



Commodity Futures Trading Commission Privacy Impact Assessment

System Name: Comments Online

Office: Management & Administrative Systems

Date: October 18, 2010

1. Overview

The enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act") has triggered significant rulemaking activities at the Commission. The Commission has identified 30 areas where rules will be necessary, and the Commission is encouraging the public and industry to comment on the rules and provide other input to the Commission. The Act has served as a catalyst for the Commission to develop a more efficient system for collecting and publishing comments and other input to the Commission.

To facilitate the submission of comments and the timely publication of those comments as public records in the informal rulemaking process under the Administrative Procedure Act ("APA"), 5 U.S.C. §553, or other statutory provisions, the new "Comments Online" system will collect and store comments received by the Commission and will automatically publish them to www.cftc.gov. Comments Online also will be used for the collection of input from the public that may not be associated with statutory or regulatory notice and comment requirements.

Specifically, the new system includes a web form on www.cftc.gov allowing individuals to submit comments or input through the Internet. Once submitted, the new system stores the comments or other input in a new database. Any comments received by fax, postal mail or email are uploaded by personnel into the new database, collecting all comments into one database. Any comments or input added to the database are automatically published to www.cftc.gov.

During an informal rulemaking or other statutory or regulatory notice and comment process, Commission personnel may manually remove a comment from publication if the commenter withdraws his or her comments before the comment period has closed or because the comment contains obscenities or other material deemed inappropriate for publication by the Commission.¹ However, comments that are removed from publication

¹ The Commission reserves the right, but has no obligation, to review, pre-screen, filter, redact, refuse or remove any submission or part of a submission that it may deem inappropriate for publication, such as a comment containing obscene language.

If an individual wishes to include in his/her comments information that he/she believes may be exempt from disclosure under the Freedom of Information Act, 5 U.S.C. § 552, the individual may submit a petition for confidential treatment according to the procedure set forth in CFTC regulations at 17 C.F.R. § 145.9 before submitting comments.

will be retained by the Commission for consideration as required by the APA, or as part of the Commission's documentation of a comment withdrawal in the event that one is requested.

2. Data Collected and Stored within the System

2.1. What information will be collected, used, disseminated or maintained in the system?

Individuals submitting comments or input on the web form in Comments Online must provide a first and last name, an email address, and their comments or input in text or an attachment, in accord with regulations implementing the Paperwork Reduction Act, 5 C.F.R. § 1320.3(h)(4). An organization submitting comments or input is required to list the name of the organization. Those submitting comments or input also may provide their job title, mailing address and daytime telephone number.

Individuals are not prevented by the system from including additional personal information in the body of their submission. However, www.cftc.gov states that individuals should only submit information they wish to make publicly available and clearly warns individuals not to include account numbers, social security numbers, home addresses or other private, personal information.

No specific personal information is required for individuals or organizations to submit comments or input via fax, postal mail or email, but a name or email address is preferred to allow the Commission to contact those submitting comments or input if needed.

2.2. What will be the sources of the information in the system?

The sources of information will be individuals and industry groups who would like to provide comments or other input to the Commission.

2.3. Why will the information be collected, used, disseminated or maintained?

The information is being collected to obtain feedback from the public and industry groups regarding the proposed rules and other Commission regulatory actions in accordance with the APA or other statutory or regulatory provisions, as well as input on Commission activities that may not be associated with notice and comment requirements. Comments are currently being collected using alternate means, such as a web form converting the submission into an email, directly by email, and by postal mail and fax.

The first and last name are being collected, and are needed, for Commission business, to contact the submitter if needed. For comments, the name will allow commenters to be identified in the public record in accordance with the APA or other statutory or regulatory provisions. The email address is required to allow the Commission to reduce spam and avoid Internet bots, and send the submitter a link to his/her published submission.

2.4. How will the information be collected and used by the Commission?

The information will be collected through a web form on www.cftc.gov. Comments received by the Commission via fax, email or postal mail will be scanned and uploaded into the system for publication on www.cftc.gov.

The information will be used by the Commission as a feedback mechanism for proposed rules and other Commission activities. As with all comments submitted during rulemaking proceedings, the comments will be part of the public record and used as public records for Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), and other purposes.

The email address will be used by the Commission to reduce spam, avoid Internet bots, send the submitter a link to his/her published submission and possibly for Commission staff to contact the submitter to discuss his/her submission.

In addition to email, if provided by the submitter, the address and phone number may be used by Commission staff to contact the submitter to discuss his/her submission.

The comments and other input will be searchable on the Commission’s website, www.cftc.gov, for example, comments will be searchable by the rule to which particular comments relate, the date of submission, the commenter’s name, and, if provided by the commenter, his/her organization.

