

SUPPORTING STATEMENT FOR RENEWAL OF INFORMATION COLLECTION

OMB CONTROL NUMBER 3038-0093

PART 40, PROVISIONS COMMON TO REGISTERED ENTITIES

Justification

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

The Commission is seeking to renew control number 3038-0093. Part 40 provides procedures for the submission of rules, rule amendments and products by registered entities, including designated contract markets, swap execution facilities, derivatives clearing organizations, and swap data repositories. Part 40 establishes the procedures for a registered entity to submit to the Commission the “written certification” required by Section 5c of the Commodity Exchange Act (“CEA”) in order for the registered entity to certify to the Commission that a product to be listed (pursuant to § 40.2) or a rule or rule amendment to be implemented (pursuant to § 40.6) complies with the Act and Commission’s regulations thereunder. As part of a self-certification of a product under § 40.2, a registered entity must submit to the Commission, among other things, a concise explanation and analysis of the product and its compliance with applicable provisions of the Act, including core principles, and the Commission’s regulations thereunder. As part of a self-certification of a rule or rule amendment under § 40.6, a registered entity must submit to the Commission, among other things, a concise explanation and analysis of the operation, purpose and effect of the proposed rule or rule amendment and its compliance with applicable provisions of the Act, including core principles, and the Commission’s regulations thereunder.

Part 40 also establishes procedures for a registered entity to submit a request pursuant to Section 5c(c)(4) of the Act that the Commission approve a rule or a rule amendment (pursuant to § 40.5) or a product (pursuant to § 40.3) of the registered entity. As part of requesting a product be approved by the Commission under § 40.3, a registered entity must submit to the Commission, among other things, an explanation and analysis of the product and its compliance with applicable provisions of the Act, including core principles, and the Commission’s regulations thereunder. As part of requesting a rule or rule amendment be approved by the Commission under § 40.5, a registered entity must submit to the Commission, among other things, an explanation and analysis of the operation, purpose and effect of the proposed rule or rule amendment and its compliance with applicable provisions of the Act, including core principles, and the Commission’s regulations thereunder.

In certain instances, other Commission regulations may expressly or impliedly trigger the requirement for a registered entity to make a rule submission under §§ 40.5 or 40.6. For

example, the Commission's part 150 regulation on position limits contains an express requirement under § 150.9(a) to make a § 40.5 rule filing in certain circumstances.

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

The requested information is essential to the staff's review of rule and product submissions and the Commission's oversight of each registered entity. Staff generally uses the information submitted by the registered entity to independently analyze the compliance of the registered entity's product or rule with the CEA and regulations.

For new products, registered entities must submit information complying with either § 40.2 (self-certification) or § 40.3 (voluntary submission for Commission approval). Both provisions require that the registered entity submit an explanation and analysis of the product and its compliance with applicable provisions of the Act, including core principles, and the Commission's regulations thereunder. For rules and rule amendments (including rules and rule amendments implementing changes to the terms and conditions of products), registered entities must comply with either § 40.5 (voluntary submission for Commission approval) or § 40.6 (self-certification) by submitting an explanation and analysis of the operation, purpose and effect of the proposed rule or rule amendment and its compliance with applicable provisions of the Act, including core principles, and the Commission's regulations thereunder.

Receiving the information that these regulations require registered entities to submit to the Commission in connection with implementing new rules and listing new products is essential to the Commission's administration of the Act. Staff generally uses the information submitted by the registered entity to independently analyze the compliance of the registered entity's product or rule with the CEA and regulations which requires that, among other things, all contracts listed for trading be not readily susceptible to manipulation. Without the registered entity submitting the information required by part 40 (which for products includes information related to prices and pricing sources), the Commission could not effectively exercise its oversight responsibilities under the Act.

- 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. The Commission's regulations require all submissions under Part 40 to be submitted to the Commission electronically via a web portal on the Commission's website at cftc.gov. The Commission intends to continue its practice of publishing all incoming submissions on its website, which expedites public review of submissions. The Commission anticipates that 100% of the collection of information will 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.**

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

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

The collection of information does not involve small businesses or other small entities. The Commission has previously determined that the registered entities subject to Part 40, including designated contract markets, swap execution facilities, derivatives clearing organizations, and swap data repositories, are not small entities for purposes of the Regulatory Flexibility Act.

