

**SUPPORTING STATEMENT FOR  
OMB CONTROL NUMBER 3038-0009**

- 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 reporting rules covered by OMB Control Number 3038-0009 (“the Collection”) are structured to ensure the Commission receives adequate information to carry out its market and financial surveillance programs.<sup>1</sup> The reporting rules are implemented by the Commission partly pursuant to the authority of sections 4a, 4c(b), 4g, and 4i of the Commodity Exchange Act.<sup>2</sup> Section 4a of the Act permits the Commission to set, approve exchange-set, and enforce speculative position limits.<sup>3</sup> Section 4c(b) of the Act gives the Commission plenary authority to regulate transactions that involve commodity options.<sup>4</sup> Section 4g of the Act imposes reporting and recordkeeping obligations on registered entities, and requires each registrant, whether a futures commission merchant (FCM), introducing broker, floor broker, or floor trader, to file such reports as the Commission may require on proprietary and customer positions executed on any board of trade in the United States or elsewhere.<sup>5</sup> Lastly, section 4i of the Act requires the filing of such reports as the Commission may require when positions made or obtained on designated contract markets or derivatives transaction execution facilities equal or exceed Commission-set levels.<sup>6</sup>

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<sup>1</sup> The market surveillance programs analyze market information to detect and prevent market disruptions and enforce speculative position limits. The financial surveillance programs combine market information with financial data to assess the financial risks presented by large customer positions to Commission registrants and clearing organizations. See 69 FR 76392 (December 21, 2004).

<sup>2</sup> 7 U.S.C. 1 *et seq.*

<sup>3</sup> 7 U.S.C. 6a.

<sup>4</sup> 7 U.S.C. 6c(b).

<sup>5</sup> 7 U.S.C. 6g.

<sup>6</sup> 7 U.S.C. 6i. In addition, CEA section 8a(5) is an enabling provision that grants to the Commission the authority to adopt regulations that in its judgment are reasonably necessary to accomplish any of the purposes of the Act. 7 U.S.C. 12a(5). Pursuant to CEA section 3(b), the Act seeks to ensure the financial integrity of regulated transactions and to prevent price manipulation and other disruptions to market integrity. 7 U.S.C. 5(b). Collectively, these purposes warrant the maintenance of an effective and vigorous system of market and financial surveillance.

- 2. Indicate how, by whom, and for what purpose the data would be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.**

The Commission employs a comprehensive reporting system to enforce speculative position limits and assess the activities and market power of traders in an effort to detect and deter manipulation of its jurisdictional markets. The information collected is used primarily by analysts in the surveillance section of the Division of Market Oversight for daily market surveillance and the enforcement of speculative position limits. In addition, information on large traders is provided on a case-by-case basis to representatives of the Department of Agriculture, the Department of the Treasury, the Federal Reserve, and the Committees of Congress. The data also provides a basis for periodic Commission publications and is 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.**

Reports and information are submitted electronically either directly through electronic links to the Commission's information systems or through electronic mail or by facsimile.

- 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 Commission's reporting rules are partially duplicative of the reporting requirements of the regulated markets. It must be noted that the Commission, and the regulated markets, each have separate statutory mandates to establish and operate comprehensive surveillance programs. Although partially duplicative of the efforts of the regulated markets, the Commission's surveillance programs, as instituted pursuant to the reporting rules, permits the Commission, among other things, to independently set reporting requirements, surveil the activities of traders across different markets on a daily basis, and verify the accuracy of the information submitted by the various regulated markets, in order to fulfill its oversight responsibility of those exchanges. In view of this, the Commission has determined to maintain an independent reporting framework.

- 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.**

The information collection does not involve 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.**

The Commission would not be able to conduct its oversight responsibilities for these markets. The Collection requirements are essential to executing the Commission's mission to foster open, transparent, competitive, and financially sound markets, to avoid systemic risk, and to protect the market users and their funds, consumers, and the public from fraud, manipulation, and abusive practices related to derivatives and other products that are subject to the Commodity Exchange Act.

