

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

Recordkeeping Policies and Procedures

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 (the “Commission”) is proposing (the “Proposal”) to amend the recordkeeping obligations set forth in Commission regulation 1.31. In addition to providing recordkeepers with greater flexibility regarding the retention and production of regulatory records, the Proposal would replace the existing audit system requirements in current Commission regulation 1.31 with a requirement that each person required by the Commodity Exchange Act (the “Act”) or Commission regulations to keep books and records (a “Records Entity”) establish, maintain, and, implement written policies and procedures reasonably designed to ensure that the Records Entity complies with its obligations under proposed Commission regulation 1.31. Such policies and procedures would be required to provide for, without limitation, appropriate training of officers and personnel of the Records Entity regarding their responsibility for ensuring compliance with the obligations of the Records Entity under proposed regulation 1.31, and regular monitoring for such compliance. The Proposal does not require reporting to the Commission.

The information collection obligations that would be imposed by the Proposal are essential to ensuring that Records Entities develop and maintain recordkeeping policies and procedures required by Commission regulations and to the effective evaluation of Records Entities’ actual compliance with Commission regulations.

- 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 required records will be used by Commission staff to evaluate the completeness and effectiveness of the recordkeeping policies and procedures of Records Entities.

- 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 proposed regulations require that recordkeeping, including with respect to the required recordkeeping policies and procedures, be performed in accordance with Commission regulation 1.31, which permits the use of electronic storage media.

- 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 From 83-I), describe the methods used to minimize burden.**

As certain persons affected by the Proposal, may be small entities or small business, the Commission considered whether the Proposal would have a significant economic impact on any such persons.

The Proposal generally updates and simplifies existing Commission regulation 1.31 by replacing it with new provisions that safeguard the same statutory-based principles previously identified by the Commission. It accomplishes this by deleting outdated terms and revising provisions to reflect advances in information technology, allowing Records Entities to benefit from evolving technological developments while maintaining necessary safeguards to ensure the reliability of the recordkeeping process. The Commission believes that the Proposal would impose only limited additional costs on small entities related to the requirement that they establish the written recordkeeping policies and procedures described above. However, as part of the Proposal, the Commission is also proposing to remove certain existing requirements that are expected to lower costs for all Records Entities, including small entities.

In light of the limited scope of the Proposal and the added flexibility and expected cost-savings provided to small entities thereby, the Commission does not expect small entities that are Records Entities to incur new costs, on a net basis, as a result of the Proposal.

- 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 Proposal does not impose reporting requirements.

Failure to maintain the records required by the Proposal would adversely affect the Commission's ability to ensure that Records Entities have recordkeeping policies and procedures that meet the requirements of Commission Regulation 1.31.

- 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. The Proposal does not impose a reporting requirement.

- **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;**

Commission regulation 1.31 expressly requires that:

All books and records required to be kept by the Act or by [Commission] regulations shall be kept ... for a period of five years from the date thereof and shall be readily accessible during the first 2 years of the five-year period. ... All such books and records shall be open to inspection by any representative of the Commission or the United States 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;**

This question does not apply. The Proposal neither requires nor involves any statistical surveys.

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

This question does not apply. The Proposal neither requires nor involves the use of any statistical data classification.

- **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. The Proposal does not make a 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.**

This question does not apply. The Proposal does not impose reporting requirements. In any event, the Commission has promulgated regulations to protect the confidentiality of any information collected from respondents. Such regulations are set forth in 17 CFR Part 145.

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 the proposing release, the Commission is affirmatively seeking comment from the public and from other federal agencies on the information collection requirements of the Proposal.

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 beyond that provided by applicable law. The Commission fully complies with section 8(a)(1) of the Act, which strictly prohibits the Commission, unless specifically authorized by the 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 to protect the confidentiality of a respondent’s data. These are set forth in the Commission’s regulations at part 145 of the Code of Federal Regulations.

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. The Proposal 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 annual hour burden per Records Entity of the collection associated with the Proposal is estimated to be 10 hours, at an annual cost of \$1,000. This burden would result from the recordkeeping obligations related to a Record Entity's obligations to establish, maintain, and, implement written policies and procedures reasonably designed to ensure that the Records Entity complies with its obligations under proposed Commission regulation 1.31. The burden relates solely to recordkeeping requirements; the proposed regulation does not contain any reporting requirements.

The annualized costs per affected registrant were determined using an average salary of \$100.00 per hour. The Commission believes that this is an appropriate salary estimate for purposes of this regulation.

In support of this determination, the Commission notes that the salary estimate is based upon May 2015 Bureau of Labor Statistics' findings of National Occupation Employment and Wage Estimates, United States, including the mean hourly wage of an employee under occupation code 23-1011, "Lawyers," that is employed by the "Securities and Commodity Contracts Intermediation and Brokerage Industry," which is \$95.63; the mean hourly wage of an employee under occupation code 11-3031, "Financial Managers," in the same industry, which is \$91.91; and the mean hourly wage of an employee under occupation code-13-1041, "Compliance Officers" in the same industry, which is \$46.03. The Commission also notes that, the Commission took the foregoing data and then increased its hourly wage estimate in recognition of the fact that some Records Entities may be large financial institutions whose employees' salaries may exceed the mean wage. The Commission also observes that the Securities Industry and Financial Markets Association's Report on "Management & Professional Earnings in the Securities Industry – 2013" estimates the average wage of a compliance attorney or compliance staffer (including chief compliance officers and directors of compliance) in the United States at only \$53.71 per hour. The Commission recognizes that some Records Entities may hire outside counsel with expertise in the various regulatory areas covered by the Proposal and that outside counsel may be able to leverage its expertise to substantially reduce the number of hours needed to fulfill a requested assignment. While the Commission is uncertain about the billing rates that Records Entities may pay for outside counsel, the Commission believes that such counsel may bill at a rate of several hundred dollars per hour. Any determination to use outside counsel, however, is at the discretion of the Records Entity.

The Commission estimates that the Proposal will require approximately 15,000 Records Entities to develop and maintain recordkeeping policies and procedures. This estimate includes approximately 8,792 registrants, 15 designated contract markets, 23 swap execution facilities, 4 swap data repositories, 15 designated clearing organizations, and 3,200 unregistered members of designated contract markets or swap execution facilities, with the balance reflecting the Commission's estimate of those persons that are required to register with the Commission, but have not so registered, and other persons neither registered nor required to register with the Commission.

Based upon these estimates, the aggregate burden hours and aggregate cost of the collection is estimated to be 150,000 [15,000*10] burden hours and \$15,000,000 [15,000*10*100], respectively.

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 information collection required by the Proposal would not involve any capital or start-up capital, operations or maintenance costs as the Commission anticipates that Records Entities already maintain mechanisms to preserve records related to their compliance with regulatory requirements as part of their customary or usual business practices.

However, because the Proposal would replace the audit system requirements in current Commission regulation 1.31 described above, the start-up costs of Collection 3038-0090 and, in particular, information collection “Adaptation of Regulations to Incorporate Swaps-Records of Transactions” would be reduced by \$35,350,000.

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 Proposal 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 Commission is proposing to amend Commission regulation 1.31 to provide greater flexibility regarding the retention and production of regulatory records. The Proposal would replace the existing audit system requirements in Commission regulation 1.31 with a requirement that Records Entities establish written recordkeeping policies and procedures. Such changes would result in revisions to collection 3038-0090.

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.

None.