2.5. Is the system using technologies in ways that the CFTC has not previously employed (e.g., monitoring software)?

No, this is a new system, being designed and implemented by Commission personnel on the Commission’s information technology network.

2.6. What specific legal authorities authorize the collection of the information?

The Commodity Exchange Act, 7 U.S.C. § 1 *et seq.*, authorizes the CFTC to engage in rulemaking activities, and the APA imposes obligations on the CFTC to publish proposed rules, solicit feedback from the public, and consider such feedback in finalizing the rules. The Commission may also gather information from the public needed to effectively administer the Commodity Exchange Act, 7 U.S.C. *et seq.*, according to the Paperwork Reduction Act, 44 U.S.C. § 3501 *et seq.*, and other law, as it may be applicable.

3. Data and Records Retention

3.1. How will the information in this system be managed throughout its lifecycle? For what period of time will data collected by this system be maintained and in what form will the data be retained?

During the time that Comments Online is accepting comments or other input on rulemaking or other Commission activities, the information submitted resides in the Comments Online database. When the deadline for accepting comments or other input on a particular issue passes, Comments Online will no longer accept

comments or other input from the public on that particular issue. The information stays within Comments Online, however, it may be also be copied into the Commission's eLaw system for purposes of analysis.

3.2. What are the plans for destruction and/or disposition of the information?

Comments received per the notice and comment requirement of the APA will be retained permanently in accordance with the Commission's records disposition schedule. All other submissions received per other statutes and regulations will be retained in accordance with the retention period for the appropriate subject item in the Commission's records disposition schedule.

4. Access to the Data

4.1. Who will have access to the information in the system (internal and external parties), and with whom will the data be shared? If contractors, are the Federal Acquisition Regulations ("FAR") clauses included in the contract (24.104 Contract clauses; 52.224-1 Privacy Act Notification; and 52.224-2 Privacy Act)?

Commission personnel and selected contractors who need to access the information to perform their duties will have access to information in the system. This includes but is not limited to personnel and contractors handling information technology issues, handling FOIA and Privacy Act requests and inquiries, and those involved in the rulemaking process. The following information will be accessible to these individuals: the submitter's first and last name, middle initial and email address; if input by the submitter, his/her organization, job title, mailing address (street address, city, state, zip code and country) and telephone number; and the comment or other input, including any attachments and any personally identifiable information that the submitter chooses to include in his/her comment, input or attachment. These contractors generally are subject to confidentiality requirements and those subject to the Federal Acquisition Regulations ("FAR") are subject to FAR clauses concerning the Privacy Act, 52.224-1 and 52.224-1.

Of information submitted through the www.cftc.gov web form, the following information will be accessible by the public on www.cftc.gov: the submitter's first and last name, middle initial, and if submitting on behalf of an organization, the organization's name; and the comment or input, including any attachments and any personally identifiable information that the submitter chooses to include in his/her comment, input or attachment. The following information, as input into the "Commenter Information" data fields, will not be published on www.cftc.gov but may be disclosed under the Freedom of Information Act: submitter's business email address and in certain instances, submitter's personal email address; organization mailing address and organization telephone number.

Of submissions submitted via fax, postal mail or email, the information contained in the comments or input received by the Commission will be published to www.cftc.gov and disclosable under FOIA, including any personally identifiable information that the submitter chooses to include in his/her comment, input or attachment.

4.2. If the data will be shared outside the Commission's network, how will the data be transferred or shared?

As noted above, certain information will be publicly disclosed and/or available pursuant to a FOIA request. Information not publicly disclosed or subject to a FOIA request would only be shared outside the Commission using security measures appropriate to the personally identifiable data being shared and in accordance with the applicable Privacy Act System of Records Notice.

4.3. Do other systems share the information or have access to the information in this system? If yes, explain who will be responsible for protecting the privacy rights of the individuals affected by the interface (e.g., System Administrators, System Developers, System Managers)?

Some of the data contained in the Comments Online database may be pushed or pulled into the Commission's E-Law application. The Commission's Office of Information Technology Services will be responsible for protecting the privacy rights of individuals affected by the interface, including system administrators, developers and managers.

5. Notice, Consent and Access for Individuals

5.1. What notice will be provided to individuals about the collection, use, sharing and other processing of their personal data?

The web form that solicits submitter information on www.cftc.gov provides notice of information being collected and its general use. The Privacy Policy on www.cftc.gov provides additional notice concerning the collection, use, sharing and other processing of personal data. Moreover, a Federal Register notice soliciting comments in response to a specific proposed rulemaking generally notifies the public and industry groups about how their comments will be collected and used.

5.2. What opportunities will exist for an individual to decline to provide information or to consent to particular uses of the information? If opportunities exist, how will this notice be given to the individual and how will an individual grant consent?

