duties under the CEA.¹⁸

The OCR rules created information collection requirements via §§ 17.01, 18.04, 18.05, and 20.5. OMB control number 3038-0103 covers such collection requirements arising from §§ 17.01, 18.04, 18.05, and 20.5.

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.

As discussed in section I(B) of the OCR rules, the rules enhance the Commission's trade practice and market surveillance programs for futures and options on futures, and facilitate surveillance programs for swaps, by expanding the information collected on old Forms 102 and 40, and introducing an information collection for omnibus volume threshold accounts in Form 71.¹⁹ The rules also help implement the 102S and 40S filing requirements adopted in connection with the Commission's part 20 rules addressing large trader reporting for physical commodity swaps.²⁰ The OCR rules significantly enhance the Commission's ability to identify participants

¹³ 7 U.S.C. 6i.

¹⁴ See generally <http://www.cftc.gov/LawRegulation/DoddFrankAct/index.htm>.

¹⁵ 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").

¹⁶ 7 U.S.C. 6t.

¹⁷ 7 U.S.C. 6s(f).

¹⁸ 7 U.S.C. 7b-3(f)(10).

¹⁹ See section V of the OCR rules for a discussion of Form 71 and omnibus volume threshold accounts.

²⁰ See section V of the OCR 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.

in the derivatives markets and to understand relationships between trading accounts, special accounts, reportable positions, and market activity. This enables 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 OCR 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. The OCR rules 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 enables the Commission to perform more efficient and effective surveillance. In particular, the OCR data collection enables 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 section I(B) of the OCR rules,²¹ “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 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 prior system by providing common reference points between TSS and ISS data. Form 102A, for example, is structured to collect special account numbers,²² trading

²¹ See OCR Rules, supra note 1 at 69180.

²² As discussed in section III(A) in the OCR 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.

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.²³

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

Form 102B requires the identification of trading accounts based solely on their total trading volume during a single trading day. This information collection enhances 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 facilitates Commission efforts to detect and deter attempted market disruptions that may occur, even in the absence of large open positions that are reportable on Form 102A. Finally, the automated collection of OCR information via electronic forms, rather than through ad hoc, manual processes, permits both the Commission and market participants to administer the reporting programs more efficiently and effectively.

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.

In order to provide flexibility to reporting parties, the OCR rules provide that reporting parties may submit each of the forms through either a web-based portal or an XML-based, secure FTP data feed. The Commission is offering two filing methods for each form because it has anticipated a wide range of technological capabilities among reporting parties (varying based on the relative size and experience of a given reporting party). Reporting parties may 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 OCR rules to contact the Commission, which will provide the necessary technical information to establish the data feed. Commission staff has published guidance in connection with the OCR rules, including technical guidance regarding the submission of data.²⁴

²³ For a complete discussion of the reporting requirements with respect to ownership information, see section V(A)(i) of the OCR rules.

²⁴ See generally <http://www.cftc.gov/Forms/OCR/index.htm>.

In addition, the Commission created a reference database so that respondents will not need to enter contact information each time they manually complete a Form 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 collected via Forms 102B and 71 was not previously collected by the Commission for any other purpose, or available for public disclosure through any other source. Portions of information collected via current Forms 102 and 40 were previously available via old Forms 102 and 40; however, those old forms were replaced and eliminated once current Form 102 and Form 40 became operational, thereby eliminating any overlap.

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 OCR 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 (“RFA”). The OCR rules also require certain reporting traders to complete and submit Form 40 upon special call by the Commission. Some of these reporting traders may be “small entities” under the RFA.²⁵ 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 OCR 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 OCR 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.”²⁶

The Commission believes that, due to the limited number of institutions likely to receive a Form 40 request in any given year, as well as the limited nature of the Form 40 reporting burden, the OCR rules with respect to Form 40 will not have a significant economic impact on a substantial number of small entities. 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. Form 40 should

²⁵ 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.

²⁶ 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).

be expected to affect only a small subset of the entities that may be small entities under the RFA.²⁷ In addition, Form 40 is not lengthy or complex, and will require reporting traders to provide only limited information to the Commission. The Commission estimates that a reporting trader submitting Form 40 via the web-based portal will require five hours, on an annualized basis, to complete the form.²⁸

The OCR rules regarding § 18.05 also impose books and records obligations upon a 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 § 18.05 will impose significant costs on the additional small entities subject to the recordkeeping requirements of such section. The 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 § 18.05. To the extent that certain small entities are required to modify their practices to comply with the volume-based recordkeeping requirements of § 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.

