

SUPPORTING STATEMENT FOR THE EXTENSION OF AN
EXISTING INFORMATION COLLECTION

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, specified requirements of the Commodity Exchange Act (“CEA” or “Act”) and the Commission’s regulations. Commission regulation 140.99 sets forth the procedures for submitting requests for such letters and related information requirements, and Commission regulation 140.98(b) sets forth procedures for temporary confidential treatment related to such requests.

The information collection requirements associated with Commission regulation 140.99 requests are voluntary. They apply only to parties that choose to request a benefit from Commission staff in the form of the regulatory relief described in Commission regulation 140.99. Such benefits may include, for example: (1) relief from some or all of the burdens associated with other collections of information; (2) relief from regulatory obligations that do not constitute collections of information; (3) interpretations; and/or (4) extensions of time for compliance with certain of the Commission’s regulations. It is likely that persons who would opt to request action under Commission regulation 140.99 will have determined that the information collection burdens that they would assume by doing so will be outweighed substantially by the relief that they seek to receive.

In order to process and properly evaluate a request for an interpretative, no-action or exemptive letter, Commission staff need accurate and complete background information concerning the persons and activities involved, the facts and circumstances relevant to the request, and the legal and/or public policy grounds upon which the request is made. Specifically, the information collection associated with Commission regulation 140.99 is necessary, and is used, to: (1) assist Commission staff in understanding the type of relief that is being requested and the basis for the request and (2) provide Commission staff with a sufficient basis for determining whether: (a) granting the relief requested would be necessary or appropriate under the facts and circumstances presented by the requestor; (b) the relief provided should be conditional and/or time-limited; and (c) granting the relief would be consistent with staff responses to requests that have been presented under similar facts and circumstances. By identifying the particular

information essential to an assessment of a request for an interpretative, no-action, or exemptive letter, the information collection requirements contained in Commission regulation 140.99 reduce the time and resources that those seeking such letters otherwise might expend assembling and submitting materials relevant to their requests. Requestors are able to target their efforts toward the limited information needed by Commission staff. The information collection requirements also expedite Commission staff review of, and response to, requests for relief by increasing the probability that Commission staff will be provided with the needed information at the time of submission.

This information collection also includes requirements that might be imposed as a condition to relief granted by Commission staff in response to a request submitted pursuant to Commission regulation 140.99. Such related information collection requirements: (1) may serve as substituted compliance for other regulatory requirements that would otherwise be imposed on the requestor; (2) are necessary to ensure that the relief granted by Commission staff is appropriate; and/or (3) are necessary for Commission staff to monitor the parties' compliance with the conditions imposed. Once again, it is likely that those who would comply with these conditions will have determined that the burden of complying with the conditions is outweighed by the benefit of the relief that they seek to receive.

Similar to Commission regulation 140.99, the information collection associated with requests for temporary confidential treatment under Commission regulation 140.98(b) are voluntary. This information collection applies only to parties that choose to request a benefit in the form of temporary confidential treatment of a request under Commission regulation 140.99 and any applicable Commission staff response thereto, and includes providing Commission staff with the grounds upon which such confidential treatment is sought. It is likely that persons who would opt to request action under Commission regulation 140.98(b) will have determined that the information collection burdens that they would assume by doing so will be outweighed substantially by the relief that they seek to receive.

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.

See response to Item 1. As noted therein, this information collection is used to facilitate and expedite the submission and evaluation of requests for interpretative, no-action, or exemptive letters and the requests for relief from the requirements of the CEA or the Commission's regulations included within them. Specifically, the information collection is used to: (1) assist Commission staff in understanding the type of relief that is being requested and the basis for the request and (2) provide Commission staff with a sufficient basis for determining whether: (a) granting the relief requested would be necessary or appropriate under the facts and circumstances presented by the requestor; (b) the relief provided should be conditional and/or time-limited; and (c) granting the relief would be consistent with staff responses to requests that have been presented under similar facts and circumstances. The information collection also is used to: (i) provide

requestors with a means for substituted compliance with the requirements of the Act or the Commission's regulations; (ii) ensure that the relief granted by Commission staff is appropriate; and/or (iii) permit Commission staff to monitor for the parties' compliance with conditions to the relief.

- 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's regulations require requestors seeking relief under Commission regulation 140.99 to submit a copy of the request electronically by email. A hard-copy request must be submitted as well. If Commission staff requests additional information or analysis from a requester, the requester generally may submit that information 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.**

This information collection applies only to persons who voluntarily request interpretative, no-action, or exemptive letters from Commission staff. The nature and the frequency of such requests are determined solely by the requestors. Requests for such letters typically are made due to the unique facts and circumstances presented by the request. Because the situations for which such letters are requested and received are characteristically unique and the relief provided generally is not universally applicable, the information collected (*e.g.*, the type of relief requested, the reasons why relief is needed, the relevant facts, the legal basis for the relief) is not the type of information already collected by the Commission.

Commission regulation 140.99 prevents duplication by permitting requestors to cite to a representative sample of publically available letters previously issued by Commission staff in response to similar circumstances where a recitation of the information contained in the previously issued letters would be repetitious.

