

## SUPPORTING STATEMENT FOR NEW AND REVISED INFORMATION COLLECTIONS

OMB CONTROL NUMBER 3038-0005

### 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.

Part 4 of the Commission's Regulations sets forth requirements regarding the disclosure of risk, the filing of reports, and the keeping of books and records by commodity pool operators (CPOs) and commodity trading advisors (CTAs). Regulation 4.21 requires that each CPO who is registered or required to be registered and who solicits prospective participants in a commodity pool must, absent an exemption, deliver to prospective participants a Disclosure Document containing the information specified by Regulations 4.24 and 4.25 and must file the Document with the National Futures Association (NFA) as provided by Regulation 4.26 before the CPO may accept funds or other property in exchange for participation in the pool. CTAs similarly must comply with the disclosure requirements of Regulations 4.31, 4.34 and 4.35 and the filing requirement of Regulation 4.36 before they may enter into an agreement to direct or to guide a client's commodity interest trading account.

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 filing requirements of Regulations 4.26 and 4.36 were established to assist customers and to facilitate the Commission and NFA in monitoring compliance with the Part 4 rules. Failure to require the information in this collection would severely hamper these efforts. These records also provide the Commission with its source of independent aggregated financial information concerning the commodity pool industry, which informs the Commission's policy decision making.

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 proposed amendments to Regulations 4.26 and 4.36 being effected along with the update of this collection of information will mandate electronic filing of Disclosure Documents by CPOs and CTAs, which is estimated to slightly increase the total hours required to submit Disclosure Documents initially, but which should ultimately streamline the process of sending, receiving and reviewing the Documents.

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.

No other Division within the agency regulates the solicitation and other activities of the respondents, and NFA is the sole registered futures association. Therefore, duplication in-house and on the self-regulatory level is avoided. Some of the respondents, however, are also registered with the Securities and Exchange Commission (SEC), which has its own disclosure requirements. The regulations include provisions designed, in part, to coordinate the Commission's regulations with those of the SEC applicable to public offerings and exempt offerings set forth in SEC Regulation D.

5. If the collection of information involves small business or other small entities (Item 5 of OMB Form 83-1), describe the methods used to minimize burden.

The Commission has established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such entities in accordance with the RFA. The Commission determined that registered CPOs are not small entities for the purpose of the RFA. With respect to CTAs, the Commission has stated that it would evaluate within the context of a particular rule whether all or some affected CTAs would be considered to be small entities and, if so, the economic impact on them of any rule. The proposed amendment to Regulation 4.36 does not change any substantive requirements for CTAs.

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.

Failure to require this minimum level of disclosure could expose the investing public to greater opportunities for fraud and mismanagement by CPOs and CTAs and would make monitoring the activities of these entities by the Commission and NFA less effective.

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 regulations in question do not require the respondents to report any information to the Commission 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;

Respondents are not required to prepare any written responses.

- 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;

Respondents must maintain certain records in order to demonstrate compliance with the Part 4 regulations. For enforcement purposes, Commission Regulation 1.31 requires that:

"All books and records required to be kept by the (Commodity Exchange) Act or by these regulations shall be kept for a period of five years from the date thereof and shall be readily accessible during the first two years of the five year period. All such books and records shall be open to inspection by any representative of the Commission or the U.S. Department of Justice."

- 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 Regulations do not involve a statistical survey.

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

The Regulations do 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 Regulations do 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 Regulations do not involve submission of proprietary trade secrets or other information to the Commission.

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.

The Regulations, and subsequent revisions thereto, will be published for comment in the Federal Register.

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.

The Commission continues to consult with industry members to assure that the requirements of this information collection are understood and to evaluate at the staff level the usefulness of the data.

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.

No such circumstances occur.

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.

The Commission has provided no assurance of confidentiality above that provided by the agency's Freedom of Information Act regulations, 17 C.F.R. Part 145. Outside of the

Freedom of Information Act, there is no basis for confidential treatment of any of the information governed by these rules.

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 question 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.

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 difference 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 hour 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.

See Attachment A. Depending on the technical expertise of the filer or recordkeeper, the cost to the public of the hour burdens varies between \$10 to \$25 per hour.

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 cost 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 (few 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.

See 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.