If the collection were conducted less frequently than required by the OCR rules, 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;**
 - Respondents are required to report information to the Commission via the OCR reporting forms pursuant to the filing schedule set forth in Part 17 and Part 20.

²⁷ 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.

²⁸ See the response to question 12 and Appendix A below.

- **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 OCR rules provide for electronic reporting.
- **requiring respondents to submit more than an original and two copies of any document;**
 - This question does not apply. The OCR 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 OCR 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 OCR 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 OCR rules do not provide 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.”²⁹ 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 60-day notice of intent to renew collection 3038-0103 (the “60-Day Notice”) was published in the Federal Register at 82 FR 12944 (March 8, 2017). A copy of the 60-day Notice is attached. In response to the 60-day Notice, the Commission received four comment letters from four entities.³⁰ Three of the commenters addressed the burdens of the proposed collection of information, as discussed below.

Comments Regarding Form 40/40S

CEWG notes that the CFTC estimated the annualized burden per response for Form 40 to be three hours at a cost of \$70.07 per hour.³¹ CEWG comments that the CFTC “significantly underestimated the burden” relating to Form 40.³² Similarly, NRECA comments that the CFTC’s estimate of three hours to complete a Form 40 is too low.³³

NRECA, CEWG and IECA comment on the burden of updating Form 40. NRECA asserts that the CFTC underestimated the costs of updating Form 40.³⁴ IECA states that the obligation to update Form 40 is an “unnecessary burden” on commercial end-users.³⁵ CEWG states that the CFTC should have considered the continuing obligations to update Form 40 in evaluating the impact of Form 40.³⁶

²⁹ 7 U.S.C. 12(a)(1).

³⁰ Specifically, in response to the 60-day Notice, the Commission received comment letters from (a) the National Rural Electric Cooperative Association (“NRECA”); (b) the Commercial Energy Working Group (“CEWG”); (c) the International Energy Credit Association (“IECA”) and (d) Capital Confirmation, Inc. (non-substantive comment). All 60-Day Notice comment letters (“CL-2017”) are available through the Commission’s website at:

<https://comments.cftc.gov/PublicComments/CommentList.aspx?id=1781>.

³¹ CL-2017-CEWG, *supra* note 28 at 5.

³² *Id.*

³³ CL-2017-NRECA, *supra* note 28 at 4-5 n.12.

³⁴ CL-2017-NRECA, *supra* note 28 at 4-5 n.12.

³⁵ CL-2017-NRECA, *supra* note 28 at 2-3.

³⁶ CL-2017-CEWG, *supra* note 28 at 6.

Furthermore, CEWG comments that the CFTC should also have considered the following factors in evaluating the impact of Form 40: (a) “outside counsel fees”; (b) “internal counsel cost”; (c) “that multiple individuals from an entity are realistically going to be involved”; (d) “systems and other operational cost”; and (e) “opportunity cost.”³⁷

Commission Response

The Commission is updating its burden estimates in response to the comments received.³⁸ As an initial matter, the Commission notes that the \$70.07 wage rate was derived from a weighted average of salaries and bonuses across different professions from the SIFMA Report on Management & Professional Earnings in the Securities Industry 2011 (the “2011 SIFMA Report”).³⁹ The Commission is updating its burden estimates based on the SIFMA Report on Management & Professional Earnings in the Securities Industry 2013 (the “2013 SIFMA Report”). As set forth in response to question 12 below, the Commission is updating its estimates of the costs to the industry of Form 102A, Form 102B, Form 71, Form 40, Form 102S, Form 40S, and the reporting and recordkeeping requirements of § 18.05, based on the 2013 SIFMA Report.

The Commission is also updating its burden estimates regarding Form 40/40S based on the CEWG, NRECA and IECA comment letters. The commenters assert that the Commission’s estimate of three hours to complete a Form 40/40S is too low and, in particular, that the Commission has underestimated the costs of updating Form 40/40S. While the commenters do not provide estimates of the burdens associated with completing Form 40, the Commission is revising its estimate upward based on the concerns raised in the comment letters. In the OCR rules, the Commission’s estimate of three hours per response reflected an initial, one-time burden of 10 hours, annualized over a five-year period, plus an additional hour per year for change updates.⁴⁰ In response to the comments, the Commission is revising its estimate of the time needed to complete a Form 40/40S from three hours to five hours. The revised estimate reflects

³⁷ Id. at 6.