Market activities require surveillance on a daily basis because situations such as attempted manipulations or congestion can develop rapidly. Adequate surveillance would be impossible if transactional and position reports were received on less than 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.**

In order to adequately conduct market surveillance, our market and large trader reporting rules collect information on a daily basis. 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 and position 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 year.**

Section 5(d)(18) 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)(18). In addition, Section 4g of the Commodity Exchange Act imposes reporting and recordkeeping obligations on registered

entities and registrants (whether a futures commission merchant (FCM), introducing broker, floor broker, or floor trader).

For the purpose of enforcing the provisions of the Act and the Commission's regulations thereunder, Commission regulation 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 in their original form (for paper records) or native file format (for electronic records) 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.**

The current and proposed reporting rules do not involve statistical surveys.

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

The current and proposed reporting rules do 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.**

The current and proposed reporting rules do 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 market and large trader reporting rules do require the submission of transactional and commercial data involves 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.**

**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.**

Notice of intent to renew this collection (60-day notice) was published in the Federal Register, 84 FR 14097 (Apr. 9, 2019). The Commission received no relevant comments.

- 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 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."

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.**

See Attachment A.

In arriving at a wage rate for the hourly costs imposed, Commission staff used the May 2017 National Occupational Employment and Wage Estimates United States, published by the Bureau of Labor Statistics.<sup>7</sup> For the cost calculations, as noted below, Commission staff used a composite (blended) wage rate by averaging the hour wages of a Compliance Officer and a Software Developer / Programmer to arrive at the hourly wage rate of \$42.

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 production bonuses into account, it

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<sup>7</sup> Available at [https://www.bls.gov/oes/current/oes\\_nat.htm](https://www.bls.gov/oes/current/oes_nat.htm).

does not include other types of bonuses or consider certain variables such as employee benefits which can increase the cost of labor.

The total information collection burden is approximately 19,676 hours. The Commission reviewed the last year's total received responses to review and revise its burden hour estimates. This review accounts for the variance in burden hours from the prior recorded Annual Burden in Fiscal Year.

#### A. Clearing Member Reports

Under regulation 16.00, the Commission obtains clearing member reports from the reporting markets or the clearing organizations of each reporting market. Reporting markets and the clearing organizations routinely provide this data to each clearing member. Since the data is routinely provided to clearing members, the reporting burden for this set of data is estimated at 20 minutes for each trading day. Total burden hours for the exchanges are estimated at 1,166 hours. Using a blended professional wage rate made up of both compliance and information technology staff of \$42 per hour, the estimated total cost to the exchanges is \$48,972.

#### B. Reports by Reporting Firms

(1) Under Commission regulation 17.00 (17 CFR 17.00), routine reports are filed only for accounts with futures and option positions that exceed levels set by the Commission in regulation 15.03(b) (17 CFR 15.03(b)). In reviewing the responses received by the Commission in 2014, 326 respondents filed at least one report. The number of responses submitted by these 326 entities ranged from 1 to 258 and the mean number of responses was 208. Using the prior year as a baseline for estimating the burdens associated with regulation 17.00, the Commission estimates that 326 respondents may be required to file 208 daily reports annually on average. This information is currently reported as a data stream that is transmitted using internet data transmissions. The reporting burden consists of staff initializing the system for new contracts and new accounts. On average it is expected that about 15 minutes per trading day is expended by these staff, making the burden approximately 16,952 hours. Using a wage rate of \$42 per hour, we estimate costs to be \$711,984 annually.