The Commission previously has delegated to NFA the authority to receive and to review Disclosure Documents. As such, there is no annualized cost to estimate. Moreover, while Commission staff does engage in periodic oversight review of NFA's activities, the frequency and the numbers and levels of staff are not specifically established or pre-determined – so no definitive answer to Item 14 is available.

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

The proposed regulation amendments are estimated to result in a decrease of 239.5 hours in the number of hours for Disclosure Documents required to be prepared and filed in accordance with Regulations 4.21, 4.24, 4.25, and 4.26 for CPOs and 4.31, 4.34, 4.35, and 4.36 for CTAs. While the average number of hours required for each response will increase as a result of the proposed amendments to Regulations 4.26 and 4.36 (to 3.25 from 2.80 for CPOs and to 1.85 from 1.40 for CTAs), the number of CPOs and CTAs subject to Disclosure Document requirements has decreased since the last PRA filing. This decrease is due to the availability and claiming by CPOs and CTAs of additional registration and disclosure exemptions.

16. For collections 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.

No exceptions exist.

**3038-0005 - RULES RELATING TO THE OPERATIONS AND ACTIVITIES OF COMMODITY POOL OPERATORS AND  
COMMODITY TRADING ADVISORS AND TO MONTHLY REPORTING BY FUTURES COMMISSION MERCHANTS**

	ESTIMATED # OF RESPONDENTS OR RECORDKEEPERS PER YEAR	POOLS BY EACH RESPONDENT	REPORTS ANNUALLY BY EACH POOL OR RESPONDENT, AS APPLICABLE	TOTAL ANNUAL RESPONSES	ESTIMATED AVERAGE NUMBER OF HOURS PER RESPONSE	ESTIMATED TOTAL NUMBER OF HOURS OF ANNUAL BURDEN IN FISCAL YEAR
<b>REPORTING</b>						
4.12(b) (Exemption from Certain CPO Requirements)	25.00		1.00	25.00	0.50	12.50
4.14(a)(8) (Notice of Exemption from CTA Registration)	210.00		1.00	210.00	0.50	105.00
4.5 (Notice of Exclusion from CPO Definition)	1,080.00		1.00	1,080.00	0.50	540.00
4.7 (Notice of Claim for Exemption for Pool Offered to QEPs)	600.00	1.00	1.00	600.00	0.50	300.00
4.7(b)(2) (QEP Pool Periodic Reports)	700.00	3.00	4.00	2,800.00	2.00	5,600.00
4.7(b)(3) (QEP Pool Annual Reports)	700.00	3.00	1.00	2,100.00	7.25	15,225.00
4.13(b)(1) (Disclosures-Exempt CPOs)	1,500.00	1.00	1.00	1,500.00	0.50	750.00
4.13(b)(2) (Reporting-Exempt CPOs)	325.00	1.00	12.00	325.00	0.10	32.50
4.21, 4.26 (CPO Disclosure Documents)	160.00		3.00	480.00	3.25	1,560.00
4.22(a) (Pool Account Statements)	500.00	3.00	9.00	13,500.00	3.85	51,975.00
4.22(c) (Pool Annual Reports)	500.00		3.00	1,500.00	9.25	13,875.00
4.22(f) (Extension for Pool Annual Report)	275.00		1.00	275.00	0.50	137.50
4.31, 4.36 (CTA Disclosure Documents)	450.00		1.00	450.00	1.85	832.50
1.33(d) (FCM Reports)	100.00		12.00	1,200.00	6.00	7,200.00
<b>SUBTOTAL REPORTING</b>	7,125.00		51.00	26,045.00		98,145.00
<b>RECORDKEEPING</b>						
4.7(b)(4) (CPOs)	700.00		1.00	700.00	42.00	29,400.00
4.13(b)(2)(ii) (Exempt CPOs)	325.00		1.00	325.00	13.00	4,225.00
4.23 (CPOs)	500.00		1.00	500.00	52.00	26,000.00
4.33 (CTAs)	464.00		1.00	464.00	18.00	8,352.00
<b>SUBTOTAL RECORDKEEPING</b>	1,289.00			1,289.00		67,977.00
<b>GRAND TOTAL</b>	8,414.00			27,334.00	6.08	166,122.00