

**SUPPORTING STATEMENT FOR NEW AND
REVISED INFORMATION COLLECTIONS
OMB CONTROL NUMBER 3038-0017**

A. 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.**

Sections 8(a)(1) and (2) of the Commodity Exchange Act (Act) provide that, for the efficient execution of the provisions of the Act and in order to inform Congress, the Commodity Futures Trading Commission (Commission) may make investigations concerning markets and may publish general statistical information from such investigations as it deems of interest to the public. See Attachment A. In certain instances, in response to abrupt and substantial changes in market prices, congressional inquiry, or other reasons, the Commission may conduct full market investigations requiring that all persons holding futures positions on the date in question in a specific market be identified.¹ The Commission issues its call for survey information pursuant to Rule 21.02. See Attachment B.

- 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 primarily by economists of the Division of Market Oversight. The data provide a basis for reports to Congress and periodic Commission publications, and are used by Commission economists and universities for 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.**

The Commission revised Part 21 of its regulations to delete the requirement for machine-readable information adhering to a specific record layout. This matches current industry and Commission practice. Generally, large firms which use independent bookkeeping services are able to provide the data in electronic format. Smaller firms with manual bookkeeping methods are generally allowed to submit forms.

¹ When futures trading in new commodities begins, the Commission may also conduct full market investigations to determine the extent to which commercials are using the market for hedging. This occurred, for example, with foreign currency and financial instrument surveys.

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.

No other organization collects these data. The Commission obtains similar information through its large trader reporting system, but for only about 10 percent of the accounts which would be reported through a market survey. Moreover, since identification information required on market surveys is more detailed than that routinely collected, particularly with respect to occupation information, and, because small (*i.e.*, nonreportable) positions must be included on surveys, information routinely collected through the daily reporting system is not sufficient for market survey purposes.

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 information collection does not involve any 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.

Surveys are conducted only on an as needed basis, as determined by the Commission. In general, this has been done in response to a request by Congress for a detailed investigation of a particular market. In any event, no more than one survey a year is conducted by the Commission. Considerations of the survey cost and the effect on the agency's programs of not conducting a marketwide survey are made prior to the initiation of each call. There are no obstacles for reducing burden.

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.**
- **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.**

No circumstances require the collection of data to be conducted in a manner inconsistent with the above guidelines.

- 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.**

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 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.

Opportunity for public comment is provided when regulations are initiated or amended. Notice of intent to renew this collection was published in the *Federal Register* on _____ (attached). _____ comments have been received in response to that notice.

- 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.**

Public disclosure of information concerning individual traders is prohibited by section 8(a) of the Act (7 USC 12(a)), except under such circumstances as specified in the Act.

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 data collection requirements relating to this requirement contain no sensitive questions as that term is used in this paragraph.

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.**

Approximately 400 members of reporting markets, FCMs, introducing brokers, and foreign brokers will receive the initial abbreviated call for information. The majority of potential respondents either own their own computers or use independent accounting services with automated data processing capabilities. We estimate that, on average, a maximum of 30 minutes would be necessary to respond to the initial call. Although burden hours for the followup survey will depend on the particular sampling rate, we do not expect to be asking for followup information on more than 1,000 accounts. This represents 10 percent of an expected maximum number of 10,000 accounts for any one survey. Providing followup information should take no longer than 30 minutes per account. Using the above estimates, on average, we would expect a reporting burden of no more than 700 hours per survey. This may range from zero for respondents who do not carry accounts in commodities specified in the call to as many as 50 hours for FCMs with a large number of customer accounts.

Estimated number of respondents 400

Reports annually by each respondent	1
Total annual responses	400
Estimated number of hours per response	1.75
Annual burden in fiscal year	700

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.**

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). 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 an hourly wage rate of \$51. Using this wage rate, estimated costs to the respondents total \$35,700.

- 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.**

Existing equipment and personnel are used to tabulate results from this information collection. Since equipment, space, etc., are fixed costs (they exist whether or not a call for information is issued), no dollar figure is included here. The Commission estimates that staff would expend 400 hours in the collection, analysis, and publication of the data. At an average salary rate of \$55 per hour for a full time employee, the Commission estimates that the cost to the government would be \$22,000.

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

No change was made to the estimated burden hours in Item 13. However, a reevaluation of industry wage rates, using the Management & Professional Earnings in the Securities Industry Report, and the type respondent staff who would most likely be assigned the work on this collection has led to an increase in the burden dollar amount.

