

## SUPPORTING STATEMENT FOR NEW AND REVISED INFORMATION COLLECTIONS

OMB CONTROL NUMBER 3038-0052

### 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 amending control number 3038-0052 to account for regulation 38.1051(n) that is being adopted in the System Safeguards and Cybersecurity Testing Final Rulemaking and requires designated contract markets (DCMs) to provide the Commission with annual trading volume information. The trading volume information will assist the Commission in its application of the enhanced system safeguard and cybersecurity testing requirements for DCMs whose annual trading volume in a calendar year is five percent or more of the combined annual trading volume of all DCMs regulated by the Commission. The Commission estimates that the annual production of trading volume information increases recordkeeping and reporting requirements by approximately .5 burden hours for the 15 DCMs presently registered with the Commission.

The regulations governing DCMs were adopted pursuant to the requirements of the Commodity Futures Modernization Act of 2000.<sup>1</sup> Part 38 of the Commission's regulations governs the activities of DCMs. The information collected pursuant to part 38 is necessary for the Commission to evaluate whether entities operating as, or applying to become DCMs, comply with the part 38 requirements. Collection 3038-0052 was created in response to the part 38 regulatory requirements for DCMs.

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 Commission will continue to use all information previously collected under OMB Control Number 3038-0052 as previously justified, and will use the new information to be collected to accurately evaluate whether a particular DCM will be subject to the enhanced system safeguard requirements.

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

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<sup>1</sup> 7 U.S.C. 1 *et seq.*

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 required submission by DCMs to the Commission for annual trading volume 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.

The trading volume information collected under the final rule is not already collected by the Commission for any other purpose, nor is it collected by any other agency, nor is the information available from any other source.

5. If the collection of information involves small business or other small entities (Item 5 of OMB From 83-1), describe the methods used to minimize burden.

The required information collected under the final production of trading volume rule will not affect any small business or small entities. The DCMs that would be subject to these rules are non-small entities for purposes of the Regulatory Flexibility Act. The Commission determined that DCMs, by virtue of the statutory requirements applicable to them, are not small entities in 1982. There have been no statutory changes that would alter that determination.

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.

This question is not applicable.

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;

The final rules do not require respondents to report any information to the Commission 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;

This question is not applicable.

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

Respondents are not required to submit more than an original and two copies of any of documents.

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

DCMs are required to maintain records of all activities related to their business as a contract market, in a form and manner acceptable to the Commission, 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, pursuant to Commission Regulation 1.31 and Core Principle 18 (Recordkeeping). All such books and records are 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;

The collection does not involve a statistical survey.

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

The collection does not involve the use of any statistical data.

- 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 collection does not involve any pledge of confidentiality.

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

The Commission 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 Federal Register Notice soliciting comments on this Collection was published in the *Federal Register* (80 FR 80162 (December 23, 2015)). Although the Commission did not receive any comment concerning the accuracy of its estimate regarding the additional burden of 7.5 hours for this collection, the Commission received a comment from CME that the Commission should consider alternatives to the reporting requirements in proposed § 38.1051(n) because the Commission currently receives daily trade reports regarding volume pursuant to DCM Core Principle 8 and part 16 of the Commission's regulations. The Commission notes that while it receives daily trade information from DCMs pursuant to part 16, it does not receive total annual trading volume from DCMs. Additionally, the Commission believes that Core Principle 8 is inapplicable because it requires DCMs to publish daily volume, but does not require submission of that information to the Commission. The Commission's rules do not currently require the submission of annual trading volume, which is essential for the Commission to accurately evaluate whether a particular DCM must comply with the enhanced system safeguard requirements. The Commission believes that DCMs generally calculate their annual trading volume in the usual course of business and any associated costs incurred by DCMs to comply with this provision will be minimal. A copy of the final regulations as they will appear in the *Federal Register* is attached hereto.

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 developed the final rules for DCMs internally, applying its knowledge of DCM system safeguard programs. Opportunity for public comment was provided when the proposed rules were published on December 23, 2015 in the *Federal Register*.

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.

No such circumstances are anticipated.

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

The question is not applicable.

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 (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.” Moreover, the Commission complies with the Freedom of Information Act regulations it has established, set forth at 17 CFR Part 145, and its Government in the Sunshine Act regulations, set forth at 17 CFR Part 147.

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 final rule covered by this collection does not 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 Attachment A. The Commission estimates that the collection of information required by the final rule will impose a burden of .5 hours per respondent annually on an estimated 15 respondents. Total annual costs are estimated to be \$372.00 or approximately \$24.80 per respondent per year (using a \$49.59 per hour Compliance Officer figure).

13. Provide an estimate of the total annual cost burden to respondents or record-keepers 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.

It is expected that DCMs will utilize existing software, information technology, and systems. Thus, the Commission believes that there will not be additional capital/startup costs or operational/maintenance costs incurred by DCMs to report the information required by the final rule to the Commission.

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 final rule 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.

The final rule is designed to enable the Commission to accurately evaluate whether a particular DCM would be subject to the enhanced system safeguards and cybersecurity testing requirements. The collection of trading volume information will assist the Commission in its application of the new requirements for DCMs whose annual trading volume in a calendar year is five percent or more of the combined annual trading volume of all DCMs regulated by the Commission. The collection of information will add additional burdens on an estimated 15 DCMs for a total of 7.5 hours annually.

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

Collection 3038-0052

Part 38 Establishing Procedures for  
Designated Contract Markets and Applicants Seeking Designation

Previous Estimated Hourly Burden

Report	Estimated Number of Respondents	Reports Per period by Each	Total Responses	Estimated Average Number of Hours per year	Annual Reporting Burden
Designation and Compliance	18	NA	NA	330	5940
Annual	18	1	18	70	1260
Quarterly	18	4	72	40	720
Sub-Total	18	5	90	440	7920
Examination Program and Audit of Program	15	NA	15	50	750
Sub-Total	15	NA	15	50	750
<b>TOTAL</b>	<b>18</b>	<b>5</b>	<b>105</b>	<b>490</b>	<b>8670</b>

Amended Estimated Hourly Burden

Report	Estimated Number of Respondents	Reports Per period by Each	Total Responses	Estimated Average Number of Hours per year	Annual Reporting Burden
*Annual	15	1	15	.5	7.5

<b>Required Production of Trading Volume<sup>2</sup></b>					
<b>Sub-Total</b>	<b>15</b>	<b>1</b>	<b>15</b>	<b>.5</b>	<b>7.5</b>
<b>TOTAL</b>	<b>18</b>	<b>6</b>	<b>120</b>	<b>490.5</b>	<b>8677.5</b>

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<sup>2</sup> The hourly wage for a Compliance Officer in the Securities and Commodity Exchanges category is \$49.59 according to the National Industry-Specific Occupational Employment and Wage Estimates (2015 Report). Divide \$49.59 by .5 to come up with a cost of \$24.80 per respondent. Multiply \$24.80 by 15 to come up with a total cost of \$372.00.