- 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.**

This collection of information does not have a significant economic impact on a substantial number of 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.**

As noted above, the information collection requirements apply only to parties that choose to request a benefit from Commission staff in the form of relief from requirements of the CEA or the Commission's regulations or guidance with respect to the application of particular provisions of the Act or the Commission's regulations. The information collected is used to facilitate, evaluate, and expedite such requests. Absent the information collection requirements, the responses of Commission staff to such requests could be delayed. The ability of Commission staff to provide the requested relief also would be adversely affected (because, for example, Commission staff might not be able to gain a sufficient understanding of the relevant facts and circumstances to grant the requested relief or there may be no adequate means of substituted compliance other than the information collection).

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 Commission regulations relevant to this information collection do not require respondents to report information to the Commission more frequently than quarterly. It is possible that, as a condition of no-action or exemptive relief granted by Commission staff, a respondent may be required to report information to the agency more frequently. As noted above, it is likely that persons who would opt to request such relief will have determined that the information collection burdens that they would assume by doing so will be outweighed substantially by the relief that they seek to receive.

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

Respondents are given thirty calendar days to respond to any requests for additional information or analysis after the initial request for relief has been received under Commission regulation 140.99. Commission staff may use discretion to extend this time as well under Commission regulation 140.99(g).

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

This question 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;**

Respondents submitting requests for interpretative, no-action, or exemptive relief from Commission staff are not subject to specific record retention requirements under Commission regulation 140.99.

Respondent may be subject to recordkeeping requirements as a condition to any relief granted by Commission staff. Conditions imposed on a respondent requesting relief will vary based on the individual facts and circumstances of the situation.

- **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 question does not apply.

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

This question 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**

This question does not apply.

- **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.**

See response to question 10 below.

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. 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.**

A Notice of Intent to Extend Information Collection 3038-0049 was published in the *Federal Register* on March 18, 2020 ("Notice"). See 85 FR 15436 (Mar. 18, 2020). The Notice requested comment on this information collection prior to submission to OMB. No relevant comments were received.

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.

As noted above, the Commission published a *Notice of Intent to Extend Information Collection 3038-0049* in the *Federal Register*. See 85 FR 15436 (Mar. 18, 2020). The notice provided a 60-day period during which the public was invited to comment on the information collection and the burdens imposed by it. Therefore, no such circumstances precluding consultation with respondents 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. 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, regulation, or agency policy.**

As part of this information collection, a respondent may request temporary confidential treatment not exceeding 120 days under Commission regulation 140.98(b). However, Commission regulation 140.98(c) provides that notwithstanding anything in Commission regulation 140.98, no request or staff response thereto shall be made public that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers, except in accordance with section 6 of the CEA.

Other than as described above, the Commission does not provide respondents with an assurance of confidentiality except as follows: 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 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 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. The regulation does not request or require the provision of sensitive information, as that term is used in Item 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. A set forth more in greater detail in Attachment A, the annual respondent burden for this information collection during the renewal period is estimated to be as follows:

Estimated Number of Respondents: 68
Estimated Average Annual Burden Hours per Respondent: 40
Estimated Total Annual Burden Hours: 2,720
Estimated Annual Burden Cost: \$272,000
Frequency of Collection: Occasional

In order to establish estimates of the annual information collection burdens associated with requests for interpretative, no-action, or exemptive letters submitted pursuant to Commission regulation 140.99, Commission staff reviewed the interpretative, no-action, and exemptive letters issued by Commission staff during each of the three years since it last evaluated this information collection burden. The estimated number of respondents is based on the average number of interpretative, no-action, and exemptive letters issued by Commission staff in 2017, 2018, and 2019, which is approximately 45 annual respondents. In addition, this estimate has been increased by 50% to account for

respondents that prepare requests for relief that do not generate a Commission staff letter in response. Adding an additional 50% to the number of respondents results in 68 total annual respondents, which helps to ensure that this estimate accounts for potential respondents that could not be tracked easily relying on Commission data.¹

Commission staff has increased the estimated average annual burden hours per respondent to 40 burden hours to reflect the fact that these requests are often complex petitions that require many hours to prepare. Requests for relief often include an analysis of underlying factual conditions as well as policy considerations to support the requestor's position. The burden hours associated with individual requests will vary widely, depending upon the type and complexity of relief requested, whether the request presents novel or complex issues, the relevant facts and circumstances, and the number of requestors or other affected entities that may be involved. These burden hours include the time spent preparing, filing, and updating such request letters as well as the burden of complying with any conditions that may be contained in any interpretative, no-action, or exemptive letters granting relief. It also includes burden hours required to prepare and submit related requests for confidential treatment.

