

**CONSOLIDATED SUPPORTING STATEMENT  
FOR REVISED INFORMATION COLLECTIONS**

**3038-0093, Part 40, Provisions Common to Registered Entities**

**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 (Commission or CFTC) is proposing amendments to its rules concerning event contracts in certain excluded commodities. The Commission is proposing amendments to further specify types of event contracts that fall within the scope of section 5c(c)(5)(C) of the Commodity Exchange Act (CEA or the Act) and are contrary to the public interest, such that they may not be listed for trading or accepted for clearing on or through a CFTC-registered entity. Among other things, the Commission proposes to further specify the types of event contracts that involve “gaming.” The Commission also proposes to amend certain language in its event contract rules to further align with statutory text, and to make certain technical changes to its event contract rules in order to enhance clarity and organization. The proposed amendments to the Commission’s event contract rules, which are set forth in part 40 of the Commission’s regulations, would require new submissions under § 40.6 for registered entities that must delist contracts prohibited by the proposed amendments. These new reporting requirements would require revision of OMB Control No. 3038-0093, “Provisions Common to Regulated Entities.”

- 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 requested information is essential to the Commission's oversight of contracts that fall within the scope of section 5(c)(5)(C) of the Act and are contrary to the public interest, such that they must not be listed for trading or accepted for clearing. Staff will generally use the information submitted by the registered entity to monitor important information about compliance and to support the statutory provision that authorizes the Commission to prohibit certain event contracts.

- 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 Commission is committed to utilizing technology in order to reduce reporting burdens for respondents. The new submissions under § 40.6 for registered entities to delist contracts prohibited by the proposed amendments would be filed electronically. Such filings are currently made via an online portal.

- 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 information to be submitted under the proposed rule amendments is not duplicated by other sources or otherwise available to the Commission.

- 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 businesses or other small entities. The Commission has previously determined that the registered entities subject to Part 40 of its regulations, including designated contract markets, swap execution facilities, and derivatives clearing organizations, are not small entities for purposes of the Regulatory Flexibility Act.

- 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's proposed rule amendments would require registered entities that offer certain event contracts to make one-time submissions to delist contracts that would be prohibited by the proposed amendments. The Commission believes that the proposed frequency of reporting is the minimum necessary to carry out the Commission's authority to prohibit registered entities from listing for trading or making available for clearing particular types of event contracts, if the Commission determines that such contracts are contrary to the public interest.

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 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 does not apply.

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

This 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, 17 CFR 1.31, requires that books and records required to be kept by the CEA or Commission regulations be retained for certain specified periods. Other than with respect to oral communications and records exclusively created and maintained on paper, the shortest of these periods is five years from the date of creation.

- **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 does not apply.

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

This 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 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 to protect the confidentiality of an applicant's or registered entity's data. These are set forth in the Commission's regulations at parts 145 and 147 of title 17 of the Code of Federal Regulations. In addition, the Commission fully complies with section 8(a) of the CEA, which strictly prohibits the Commission, unless specifically authorized by the CEA, 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 C.F.R. 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.**

**Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every three 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.**

The Commission sought comment from the public concerning the proposed rule amendments and on any aspect of the proposed collection of information. A copy of the solicitation of public comment in the notice of proposed rulemaking was published in the Federal Register. See Notice of Proposed Rulemaking, *Event Contracts*, 89 FR 48968 (June 10, 2024). In addition, the Commission maintains regular contact with regulated entities.

- 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 CEA, which strictly prohibits the Commission, unless specifically authorized by the CEA, 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 an applicant's or registered entity's data. These are set forth in the Commission's regulations at parts 145 and 147 of title 17 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.**

The proposed rule amendments covered by this collection do not require the provision of sensitive information, as that term is used in Question 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.**

