

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

- 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 is proposing rules and rule amendments 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).

As part of that rulemaking effort, the Commission is proposing to add new regulation 16.02 to part 16 of the Commission's regulations. Proposed regulation 16.02 would result in a new collection of information requirement within the meaning of the PRA. The Commission is therefore submitting the proposal for regulation 16.02 to OMB for review. The title for the proposed collection of information requirements is "Regulation 16.02 - Daily Trade and Supporting Data Reports" (OMB control number 3038-NEW).

Under proposed regulation 16.02, reporting markets, a term which would include ECMs with SPDCs with respect to SPDCs in addition to fully regulated designated contract markets (DCMs) and derivatives transaction execution facilities (DTEFs) would be required to provide trade and supporting data reports to the Commission on a daily basis. Such reports would include transaction-level trade data (such as contract traded, quantity involved, execution price, counter-party identifiers and time and sales data) and related order information for each transaction executed on the reporting market and would be accompanied by data that identifies traders for each transaction when reporting markets maintain such data.

Since the mid-1980s, fully regulated markets have voluntarily submitted transaction level data on a daily basis to the Commission. Proposed regulation 16.02 seeks to formalize and codify this submission process and extend its requirements to ECMs with SPDCs. Under the Commodity Exchange Act, as amended by the Reauthorization Act, ECMs with SPDCs are defined as registered entities and are charged with complying 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.**

Since the mid-1980, the Commission has used the transactional data submitted by the DCMs to conduct trade practice surveillance activities. Given advances in technology, the Commission intends to employ such data in efforts to surveil markets for price distortions, abusive conduct, manipulative conduct, and for financial surveillance purposes. If proposed regulation 16.02 is adopted, initially the data will continue to be used by Futures Trading Specialists in the Division of Market Oversight on a daily basis to monitor for the presence of trade practice abuses.

If the Commission is able to obtain identifying data that links transactions to specific traders, the data may also be used by staff in the Division of Clearing and Intermediary Oversight for financial surveillance purposes and economists in the surveillance section of the Division of Market Oversight for daily market surveillance and the enforcement of speculative position limits.

With respect to ECMs specifically, since transactions on ECMs cannot be intermediated on the execution side, such markets must know the identities of traders. The collection of information under proposed regulation 16.02 would therefore immediately enable the Commission to conduct market surveillance with respect to un-cleared SPDC transactions as mandated by the Reauthorization Act which it could not do otherwise.

- 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 data would 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.**

Information of the type that is required under the proposed rule 16.02, if adopted, will not be duplicative of information acquired by the Commission through other means.

- 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.**

Information of the type that is required does not involve any small entities.

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

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 transactional information on 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.**

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 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.

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.**

Proposed regulation 16.02 does not involve statistical surveys.

- **Requiring the use of a statistical data classification that has not been reviewed and approved by OMB.** Proposed regulation 16.02 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.**

Proposed regulation 16.02 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.**

The proposed rule could 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 published in FR 73 75888, December 12, 2008.

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 provides the assurances of confidentiality that are provided by the agency's Freedom of Information Act regulations, 17 CFR part 145. 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.**

As discussed above, under proposed regulation 16.02, reporting markets, a term which as proposed would include ECMs with SPDCs with respect to SPDCs in addition to DCMs and DTEFs, would be required to provide trade and supporting data reports to the Commission on a daily basis. Such reports would include transaction-level trade data (such as the contract traded, quantity involved, price, counter-party identifiers and time and sales data) and related order information for each transaction executed on the reporting market and would be accompanied by

data that identifies traders for each transaction when reporting markets maintain such data.

Staff's estimates are based on the manpower and time expenditures required to load and maintain data into the Exchange Database System (EDBS), which has been used to store and analyze trade data voluntarily received from DCMs since the mid-1980s. The Commission is currently transitioning from EDDBS to the Trade Surveillance System (TSS). Because this transition is not yet complete, however, staff has based its estimates on its long experience with EDDBS.

In the future, reporting entities will submit their trade data to TSS using a new reporting standard (FIXML) not used for EDDBS. FIXML should require less maintenance for ongoing production, thus consuming fewer CFTC and reporting entity resources. However, the transition from an older reporting standard to FIXML by existing entities will require temporary additional resources. Because the CFTC has yet to implement FIXML or to transition any reporting entity to it, FIXML has not been used as the basis for any of the estimates provided here.

Staff's estimates are averages across reporting entities. Staff has separated burden hours and costs into two separate phases. The first phase involves establishing a data stream to the Commission and requires that initial one-time burden hours be expended by reporting markets (covered in response to question 13). The second phase involves maintaining the data stream from the reporting market to the Commission on a daily basis.

