

SUPPORTING STATEMENT FOR NEW INFORMATION COLLECTION

OMB CONTROL NUMBER 3038-0121

REGULATIONS GOVERNING SEPARATE ACCOUNT TREATMENT FOR WITHDRAWAL OF CUSTOMER INITIAL MARGIN

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.

Two of the fundamental purposes of the Commodity Exchange Act (CEA) are the avoidance of systemic risk and the protection of market participants from misuses of customer assets.¹ Section 4d(a)(2) of the CEA and Commodity Futures Trading Commission (CFTC or Commission) regulation § 1.20(a) require a futures commission merchant (FCM) to separately account for and segregate all money, securities, and property which it has received to margin, guarantee, or secure the trades or contracts of its commodity customers.² Additionally, section 4d(a)(2) of the CEA and Commission regulation § 1.22(a) prohibit an FCM from using the money, securities, or property of one customer to margin or settle the trades or contracts of another customer.³ This requirement is designed to prevent disparate treatment of customers by an FCM and mitigate the risk that there will be insufficient funds in segregation to pay all customer claims if the FCM becomes insolvent. Section 8a(5) of the CEA authorizes the Commission to make and promulgate such rules and regulation as in the Commission's judgment are reasonably necessary to effectuate any of the provisions, or to accomplish any of the purposes, of the CEA.⁴

The Commission is amending part 1, with supporting amendments in parts 1, 22, 30, and 39, to codify via direct application to all FCMs the conditional and time-limited no-action position in CFTC Letter No. 19-17,⁵ which allows DCOs to permit FCM clearing members to treat the separate accounts of a single customer as accounts of separate entities for purposes of Commission regulation 39.13(g)(8)(iii).⁶ The amendments add for all FCMs a margin adequacy requirement similar to that applied to clearing FCMs by DCOs pursuant to regulation 39.13(g)(8)(iii) (prohibiting margin withdrawals if such withdrawals would create or exacerbate an under-margining scenario) and provide for separate account treatment for purposes of such margin adequacy requirement, subject to certain conditions designed to mitigate risk consistent with CEA section 4d(a)(2) and the Commission's implementing regulations. The amendments add new Commission

¹ Section 3(b) of the CEA, 7 U.S.C. 5(b).

² 7 U.S.C. 6d(a)(2); 17 CFR 1.20(a).

³ 7 U.S.C. 6d(a)(2); 17 CFR 1.22(a).

⁴ 7 U.S.C. 12a(5).

⁵ CFTC Letter No. 19-17 (July 10, 2019). CFTC Letter Nos. 20-28, 21-29, 22-11, 23-13, and 24-07 each extended the expiry of the no-action position set forth in CFTC Letter No. 19-17, which currently expires on the earlier of June 30, 2025 or the effective date of the final rule.

⁶ 17 CFR 39.13(g)(8)(iii).

regulation § 1.44 and appendix 1 to part 1, and make supporting amendments to Commission regulations §§ 1.3, 1.17, 1.20, 1.32, 1.58, and 1.73 in part 1, 22.2 in part 22, 30.2 and 30.7 in part 30, and 39.13 in part 39. The amendments include an information collection comprising reporting, recordkeeping, and third-party disclosure requirements.

The information collected under the new regulations is necessary for the Commission to ensure that FCMs (a) can effectively monitor and risk manage customers engaged in separate account treatment and circumstances necessitating cessation of separate account treatment have occurred; (b) document and keep current records regarding the application of separate account treatment; and (c) provide customers with appropriate disclosures concerning application of separate account treatment. The Commission is submitting the information collection requirements for OMB review.

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 final rule applies to all FCMs a margin adequacy requirement similar to that applied to clearing FCMs by DCOs pursuant to regulation 39.13(g)(8)(iii), and, for purposes of such requirement, allow an FCM to treat the separate accounts of a single customer as accounts of separate entities, subject to conditions designed to mitigate the risk that such separate account treatment could result in exacerbation of under-margining of customer accounts, which would be inconsistent with the objectives of the CEA. The information required by regulation 1.44 and the supporting regulations set forth in the final rule will be used by FCMs that choose to permit separate account treatment to ensure that they, and their customers that engage in separate account treatment, do so in a manner that achieves the customer funds protection and risk mitigation goals of the CEA. In turn, the Commission or a designated self-regulatory organization (DSRO) may use the information collected by the regulations to evaluate an FCM's compliance with the risk-mitigating conditions for separate account treatment set forth in the final rule.

