

SUPPORTING STATEMENT FOR NEW AND REVISED INFORMATION COLLECTIONS

Daily Trade and Supporting Data Reports

OMB CONTROL NUMBER 3038-0061

CFTC Regulation 16.02

- 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 collection of information is codified in Commission Rule 16.02, which requires Reporting Markets, including Designated Contract Markets, to submit daily trade and supporting data reports to the Commission. Commission staff need access to transaction level data detailing trading activity in the Commission's jurisdictional markets to discharge the Commission's regulatory responsibilities, including the responsibilities to prevent market manipulations and commodity price distortions and ensure the financial integrity of the Commission's jurisdictional markets.

Fully regulated markets began voluntarily providing the Commission with daily trade reports in the mid-1980s. The CFTC Reauthorization Act of 2008 (2008 Reauthorization Act)¹ amended the Commodity Exchange Act to significantly expand the CFTC's regulatory authority over certain markets that had previously operated outside the Commission's full regulatory reach. The Commission implemented the 2008 Reauthorization Act, in part, by amending Part 16.02 to formalize the already existing process by which fully regulated markets provided transaction level trade data and related order information to the Commission, and to extend its requirements to markets that were more-fully brought within the Commission's jurisdiction by the 2008 Reauthorization Act.

- 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-1980s, the Commission has used transactional data submitted by regulated markets to conduct trade practice surveillance activities. The Commission uses such data in efforts to surveil markets for price distortions, abusive conduct, manipulative conduct, and for financial surveillance purposes. For example, the data is used on a daily basis by staff in the Division of Market Oversight to monitor for the presence of trade practice abuses, daily market surveillance, and to enforce speculative position limits.

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).

- 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 required to be reported by Commission Rule 16.02 is required to 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.**

Prior to the 2008 Reauthorization Act, the Commission did not have the authority to require the reporting of daily trade and supporting data reports from all Reporting Markets. The information required to be reported by respondents pursuant to Commission Rule 16.02 is not otherwise available to Commission staff from any other source. There is no similar information collection by the Commission or other agencies.

- 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 collection of information does not involve small business or other 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. The information collection cannot be conducted less frequently than daily without compromising the accuracy and timeliness of the data.

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. The information collection cannot be conducted less frequently without compromising the ability of the Commission to identify and stop abusive conduct in a timely manner.

- **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.**

The question does not apply. Commission Rule 16.02 does not impose recordkeeping obligations on respondents.

- **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. Commission Rule 16.02 does not require nor involve 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. Commission Rule 16.02 does not require nor involve 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.**

This question does not apply. Commission Rule 16.02 does not directly involve any pledge of confidentiality regarding the collection of data.

- **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.**

Commission Rule 16.02 requires 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.**

The Commission published a *Notice of Intent to Extend Collection 3038-0061: Daily Trade and Supporting Data Reports*. See 87 Fed. Reg. 31217 (May 23, 2022). The notice provided a 60-day period during which the public was invited to comment on the information collection and the burdens imposed by it. The Commission did not receive any relevant comments on the 60-day Federal Register notice.

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 Reporting Markets is maintained on an ongoing basis to resolve reporting problems and address concerns. 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.

Commission staff have continued to meet with affected parties throughout the life of the regulation.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

This question does not apply. This information collection does not involve the provision of any payment or gift to respondents.

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

The Commission is required to provide confidentiality to respondents pursuant to the Freedom of Information Act, Privacy Act of 1974, CEA, and Commission regulations requiring the confidentiality of information.² Section 8(a) of the CEA provides for the confidentiality of data and information except under the limited circumstances delineated therein.

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. Commission Rule 16.02 does not require nor request the provision of sensitive information, as that term is used in Question 11.

² See 17 CFR 145.

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 hour 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.**

Reporting Markets are required by Commission Rule 16.02 to provide trade and supporting data reports to the Commission on a daily basis. Such reports include transaction-level trade data (such as the contract traded, quantity involved, price, counterparty identifiers and time and sales data) and related order information for each transaction executed on the Reporting Market and are generally accompanied by data that identifies traders for each transaction.

The Commission estimates that all respondents incur a total of 10,000 annual burden hours as a result of this collection of information. The electronic reporting required by Commission Rule 16.02 is generally accomplished in an automated manner by respondents' computer systems transmitting data to the Commission using an electronic communications protocol commonly used in the financial industry. Reporting entities have already incurred significant one-time costs to establish systems and processes to facilitate electronic reporting to the Commission. The burden hours currently incurred by respondents to comply with Commission Rule 16.02 are primarily related to the hours necessary to oversee, maintain, and utilize respondents' existing automated reporting functionality.