³⁸ In addition to commenting on the burdens of the proposed collection of information, CEWG, NRECA, and IECA also commented more generally on certain aspects of the OCR rules. In particular, NRECA urged the Commission to conduct a “holistic evaluation” of its reporting rules and “to provide the requested clarification to implementation of the OCR Rules and Forms 40/40S” (CL-2017-NRECA, supra note 28 at 5); IECA requested that the Commission suspend Form 40 submissions and accept filings under old Form 40 (CL-2017-IECA, supra note 28 at 3); CEWG recommended that the Commission “revisit the OCR Final Rule” and revise Form 40 (CL-2017-CEWG, supra note 28 at 2-6). The Commission acknowledges these comments, which are outside the scope of the present discussion of the cost and hour burdens of the proposed information collection.

³⁹ See OCR rules, supra note 1, at 69202. 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%).

⁴⁰ See OCR rules, supra note 1, at 69207 n. 232, 69208 n. 246, 29210 n.263, 69218 n.305, 69219 n.308, 69211 n.327.

an initial, one-time burden of 15 hours, annualized over a five-year period, plus an additional two hours per year for change updates.

The Commission has not increased its burden estimates for Form 40 based on the additional factors listed in CEWG's comment letter.⁴¹ The Commission does not believe those factors warrant a revision to its burden estimates, and the CEWG comment letter does not provide any quantitative analysis based on the factors.⁴²

The Commission's updated burden estimates are set forth in response to question 12 below.

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.

On March 8, 2017, the Commission published for public comment the 60-day Notice. As discussed above, the Commission received four comment letters in response to the 60-day Notice.

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.

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

No payment or gift was provided to respondents.

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."⁴³ The

⁴¹ *Id.* at 6.

⁴² With respect to counsel costs and operational costs, the Commission notes that the wage rate used in its burden estimates is a weighted average of salary and bonuses for various types of professionals, including "assistant/associate general counsel," programmers and systems analysts.

⁴³ 7 U.S.C. 12(a)(1).

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 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

The Commission 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 the reasons discussed in sections VIII(A) and (B) of the OCR 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 OCR rules.

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

The discussion below considers the anticipated costs to the industry of Form 102A, Form 102B, Form 71, Form 40, Form 102S, Form 40S, and the reporting and recordkeeping requirements of § 18.05. As noted above, the Commission has updated its calculations based on data in the 2013 SIFMA report and on comments received regarding Form 40/40S. The Commission also has updated its calculations to reflect a possible data entry error that resulted in the “Cost Burden (Dollars)” requested being too low (\$18).

A. Form 102A

The Commission assumes that each Form 102A reporting party will submit 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.⁴⁴

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 Form 102A submissions from a similar number of reporting parties each year. Assuming all Form 102A reporting parties utilize the FTP submission method, the Commission estimates that the total annual industry burden for Form 102A will equal 27,560 hours. Using an estimated wage rate of \$75.13 per hour,⁴⁵ annual industry costs for 102A filings made pursuant to the FTP submission method are estimated at \$2,070,583.

⁴⁴ 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.

⁴⁵ 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 \$75.13 per hour is derived from figures from a weighted average of salaries and bonuses across different professions from the 2013 SIFMA Report, modified to account for an 1800-hour work-year and multiplied by 1.3 to account for overhead and other benefits. See note 196 in the OCR rules.

The Commission used the same wage rate of \$75.13 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 \$75.13 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 footnote 196 in the OCR rules.

Form 102A			
Regulation	Estimated Total Annual Industry Cost	Estimated Low and High Range (25% Below and 25% Above Estimated Total Annual Industry Cost)⁴⁶	Anticipated Transmission Method⁴⁷
17.01(a)	\$2,070,583	\$1,552,937 - \$2,588,229	FTP

B. Form 102B

The Commission assumes that each Form 102B reporting party will submit 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.⁴⁸

⁴⁶ 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.

⁴⁷ 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 OCR 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.

⁴⁸ All annualized development burden estimates are based on 5 year, straight line depreciation.

