

SUPPORTING STATEMENT FOR NEW AND REVISED INFORMATION COLLECTIONS

Procedural Requirements for Requests for Interpretative, No-Action, and Exemptive Letters

OMB CONTROL NUMBER 3038-0049

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.

In appropriate circumstances, the staff of the Commodity Futures Trading Commission (“Commission”) issues letters providing interpretative guidance concerning, and exemptive and “no-action” relief from, requirements of the Commodity Exchange Act (the “Act”) and the Commission’s regulations issued pursuant to the Act. The rule establishes regular procedures for the submission of requests for such letters. In order to process requests, Commission staff require accurate and complete background information concerning the persons and activities involved, as well as information concerning legal or other authorities bearing upon the request. In the absence of specified procedures for submissions of requests, substantial amounts of time and resources have been expended requesting and assembling the necessary information, or determining that a request could not be considered at all (e.g., due to the hypothetical nature of the request, the unwillingness of the requester to identify the parties, or the absence of an actual problem or issue). The rule is intended to streamline the process of requesting (and processing requests for) exemptive, no-action and interpretative letters (“Letters”).

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 principal beneficiaries of the information required to be disclosed under this rule are persons subject to regulation under the Act and the Commission’s regulations who seek guidance with respect to the application of particular provisions or who seek relief from the applicability or particular requirements. The information received pursuant to the rule will facilitate the process for granting requests for Letters.

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 provides for electronic submission of requests for Letters.

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 rule is the first effort by the Commission to adopt provisions for requesting Letters. Nor are there existing regulations that could be modified to serve a similar purpose.

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 rule does not have a significant economic impact on a substantial number of small entities. Certain persons affected by the rule may be considered small entities. However, the rule permits Commission staff to assist persons with limited resources in complying with the requirements.

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.

Futures industry participants are the primary beneficiaries of these disclosure requirements, in that providing the information enables Commission staff more easily to provide the guidance or regulatory relief sought. Submission of requests for Letters is entirely voluntary and the frequency of such requests is determined solely by the requesters.

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 rule in question does not require the respondent to report any information to the Commission.

- requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;

Respondents are not required to prepare any written responses upon less than thirty days' notice.

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

Respondents are not required 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;

The rule does not impose requirements to retain any records.

- 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;

The rule does not involve a statistical survey.

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

The rule does not involve use of statistical data.

- 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 rule does not involve a pledge of confidentiality.

- 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 rule does not require submission of proprietary trade secrets or other information to the Commission. To the extent that submission of such information would support the issuance of a letter, the respondent is free to submit or to withhold such information at his or her own discretion. The Commission also provides a procedure whereby submitters of requests may petition for confidential treatment of information submitted should there be a request made for such information under the Freedom of Information Act. A submitter may also request that any response not be published for up to 120 days after issuance. Further, the Commission generally redacts identifying details from incoming and outgoing correspondence before release of those materials to the public.

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.

This question does not apply.

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.

As part of the rulemaking process, the rule was published in the Federal Register. Thus, members of the public, including respondents, were provided an opportunity to comment on the rule and related matters, including issues concerning recordkeeping and other paperwork burdens.

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.

This question does not apply.

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, regulation, or agency policy.

Confidential treatment is available pursuant to 17 C.F.R. §140.98 or 17 C.F.R. §145.9. See the response above to the final portion of Question 7.

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 rule does not require the giving 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 OMB Form 83-I.
- Provide estimates of annualized cost to respondents for the hours burden 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. When the Commission last requested extension of this collection, the Commission had just issued numerous new regulations pursuant to the Commodity Futures Modernization Act of 2000, Pub. L. No. 106-554, 114 Stat. 2763. At that time, the Commission expected to receive large number of interpretative, exemptive and no-action letters. Those expectations were borne out to a large degree; in the years 2000-2002, the Commission issued an average of slightly over 100 interpretative, exemptive and no-action letters annually. However, as the industry became familiar with the new rules and their application, the number of requests for such letters declined; in the years 2003-2009, the Commission issued an average of 30 such letters annually.

In September of 2010, the Commission issued a comprehensive set of new regulations applicable to retail foreign currency transactions pursuant to new authority conferred upon the Commission by the Commodity Futures Trading Commission Reauthorization Act of 2008 Pub. L. No. 110-246, 122 Stat. 1651 (2008). Such transactions had not previously been subject to regulation by the Commission, and the Commission expects that in the coming years, it will respond to numerous requests for interpretative, exemptive and no-action letters specifically with regard to these new rules. Additionally, the recently enacted Wall Street Reform and Consumer Protection Act of 2010 Pub. L. No. 111-203, 124 Stat 1376 (2010) confers significant new authority upon the Commission with regard to the regulation of over-the-counter transactions (i.e., swaps) where none has previously existed. Again, the Commission expects that the new rules will, at least initially, be the source of numerous letter requests under § 140.99.

Based on historical numbers and the release and prospective release of numerous, substantive new rules, the Commission therefore estimates that 100 respondents will file

1.5 requests annually pursuant to § 140.99 for a total of 150 requests. Each response will take approximately 7 hours for a total burden of 1050 hours. Preparation of requests would likely be done by a professional-level employee using clerical assistance. If a rate of \$25 per hour is assumed, the anticipated cost would be \$26,250.

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 factor 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 rule involves no new start-up or operations and maintenance costs.

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.

The rule does not create any additional burden on the Commission.

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

Not applicable.

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

#3038-0049 – PROCEDURAL REQUIREMENT FOR REQUESTS FOR INTERPRETIVE, NO-ACTION AND EXEMPTIVE LETTERS

ESTIMATED # OF RESPONDENTS OR RECORDKEEPERS PER YEAR	REPORTS ANNUALLY BY EACH RESPONDENT	TOTAL ANNUAL RESPONSES	ESTIMATED AVERAGE NUMBER OF HOURS PER RESPONSE	ESTIMATED TOTAL NUMBER OF HOURS OF ANNUAL BURDEN IN FISCAL YEAR
100	1.5	150	7	1,050