(2) Under part 21 of the Commission's regulations (17 CFR part 21), the Commission may make special calls for additional cash and futures data concerning traders. In addition, under part 21 of the Commission's regulations (17 CFR part 21), the Commission may request upon call identifying information regarding persons who exercise trading control over accounts. Position information collected pursuant to special call under part 21 (17 CFR part 21) of the Commission's regulations is submitted by reporting firms and may be used to audit large trader reports and is used to investigate potential market abuses. Although similar to the standardized information routinely collected under part 17

of the Commission's regulations (17 CFR part 17) for reportable accounts, such data is submitted in response to customized requests for information and may regard accounts and positions that are not reportable. In contrast to special calls for identifying data made under Commission regulation 18.04 (17 CFR 18.04), special calls made under any provision of part 21 of the Commission's regulations (17 CFR part 21) generally occur only when a particular market shows a potential for disruption or there is an investigation of possible violations of the Act or the regulations thereunder. Authority to issue special calls under Part 21 is delegated to the Directors of the Divisions of Market Oversight and Clearing and Risk. The Commission rarely issues special calls under part 21 of the Commission's regulations; no such special calls have been issued by either the Division of Market Oversight or the Division of Clearing and Risk for the last five years at least, and a high-level search for more historical information about the use of this provision revealed no issuances under this authority. We estimate that the Commission will make less than 5 special calls under all of the provisions of part 21 of the Commission's regulations (17 CFR part 21) and that each response to a call will require approximately 1 hour. Using a wage rate of \$42 per hour, costs are estimated at \$210 per annum. The estimate of 5 special calls is based upon the Division of Market Oversight's assessment of the extreme rarity of issuances of special calls under part 21 of the Commission's regulations (17 CFR part 21).

### C. Reports by Traders

Under part 19 of the Commission's regulations (17 CFR part 19), approximately 135 reportable traders on average must file Series '04 reports. The Commission requires monthly Series '04 reports from traders concerning their cash positions in order to verify that traders who own or control futures positions in excess of Federal speculative limits are hedging. In addition, weekly Series '04 data is collected pertaining to cotton call purchases and sales. In 2014, 3,105 responses were filed. Each filing required approximately 1/2 hour of response time resulting in an aggregate annual burden of 1,553 hours. Using a wage rate of \$42 per hour costs are estimated at \$65,226 per annum.

Based on the above, annual costs associated with these burden hours total \$826,392 (\$48,972 + \$711,984 + \$210 + 65,226; or \$42/hr x 19,676 total burden hours).

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.**

There are no applicable capital, start up, maintenance, or purchase of service cost component.

It is important to note that the information collected under the reporting rules are basic transaction records that any market participant would create as a matter of sound business practices in the normal course of business operations and in response to requirements imposed by non-governmental financial self-regulatory bodies. Because these records would be generated in any event, independently of any regulatory requirements, we estimate that the reporting rules impose no additional material costs on FCMs, clearing members, introducing brokers, members of reporting markets, or foreign brokers or traders that relate to recordkeeping and retention.

- 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 the equivalent of a mix of approximately 30 Market and Surveillance Analysts along with technical support staff will expend approximately 5 hours per day over 250 trading days to collect and analyze the information submitted under the market and large trader reporting rules within the Collection. This is a

reduction in the burden estimate commensurate with the removal of certain provisions of the Collection to OMB Control No. 3038-0103. At an average salary rate of \$55 per hour for a full-time employee, the Commission estimates that the cost to the government will be \$2,062,500 annually.

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

Changes in Items 13 or 14 of the OMB Form 83-I are due to the Commission altering the current figures to provide a more accurate estimate of the associated burdens and wages. The Commission revised the burden estimates housed in the Collection by reviewing summary statistics regarding the previous year's submissions of the required forms, as described above in Question 12.

**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 A

The following chart summarizes the burden hours for this information collection. Annual costs associated with these burden hours total \$826,392 (\$42/hr. x 19,676 hrs.).

	b	c	d	e <sup>8</sup>	f	g <sup>9</sup>
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	14	R. 16.00	250	3,500	0.333	1,166
Reporting Firms	326	R. 17.00	208	67,808	0.25	16,952
	5	Part 21 Special Calls	1	5	1	5
Traders	135	Part 19 (Forms 204 & 304)	23	3,105	0.5	1,553
Total	480 (distinct entities or persons)			74,418		19,676

<sup>8</sup> Column b times column d.

<sup>9</sup> Column e times column f. Burdens have been rounded to the nearest whole number where appropriate.