The Commission estimated the number of 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 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 Form 102B will equal 10,600 hours.⁴⁹ Using an estimated wage rate of \$75.13 per hour, annual industry costs for such filings made pursuant to the FTP submission method are estimated at \$796,378.⁵⁰
- For volume threshold accounts associated with SEFs, the Commission anticipates that it will receive approximately 62,015 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 Form 102B will equal 7,950 hours.⁵¹ Using an estimated wage rate of \$75.13 per hour, annual industry costs for such filings made pursuant to the FTP submission method are estimated at \$597,284.⁵²

Collectively, annual industry costs for 102B filings made pursuant to the FTP submission method are estimated at \$1,393,662.⁵³

Form 102B			
Regulation	Estimated Total Annual Industry Cost	Estimated Low and High Range (25% Below and 25% Above Estimated Total Annual Industry Cost)⁵⁴	Anticipated Transmission Method
17.01(b)	\$1,393,662	\$1,045,247 - \$1,742,078	FTP

⁴⁹ 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.

⁵⁰ The \$796,378 figure is arrived at by multiplying 100 reporting parties by 106 hours (equals 10,600 hours) by \$75.13 (equals \$796,378).

⁵¹ 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.

⁵² The \$597,284 figure is arrived at by multiplying 75 reporting parties by 106 hours (equals 7,950 hours) by \$75.13 (equals \$597,284).

⁵³ The \$1,393,662 figure is arrived at by multiplying 175 reporting parties by 106 hours (equals 18,550 hours) by \$75.13 (equals \$1,393,662).

⁵⁴ 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.

C. Form 71

The Commission assumes that each Form 71 reporting party (i.e., originators of omnibus volume threshold accounts or omnibus reportable sub-accounts) will complete and submit 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 whole. The Commission estimates that, on average, Form 71 will create an annual reporting burden of 8 hours per filing.⁵⁵

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

- Based on an estimated 564 DCM-related 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 \$75.13 per hour, annual industry costs for such filings made via the web-based portal are estimated at \$338,987.⁵⁶
- Based on an estimated 198 SEF-related 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 \$75.13 per hour, annual industry costs for such filings made via the web-based portal are estimated at \$119,006.⁵⁷

Collectively, annual industry costs for Form 71 filings made via the web-based portal are estimated at \$457,992.⁵⁸

Form 71			
Regulation	Estimated Total Annual Industry Cost	Estimated Low and High Range (25% Below and 25% Above Estimated Total Annual Industry Cost)⁵⁹	Anticipated Transmission Method

⁵⁵ The submission of 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.

⁵⁶ The \$338,987 figure is arrived at by multiplying 564 anticipated records by 8 hours (equals 4,512 hours) by \$75.13 (equals \$338,987).

⁵⁷ The \$119,006 figure is arrived at by multiplying 198 anticipated records by 8 hours (equals 1,584 hours) by \$75.13 (equals \$119,006).

⁵⁸ The \$457,992 figure is arrived at by multiplying 762 anticipated records by 8 hours (equals 6,096 hours) by \$75.13 (equals \$457,992).

⁵⁹ 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,

17.01(c)	\$457,992	\$343,494 - \$572,490	web
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D. Form 40

Form 40 Submissions Resulting from Form 102A. The Commission assumes that each reporting party filing Form 40 as a result of Form 102A (*i.e.*, special account owners and controllers) will complete and submit 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 OCR rules, the Commission expects approximately 5,250 Form 40 records filings per year arising from Form 102A filings. The Commission estimates that each of the 5,250 Form 40 records will require five hours to complete.⁶⁰ Assuming each such Form 40 record is provided via the web-based portal, the Commission estimates that the total annual industry burden for reporting on Form 40, as a result of Form 102A, will equal 26,250 hours. Using an estimated wage rate of \$75.13 per hour, annual industry costs for Form 40 filings arising from special accounts are estimated at \$1,972,163.⁶¹

Form 40 Submissions Resulting from Form 102B and Form 71. The Commission also assumes that each reporting party filing Form 40 as a result of Form 102B and 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 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 Form 40 filings annually and approximately 5,511 SEF-related Form 40 filings annually, in each case arising from Form 102B and Form 71.⁶² Each such Form 40 filing is estimated to require five hours.⁶³ Assuming each such Form 40 record is provided via the web-based portal:

- The Commission estimates that the total annual industry burden for reporting on Form 40, as a result of Form 102B and Form 71, will equal 67,045 hours for

and their differing levels of market and reporting experience.

⁶⁰ The Commission's estimate of five hours per response reflects an initial, one-time burden of 15 hours, annualized over a five-year period, plus an additional two hours per year for change updates.

⁶¹ The \$1,972,163 figure is arrived at by multiplying 5,250 anticipated records by 5 hours (equals 26,250 hours) by \$75.13 (equals \$1,972,163).