- 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.**

The Commission generally allows 30 days after the call date for submission of population data in its abbreviated call procedures. Within 60 days of receipt of the majority of this data, a subsequent call for information will be made for additional data on sample accounts with another 30-day response requirement. Tabulation and analysis of the data is expected within 90 to 120 days, depending on the degree of data problems incurred. Within one year of the call date, survey data is usually published.

- 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.

B. Collection of Information Employing Statistical Methods.

- 1. Describe (including a numerical estimate) the potential respondent universe and any sampling or other respondent selection method to be used. Data on the number of entities (e.g., establishments, State and local government units, households, or persons) in the universe covered by the collection and in the corresponding sample are to be provided in tabular form for the universe as a whole and for each of the strata in the proposed sample. Indicate expected response rates for the collection as a whole. If the collection has been conducted previously, include the actual response rate achieved during the last collection.**

After the Commission has determined that a marketwide report is necessary in particular commodities on a specific date, approximately 400 futures commission merchants (FCMs), members of reporting markets, introducing brokers, and foreign brokers will be required to report information on each account on their books in which there are open positions in the commodity surveyed. The call will be made to those entities under Rule 21.02 to provide the following information:

- a. The account number, name, and mailing address of persons holding open positions in commodities named in the call; and
- b. Open positions by future in such accounts.

This information will provide a sampling frame from which a sample of accounts will be drawn. At this point, either one of two procedures will be employed.

If the additional information needed for the survey corresponds to the information required under Rule 21.02, subsequent calls for this information will be made to FCMs for the accounts in the sample. In this instance, no test of procedures will be undertaken, and expected response rates are 100 percent.

If traders must be contacted for the additional information, this will be considered a separate information collection, and a request for a separate OMB number will be made.

- 2. Describe the procedures for the collection of the information including:**

- **Statistical methodology for stratification and sample selection,**
- **Estimation procedure,**
- **Degree of accuracy needed for the purpose described in the justification,**
- **Unusual problems requiring specialized sampling procedures, and**

- **Any use of periodic (less frequent than usual) data collection cycles to reduce burden.**

It is anticipated that, at the time of the call, services of in-house economists and statisticians will be utilized for stratifying the populations, drawing the sample, and preparing estimates of the reliability of the data.

- 3. Describe methods to maximize response rates and to deal with the issues of nonresponse. The accuracy and reliability of information collected must be shown to be adequate for intended uses. For collections based on sampling, a special justification must be provided for any collection that will not yield “reliable” data that can be generalized to the universe studied.**

Data on the sample accounts are required under Commission regulation.

- 4. Describe any tests of procedures or methods to be undertaken. Testing is encouraged as an effective means of refining collections of information to minimize burden and improve utility. Tests must be approved if they call for answers to identical questions from 10 or more respondents. A proposed test or set of tests may be submitted for approval separately or in combination with the main collection of information.**

No tests of procedures are contemplated.

- 5. Provide the name and telephone number of individuals consulted on statistical aspects of the design and the name of the agency unit, contractor(s), grantee(s), or other person(s) who will actually collect and/or analyze the information for the agency.**

Contact Gary Martinaitis (202-418-5209) for further information.

COMMODITY EXCHANGE ACT

SEC. 8. [7 U.S.C. 12] (a)(l) For the efficient execution of the provisions of this Act, and in order to provide information for the use of Congress, the Commission may make such investigations as it deems necessary to ascertain the facts regarding the operations of boards of trade and other persons subject to the provisions of this Act. The Commission may publish from time to time the results of any such investigation and such general statistical information gathered therefrom as it deems of interest to the public: *Provided*, That except as otherwise specifically authorized in this Act, the Commission may not publish data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers: *Provided further*, That the Commission may withhold from public disclosure any data or information concerning or obtained in connection with any pending investigation of any person. The Commission shall not be compelled to disclose any information or data obtained from a foreign futures authority if-

(A) the foreign futures authority has in good faith determined and represented to the Commission that disclosure of such information or data by that foreign futures authority would violate the laws applicable to that foreign futures authority; and

(B) the Commission obtains such information pursuant to

(i) such procedure as the Commission may authorize for use in connection with the administration or enforcement of this Act; or

(ii) a memorandum of understanding with that foreign futures authority;

except that nothing in this subsection shall prevent the Commission from disclosing publicly any information or data obtained by the Commission from a foreign futures authority when such disclosure is made in connection with a congressional proceeding, an administrative or judicial proceeding commenced by the United States or the Commission, in any receivership proceeding commenced involving a receiver appointed in a judicial proceeding by the United States or the Commission, or in any Proceeding under title 11 of the United States Code in which the Commission has intervened or in which the Commission has the right to appear and be heard. Nothing in this subsection shall be construed to authorize the Commission to withhold information or data from Congress. For purposes of section 552 of title 5, United States Code, this subsection shall be considered a statute described in subsection (b)(3)(B) of section 552.

