

SUPPORTING STATEMENT FOR NEW INFORMATION COLLECTIONS

Part 20 – Large Trader Reporting for Physical Commodity Swaps

OMB CONTROL NUMBER 3038-0095

Justification

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

On July 21, 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) went into effect.* Title VII of the Dodd-Frank Act amends the Commodity Exchange Act (“Act” or “CEA”)[†] to establish a comprehensive new regulatory framework for swaps and security-based swaps. On July 22, 2011, the Commodity Futures Trading Commission (“CFTC” or “Commission”) adopted reporting rules that, in addition to establishing recordkeeping requirements, require routine swaps position reports from clearing organizations, clearing members and swap dealers and apply non-routine reporting requirements to large swaps traders. The reporting rules (“Reporting Rules”), primarily set out in part 20 of the Commission’s regulations, were adopted primarily pursuant to sections 4t, 4a and 8a(5) of the Act.

Section 4t of the Act authorized the Commission to establish a large trader reporting system for significant price discovery function swaps. All swaps subject to the Reporting Rules are linked to futures contracts listed on fully regulated commodity futures exchanges (a “designated contract market” or “DCM”) and are significant price discovery function swaps. Section 4a of the CEA, as amended by the Dodd-Frank Act, directed the Commission to establish position limits, as appropriate, for physical commodity swaps. Swaps position reports are a necessary component of an effective surveillance program and necessary for the implementation of all surveillance based regulatory programs (including market, financial and trading surveillance programs). Accordingly, the Commission adopted the subject swap reporting requirements pursuant to its authority in sections 4t and 4a of the CEA, and section 8a(5) of the Act, a general rulemaking authority provision that allows the Commission to promulgate such regulations as, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes of the CEA.

Part 20 of the Commission’s regulations requires clearing organizations and any persons that are “reporting entities” to file swaps position data with the Commission. The Reporting Rules collect clearing member reports from clearing organizations. The Reporting Rules also require position reports from reporting entities for principal and counterparty positions in cleared

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

[†] 7 U.S.C. 1 *et seq.*

and uncleared physical commodity swaps. Reporting entities are those persons that are either “clearing members” or “swap dealers” that are otherwise not clearing members. For purposes of part 20, reporting parties are required to submit data on positions on a futures equivalent basis so as to allow the Commission to assess a trader’s market impact across differently structured but linked derivatives instruments and markets.

2. Indicate how, by whom, and for what purpose the data would be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

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

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

The Commission is committed to utilizing technology in order to reduce reporting burdens for respondents. Accordingly, the Commission has provided for the electronic transmission of the required submissions. The updated estimates of percentage of responses provided electronically in this collection reflects the ongoing efforts of the Commission to utilize technology to reduce burdens for respondents.

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 required information is not already collected by the Commission for any other purpose, collected by any other agency, or available for public disclosure through any other source.

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

The part 20 Reporting Rules do not impose daily reporting requirements on small businesses or other small entities. The Commission has previously determined that derivatives clearing organizations[‡] and futures commission merchants[§] are not “small entities” for purposes

[‡] 66 FR 45604, 45609 (August 29, 2001).

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

of the Regulatory Flexibility Act (“RFA”). In addition, the Commission has recently noted that entities who meet the part 20 Reporting Rules’ non-discretionary quantitative threshold will not constitute small entities for RFA purposes.**

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

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

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

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

See response to question 6.

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

The Commission generally regulates the trading of commodity derivatives, including futures and swaps, which are used to price a wide range of physical and financial commodity transactions. These transactions are vital to national and international commerce. The exercise of regulatory oversight for the purpose of conducting market surveillance, financial surveillance, and monitoring of trading for abusive conduct, by necessity, requires the collection of transaction-related and position information on a daily basis.

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

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

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

Regulation 20.6 imposes recordkeeping and production requirements on reporting clearing organizations, reporting entities, and persons with large swaps positions. Regulation

** Large Trader Reporting for Physical Commodity Swaps (final rule), 76 FR 43851, 43860 (Jul. 22, 2011).

20.6 requires clearing organizations and reporting entities to keep records of transactions in paired swaps or swaptions, as well as records showing methods used to convert swaps and swaptions into futures equivalents.