⁶² 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 Form 102B will be the same, and that accordingly, only one Form 40 would be required. Similarly, a number of potential Form 40 reporting parties are likely to own or control both DCM-related and SEF-related volume threshold accounts, but only one Form 40 would be required.

⁶³ The Commission's estimate of five hours per response reflects an initial, one-time burden of 15 hours, annualized over a five-year period, plus an additional two hours per year for change updates.

DCM-related Form 40 filings. Using an estimated wage rate of \$75.13 per hour, annual industry costs for such filings arising from volume threshold accounts and reportable sub-accounts are estimated at \$5,037,091.⁶⁴

- The Commission estimates that the total annual industry burden for reporting on Form 40, as a result of Form 102B and Form 71, will equal 27,555 hours for SEF-related Form 40 filings. Using an estimated wage rate of \$75.13 per hour, annual industry costs for such filings arising from volume threshold accounts and reportable sub-accounts are estimated at \$2,070,207.⁶⁵

Collectively, annual industry costs for Form 40 filings, as a result of Form 102B and Form 71, are estimated at \$7,107,298.⁶⁶

Form 40- Submissions Resulting from (a) Form 102A and (b) Form 102B and Form 71			
Regulation	Estimated Total Annual Industry Cost	Estimated Low and High Range (25% Below and 25% Above Estimated Total Annual Industry Cost)⁶⁷	Anticipated Transmission Method
18.04(a)	\$1,972,163	\$1,479,122 - \$2,465,203	web
18.04(b)	\$7,107,298	\$5,330,473 - \$8,884,123	web

E. Form 102S

The Commission assumes that each Form 102S reporting party will submit 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 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 § 20.5(a)(3),⁶⁸ 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

⁶⁴ The \$5,037,091 figure is arrived at by multiplying 13,409 filings by 5 hours (equals 67,045 hours) by \$75.13 (equals \$5,037,091).

⁶⁵ The \$2,070,207 figure is arrived at by multiplying 5,511 filings by 5 hours (equals 27,555 hours) by \$75.13 (equals \$2,070,207).

⁶⁶ The \$7,107,298 figure is arrived at by multiplying 18,920 filings by 5 hours (equals 94,600 hours) by \$75.13 (equals \$7,107,298).

⁶⁷ 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.

⁶⁸ 17 CFR 20.5(a)(3).

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.⁶⁹

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 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 \$75.13 per hour, annual industry costs for Form 102S are estimated at \$310,587.⁷⁰

Form 102S			
Regulation	Estimated Total Annual Industry Cost	Estimated Low and High Range (25% Below and 25% Above Estimated Total Annual Industry Cost)⁷¹	Anticipated Transmission Method
20.5(a)	\$310,587	\$232,941 - \$388,234	FTP

F. Form 40S

The Commission assumes that each 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 OCR 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 five hours,⁷² resulting in an estimated total annual reporting burden of 12,540 hours. Using an estimated wage rate of \$75.13 per hour, annual industry costs for Form 40S filings made via the web-based portal are estimated at \$942,130.⁷³

⁶⁹ All annualized development burden estimates are based on 5 year, straight line depreciation.

⁷⁰ The \$310,587 figure is arrived at by multiplying 39 reporting parties by 106 hours (equals 4,134 hours) by \$75.13 (equals \$310,587).

⁷¹ 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.

⁷² The Commission's estimate of five hours per response reflects an initial, one-time burden of 15 hours, annualized over a five-year period, plus an additional two hours per year for change updates.

⁷³ The \$942,130 figure is arrived at by multiplying 2,508 filings by 5 hours (equals 12,540 hours) by \$75.13 (equals \$942,130).

Form 40S			
Regulation	Estimated Total Annual Industry Cost	Estimated Low and High Range (25% Below and 25% Above Estimated Total Annual Industry Cost)⁷⁴	Anticipated Transmission Method
20.5(b)	\$942,130	\$706,598 - \$1,177,663	web

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

Section 18.05 makes four categories of persons, identified through the volume-based reporting regime, subject to § 18.05: (1) volume threshold account controllers, (2) owners of volume threshold accounts, (3) reportable sub-account controllers, and (4) persons who own reportable sub-accounts. The Commission anticipates that 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 current § 18.05 are likely required to maintain books and records under former § 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 § 18.05 will not meaningfully increase recordkeeping burdens on persons brought under its scope.

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.⁷⁵ 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 § 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 volume-based reporting will lead to the Commission sending more special calls than it would otherwise, because this regime identifies new ownership and control relationships and patterns of trading activity. As a result, for purposes of estimating the costs of § 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.

