

Supporting Statement to Accompany
Request for Three Year Extension of
OMB Control Number 3038-0033
(Notification of Pending Legal
Proceedings Pursuant to 17 C.F.R. § 1.60)

- A. 1. Explain the circumstances that make the collection of information necessary. Include identification of any legal or administrative requirements that necessitate the collection.

The Commodity Futures Trading Commission has been entrusted by Congress with the administration and the enforcement of the Commodity Exchange Act (“Act”). Legal proceedings instituted by private parties or other governmental authorities may affect the Commission’s efforts in this regard. The interpretation of the responsibilities imposed by the Act on contract markets and their officials and on futures commission merchants (“FCMs”) and their principals is of primary importance to the Commission in its efforts to establish and administer a uniform regulatory scheme in this area. And, to the extent that private or public action may affect the regulatory standards of the Act, the Commission is interested in the development of judicial interpretations. This interest has become particularly crucial with the increased number of private rights of action cases pending in the judicial system as a result of the Supreme Court’s decision in *Merrill Lynch, Pierce, Fenner & Smith v. Curran*, 456 U.S. 353 (1982), and enactment of § 22 of the Act, 7 U.S.C. § 25 (1994). The Commission, therefore, may wish to participate, as *amicus curiae*, as it did in *Grain Land*, 199 F.3d 983 (8th Cir. 1999), or to intervene as it did in *Lachmund v. ADM Investor Services*, 191 F.3d 777 (7th Cir. 1999), where important questions of law are raised in legal proceedings involving contract markets or FCMs. In addition, and notwithstanding any desire to participate in such proceedings, the Commission has a continuing interest in maintaining oversight of the development of the general body of evolving case law which may have direct bearing on the Commission’s administrative opinions interpreting, and actions brought to enforce, the Act. The information required to be reported by contract markets and FCMs pursuant to 17 C.F.R. § 1.60 enables the Commission to more effectively accomplish these objectives.

2. Indicate how, by whom, and for what purpose the data is to be used and the actual use the agency has made of the information.

As noted above, the information reported to the Commission pursuant to Rule 1.60 assists the Commission in monitoring legal proceedings involving responsibilities imposed by the Act or otherwise upon contract markets and their officials and upon FCMs and their principals. Without this collection of information, it is expected that the Commission would be unable to keep apprised of these legal proceedings in many instances.

3. Describe whether the collection of information involves the use of automated or other information technology. Describe any consideration of the use of improved information technology to reduce burden and any technical or legal obstacles to reducing burden.

Does not apply.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purpose(s) described in 2.

There is no similar information presently available.

5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.

This question does not apply as the collection of the information does not involve small businesses or other small entities.

6. Describe the consequences to Federal program or policy activities if the collection were conducted less frequently.

The question does not apply since information concerning a pending legal proceeding is generally required by Rule 1.60 to be reported to the Commission only once.

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

Does not apply.

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.

No comments were received to the request for comments. (See 73 Fed. Reg. 57338 (Oct. 2, 2008))

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.

Does not apply.

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.

Does not apply.

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

Does not apply.

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

Because the information required to be reported to the Commission pursuant to Rule 1.60 involves matters of public record in pending legal proceedings, no assurance of confidentiality will be provided to respondents.

11. Provide additional justification of any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

The data collection requirements of Rule 1.60 do not require the submission of sensitive information as that term is used in Question 11.

12. Provide estimates of the hour burden of the collection of information.

Rule 1.60 applies to 12 contract markets and approximately 145 FCMs. It is estimated that one of these entities makes, on average, one submission of documents to the Commission per year pursuant to Rule 1.60. It is estimated that the time required to prepare the submission is approximately .10 hours, for a total annual burden of .10 hours.

13. Provide an estimate of the total annual cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14).

Although the estimated annual cost to respondents of submitting documents to the Commission as required by Rule 1.60 is \$250, this is unchanged from the previous ICR submission. Owing to an inadvertent CFTC omission, this cost was not recorded in the previous ICR submission. This figure is based upon the Commission's estimate of the time requirement for an appropriate

support staff employee of a contract market or FCM to photocopy and mail to the Commission certain documents as required by Rule 1.60.

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 estimated that the annual cost to the Government of implementing Rule 1.60 is \$100. This figure is obtained by taking an appropriate portion of the salaries of persons who review the information submitted to the Commission pursuant to Rule 1.60. Commission personnel spend only a very small portion of their time engaged in these duties.

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

Does not apply.

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.

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.

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.

Does not apply.