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

The recordkeeping duties imposed by regulation 20.6 for clearing organizations and reporting entities are to be in accordance with regulation 1.31. Commission Regulation 1.31(b) expressly requires that books and records required to be kept by the CEA or Commission regulations be retained for certain specified periods. Other than with respect to oral communications and records exclusively created and maintained on paper, the shortest of these periods is five years from the date of creation.^{††}

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

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

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

The Reporting Rules do not involve statistical surveys.

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

The Reporting Rules do not involve statistical data classifications.

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

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

^{††}Amendments to the Record-keeping Rules in 17 CFR Parts 1 and 2, 82 FR 24479, 24482 (May 30, 2017).

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

The Reporting Rules do require the submission of data involving confidential information or proprietary trade secrets. The Commission has procedures to protect the confidentiality of an applicant's or registrant's data. These are set forth in the Commission's regulations at parts 145 and 147 of title 17 of the Code of Federal Regulations.

- 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.**

A Notice of Intent to Extend Collection 3038-0095, Large Trader Reporting for Physical Commodity Swaps, was published for a 60-day public comment period in the Federal Register ("Notice"), 83 FR 5761 (Feb. 9, 2018).

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 Notice requested comment on this information collection prior to submission to OMB. No relevant comments were received. Nevertheless, contact with the reporting entities and market participants is maintained on a continuous basis to resolve reporting problems and address concerns.

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.

See response in 8. No circumstances that may preclude consultation are anticipated.

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

This question does not apply. The Commission has neither considered nor made any payment or gift to a respondent.

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. The Commission fully complies with section 8(a)(1) of the Commodity Exchange Act, which strictly prohibits the Commission, unless specifically authorized by the Commodity Exchange Act, from making public “data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers.” The Commission has procedures to protect the confidentiality of an applicant’s or registrant’s data. These are set forth in the Commission’s regulations at parts 145 and 147 of title 17 of the Code of Federal Regulations.

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. The regulation does not request or require the provision of sensitive information, as that term is used in Item 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 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. As set forth in greater detail below and also in Attachment A, the annual respondent burden for this information collection during the renewal period is estimated as follows:

Estimated Number of Respondents: 4,824

Estimated Average Annual Burden Hours per Respondent: 1.57

Estimated Total Annual Burden Hours: 60,382

Estimated Annual Burden Cost: \$4,504,508

Frequency of Collection: The position reports are daily, the 102s/40s are on occasion.

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

1. Under regulation 20.3, swap “clearing organizations” provide daily reports of relevant position and clearing data.
2. Under regulation 20.4, “reporting entities” produce position reports on a daily basis on their own and individual counterparty accounts. Within this class of “reporting entities,” there are two categories of “reporting entities:” (a) “clearing members” and (b) “swap dealers” that are not clearing members.
3. Finally, under regulation 20.5, all “reporting entities” submit identifying information to the Commission on new reportable accounts through a 102S filing on an as appropriate basis, *i.e.* whenever the reportable entity has a new reportable account.

In addition to these reporting requirements, regulation 20.6 would impose recordkeeping requirements for (1) clearing organizations, (2) reporting entities, and (3) persons with large positions in paired swaps or swaptions. Regulation 20.6(a) requires clearing organizations to maintain all records of transactions in paired swaps or swaptions on clearing organizations, as well as methods used to convert swaps and swaptions into futures equivalents. Regulation 20.6(b) require reporting entities to maintain all records of transactions in paired swaps or swaptions on clearing organizations, as well as methods used to convert swaps and swaptions into futures equivalents. Large paired swap traders also have to retain records in paired swaps as well as some related cash market transactional data. These provisions extend those recordkeeping requirements currently applicable to those traders holding reportable positions in futures contracts, as currently found in regulation 18.05, to those traders holding positions in paired swaps.

