

**SUPPORTING STATEMENT FOR NEW AND
REVISED INFORMATION COLLECTIONS
OMB CONTROL NUMBER 3038-0012**

- 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 Commodity Futures Trading Commission (Commission or CFTC) is proposing to amend rule 16.01 to implement the CFTC Reauthorization Act of 2008 (Reauthorization Act)¹ which, in pertinent part, amends the Commodity Exchange Act to significantly expand the CFTC's regulatory authority over exempt commercial markets (ECMs) that had heretofore operated largely outside the Commission's regulatory reach by creating a new regulatory category – ECMs with significant price discovery contracts (SPDCs). The Reauthorization Act charges the Commission with issuing rules to implement this expanded authority.

Section 4g(b) of the Commodity Exchange Act, as amended by the reauthorization Act, requires registered entities including ECMs with SPDCs, to maintain daily trading records that include such information as the Commission shall prescribe by rule. 7 U.S.C. 6g(b). Section 4g(d) of the Act requires exchanges to make reports from those records as required by the Commission. 7 U.S.C. 6g(d). Section 4g(e) of the Act requires exchanges to publish the volume of trading for each contract, along with such other information that the Commission determines should be published. 7 U.S.C. 6g(e). The Commission has determined that in addition to volume of trading for each contract, it is in the public interest and necessary for market surveillance that exchanges provide to the Commission or publicly disseminate the following market information for each contract:

1. total gross open contracts;
2. open futures contracts against which delivery notices have been stopped;
3. volume generated from the exchange of futures;
4. delta factors;
5. certain pricing data; and
6. block trade volume.

Proposed regulation 16.01, which currently applies to reporting markets would extend the market reporting requirements that are currently applicable only to fully regulated designated contract markets (DCMs) and derivatives transaction execution facilities (DTEFs) to ECMs with SPDCs. ECMs with SPDCs, pursuant to the amendments to the Commodity Exchange Act introduced by the Reauthorization Act, are now registered entities with self-regulatory responsibilities.

¹ The CFTC Reauthorization Act of 2008 was incorporated into the Food, Conservation and Energy Act of 2008 as Title XIII of that legislation, Pub.L. No. 110-246 (June 18, 2008).

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 is used by the general public, derivatives industry researchers, and the Commission to analyze the commodity futures and options marketplace. The information is received from each reporting market on a daily basis in conjunction with other data collected by the Commission to determine the potential for market disturbances and distortions. Commission market analysts and researchers use this data on a frequent basis in conducting reporting market reviews and undertaking research projects.

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.**

All information is 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.**

There is no duplication.

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 information collection does not involve small organizations.

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 these markets. The collection requirements are essential to the Commission's mission as mandated by the Commodity Exchange Act. Market activities require surveillance on a daily basis because situations such as attempted manipulation or congestion can develop rapidly. Adequate surveillance would be impossible, if market 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.**
- **Requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it.**

In order to adequately conduct market surveillance, our reporting rules routinely require the collection and presentation of information in fewer than 30 days.

The Commission regulates the trading of commodity futures and options contracts that impact a vast array of commodity prices 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 aggregated transactional 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.**

Section 5(d)(17) of the Commodity Exchange Act requires DCMs to maintain records of all activities related to the business of the market in a form and manner acceptable to the Commission for a period of five years. 7 U.S.C. 7(d)(17).

Section 5a(d)(8) of the Commodity Exchange Act requires DTEFs to maintain records of all activities related to the business of the market in a form and manner acceptable to the Commission for a period of five years. 7 U.S.C. 7a(d)(8).

Section 2(h)(5)(B)(ii) of the Commodity Exchange Act specifies that ECMs retain business and operational records for 5 years and make such records available to the Commission for inspection upon request. 7 U.S.C. 2(h)(5)(B)(ii).

For the purpose of enforcing the provisions of the Act and the Commission's regulations thereunder, Commission rule 1.31 (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.**

Current and proposed regulation 16.01 does not involve statistical surveys.

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

Current and proposed regulation 16.01 does 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.**

Current and proposed regulation 16.01 does not directly involve any pledge of confidentiality regarding the collection of data (please see answer to question 10).

- **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.**

Certain requirements of regulation 16.01 may require the submission of transactional and commercial data that may involve confidential information or proprietary trade secrets. The Commission will protect 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)(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."

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 copy of the notice of proposed rulemaking is attached for OMB's review. It has been submitted for publication (but not yet published) in the Federal Register.

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).

Opportunity for public comment is provided when regulations are initiated or amended. Contact with derivatives markets and market participants is maintained on a continuous and on an ongoing basis to resolve reporting problems and address concerns. The Commission has, and plans to continue, to solicit comments through publication of proposed rules in the Federal Register. The Commission will also, on an ongoing basis, solicit public comments through the notice required by 5 CFR 1320.8(d).

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.**

This question does not apply.

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

The Commission will protect 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)(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."

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.

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.**

Twelve exchanges provide the information required by regulation 16.01 for each of approximately 250 trading days per year. It is estimated that up to 3 ECMs with SPDCs will also be providing this data on a continuing basis. We have estimated that it takes these reporting markets about 30 minutes per day to generate each data file, transmit that file to Commission offices, and make public the required information. This results in an annual burden of approximately 1,875 hours.

In arriving at a wage rate for the hourly costs imposed, Commission staff used the Management & Professional Earnings in the Securities Industry Report, published in 2008 by the Securities Industry and Financial Markets Association (2008 Report). Unless stated otherwise, Commission staff used a composite (blended) wage rate by averaging the mean annual salaries of a Compliance Manager and a Programmer as published in the 2008 Report, and divided that figure by 1800 annual working hours to arrive at the hourly wage rate of \$51. Commission staff chose this methodology to account for the variance in skill sets that may be used to accomplish the collection of information. It is important to note that although the hourly wage referenced above does take bonuses into account, it does not consider certain variables such as employee benefits which can increase the cost of labor. Using a blended professional wage rate made up of both compliance and information technology staff of \$51 per hour, the annual costs are estimated at \$95,625.

- 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.**

Exchanges generate and record market data on a daily basis for market participants and to fulfill self-regulatory responsibilities such as market surveillance responsibilities. No additional costs, other than those described in question 12 or those incurred in the normal course of business operations, are imposed by requirements of current and proposed regulation 16.01.

- 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 3 Industry Economists will expend approximately 8 hours per day over 250 trading days to analyze the information provided by proposed regulation 16.01, which includes reports by DCMs, DTEFs, and ECMs with SPDCs for a total of 6,000 hours expended. At an average salary rate of \$55 per hour for a full-time employee, the Commission estimates that the cost to the government will be \$330,000 annually.

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

The proposed regulation expands the number of reporting markets that could potentially be subject to regulation 16.01.

- 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.**

There are no exceptions to the certification statement. The Commission is able to certify compliance with the provisions of 5 CFR 1320.9.

ATTACHMENT 1

Market Reporting Requirements for Options and Futures

a	b	c	d	e	f	g
Type of Respondent	Estimated Number of Respondents	Report or Record	Average Reports Annually by Each Respondent	Total Annual Responses	Estimated Number of Hours Per Response	Annual Burden in Fiscal Year in Hours
Exchanges	15	Volume, Open Interest, Prices, Notices, EFs (R. 16.01)	250	3,750	0.5	1875