

**SUPPORTING STATEMENT FOR NEW AND  
REVISED INFORMATION COLLECTIONS**

**OMB CONTROL NUMBER 3038-0082**

**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.**

Section 23 of the Commodity Exchange Act, 7 U.S.C. 1 et seq, directs that the Commission establish a fund from which to pay awards of 10 to 30 percent of sanctions collected from successful enforcement of covered judicial or administrative actions, or related actions, to individuals who provide information that leads to the successful enforcement of an action in which sanctions exceeding \$1,000,000 are obtained; and to finance customer education regarding whistleblower initiatives. Section 23(c) establishes procedures for the determination or denial of an award. Rules 165.3 and 165.7 implement these statutory provisions. Rule 165.3 establishes the procedures for submitting original information to the Commission. Rule 165.7 establishes the procedures for award applications and Commission award determinations.

**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 information received pursuant to rules 165.3 enables the Commission to receive original information in support of whistleblower tips that can elicit sufficient information to determine whether that alleged conduct suggests a violation of the CEA. Ultimately, the receipt of such tips can lead to the successful enforcement of Commission administrative or judicial actions achieving total sanctions in excess of \$1,000,000 or related actions. Rule 165.7 requires the whistleblower to apply for an award, and likewise enables the Commission to make a determination of the amount of an award or denial of an award based upon certain criteria.

**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.**

Information may be submitted electronically.

**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.**

Not applicable. Under the statute, the required information sought is to be original information from an original 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.**

This collection of information will be from individuals and not small businesses or entities.

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

If the information required under this collection of information were not collected, application of Commission rules would be adversely affected.

**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;**
- **requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;**
- **requiring respondents to submit more than an original and two copies of any document;**
- **requiring respondents to retain records other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;**
- **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;**
- **requiring the use of a statistical data classification that has not been reviewed and approved by OMB;**
- **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**
- **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.**

Not applicable.

**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.**

The 60-day *Federal Register* notice soliciting comments on the renewal of this collection was published at 85 Fed. Reg. 74995 (November 24, 2020). The Commission received no relevant comments.

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

The Commission sought public comments on the collection of information.

**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.**

This question does not apply.

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

This question does not apply.

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

Section 23(h)(2)(A) of the CEA provides that the Commission, its officers and employees shall not disclose any information, including that provided by the whistleblower, that could reasonably be expected to reveal the identity of a whistleblower except under certain limited conditions.

**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.**

None of the regulations require the giving of sensitive information, as that term is used in Question 11.

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

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

See Tables A & B below. The Commission estimates that respondents will file 750 submissions of original information (Form TCR) and 150 requests for determinations of whistleblower awards (Form WB-APP), for a total of 900 submissions. The Commission estimated that this collection would involve approximately 0.5 burden hours per Form TCR or Form WB-APP, for an annual aggregate 450 burden hours per fiscal year.

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

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

- **If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate, agencies may consult with a sample of respondents (fewer than ten), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.**
- **Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.**

The Commission estimates the cost of the hourly burden to be between \$25.72 and \$45.27 per hour for respondents to complete the required forms themselves. The Commission also estimates that respondents will pay hourly fees to counsel for the submission of approximately 7% of the Forms TCR and 20% of the Forms WB-APP annually.<sup>1</sup> The Commission further estimates that counsel retained by respondents pursuant to an hourly fee arrangement will charge on average \$500 per hour.<sup>2</sup> See also Table B below.

**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.**

This question does not apply because there are no new costs to the Federal Government associated with this renewed information collection.

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

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<sup>1</sup>Because any individual may file a Form TCR or Form WB-APP, taking time away from their regular employment to do so, these estimates assume a low end mean hourly wage of \$25.72. See Bureau of Labor Statistics, U.S. Department of Labor, May 2019 National Occupational Employment and Wage Estimates United States, "All Occupations," available at [https://www.bls.gov/oes/current/oes\\_nat.htm#00-0000](https://www.bls.gov/oes/current/oes_nat.htm#00-0000). But because many respondents are in the financial industry, these estimates assume a high end of \$45.27. See Bureau of Labor Statistics, U.S. Department of Labor, May 2019 National Occupational Employment and Wage Estimates United States, "Financial and Investment Analysts, Financial Risk Specialists, and Financial Specialists, All Other," available at <https://www.bls.gov/oes/current/oes132098.htm>.

<sup>2</sup> Based on the specialized knowledge, experience, and current competitive salary of a private counsel in a mid-to-large US firm in a major urban center, we estimate the blended salary rate in 2021 and during the next three years is \$500 per hour. This rate has been deemed reasonable by our WBO staff.

The number of responses are expected to increase from 600 previously to 900, but the expected time to complete each form remains unchanged, at 0.5 hr per form. This results in 450 hours as the total annual burden hours during the renewal period.

**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.

Table A

Number of Respondents	750 (Form TCR)
	150 (Form WB-APP)
Estimated Average Hours Per Response	0.5 (Form TCR)
	0.5 (Form WB-APP)
% of Responses Collected Electronically	95%
Frequency of Reporting	Annual Report to Congress

Table B

Responses	Burden Hours	Burden Cost/hr	Total Burden Cost
700 (Form TCR; Respondents Completed)	350 (0.5 x 700)	\$25.72 - \$45.27	\$9,002 - \$15,845
50 (Form TCR; Counsel(s) for Respondents Completed)	25 (0.5 x 50)	\$500	\$12,500

120 (Form WB-APP; Respondents Completed)	60 (0.5 x 120)	\$25.72 - \$45.27	\$1,543 - \$2,716
30 (Form WB-APP; Counsel(s) for Respondents Completed)	15 (0.5 x 30)	\$500	\$7,500
<b>Total</b>	450		\$30,545 - \$38,561