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). For the cost calculation of the second phase, 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.

Once the data link to the Commission has been established, Commission staff estimates that reporting markets would expend 2 hours per day for maintaining the data flow to the Commission on a daily basis. The 2 hours per day includes the hours expended to interact with compliance staff in the Division of Market Oversight Market and staff in the Commission's Office of Information and Technology Services.

Twelve exchanges currently and on a voluntary basis provide some form of the information that would be required to be submitted by proposed regulation 16.02 to the Commission 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. As mentioned above, reporting markets would expend an estimated 2 hours per day for maintaining the data flow to the Commission on a daily basis for each trading day. This results in a burden of approximately 7,500 hours (15 reporting markets x 250 trading days x 2 hours) and a cost of \$382,500 (7,500 hours x \$51 per hour) annually.

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.**

For the cost calculation of the first phase (initial start-up phase), Commission staff used a composite (blended) wage rate by averaging the mean annual salaries of an Assistant/Associate General Counsel, an Assistant Compliance Director, and a

Programmer (Senior), as published in the 2008 Report, and divided that figure by 1800 annual working hours to arrive at the hourly wage rate of \$80.75.

The burden hours associated with the first phase of the collection of information involve onsite visits to the Commission by the staff of reporting markets, follow-up discussions between the Commission and reporting markets, systems development and deployment, and systems testing. Commission staff estimates that reporting markets will expend 2,343 hours per market to establish a data stream from the reporting market to the Commission. At a wage rate of \$80.75 per hour, the total labor cost would be \$189,197.25 (2,343 X \$80.75) per reporting market. Annualized over an expected useful life of 10-years, each reporting market would be expected to expend 234.3 hours (2,343 hours/10 years) at a cost of \$18,919.73 per annum over a ten-year period.

It is estimated that up to 15 reporting markets (12 DCMs and up to 3 ECMs) will incur such costs. Accordingly, the aggregated hours expended by all reporting markets would be 3,514.5 hours (234.3 hours x 15) at a cost of \$283,795.88 (\$18,919.73 x 15) per annum.

Start-up and continuing capital costs may also involve product and service purchases. Commission staff estimates that reporting markets could expend up to \$5,000 annually per market on product and service purchases to comply with proposed regulation 16.02. This results in an aggregated cost of \$75,000 per annum (15 reporting markets x \$5,000). This estimate, however, is speculative because reporting markets must possess the ability to audit and track transactions in the ordinary course of operations independently of proposed regulation 16.02.

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 staff would expend 915 hours per reporting market to establish the data flow covered by proposed regulation 16.02. 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 \$50,325 per reporting entity. Annualized over a useful life span of 10 years, the cost would be \$5,032.50 per reporting market. Assuming the presence of 15 reporting markets, the aggregated annualized cost would be \$75,487.50 over a 10-year period.

In addition to the cost incurred to establish the data flow, Commission staff estimates that 3 hours would be expended per day by Commission staff to maintain the data flow. Assuming the presence of 15 reporting markets and 250 trading days over a 12-month period, Commission estimates that the Commission would expend 11,250 hours annually to maintain the data flow generated by proposed regulation 16.02 at a cost of \$618,750 annually.

Finally, the Commission estimates that approximately 20 Commission staff members will expend approximately 8 hours per day over 250 trading days to analyze the information provided by proposed regulation 16.02. Staff would use the information submitted under proposed regulation 16.02 to conduct trade practice surveillance activities and could employ such data in efforts to surveil markets for price distortions, manipulative conduct, and for financial surveillance purposes.

Currently, information that is comparable to what would be submitted under proposed regulation 16.02 is submitted to the Commission on a voluntary basis by 12 DCMs.

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 \$2,200,000 annually (20 staff members x 8 hours per day x 250 trading days x \$55 per hour).

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

This question does not apply because this statement is provided in support of a request for a new OMB control number.

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

Table 1 (Question 12)

Regulation 16.02 - Daily Trade and Supporting Data Reports

a	b	c	d	e ²	f	g ³
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
Reporting Markets	15	Daily Trade and Supporting Data Reports (R. 16.02)	250	3,750	2	7,500

Table 2 (Question 13)

Regulation 16.02 - Daily Trade and Supporting Data Reports

a	b	c	d	e ⁴	f	g ⁵
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
Reporting Markets	15	Daily Trade and Supporting Data Reports (R. 16.02)	1	1	234.3	3,514.5

² Column b times column d.

³ Column e times column f.

⁴ Column b times column d.

⁵ Column e times column f.