See Attachment A. In calculating its labor cost estimates, the Commission estimates the appropriate wage rate based on salary information for the securities industry compiled by the Department of Labor's Bureau of Labor Statistics ("BLS"). Commission staff arrived at an hourly rate of \$266 using figures from data on the relevant profession contained in the most recent BLS Occupational Employment and Wages Report (May 2023) under NAICS 523000. According to BLS, the mean salary for financial examiners in the context of Securities, Commodity Contracts, and Other Financial Investments and Related Activities is \$116,520. This number is divided by 1,800 work hours in a year to account for sick leave and vacations and

multiplied by 4 to account for retirement, health, and other benefits or compensation, as well as for office space, computer equipment support, and human resources support. This number is further multiplied by 1.0272 to account for the 2.72% change in the CPI for Urban Wage-Earners and Clerical Workers between May 2023 and March 2024 (298.382 to 306.502). BLS, CPI for Urban Wage Earners and Clerical Workers (CPI-W), U.S. City Average, All Items—CWUR0000SA0, available at <https://www.bls.gov/data/#prices>. Together, these modifications yield an hourly rate of \$266. The estimated wage rate is a weighted national average of mean hourly wages for the occupation of “financial examiners” (13-2061). 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 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, start-up, or operation and maintenance costs associated with the proposed rule amendments. The Commission anticipates that respondents will leverage existing systems in complying with the proposed rule amendments.

- 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 proposed rule amendments 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 rule amendments that would include new reporting requirements and would result in the revision of its burden hour estimates for Collection 3038-0093 (Provisions Common to Regulated Entities). The proposed rule amendments would result in the following changes to the affected collection:

|                           | <b>Burden Hours<sup>1</sup></b> | <b>Burden Hour Costs</b> |
|---------------------------|---------------------------------|--------------------------|
| <b>Current Totals</b>     | 20,540                          | \$2,188,742.40           |
| <b>Incremental Burden</b> | +60                             | +\$15,960                |
| <b>New Totals</b>         | <b>20,600</b>                   | <b>\$2,204,702.40</b>    |

- 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.

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<sup>1</sup> The current burden hours are reflected in the most recent renewal of 3038-0093, ICR Reference No: 202312-3038-001 (Conclusion Date Feb. 9, 2024), available at [https://www.reginfo.gov/public/do/PRAViewICR?ref\\_nbr=202312-3038-001](https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202312-3038-001).

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

No exceptions exist.

**Attachment A**  
**Collection 0038-0093 “Provisions Common to Regulated Entities”**

**IC: Part 40, Provisions Common to Registered Entities**

**Reporting Burden Hours and Costs**

| 1.<br>Regulation(s)   | 2.<br>Estimated<br>Number of<br>Respondents | 3.<br>Estimated<br>Number of<br>Reports<br>by Each<br>Respondent <sup>1</sup> | 4.<br>Estimated<br>Average Number<br>of Burden Hours<br>per Response | 5.<br>Annual Number of<br>Burden Hours per<br>Respondent<br>(3 × 4) | 6.<br>Estimated<br>Average Burden<br>Hour Cost <sup>2</sup> | 7.<br>Total Average<br>Hour Burden Cost<br>Per Respondent<br>(5 × 6) | 8.<br>Total Annual<br>Responses <sup>3</sup> | 9.<br>Total Annual<br>Number of<br>Burden<br>Hours<br>(2 × 5) | 10.<br>Total<br>Burden<br>Cost<br>Resp<br>(2<br>× 9) |
|---|---|---|--|---|---|--|--|---|--|
| §§ 40.2 and 40.3<br>(Products)  | 70  | 12  | 21   | 252   | \$106.56  | \$26,853.12  | 848  | 17,640  | \$1,879,680  |
| §§ 40.5 and 40.6<br>(Rules) <sup>4</sup>  | 70  | 20  | 2  | 40  | \$106.56  | \$4,262.40   | 1,412  | 2,800   | \$298,560  |
| <b>NEW BURDEN:<br/>§40.6 Delisting<br/>Submissions for<br/>Gaming contracts<br/>(one-time burden)</b> | <b>6<sup>5</sup></b>                        | <b>5</b>  | <b>2</b>   | <b>10</b>   | <b>\$266<sup>6</sup></b>                                    | <b>\$2,660</b>   | <b>30</b>                                    | <b>60</b>   | <b>\$15,960</b>                                      |
| § 40.10 (SIDCO)   | 2   | 1   | 50   | 50  | \$106.56  | \$5,328.00   | 2  | 100   | \$10,656   |
| <b>New Totals</b>   | <b>70<sup>7</sup></b>                       |   |  |   |   |  | <b>2,292</b>                                 | <b>20,600</b>   | <b>\$2,207,856</b>                                   |

