

**SUPPORTING STATEMENT FOR NEW AND
REVISED INFORMATION COLLECTIONS**

Records of Commodity Interest and Related Cash or Forward Transactions.

OMB CONTROL NUMBER 3038 -0090

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 Commodity Futures Trading Commission (“CFTC” or “Commission”) recently amended Regulation 1.35(a) to change and clarify several of the existing recordkeeping requirements that apply to certain registrants and market participants. *Records of Commodity Interest and Related Cash or Forward Transactions*, 80 FR 80247 (Dec. 24, 2015). Specifically, the amendment to Regulation 1.35: (1) excludes members of designated contract markets (“DCMs”) and members of swap execution facilities (“SEFs”) that are not registered or required to register with the Commission (“Unregistered Members”) from the requirement to keep written communications that lead to the execution of a commodity interest transaction and related cash or forward transactions; (2) excludes Unregistered Members from the requirement to maintain records in a particular form and manner; (3) excludes Unregistered Members from the requirement to retain text messages; (4) excludes commodity trading advisors (“CTAs”) that are members of a DCM or of a SEF from the requirement to record oral communications that lead to the execution of a transaction; and (5) clarifies the form and manner requirements that apply to required records. With the exception of the clarification of the form and manner requirements (which neither increases nor decreases the exiting recordkeeping burdens), these changes decrease the recordkeeping burdens imposed by Regulation 1.35(a). Thus, the Commission is amending collection 3038-0090 to reflect a decrease in the burden of respondents resulting from the amendment to Regulation 1.35(a). The collection of information is necessary to detect and deter abusive, fraudulent and manipulative acts and practices that can harm market integrity and customers.

- 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 records required by Regulation 1.35, as well as the requirements specifying the form and manner in which such records must be kept, are an important component of the Commission’s efforts to ensure fair, orderly and efficient markets, and to detect and deter abusive, fraudulent and manipulative acts and practices that can harm market integrity and customers. The

Commission uses the information required by the rule in connection with market surveillance and enforcement activities.

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.**

Regulation 1.35(a) permits respondents to keep the required records electronically, except in the limited circumstance where the required records are non-electronic “original source documents,” as defined in the rule, which must be kept in their original format.

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 required information is not already collected by the Commission for any other purpose, collected by any other agency, or available for public disclosure through any other source.

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

The Chairman has certified on behalf of the Commission that the amendment of Regulation 1.35 will not have a significant economic impact on a substantial number of 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.**

Failure to maintain full and complete records of commodity interest and related cash or forward transactions, as required by Regulation 1.35(a), will adversely affect the Commission’s ability to ensure compliance with the Commodity Exchange Act and Commission Regulations.

7. **Explain any special circumstances that require the collection to be conducted in a manner:**
 - **requiring respondents to report information to the agency more often than quarterly;**

This question does not apply.

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

This question does not apply.

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

This question does not apply.

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

This question does not apply.

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

This question does not apply.

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

This question does not apply.

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

This question does not apply.

- **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 (in Parts 145 and 147 of the Commission Regulations) to protect the confidentiality of information it receives from registrants and market participants.

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).

In Agency Information Collection Activities: Proposed Collection Revision, Comment Request: Final Rule for Records of Commodity Interest and Related Cash or Forward Transactions, 80 FR 80327 (Dec. 24, 2015), the Commission addressed the PRA implications of the amendment of Regulation 1.35. The Commission requested comments on, among other things, its estimates regarding the modified information collection burdens associated with the changes to Regulation 1.35(a). The Commission did not receive any comments that addressed any of its estimates or any other aspect of the information collection.

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. The Commission has neither considered nor made any payment or gift to a respondent.

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

The Commission does not provide respondents with an assurance of confidentiality. The Commission fully complies with section 8(a)(1) of the Commodity Exchange Act, which strictly prohibits the Commission, unless specifically authorized by the Commodity Exchange Act, from making public “data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers.” The Commission has procedures (in Parts 145 and 147 of the Commission Regulations) to protect the confidentiality of information it receives from registrants and market participants.