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 final rule contemplates that the collection of information that would be required may be carried out 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.

To the maximum extent possible, the information collection was designed to avoid duplication. In all cases where it was possible to leverage information collections contained in other regulations, the Commission elected not to impose collections that would impose additional burden. 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. Each different type of information is needed given the purposes for which the data will be used, stated above in Questions 1 and 2.

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 required information does not involve any small businesses 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.

If the collections were conducted less frequently, FCMs, DSROs, and the Commission may not have sufficient information to ascertain whether FCMs comply with conditions designed to mitigate risk with regard to separate account treatment.

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:

The final rule does not require that respondents report information to the Commission 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 final rule requires FCMs that wish to provide for separate account treatment to comply with certain risk-mitigating conditions. Among these conditions, an FCM that permits separate account treatment would have to notify its DSRO and the Commission of the occurrence of certain enumerated events that would put the FCM out of the ordinary course of business and trigger cessation of disbursements on a separate account basis, either as to one or more specific customers, or as a general matter, depending on the event. Such notification would be required to be made promptly in writing, and in any case no later than the next business day following the date on which the FCM identifies or has been informed that such event has occurred.⁷

⁷ Such notice must also be provided in accordance with the process specified in Commission regulation 1.12(n)(3).

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

The regulations do not require the submission of more than an original and two copies of any document.

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

The regulations require that FCMs that permit separate account treatment comply with four recordkeeping requirements, regarding (1) keeping of records documenting all accounts receiving separate account treatment; (2) documentation of the factual circumstances and rationale for the cure of non-ordinary course of business circumstances leading to resumption of disbursements to customers on a separate account basis; (3) collection of contact information of representatives at customers; and (4) keeping of records demonstrating that a disclosure statement regarding treatment of separate accounts in the event of the FCM's bankruptcy has been delivered to customers. While the final rule does not establish specific periods for the keeping of such records, Commission regulation 1.31(b) expressly 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;

No statistical surveys are involved in the regulations.

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

The requirements do not involve the use of 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

The requirements do not involve a pledge of confidentiality regarding the collection of data beyond that provided by applicable law.

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 registrant'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.

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.

The Commission published a notice of proposed rulemaking (NPRM) in the Federal Register.⁸ The NPRM included a request for comment on all aspects of the proposed regulation, as well as requests for comment on specific provisions and issues (including all aspects of the proposed information collection requirements). The NPRM also notified the public and other federal agencies that the Commission is submitting an information collection request for OMB review. The Commission did not receive any comments specifically addressing the Commission's PRA analysis with respect to the proposed regulations.

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.

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.

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 Commodity Exchange Act, which strictly prohibits the Commission, unless specifically authorized by the Commodity Exchange Act, from making public "data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers." The Commission has procedures to protect the confidentiality of an applicant's or registrant's data. These are set forth in

⁸ Regulations to Address Margin Adequacy and To Account for the Treatment of Separate Accounts by Futures Commission Merchants, 89 FR 15312 (Mar. 1, 2024) (solicitation of comments on information collection at 89 FR 15352).

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.

This question does not apply. None of the required information is sensitive, 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. Burden hours and costs were estimated based on CFTC reports of financial data for FCMs,⁹ information submitted by the Futures Industry Association (FIA),¹⁰ and the U.S. Bureau of Labor Statistics (BLS) May 2023 National Occupational Employment and Wage Estimates.¹¹

⁹ Available at <https://www.cftc.gov/MarketReports/financialfcmdata/index.htm>.

¹⁰ Letter from FIA to Robert Wasserman dated May 11, 2022.

¹¹ Available at https://www.bls.gov/oes/current/oes_nat.htm.

13. Provide an estimate of the total annual cost burden to respondents or record keepers 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 costs associated with the new regulations are provided in the responses to question 12. No initial capital and start-up costs or operation and maintenance costs are anticipated.

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.

No increased costs to the Federal Government are anticipated as a result of this new collection of information.

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

This is a new collection of information. The CFTC is adopting regulations that add a new Commission regulation § 1.44 and make supporting amendments to other Commission regulations. The regulations introduce an information collection comprising reporting, recordkeeping, and third-party disclosure requirements that would result in an estimated 21,751 annual burden hours, as described in Attachment A.

