

**SUPPORTING STATEMENT FOR NEW AND
REVISED INFORMATION COLLECTIONS**

OMB CONTROL NUMBER 3038-3033

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.

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 designated contract markets (“DCMs”) and their officials and on futures commission merchants (“FCMs”) and their principals as well as on swap execution facilities (“SEFs”) 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. The Commission, from time to time, participates as *amicus curiae* in private litigation, as it did in *Klein v. Cornelius*, 786 F.3d 1310 (10th Cir. 2015), or to intervene as it did in *Koch Supply & Trading, LP v. Giddens*, 484 B.R. 18 (S.D.N.Y. 2012) and *ConocoPhillips Co. v. Giddens*, 2012 U.S. Dist. LEXIS 144601 (S.D.N.Y. Oct. 4, 2012), where important questions of law are raised in legal proceedings involving the Act and regulations thereunder. 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 DCMs and FCMs pursuant to 17 C.F.R. § 1.60, and the information required to be reported by SEFs in accordance with 17 C.F.R. § 37.2 (which makes the requirement of § 1.60 applicable to SEFs), enables the Commission to more effectively accomplish these objectives.

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.

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 DCMs, FCMs, and SEFs. Without this collection of information, it is expected that the Commission would be hindered in keeping apprised of these legal proceedings in many instances.

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 regulatory language of 17 CFR § 1.60 does allow for “more expeditious means” of submission, such as email.

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.

An alternative would be for the Commission to surveil court systems nationwide (and perhaps in other countries) to identify cases concerning the CEA. However, respondents are in a far superior position to apprise the Commission of pending litigation they are involved in, and to do so in a timely manner and at minimal burden, than independent efforts by the Commission would permit.

5. If the collection of information involves small business or other small entities (Item 5 of OMB from 83-I), 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 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.

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;**

Not applicable.

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

Not applicable.

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

Not applicable.

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

Not applicable.

- **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;**

Not applicable.

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

Not applicable.

- **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 collection does not involve any 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.**

Not applicable.

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.

A Notice of Intent to Extend Information Collection 3038-0033 was published in the *Federal Register* on August 23, 2021 ("Notice"). See 87 FR 47087 (Aug. 23, 2021). The Notice requested comment on the extension of this information collection prior to submission to OMB. No relevant comments were received.

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

Not applicable. 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, 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.

Generally, 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 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.

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. 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.

Rule 1.60 applies to 77 FCMs and DCMs, and applies to 20 SEFs through Rule 37.2. It is estimated that among the 97 entities covered directly and indirectly by Rule 1.60, only one of these entities submits a document to the Commission per three-year period. That number was based on the actual number of submissions received between 2018 and 2021. It is estimated that the time required to prepare the submission or otherwise comply with the Rule is approximately .25 hour per entity, totaling 24.25 hours annually (97 x .25 = 24.25).

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 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.**

This information collection does not involve any new start-up or operations and maintenance costs.

Average salary for a financial manager is \$134,180 per year according to the Bureau of Labor and Statistics (“BLS”). Dividing \$134,180 per year by 80 hours per 2 weeks for 26 pay periods yields \$65 per hour. Since each response takes 15 minutes, or ¼ hour (.25) to complete,

the cost per response is \$16.25. Thus the total estimated annual cost for 97 respondents is \$1576.25 (1 response/year x 97 x \$16.25). *See also* Attachment A.

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.

The current number of registrants, 97, has increased from the previous 79, due to an increase in FCMs and the inclusion of SEFs.¹ Additionally, the time for each entity to comply has been adjusted from .2 to .25 hours.

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.

¹ The requirement in Rule 1.60 is applicable to swap execution facilities ("SEFs") through 17 C.F.R. § 37.2.

Attachment A

OMB Control Number 3038-3033 – Notification of Pending Legal Proceedings

Reporting Burden

Regulation(s)	Estimated Number of Respondents	Reports by Each Respondent	Total Annual Responses	Estimated Average Number of Hours per Response	Estimated Total Annual Number of Hours	Cost per response ²	Total Annual cost of all responses
17 C.F.R. 1.60 & 37.2	97	1	97	.25	24.25	\$16.25	\$1,576.25

²Rule 1.60 is applicable to swap execution facilities (SEFs) through 17 C.F.R. § 37.2