Commission staff estimate that Reporting Markets expend an average of two hours per day to oversee, maintain, and utilize their systems and processes to electronically transmit daily trade and supporting data reports to the Commission on a daily basis. The two

hours per day estimate also includes time that Reporting Markets spend interacting with compliance staff in the Division of Market Oversight and the Division of Data.

It is estimated that up to 20 Reporting Markets could provide daily trade and supporting data reports to the Commission in the future. As explained above, Reporting Markets would expend an estimated two hours per day, for each trading day, to comply with Commission Rule 16.02. This results in a burden of approximately 10,000 hours (20 Reporting Markets x 250 trading days x 2 hours per day) and a cost of \$869,000 (10,000 hours x \$86.90 per hour) annually.

In calculating the total annual burden cost of \$869,000, the Commission estimated an appropriate wage rate of \$86.90 based on salary information provided by the Department of Labor's Bureau of Labor Statistics (BLS). Commission staff arrived at an hourly rate of \$86.90 using figures from a weighted average of hourly mean wages across different professions contained in the most recent BLS Occupational Employment and Wages Report (May 2021) multiplied by 1.3 to account for overhead and other benefits.³ The Commission estimated appropriate wage rate is a weighted national average of mean hourly wages for the following occupations (and their relative weight): "computer programmer - industry: securities, commodity contracts, and other financial investment and related activities" (50% weight); "compliance officer - industry: securities, commodity contracts, and other financial investment and related activities" (25%); "lawyer – legal services" (25%). Commission staff chose this methodology to account for the variance in skill sets that may be used to accomplish the collection of information.

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**

³ The BLS Occupational Employment and Wages Report is available at https://www.bls.gov/oes/current/naics4_523000.htm.

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 capital or operating and maintenance costs associated with this collection. Reporting entities have already incurred significant one-time costs to establish systems and processes associated with establishing a data stream to the Commission.

- 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.**

Commission staff estimate that approximately 20 Commission staff members will expend approximately 8 hours per day over 250 trading days to both analyze the information provided by Commission Rule 16.02 and maintain the data flows required by Commission Rule 16.02. The vast majority of the approximately 20 Commission staff members use the information submitted under Commission Rule 16.02 to conduct trade practice surveillance activities and employ such data in efforts to surveil markets for price distortions, manipulative conduct, and for financial surveillance purposes. The estimated annual cost to the Commission per new hire is \$150,863.⁴ Therefore, the total annual aggregate cost to the Commission is \$3,017,260.

⁴ This figure is a composite of the salaries for economists (Grade 11-13) and attorneys (Grade 11-14) in the Commission's Division of Market Oversight. In obtaining the composite, Commission staff used the CFTC 2022 Washington Pay Chart (with adjusted locality pay). This figure does not include employee benefits.

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

The estimated total annual burden cost to respondents for this collection has increased from the estimate reported previously for this collection. The estimated increase is due to (i) an increase in the estimated number of Reporting Markets, from 15 in 2019 to 20 currently, that provide reports to the Commission pursuant to Commission Rule 16.02; and (ii) a change in the estimated hourly wage rate used to estimate the total annual burden-hour cost.⁵

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.

This question does not apply. There are no exceptions to the certification statement.

⁵ The current estimated wage rate is based on wage information contained in the most recent BLS Occupational Employment and Wages Report (May 2021). This change resulted in a reduction in the weighted average of hourly mean wages across different professions used to estimate the total annual burden-hour cost for this collection.

Attachment

Table 1

Regulation 16.02 - Daily Trade and Supporting Data Reports

| a | b | c | d | e ⁶ | f | g ⁷ | h ⁸ |
|--------------------|---------------------------------|--|---|------------------------|--|---------------------|--------------------|
| 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 Hours | Annual Burden Cost |
| Reporting Markets | 20 | Daily Trade and Supporting Data Reports (R. 16.02) | 250 | 5,000 | 2 | 10,000 | \$869,000 |

⁶ Column b times column d.

⁷ Column e times column f.

⁸ See Response # 12 on p. 6: respondent's hourly salary times column g (\$86.90 x 10,000 burden hours).