The Commission estimates that implementing part 20 would create a total annual reporting and recordkeeping hour burden of 60,382 hours across 4,824 firms: 1 clearing organization; 67 clearing member or swap dealer reporting entities; and 4,756 firms that would

hold reportable accounts in swaps. Based on a weighted average wage rate of \$74.73,^{‡‡} this would amount to an annualized labor cost of \$4.5 million.^{§§}

Reporting burdens:

1. Regulation 20.3 clearing organization reports accounts for 390 of these annual reporting and hours. These hours would be spread across 1 respondent.
2. Regulation 20.4 reporting entity reports account for 26,130 of these annual reporting hours. These hours would be spread across 67 clearing member or swap dealer reporting entities.
3. Regulation 20.5 reporting entity 102S submissions creates an annual reporting burden of 16,722 hours spread across 4,756 firms.
4. 40S submissions by persons with reportable positions under regulation 20.5(b) in paired swaps create an annual reporting burden of 1,580 hours and would affect 4,756 firms.

Recordkeeping burdens:

5. Regulation 20.6(a) recordkeeping duties for clearing organizations account for 20 of these annual recordkeeping hours. These hours would be spread across 1 firm.
6. Regulation 20.6(b) reporting entity recordkeeping duties account for 1,340 of these annual recordkeeping hours. These hours would be spread across 67 clearing member or swap dealer reporting entities.
7. Regulation 20.6(c) recordkeeping duties large swaps traders create an annual reporting and recordkeeping burden of 14,200 hours spread across 4,756 firms.

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

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

^{‡‡} The Commission staff's estimates concerning the wage rates are based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association ("SIFMA"). The \$74.73 per hour is derived from figures from a weighted average of salaries and bonuses across different professions from the SIFMA Report on Management & Professional Earnings in the Securities Industry 2013, modified to account for an 1800-hour work-year and multiplied by 1.3 to account for overhead and other benefits. The wage rate is a weighted national average of salary and bonuses for professionals with the following titles (and their relative weight): "programmer (senior)" (60% weight), "compliance advisor (intermediate)" (20%), "systems analyst" (10%), and "assistant/associate general counsel" (10%).

^{§§} Estimated annualized costs \$3,341,709 (Reports) plus \$1,162,799 (Recordkeeping) equals \$4,504,508.

- The cost estimate should be split into two components; (a) a total capital and start-up cost component (annualized over its expected useful life) and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major costs factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software, monitoring, sampling, drilling and testing equipment, and record storage facilities.
- If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate, agencies may consult with a sample of respondents (fewer than ten), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.
- Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.

The Commission estimates that the total annualized capital, operational, and maintenance costs associated with complying with the part 20 would be approximately \$38.3 million.^{***} Of this \$38.3 million, \$15.63 million is from annualized capital and start-up costs and \$22.63 million is from operating and maintenance costs.^{†††} These cost estimates are based on Commission staff's estimated costs to acquire needed equipment and contracted expertise to develop the reports and recordkeeping capabilities required by part 20.

Reporting burdens:

1. Regulation 20.3 clearing organization reports would result in annualized capital/start-up costs of approximately \$25,000 and operating, and maintenance costs of \$25,000.

^{***} All of the capital cost figures are based on a 5 year, straight line depreciation.

^{†††}This accounts for any ongoing capital requirements needed for compliance apart from start-up factors.

2. Regulation 20.4 reporting entity reports would result in annualized capital/start-up costs of approximately \$12,000,000 and operating, and maintenance costs of \$4,000,000.
3. Regulation 20.5 reporting entity 102S submissions would create operating and maintenance costs of approximately \$1.5 million spread across 4,756 reporting entities.
4. 40S submissions by persons with reportable positions under regulation 20.5(b) in paired swaps would result in an annualized \$1.8 million in capital and start-up costs and \$600,000 in operating and maintenance costs spread across 4,756 firms.

Recordkeeping burdens:

5. Regulation 20.6(a) recordkeeping duties for clearing organizations would result in approximately \$500,000 in operating, and maintenance costs.
6. Regulation 20.6(b) clearing member and swap dealer reporting entity recordkeeping duties would create operating, and maintenance costs of approximately \$4 million.
7. Regulation 20.6(c) recordkeeping duties for persons with large positions in swaps (these firms were previously were not reportable) would create annualized capital/start-up costs of \$1.8 million and operating and maintenance costs of approximately \$12 million.