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. Regulation 1.35(a) does not request or require the provision of sensitive information, as that term is used in Item 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.**

The Commission previously stated that the burden of this collection of information under Regulation 1.35(a) affects the following respondents: Futures Commission Merchants; Retail Foreign Exchange Dealers; Introducing Brokers; Floor Traders; Floor Brokers; and Members of a DCM or of a SEF. The Commission previously estimated that there are 6,000 such respondents. Regulation 1.35(a) is a recordkeeping rule, so the collection required under the rule is conducted on an ongoing basis.

Additionally, because the amendment to Regulation 1.35(a) reduces the recordkeeping burden on certain respondents, the Commission has revised its estimate of the total annual burden hours of this collection, reducing it from 473,599 hours to 321,449 hours. Specifically, the amendment of Regulation 1.35 reduces the recordkeeping burdens of Unregistered Members and of CTAs that are members of a DCM or of a SEF. For each respondent that is an Unregistered Member, the Commission estimates that the amendment reduces the annual recordkeeping burden by a total of 38 hours. The total annual cost reduction per Unregistered Member is estimated to be \$2,470. The Commission based its calculation on an hourly wage rate of \$65 for a Senior Operations Manager. For each respondent that is a CTA, the Commission estimates that the amendment reduces the annual recordkeeping burden by a total of 26 hours. The total annual cost reduction per CTA is estimated to be \$1,690. The Commission based its calculation on an hourly wage

rate of \$65 for a Senior Operations Manager.¹ These changes reduce the total annualized burden hour costs associated with compliance with Regulation 1.35(a) from \$210,963,700 to \$201,073,950.

Finally, the amendment to Regulation 1.35(a) does not involve the use of any forms.

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.**

The amendment of Regulation 1.35(a) involves no new start-up or operations and maintenance costs.

¹ The Commission used the *Management & Professional Earnings in the Securities Industry Report*, published October 2013 by the Securities Industry and Financial Markets Association, to determine the appropriate hourly wage to use in calculating the burden reduction associated with the amendment to Regulation 1.35(a). According to this report, the average annual salary for a Senior Operations Manager (Occupation Code 1307) is \$134,409, which amounts to an hourly wage of \$64.62 that the Commission rounded-up to \$65 per hour for this analysis.

- 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 amendment of Regulation 1.35(a) 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.**

See response to 12, above.

- 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.**

Not applicable.

- 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.**

Not applicable.

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

Not applicable.

Attachment A

**OMB Control Number 3038-0090
Records of Commodity Interest and Related Cash or Forward Transactions**

RECORDKEEPING BURDEN

| Regulation | Estimated Number of Respondents Effected by the Amendment to CFTC Reg. 1.35(a) ² | Responses by Each Respondent | Total Annual Responses | Estimated Reduction in Burden Hours Per Week per Response | Estimated Annual Reduction of Burden Hours (per Respondent) | Estimated Total Annual Reduction of Burden Hours | Estimated Reduction of Cost per Response | Total Annual Cost Reduction |
|----------------|---|------------------------------|------------------------|---|---|--|--|-----------------------------|
| <u>1.35(a)</u> | | | | | | | | |
| -UM | 3,200 UM | 1 | 52 | .73 | 38 | 121,600 | \$47.50 | \$7,904,000 |
| -CTA | 1,175 CTA | 1 | 52 | .50 | 26 | 30,550 | \$32.50 | \$1,985,750 |
| TOTAL | 4,375 | 1 | 52 | .73 / .50 | 38 / 26 | 152,150 | \$47.50 / \$32.50 | \$9,889,750 |

² This collection of information covers 6,000 respondents in connection with the recordkeeping obligations imposed by Commission Regulation 1.35. As described above, the amendment to Regulation 1.35(a) reduces some of the recordkeeping obligations of a subgroup of the 6,000 respondents. Specifically, approximately 3,200 Unregistered Members and 1,175 Commodity Trading Advisors (abbreviated “UM” and “CTA” respectively, for the purpose of this Attachment) had their recordkeeping obligations reduced by the amendment to Regulation 1.35. The recordkeeping obligations of the other respondents covered by this collection were not affected by the amendment of Regulation 1.35.