The total burden hour estimate was derived by multiplying the estimated number of annual respondents by the estimated average burden hours per respondent.²

Burden costs were calculated by multiplying the estimated total annual burden hours by the burden hour cost. The burden hour cost in this supporting statement was determined using an average salary of \$100 per hour. The Commission believes that this is an appropriate salary estimate for purposes of the regulation. In support of this determination, the Commission notes that the salary estimate is based upon May 2018 Bureau of Labor Statistics' findings of National Occupation Employment and Wage Estimates, United States, including the mean hourly wage of an employee under occupation code 23-1011, "Lawyers," that is employed by the "Securities, Commodity Contracts, and Other Financial Investments and Related Activities Industry," which is \$96.26 and the mean hourly wage of an employee under occupation code 11-3031, "Financial Managers," in the same industry, which is \$100.56.³ The Commission also notes that some respondents may be large financial institutions whose employees' salaries may exceed the mean wage. In addition, the Commission recognizes that some respondents may hire outside counsel with expertise in the various regulatory areas covered by the regulation and that outside counsel may be able to leverage its expertise to substantially reduce the number of hours needed to fulfill a requested assignment. While the Commission is uncertain about the billing rates that these respondents may pay for outside counsel, the Commission believes that such counsel may bill at a rate of several hundred dollars per hour. Any determination to use outside counsel, however, is at the discretion of the respondent.

¹ 45 annual respondents x 150% = 68 annual respondents (rounded up).

² The estimated number of respondents (68) multiplied by the estimated average burden hours per respondent (40) equals 2,720 burden hours.

³ The estimated total annual burden hour cost equals the estimated total annual burden hours (2,720) multiplied by the burden hour cost (\$100) and equals \$272,000. For additional information about the burden hour cost see Attachment A.

The annual information collection estimates for this renewal period are projected to be consistent with the estimates used in the prior renewal period. Although the estimated number of respondents decreased, the overall estimates of total annual burden hours and total annual burden hour costs are similar.⁴ These estimates likely reflect the fact that regulated entities and market participants have continued to adapt to regulations and seek more specific and tailored requests for relief, which often require more detailed submissions under Commission regulation 140.99.

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.**

⁴ The total estimated annual burden hour costs increased from \$227,570 in the previous renewal of this information collection to an estimated \$272,000. This can be attributed to a change in the estimated burden hour cost from a range of wages (\$72 to \$88 per hour), to an estimated average burden hour cost of \$100 per hour. The updated average burden hour cost is from more recent Bureau of Labor Statistics data collected in 2018 and the previous hour cost estimates were based on a survey of management and professional earnings in the securities industry published in 2013.

The Commission does not expect any capital or new start-up costs, or operational or maintenance costs associated with the renewal of this collection of information. The Commission does not anticipate any additional cost burdens to respondents other than the hourly costs estimated in Item 12.

Respondents that are seeking relief are likely to have the equipment and services necessary to submit a request to the Commission.

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 information collection associated with Commission regulations 140.99 and 140.98(b) will impose any additional costs to the Federal Government. Commission regulation 140.99 and related Commission regulation 140.98 may save Commission staff time and resources by providing information about the process by which respondents can seek regulatory relief. Commission regulation 140.99 outlines and organizes the type of information that respondents should present to the Commission, and provides procedural information about how to submit requests for interpretative, no-action, and exemptive letters. By providing this information to all members of the public in a concise and organized manner, Commission regulations 140.99 and 140.98 save Commission staff time that would otherwise be spent explaining the process in detail or assisting respondents with drafting requests for relief.

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

See response to Item 12.

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

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

OMB Control Number 3038-0049

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

	1	2	3	4	5	6	7	8	9
	Est. No. of Annual Respondents	Est. Annual Reports or Records per Respondent	Est. Total Annual Responses (1x2)	Estimated Avg. No. of Hours per Response	Est. Annual No. of Burden Hours per Respondent (2x4)	Est. Avg. Burden Hour Cost ⁵	Est. Avg. Burden Cost per Respondent (5x6)	Est. Total Annual Burden Hours (1x4)	Total Est. Annual Burden Hour Cost of All Responses (6x8)
<u>Reporting</u> ⁶									
§ 140.99 - request for relief under an interpretative, no-action, or exemptive letter, including any related request for confidential treatment under § 140.98(b).	68	1	68	40	40	\$100	\$4,000	2,720	\$272,000

⁵ The average burden hour cost in this supporting statement was determined to be \$100 per hour. The Commission believes that this is an appropriate salary estimate for the level of staff that would be responsible for preparing and submitting a request for relief under Commission regulation 140.99, including any related request under Commission regulation 140.98. In support of this determination, the Commission notes that the salary estimate is based upon May 2018 Bureau of Labor Statistics’ findings of National Occupation Employment and Wage Estimates, United States, including the mean hourly wage of an employee under occupation code 23-1011, “Lawyers,” that is employed by the “Securities, Commodity Contracts, and Other Financial Investments and Related Activities Industry,” which is \$96.26 and the mean hourly wage of an employee under occupation code 11-3031, “Financial Managers,” in the same industry, which is \$100.56.

⁶ The burden to respondents is primarily a reporting burden requiring the preparation and submission of a request. However, if Commission staff grants a request for relief, it may include certain conditions such as third-party disclosures and recordkeeping requirements. These burdens are related, but not the primary source of the burden for this information collection.