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

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

The Commission estimates that the equivalent of approximately 10 full-time staff members will be needed to process and monitor the reports provided for in the part 20. The staff needed would include industry economists, statisticians, attorneys, and information technology staff, including computer programmers. These estimates are based on estimated labor costs associated with processing analogous reports that would be received pursuant to part 20. At an average CT-13 pay grade for Commission employees in Washington, D.C. for 2018, or \$145,925, multiplied by 1.3 to account for overhead and other benefits, each employee would cost the Commission approximately \$189,702 or \$ 1.9 million per year in labor costs.

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

The extension is updating the total burden based on reported data. The number of affected firms has been updated in this collection and they total 4,824 respondents (comprised of 1 clearing organization, 67 clearing member and swap dealer reporting entities and 4,756 firms that would hold reportable accounts in swaps). The number of respondents and the time required per response directly correlates to the changes in the burden totals of this collection renewal. (See Attachment A.)

The pending renewal is correcting a computational error made in ROCIS in the previous renewal of the collection regarding the total number of responses. The total number of responses entered in ROCIS should have been 88,768 (as indicated in the 2014 supporting statement and the amended 30-Day FRN filed by the CFTC on 12/14/14), instead of the recorded 3,998 – which was the total annual number of respondents. For the pending renewal, the total number of respondents has now increased to 4,824 (from 3,998 in 2014) and the total annual number of responses has decreased to 38,408 (from 88,768 in 2014). The reduction in the number of responses has caused the total burden hours also to decrease.

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.

Attachment A

13. Annual Reporting and Recordkeeping Hour Burden

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Type of respondent	Applicable CFTC Regulation Section (17 CFR)	Total Number of Respondents	Total Annual Responses	Percentage of Responses Collected Electronically	Total Annual Hours Requested	Total Annualized Labor Costs
Clearing organization reports	20.3	1	260	100%	390	\$ 29,145
Clearing member and swap dealer non-clearing member reporting entity reports	20.4	67	17,420	100%	26,130	\$ 1,944,856
Subtotal Reports			17,680		26,520	\$ 1,974,001
102S Filings	20.5	4,756	11,148	100%	16,722	\$ 1,249,635
40S Filings	20.5	4,756	4,756	100%	1,580	\$ 118,073
Subtotal Filing Responses			15,904			\$ 1,367,708

Total Reporting			33,584		44,822	\$ 3,341,709
Clearing organization recordkeeping	20.6(a)	1	1	100%	20	\$ 1,495
Clearing member and swap dealer non-clearing member reporting entity recordkeeping	20.6(b)	67	67	100%	1,340	\$ 100,138
Large swap traders	20.6(b)	4,756	4,756	100%	14,200	\$ 1,061,166
Total Recordkeeping			4,824		15,560	\$ 1,162,799
Total			38,408		60,382	\$ 4,504,508

Attachment B

14. Annual Reporting and Recordkeeping Cost Burden

Part 20 – Large Trader Reporting for Physical Commodity Swaps

OMB Collection File 3038- 0095

Type of respondent	Applicable CFTC Regulation Section (17 CFR)	Total Number of Respondents	Total Annualized Capital/Start-up Costs	Total Annual Costs (Operating & Maintenance)	Total Annualized Cost Requested	Average Annual Capital + O&M Costs
Clearing organization reports	20.3	1	\$25,000	\$25,000	\$50,000	\$50,000
Clearing member and swap dealer non-clearing member reporting entity reports	20.4	67	\$12,000,000	\$4,000,000	\$16,000,000	\$238,806
102S Filings	20.5	4,756	\$0	\$1,500,000	\$1,500,000	\$315
40S Filings	20.5	4,756	\$1,800,000	\$600,000	\$2,400,000	\$505
Total Reporting			\$13,825,000	\$6,125,000		
Clearing organization recordkeeping	20.6(a)	1	\$0	\$500,000	\$500,000	\$500,000
Clearing member and swap dealer non-	20.6(b)	67	\$0	\$4,000,000	\$4,000,000	\$59,701

clearing member reporting entity recordkeeping						
Large swap traders	20.6(b)	4,756	\$1,800,000	\$12,000,000	\$13,800,000	\$2,902
Total Recordkeeping			\$1,800,000	\$16,500,000		
Total Annualized Startup Costs			\$15,625,000			
Total Annual Costs (O&M)				\$22,625,000		
Total Annualized Costs Requested					\$38,250,000	