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

The Commission's Part 40 regulations do not require the submission of information on a periodic basis. Rather, submissions are required only at such time that registered entities seek to list new products or adopt new rules or rule amendments. The frequency of the required submissions depends on the frequency that registered entities seek to take one or more actions that require a filing with the Commission. Without contemporaneous submission of the information, the Commission could not adequately review the product or rule in a timely manner, which would undermine the Commission's statutory oversight.

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

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

This does not apply.

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

This does not apply.

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

This does not apply.

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

Commission Regulation 1.31 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.

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

This does not apply.

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

This does not apply.

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

There is no specific pledge of confidentiality with respect to the part 40 submissions. The Commission protects sensitive information according to the Freedom of Information Act and 17 CFR part 145, "Commission Records and Information." In addition, the Commission fully complies with section 8(a) of the CEA, which 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."

- 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.**

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.

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.

The Commission sought comment from the public concerning the renewal of the collections of information under Part 40. A copy of the solicitation of public comment was published in the Federal Register at 88 FR 68112 (Oct. 3 2023). The Commission received no relevant comments that addressed its PRA burden estimates. In addition, the Commission maintains regular contact with regulated entities.

- 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.**

The regulations covered by this collection do not require the provision of sensitive information, as that term is used in Question 10.

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

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

See Attachment A. In calculating this cost estimate, the Commission estimates the appropriate wage rate based on salary information for the securities industry compiled by the Department of Labor’s Bureau of Labor Statistics (“BLS”). Commission staff arrived at an hourly rate of \$106.56 using figures from a weighted average of salaries and bonuses across different professions contained in the most recent BLS Occupational Employment and Wages Report (May 2022) under NAICS 523000 multiplied by 1.3 to account for overhead and other benefits. The Commission estimated appropriate wage rate is a weighted national average of

mean hourly wages for the following occupations (and their relative weight): “compliance officer – industry: securities, commodity contracts, and other financial investment and related activities (13-1041)” (50%); and “lawyer – legal services (23-1101)” (50%). Commission staff chose this methodology to account for the variance in skill sets that may be used to accomplish the collection of information.

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.**

There are no capital, start-up, or maintenance costs associated with the regulations. The Commission anticipates that respondents will leverage existing systems in complying with the regulations.

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.

It is not anticipated that the regulations will impose any additional costs to the Federal Government.

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

There are no program changes. The Commission is updating its burden hour estimates to reflect the current number filings and of burden hours for each filing. To obtain the number of filings, CFTC staff searched the Commission data for filings made in 2020, 2021, and 2022, and averaged the totals by filing type. For the burden hours, CFTC staff have updated their burden estimates based on the Commission data, including the Commission’s 2018 burden estimates as updated in response to comments by registered entities.¹ CFTC staff also reviewed Commission data to estimate the number of respondents currently obligated to make filings under part 40.

In addition, the Commission is revising the collection by consolidating the two Information Collections under this clearance. OMB Control Number 3038-0093 currently has two Information Collections (ICs): Part 40, Provisions Common to Registered Entities (“Provisions Common to Regulated Entities IC”); and Part 150, Position Limits (“Part 150 Position Limits IC”). The Provisions Common to Regulated Entities IC includes almost all filings made under §§40.2, 40.3, 40.5, 40.6 and 40.10. The Part 150 Position Limits IC was created to account for rule filings made pursuant to §150.9(a), which requires SEFs and DCMs to submit rules to the Commission for approval under § 40.5 if they wish to establish a self-regulatory process for recognition of bona fide hedging transactions that are not enumerated in part 150’s express list of such transactions.² CFTC staff has determined it is not necessary to maintain a separate IC for part 40 filing requirements triggered by § 150.9(a) because the burdens are not different in type from the other burdens aggregated into the general Provisions Common to Regulated Entity IC.³ Disaggregating every underlying substantive requirement that triggers a part 40 rule filing is impracticable, given that so many Commission regulations impacting the registered entities could trigger a filing under certain circumstances. Accordingly, the Commission believes that a single category for each type of filing (product, rule or SIDCO) provides more appropriate information about the burden associated with the collection, as shown in Attachment A. As a result, the Commission is consolidating the estimates for both ICs under IC 1, Part 40, Provisions Common to Registered Entities.