Comments Online requires minimal personal data for submission of comments or other input: a first and last name, and email address, and for organizations, the organization name. A submitter may submit comments or input without providing a name or email address by sending comments or input via postal mail or fax.

For comments, notice is provided in the Federal Register notice that solicits the comments in response to a specific proposed rulemaking as well as in instructions provided on the Commission's website.

5.3. What procedures will exist to allow individuals to gain access to their information and request amendment/correction, and how will individuals be notified of these procedures?

Individuals may access their information and request amendment by following the procedures set forth in 17 CFR §§ 146.3-5, 146.8-9. Questions may be directed to the Commission's Chief Privacy Officer at privacy@cftc.gov. Individuals are notified of these procedures through the Privacy Policy at www.cftc.gov.

6. Maintenance of Controls

6.1. What controls will be in place to prevent the misuse of the information by those having authorized access and to prevent unauthorized access, use or disclosure of the information?

The information is protected from misuse and unauthorized access through various administrative, technical and physical security measures. Technical security measures within CFTC include restrictions to limit computer access to authorized individuals, required use of strong passwords frequently changed, firewalls, intrusion detection activities, use of encryption for certain data types and transfers, and regular review of security procedures and best practices to enhance security, in accordance with the Federal Information Security Management Act. Physical measures include restrictions on building access to authorized individuals and maintenance of records in lockable offices and filing cabinets.

6.2. While the information is retained in the system, what will the requirements be for determining if the information is still sufficiently accurate, relevant, timely, and complete to ensure fairness in making determinations?

No determinations rely on the information in this system. Nonetheless, various administrative, technical and physical security measures are in place to help ensure that the information input into Comments Online on www.cftc.gov by submitters continuously reflects, over time, that information originally input by the submitter.

There are no requirements for the determining whether the information input into Comments Online by the submitter is accurate, relevant, timely or complete. The Commission does not guarantee or warrant that any information submitted is accurate, relevant, timely or complete, and disclaims any liability for loss or damage resulting from reliance on any such information. The posting of any unprofessional, profane or defamatory material may be removed from the website by Commission staff at its discretion.

6.3. Will this system provide the capability to identify, locate, and monitor individuals? If yes, explain.

No, the system does not provide the capability to locate an individual in real-time or monitor an individual. The system provides the capability to identify an individual and when voluntarily provided by the individual, to determine his/her address.

6.4 Are all IT security requirements and procedures required by federal law being followed to ensure that information is appropriately secured?

The CFTC follows all applicable Federal Information Security Management Act (FISMA) requirements to ensure that the information contained in Comments Online is appropriately secured. Under the Federal Information Processing Standards (FIPS) 199, the potential impact of a loss of confidentiality, integrity or availability of the Comments Online system is categorized as “low.”

6.5. Describe the privacy training provided to users either generally or specifically relevant to the program or system.

All CFTC personnel are subject to CFTC agency-wide procedures for safeguarding PII and receive annual privacy and security training.

7. Privacy Act

7.1. Will the data in the system be retrieved by a personal identifier in the normal course of business? If yes, explain. If not, can it be retrieved by a personal identifier?

On www.cftc.gov, the comments and other input will be retrieved, and may be searched, by the submitter’s name, organization (if provided), relevant rule if applicable and/or date of submission.

Within Comments Online at the Commission, Commission personnel and contractors will regularly retrieve data by the same fields as on www.cftc.gov (see above), in addition to the submitter’s email address and mailing address.

7.2 Is the system covered by an existing Privacy Act System of Records Notice (“SORN”)? Provide the name of the system and its SORN number, if applicable.

A new System of Records Notice will be published in the Federal Register as soon as practicable, as “Comments Online System,” CFTC-45.

8. Privacy Policy

8.1. Confirm that the collection, use and disclosure of the information in this system have been reviewed to ensure consistency with the CFTC’s Privacy Policy on www.cftc.gov.

Yes, the collection, use and disclosure has been reviewed to ensure consistency with the Privacy Policy.

9. Privacy Risks and Mitigation

9.1. What privacy risks are associated with the collection, use, dissemination and maintenance of the data? How have those risks been mitigated?

Commission personnel decided to require the least amount of personal data possible – name, email address and, for organization, the organization name – to

minimize privacy risks associated with the collection, use, dissemination and maintenance of the data.

A remaining privacy risk is that an individual may include in the body of his/her comments or other submission or attachment unnecessary personally identifiable information, such as a social security number, bank account number or home mailing address. This risk has been minimized by the inclusion of warnings on the www.cftc.gov web form similar to the following:

IMPORTANT: The text you put into the comment box and any attachment(s) you provide below will be published without review or removal of personally identifying information. Submit only information that you wish to make publicly available. Do not include account numbers, social security numbers, your home address or other personal or corporate information that you prefer not be made publicly available.

PIA publication date: October 18, 2010