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.

Attachment A

Reporting	1. Est. # of Respondents	2. Est. Annual Reports per Respondent	3. Est. Total Annual Responses (1×2)	4. Est. Avg. # of Hours per Response	5. Est. Annual # of Burden Hours per Respondent (2×4)	6. Est. Avg. Burden Hour Cost	7. Est. Avg. Burden Cost per Respondent (5×6)	8. Est. Total Annual Burden Hours (3×4)	9. Total Est. Annual Burden Cost of All Responses (1×7)
Regulation 1.44(d)(2) ¹²	30	1	30	1	1	\$268 ¹³	\$268	30	\$8,040
Regulation 1.44(e)(3)	30	2	60	8	16	\$268 ¹⁴	\$4,288	480	\$128,640
Total Reporting ¹⁵	30	3	90					510	\$136,680

¹² Regulation 1.44(d)(2) includes a one-time reporting requirement.

¹³ This figure is rounded to the nearest dollar and based on the annual mean wage for U.S. Bureau of Labor Statistics (BLS) category 13-2061, “Financial Examiners.” BLS, Occupational Employment and Wages, May 2023 (BLS Data), available at https://www.bls.gov/oes/current/oes_nat.htm. This category consists of professionals who “[e]nforce or ensure compliance with laws and regulations governing financial and securities institutions and financial and real estate transactions.” BLS, Occupational Employment and Wages, May 2023: 13-2061 Financial Examiners, available at <https://www.bls.gov/oes/current/oes132061.htm>. According to BLS, the mean salary for this category 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, as well as for office space, computer equipment support, and human resources support. This number is further multiplied by 1.0357 to account for the 3.57% change in the Consumer Price Index for Urban Wage-Earners and Clerical Workers between May 2023 and September 2024 (298.382 to 309.046). 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 \$268. The rounding and modifications applied with respect to the estimated average burden hour cost for this occupational category have been applied with respect to each occupational category discussed as part of this analysis.

¹⁴ Financial Examiners. BLS Data, available at https://www.bls.gov/oes/current/oes_nat.htm.

¹⁵ This estimate reflects the aggregate information collection burden estimate associated with the reporting requirements for the first annual period following implementation of the regulation. Because regulation § 1.44(d)(2) would result in a one-time reporting requirement, the Commission staff estimates that for each subsequent annual period, the number of reports, burden hours, and burden cost would be reduced accordingly.

Disclosure¹⁶	1. Est. # of Respondents	2. Est. Annual Reports per Respondent	3. Est. Total Annual Responses (1×2)	4. Est. Avg. # of Hours per Response	5. Est. Annual # of Burden Hours per Respondent (2×4)	6. Est. Avg. Burden Hour Cost	7. Est. Avg. Burden Cost per Respondent (5×6)	8. Est. Total Annual Burden Hours (3×4)	9. Total Est. Annual Burden Cost of All Responses (1×7)
Regulation 1.44(h) (3)(i)	30	1	30	1	1	\$608 ¹⁷	\$608	30	\$8,040
Regulation 1.44(h) (3)(iii) [Disclosure Document Option]	30	1	30	1	1	\$608 ¹⁸	\$608	30	\$18,240
Regulation 1.44(h) (3)(iii) [Website Option]	30	1	30	1	1	\$324 ¹⁹	\$324	30	\$9,720
Regulation 1.44(h) (4)	30	1	30	1	1	\$608 ²⁰	\$608	30	\$18,240
Total Disclosure²¹	30	4	120					120	\$54,240

¹⁶ Each of the regulations listed in this table result in a one-time disclosure requirement for Paperwork Reduction Act (PRA) purposes.

¹⁷ BLS 2022 Data for BLS Category 23-1011, “Lawyers,” in Securities, Commodity Contracts, and Other Financial Investments and Related Activities, <https://data.bls.gov/oes/#/indOcc/Multiple%20occupations%20for%20one%20industry> (mean annual salary of \$264,110).

¹⁸ Lawyers. BLS Data, available at https://www.bls.gov/oes/current/oes_nat.htm.

¹⁹ This figure is based on the annual mean wage for BLS category 15-1254, “Web Developers,” in the context of Securities, Commodity Contracts, and Other Financial Investments and Related Activities (\$140,970). BLS Data, available at https://www.bls.gov/oes/current/oes_nat.htm.