⁷⁴ 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.

⁷⁵ See section I(B) of the OCR rules for a discussion of the TCR.

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., Form 102B and Form 71). The Commission estimates that each special call response submitted by the categories of persons subject to § 18.05 will take approximately 5 hours, for a total annual reporting burden of 265 hours. Using an estimated wage rate of \$75.13 per hour, annual reporting costs for the new categories of persons that are subject to § 18.05 are estimated at \$19,909.⁷⁶

§ 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)⁷⁷
18.05	\$19,909	\$14,932 - \$24,887

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)**

⁷⁶ The \$19,909 figure is arrived at by multiplying 53 responses by 5 hours (equals 265 hours) by \$75.13 (equals \$19,909).

⁷⁷ 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.

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 OCR rules will equal approximately \$803,945.⁷⁸ This figure represents initial 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 OCR 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 \$1,744,950.⁷⁹

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 OCR 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 \$454,955.⁸⁰

⁷⁸ 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.

⁷⁹ 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).

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

As stated above, the Commission has updated its calculations based on data in the 2013 SIFMA report and on issues raised in comment letters.

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.

This question does not apply.

⁸⁰ The \$454,955 figure is arrived at by adding \$449,955 (software development contractors) and \$5,000 (maintenance of servers and data storage equipment).

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)⁸¹	Associated Report	Type of Respondent	Total Number of Respondents (13(a))	Total Annual Responses (13(b))	Percentage of Responses Collected Electronically (13(b)(1))⁸²	Total Annual Hours Requested (13(c))⁸³	Total Annualized Costs⁸⁴
17.01(a)	Form 102A	FCMs, clearing members, and foreign brokers	260	7,726	100%	27,560	\$2,070,583
17.01(b)	Form 102B	Clearing members	175	188,015 ⁸⁵	100%	18,550	\$1,393,662

⁸¹ As adopted in the OCR rules.

⁸² 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 OCR rules for additional details.

⁸³ Represents the hours required in connection with the most cost-efficient submission method for each form, as determined by the Commission.

⁸⁴ Based on 5-year, straight line depreciation.

⁸⁵ For volume threshold accounts associated with DCMs, the Commission anticipates that it will receive approximately 126,000 Form 102B records annually. For volume threshold accounts associated with SEFs, the Commission anticipates that it will receive approximately 62,015 Form 102B records annually. Collectively, the Commission anticipates that it will receive 188,015 Form 102B records annually.

Applicable CFTC Regulation Section (17 CFR)	Associated Report	Type of Respondent	Total Number of Respondents (13(a))	Total Annual Responses (13(b))	Percentage of Responses Collected Electronically (13(b) (1))	Total Annual Hours Requested (13(c))	Total Annualized Costs
17.01(c)	Form 71	Originators of omnibus volume threshold accounts or omnibus reportable sub-accounts	762 ⁸⁶	762 ⁸⁷	100%	6,096	\$457,992
18.04(a)	Form 40	Special account owners and controllers	5,250	5,250	100%	26,250	\$1,972,163

⁸⁶ The Commission estimates that a number of 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 Form 71 response will be provided by a different respondent.

⁸⁷ The Commission estimates that there will be 198 SEF-related, and 564 DCM-related, Form 71 filings per year.

Applicable CFTC Regulation Section (17 CFR)	Associated Report	Type of Respondent	Total Number of Respondents (13(a))	Total Annual Responses (13(b))	Percentage of Responses Collected Electronically (13(b) (1))	Total Annual Hours Requested (13(c))	Total Annualized Costs
18.04(b)	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 ⁸⁸	100%	94,600	\$7,107,298
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	53	53	100%	265	\$19,909

⁸⁸ The Commission estimates that there will be 5,511 SEF-related, and 13,409 DCM-related, Form 40 filings (arising from Form 102B and Form 71 filings) per year.

Applicable CFTC Regulation Section (17 CFR)	Associated Report	Type of Respondent	Total Number of Respondents (13(a))	Total Annual Responses (13(b))	Percentage of Responses Collected Electronically (13(b) (1))	Total Annual Hours Requested (13(c))	Total Annualized Costs
		reportable futures or option positions					
20.5(a)	102S Filing	Clearing members and swap dealers	39	2,508	100%	4,134	\$310,587
20.5(b)	40S Filing	Clearing members and swap dealers	2,508	2,508	100%	12,540	\$942,130
Total			27,967	225,742		189,995	\$14,274,324