<sup>1</sup> The totals for estimated numbers of reports by respondent per year are rounded. These estimates are derived by dividing the total number of responses in Column 8 (based on an average of actual filings submitted to the Commission over the past three years) by the total number of respondents shown in Column 2.

<sup>2</sup> For the existing aggregated §§ 40.2, 40.3, 40.5, 40.6, and 40.10 burdens, the Commission is providing a blended rate using estimated industry specific wages for Compliance Officer and Lawyers multiplied by 1.3 to account for overhead and other benefits using data from 2022. Per the U.S. Bureau of Labor Statistics, national industry-specific occupational employment and wage estimates with data collected from employers in the securities, commodity contracts, and other financial investments and related activities (NAICS 523000) provides that the mean hourly wage for a compliance officer is \$44.31 and lawyer is \$119.63. The average of those wages is \$81.97, when adjusted by 1.3 multiplier noted above results in the average hourly wage of \$106.56. See May 2022 National Industry-Specific Occupational Employment and Wage Estimates, NAICS 523000 - Securities, Commodity Contracts, and Other Financial Investments and Related Activities, available at: [https://www.bls.gov/oes/current/naics3\\_523000.htm](https://www.bls.gov/oes/current/naics3_523000.htm).

<sup>3</sup> The Total Annual Responses in column 8 were obtained by querying the Commission's submission database for the total number of past three years of filings in each category. The three-year totals were averaged to calculate the annual estimate. See Provisions Common to Registered Entities, Notice of Proposed Rulemaking, 88 F.R. 61432, 61443 n.75, 61444 nn.79 and 82 (Sept. 6, 2023).

<sup>4</sup> The category for §§ 40.5 and 40.6 now includes part 40 rule filings triggered by § 38.251(e), which had previously been listed as a separate line-item, and the filings triggered by § 150.9(a), which had previously been included in a second IC that has now been merged with the Provisions Common to Registered Entities IC.

<sup>5</sup> As discussed in the notice of proposed rulemaking, only one designated contract market currently offers the types of event contracts that would be prohibited and require new § 40.6 filings to delist. However, for the purposes of the PRA, the Commission is estimating the potential burden for all six designated contract markets that offer event contracts.

<sup>6</sup> For the one-time § 40.6 burden for delisting gaming contracts stemming from the proposed rule, in calculating its labor cost estimates, the Commission estimates the appropriate wage rate based on salary information for the securities industry compiled by the Department of Labor's Bureau of Labor Statistics ("BLS"). Commission staff arrived at an hourly rate of \$266 using figures from data on the relevant profession contained in the most recent BLS Occupational Employment and Wages Report (May 2023) under NAICS 523000. According to BLS, the mean salary for financial examiners in the context of Securities, Commodity Contracts, and Other Financial Investments and Related Activities is \$116,520. This number is divided by 1,800 work hours in a year to account for sick leave and vacations and multiplied by 4 to account for retirement, health, and other benefits or compensation, as well as for office space, computer equipment support, and human resources support. This number is further multiplied by 1.0272 to account for the 2.72% change in the CPI for Urban Wage-Earners and Clerical Workers between May 2023 and March 2024 (298.382 to 306.502). BLS, CPI for Urban Wage Earners and Clerical Workers (CPI-W), U.S. City Average, All Items—CWUR0000SA0, available at <https://www.bls.gov/data/#prices>. Together, these modifications yield an hourly rate of \$266. The estimated wage rate is a weighted national average of mean hourly wages for the occupation of "financial examiners" (13-2061). Commission staff chose this methodology to account for the variance in skill sets that may be used to accomplish the collection of information.

<sup>7</sup> The total number of respondents for the Information Collection is 70.