(2) In conducting investigations authorized under this subsection or any other provision of this Act, the Commission shall continue, as the Commission determines necessary, to request the assistance of and cooperate with the appropriate Federal agencies in the conduct of such investigations, including undercover operations by such agencies. The Commission and the Department of Justice shall assess the effectiveness of such undercover operations and, within two years of the date of enactment of the Futures Trading Practices Act of 1992, shall recommend to Congress any additional undercover or other authority for the Commission that the Commission or the Department of Justice believes to be necessary.

(3) The Commission shall provide the Securities and Exchange Commission with notice of the commencement of any proceeding and a copy of any order entered by the

Commission against any futures commission merchant or introducing broker registered pursuant to section 4f(a)(2), any floor broker or floor trader exempt from registration pursuant to section 4f(a)(3), any associated person exempt from registration pursuant to section 4k(6), or any board of trade designated as a contract market pursuant to section 5f.

(b) The Commission may disclose publicly any data or information that would separately disclose the market positions, business transactions, trade secrets, or names of customers of any person when such disclosure is made in connection with a congressional proceeding, in an administrative or judicial proceeding brought under this Act, in any receivership proceeding involving a receiver appointed in a judicial proceeding brought under this Act, or in any bankruptcy proceeding in which the Commission has intervened or in which the Commission has the right to appear and be heard under title 11 of the United States Code. This subsection shall not apply to the disclosure of data or information obtained by the Commission from a foreign futures authority.

(c) The Commission may make or issue such reports as it deems necessary, or such opinions or orders as may be required under other provisions of law, relative to the conduct of any registered entity or to the transactions of any person found guilty of violating the provisions of this Act or the rules, regulations, or orders of the Commission thereunder in proceedings brought under section 6 of this Act. In any such report or opinion, the Commission may set forth the facts as to any actual transaction or any information referred to in subsection (b) of this section, if such facts or information have previously been disclosed publicly in connection with a congressional proceeding, or in an administrative or judicial proceeding brought under this Act.

(d) The Commission, upon its own initiative or in cooperation with existing governmental agencies, shall investigate the marketing conditions of commodities and commodity products and byproducts, including supply and demand for these commodities, cost to the consumer, and handling and transportation charges. It shall also compile and furnish to producers, consumers, and distributors, by means of regular or special reports, or by such other methods as it deems most effective, information respecting the commodity markets, together with information on supply, demand, prices and other conditions in this and other countries that affect the markets.

Title 17: Commodity and Securities Exchanges

§ 21.02 Special calls for information on open contracts in accounts carried or introduced by futures commission merchants, members of reporting markets, introducing brokers, and foreign brokers.

Upon special call by the Commission for information relating to futures or option positions held or introduced on the dates specified in the call, each futures commission merchant, member of a reporting market, introducing broker, or foreign broker, and, in addition, for option information, each reporting market, shall furnish to the Commission the following information concerning accounts of traders owning or controlling such futures or option positions, except for accounts carried on a fully disclosed basis by another futures commission merchant, as may be specified in the call:

- (a) The name, address, and telephone number of the person for whom each account is carried;
- (b) The principal business or occupation of the person for whom each account is introduced or carried, as specified in the call;
- (c) The type of each such account;
- (d) The name, address and principal business or occupation of any person who controls the trading of each account;
- (e) The name and address of any person having a financial interest of ten percent or more in each account;
- (f) The number of open futures and/or option positions introduced or carried in each account, as specified in the call; and
- (g) As applicable, the following identifying information:
 - (1) Whether a trader who holds commodity options is classified as a commercial or as a noncommercial for each commodity option;
 - (2) Whether the open commodity futures contracts are classified as speculative, spreading (straddling), or hedging; and
 - (3) Whether any of the accounts in question are omnibus accounts and, if so, whether the originator of the omnibus account is another futures commission merchant or foreign broker.

(Approved by the Office of Management and Budget under control number 3038-0017)

[46 FR 63036, Dec. 30, 1981, and 47 FR 57016, Dec. 22, 1982, as amended at 48 FR 35301, Aug. 3, 1983; 49 FR 1339, Jan. 11, 1984; 51 FR 4720, Feb. 7, 1986; 71 FR 37821, July 3, 2006]