¹ See 83 F.R. 43855, 43856 (Aug. 28, 2018); Supporting Statement at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201808-3038-003.

² See OMB Control No. 3038-0093, Part 150 Position Limits IC, Supporting Statement, at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202102-3038-001.

³ For similar reasons, the Commission is also consolidating the burden for Regulation 38.125(e) that was previously reported separately.

This consolidation and revision yields a total burden hour estimate of 20,540 annual burden hours (a 5,574-hour increase from the prior estimate of 14,966 annual burden hours).

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

This question does not apply.

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

This question does not apply.

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

No exceptions exist.

Attachment A

Estimated Annual Hour and Cost Burden of the Collection of Information

IC: Part 40, Provisions Common to Registered Entities

1. Regulation(s)	2. Estimated Number of Respondents	3. Estimated Number of Reports by Each Respondent ⁴	4. Estimated Average Number of Burden Hours per Response	5. Annual Number of Burden Hours per Respondent (3 × 4)	6. Estimated Average Burden Hour Cost ⁵	7. Total Average Hour Burden Cost Per Respondent (5 × 6)	8. Total Annual Responses ⁶	9. Total Annual Number of Burden Hours (2 × 5)	10. Total Annual Burden Cost of Responses (2 × 7)
§§ 40.2 and 40.3 (Products)	70	12	21	252	\$106.56	\$26,853.12	848	17,640	\$1,879,776
§§ 40.5 and 40.6 (Rules) ⁷	70	20	2	40	\$106.56	\$4,262.40	1,412	2,800	\$298,368
§ 40.10 (SIDCO)	2	1	50	50	\$106.56	\$5,328.00	2	100	\$10,656
New Totals	70⁸						2,296	20,540	\$2,188,740

⁴ The totals for estimated numbers of reports by respondent per year are rounded. These estimates are derived by dividing the total number of responses in Column 8 (based on an average of actual filings submitted to the Commission over the past three years) by the total number of respondents shown in Column 2.

⁵ For §§ 40.2, 40.3, 40.5, 40.6, and 40.10, the Commission is providing a blended rate using estimated industry specific wages for Compliance Officer and Lawyers multiplied by 1.3 to account for overhead and other benefits using data from 2022. Per the U.S. Bureau of Labor Statistics, national industry-specific occupational employment and wage estimates with data collected from employers in the securities, commodity contracts, and other financial investments and related activities (NAICS 523000) provides that the mean hourly wage for a compliance officer is \$44.31 and lawyer is \$119.63. The average of those wages is \$81.97, when adjusted by 1.3 multiplier noted above results in the average hourly wage of \$106.56. See May 2022 National Industry-Specific Occupational Employment and Wage Estimates, NAICS 523000 - Securities, Commodity Contracts, and Other Financial Investments and Related Activities, available at: https://www.bls.gov/oes/current/naics3_523000.htm.

⁶ The Total Annual Responses in column 8 were obtained by querying the Commission's submission database for the total number of past three years of filings in each category. The three-year totals were averaged to calculate the annual estimate. See Provisions Common to Registered Entities, Notice of Proposed Rulemaking, 88 F.R. 61432, 61443 n.75, 61444 nn.79 and 82 (Sept. 6, 2023).

⁷ The category for §§ 40.5 and 40.6 now includes part 40 rule filings triggered by § 38.251(e), which had previously been listed as a separate line-item, and the filings triggered by § 150.9(a), which had previously been included in a second IC that has now been merged with the Provisions Common to Registered Entities IC.

⁸ The total number of respondents for the Information Collection is 70. A subset of 2 respondents filed reports under § 40.10.