²⁰ Lawyers. BLS Data, available at https://www.bls.gov/oes/current/oes_nat.htm.

²¹ FCMs would be able to comply with the disclosure requirement in regulation 39.13(j)(12)(iii) by updating and disseminating to customers an updated Disclosure Document required by Commission regulation 1.55(i) or by posting the disclosure on their websites. This estimate assumes FCMs employ both options. Additionally, this estimate reflects the aggregate information collection burden estimate associated with the disclosure requirements for the first annual period following implementation of the regulation. Because each disclosure requirement listed in this table would result in a one-time disclosure requirement for PRA purposes, the Commission staff estimates that for each subsequent annual period the number of respondents, reports, burden hours, and burden cost would be reduced accordingly.

Recordkeeping	1. Est. # of Respondents	2. Est. Annual Reports per Respondent	3. Est. Total Annual Responses (1×2)	4. Est. Avg. # of Hours per Response	5. Est. Annual # of Burden Hours per Respondent (2×4)	6. Est. Avg. Burden Hour Cost	7. Est. Avg. Burden Cost per Respondent (5×6)	8. Est. Total Annual Burden Hours (3×4)	9. Total Est. Annual Burden Cost of All Responses (1×7)
Regulation 1.44(d) (1)	30	125	3,750	0.25	31.25	\$268 ²²	\$8,375	938	\$251,250
Regulation 1.44(e) (4)	30	2	60	2	4	\$268 ²³	\$1,072	120	\$32,160
Regulation 1.44(h) (2)	30	125	3,750	1	125	\$162 ²⁴	\$20,250	3,750	\$607,500
Regulation 1.44(h) (3)(ii) ²⁵	30	125	3,750	0.1	12.5	\$162 ²⁶	\$2,025	375	\$60,750
Recordkeeping related to pending non-USD transfers ²⁷	7,500	125	937,500	0.017	2.125	\$574 ²⁸	\$1,220	15,938	\$9,150,000
Total Recordkeeping ²⁹	7,530	502	948,810					21,121	\$10,101,660

²² Financial Examiners. BLS Data, available at https://www.bls.gov/oes/current/oes_nat.htm.

²³ *Id.*

²⁴ This figure is based on the annual mean wage of \$70,470 for BLS category 43-6012, “Legal Secretaries & Administrative Assistants” in the New York City Metropolitan Area, one of the top-paying metropolitan areas for this category. BLS Data, available at https://www.bls.gov/oes/current/oes_nat.htm.

²⁵ This estimate reflects the cost and burden hours for FCM recordkeeping of documentation that the disclosure required by regulation 1.44(h)(3) was delivered to customers. FCMs would not need to provide such disclosure to the same customer more than once. Accordingly, regulation 1.44(h)(3)(ii) would result in a one-time recordkeeping requirement as to each customer.

²⁶ This figure is based on the annual mean wage of \$70,470 for BLS category 43-6012, “Legal Secretaries & Administrative Assistants” in the New York City Metropolitan Area, one of the top-paying metropolitan areas for this category. BLS Data, available at https://www.bls.gov/oes/current/oes_nat.htm.

²⁷ Recordkeeping related to pending non-USD transfers consistent with Joint Audit Committee guidance with respect to regulations 1.17(c)(5)(viii), 1.17(c)(5)(ix), 1.44(b), and 1.44(g)(5).

²⁸ This figure is based on the annual mean wage of \$249,260 for BLS category 11-3031, “Financial Managers,” in Securities, Commodity Contracts, and Other Financial Investments and Related Activities, available at <https://www.bls.gov/oes/current/oes113031.htm>.

²⁹ This estimate reflects the aggregate information collection burden estimates associated with the disclosure requirements for the first annual period following implementation of the regulation. Because, as noted above, regulation 1.44(h)(3)(ii) would result in a one-time recordkeeping requirement as to each customer (*i.e.*, once the disclosure is provided to existing customers, it would need to be provided only to new customers on a going forward basis), the Commission staff estimates that for each subsequent annual period the number of reports, burden hours, and burden cost would be reduced accordingly.

Combined Additional Total Hour/Cost Burden for Information Collection 3038-0121:

Estimated number of respondents affected by amendments: 7,530

Estimated total annual number of responses: 949,020

Estimated total annual burden hours: 21,751

Estimated total annual burden cost: \$10,292,580