



COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent to Extend Collection

Number 3038-0049: Procedural Requirements for Requests for Interpretative, No-Action, and Exemptive Letters

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (“Commission” or “CFTC”) is announcing an opportunity for public comment on the proposed extension of a collection of certain information by the agency. Under the Paperwork Reduction Act (“PRA”), Federal agencies are required to publish notice in the *Federal Register* concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment. This notice solicits comments on requirements related to requests for, and the issuance of, exemptive, no-action, and interpretative letters.

DATES: Comments must be submitted on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: You may submit comments, identified by “OMB Control Number 3038-0049,” by any of the following methods:

- The CFTC website, at <https://comments.cftc.gov/>. Follow the instructions for submitting comments through the website.
- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail above.

Please submit your comments using only one method. All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to <https://www.cftc.gov>.

FOR FURTHER INFORMATION CONTACT: Rebecca Mersand, Paralegal Specialist, Division of Market Oversight, (202) 941-8910, email: rmersand@cftc.gov; Jacob Chachkin, Associate Chief Counsel, Market Participants Division, (202) 418-5496, email: jchachkin@cftc.gov; or Steven A. Haidar, Assistant Chief Counsel, Division of Market Oversight, (202) 418-5611, email: shaidar@cftc.gov.

SUPPLEMENTARY INFORMATION: Under the PRA, 44 U.S.C. 3501 *et seq.*, Federal agencies must obtain approval from the Office of Management and Budget (“OMB”) for each collection of information they conduct or sponsor. “Collection of Information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3 and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires a Federal agency to provide a 60-day notice in the *Federal Register* concerning each proposed collection of information, including each proposed extension of an existing collection of information before submitting the collection to OMB for approval. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB number.¹ To comply with these requirements, the CFTC is publishing notice of the proposed extension of the currently approved collection of information listed below.

Title: Procedural Requirements for Requests for Interpretative, No-Action, and Exemptive Letters (OMB Control No. 3038-0049). This is a request for an extension of a currently approved information collection.

¹ 44 U.S.C. 3512, 5 CFR 1320.5(b)(2)(i) and 1320.8 (b)(3)(vi).

Abstract: This collection covers the information requirements for voluntary requests for, and the issuance of, interpretative, no-action, and exemptive letters submitted to Commission staff pursuant to the provisions of section 140.99 of the Commission's regulations,² and related requests for confidential treatment pursuant to section 140.98(b)³ of the Commission's regulations.

The collection requirements described herein are voluntary. They apply to parties that choose to request a benefit from Commission staff in the form of the regulatory action described in section 140.99. Such benefits may include, for example, relief from some or all of the burdens associated with other collections of information, relief from regulatory obligations that do not constitute collections of information, interpretations, or extensions of time for compliance with certain Commission regulations. It is likely that persons who would opt to request action under section 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.

This information collection is necessary, and would be used, to assist Commission staff in understanding the type of relief that is being requested and the basis for the request. It is also necessary, and would be used, to provide staff with a sufficient basis for determining whether: (1) granting the relief would be necessary or appropriate under the facts and circumstances presented by the requestor; (2) the relief provided should be conditional and/or time-limited; and (3) granting the relief would be consistent with staff responses to requests that have been presented under similar facts and circumstances. In some cases, the requested relief might be granted upon the condition that those who seek the benefits of that relief fulfill certain conditions that are necessary to ensure that the relief granted by Commission staff is appropriate. Once again, it is likely that those who

² 17 CFR 140.99. An archive containing CFTC staff letters may be found at <http://www.cftc.gov/LawRegulation/CFTCStaffLetters/index.htm>.

³ 17 CFR 140.98(b).

would comply with these conditions will have determined that the burden of complying with the conditions is outweighed by the relief that they seek to receive. This information collection also is necessary to provide a mechanism whereby persons requesting interpretative, no-action, and exemptive letters may seek temporary confidential treatment of their request and the Commission staff response thereto and the grounds upon which such confidential treatment is sought.

With respect to the collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in section 145.9 of the Commission's regulations.⁴

⁴ 17 CFR 145.9.

The Commission reserves the right, but shall have no obligation to, review, pre-screen, filter, redact, refuse or remove any or all of your submission from <https://www.cftc.gov> that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the Information Collection Requirement will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

Burden Statement: The Commission is revising its burden estimate for this information collection. The Commission has based its estimate of the annual number of respondents related to this information collection, in part, on the average number of interpretative, no-action, and exemptive letters issued by Commission staff in 2020, 2021, and 2022. The Commission generally estimates that each request was made by a unique respondent. To that number, the Commission is adding additional respondents that have incurred burden hours preparing requests for relief that did not generate a Commission staff letter in response.

This estimate includes the burden hours for 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 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.

The respondent burden is estimated to be as follows:

Estimated Number of Annual Respondents: 45.

Estimated Average Annual Burden Hours Per Respondent: 40.

Estimated Total Annual Burden Hours: 1,800.

Frequency of Collection: Occasional.

Type of Respondents: Respondents include persons registered with the Commission (such as commodity pool operators, commodity trading advisors, derivatives clearing organizations, designated contract markets, futures commission merchants, introducing brokers, swap dealers, and swap execution facilities), persons seeking an exemption from registration, persons whose registration with the Commission is pending, trade associations and their members, eligible contract participants, and other persons seeking relief from discrete regulatory requirements.

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: February 17, 2023.

Robert Sidman,

Deputy Secretary of the Commission.

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