

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.

(a) Part 4

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). Each CPO who is registered or required to be registered and solicits prospective participants in a commodity pool must, absent an exemption, deliver to prospective participants, and file with the National Futures Association (NFA), a Disclosure Document containing information specified by 4.24 and 4.25 before the CPO may accept funds or other property in exchange for participation in the pool. CTAs must comply with the disclosure requirements of 4.34 and 4.35 before they may enter into an agreement to direct or to guide a client's commodity interest trading account.

Regulation 4.22 requires that CPOs who are registered or required to be registered also must provide pool participants with an unaudited monthly or quarterly Account Statement for the pool, and an Annual Report for the pool that contains the net asset value of the pool and Statements of Financial Condition, Operations, Changes in Financial Position, and Changes in Ownership Equity. Regulation 4.23 for CPOs, and 4.33 for CTAs specifies the books and records that must be maintained by these registrants.

(b) Section 1.33(d)

Section 1.33(d) requires each futures commission merchant (FCM) to furnish to a person that controls the account of the FCM's customer (e.g., a CTA) the same information that the FCM must furnish to the customers. Without this data, the person controlling the account lacks critical and timely information about the trades executed for the client's 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.

(a) Part 4

The reporting and recordkeeping requirements 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.

(b) Section 1.33(d)

This rule requires FCMs to provide the controllers of customer accounts (such as CTAs) with information on the trades that were executed for their customers' accounts and the execution prices thereof. Failure to require this information collection would deprive controllers of customer's accounts of a significant monitoring tool.

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.

(a) Part 4

In March 2009, the Commission adopted requirements for electronic filing of CTA and CPO disclosure documents. From 1997 to 2009, the Commission permitted voluntary electronic filing of disclosure documents submitted on behalf of CTAs and CPOs. In 2006, the Commission adopted a requirement that commodity pool annual reports be filed electronically, and in 2007, the Commission adopted requirements that exemption notices under Part 4 be submitted electronically. The Commission and NFA permit electronic filings to minimize the burden on registrants and to streamline the process of sending, receiving and reviewing the filings.

(b) Section 1.33(d)

The Commission has determined that such information may be furnished in writing or by electronic media.

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.

(a) Part 4

No other Division within the agency regulates the solicitation and other activities of the respondents. Therefore, duplication in-house 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.

(b) Section 1.33(d)

No other Division within the agency and no other agency regulate the disclosure of this type of information. Therefore, duplication is avoided.

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 Part 4 rule amendments do not change any 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 entities in these two categories and would make monitoring 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 rule in question does not require the respondent to report any information to the Commission more often than monthly.

- 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 Rule 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 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 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 rules, and subsequent revisions thereto, were 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.

2.2 years attorney's time @ 26.41/hr. = 4591.14 (hrs) x \$26.41
\$121,252

1.0 years secretary's time @ 8.76/hr. = 2087.0 (hrs) x 8.76
\$18,282.12

2.4 years auditor's time @ 17.20/hr. = 5008.8 (hrs) x 17.20
\$96,151.36

Total = \$225,685.48

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

The proposed amendments will modify existing regulatory requirements by clarifying information that must be included in required periodic and annual reports. The expected effect of the proposed amended regulations will be to increase slightly the burden for this collection of information due to including specific fee and expense information in annual reports for funds of funds. This increase affects only annual reports for pools that invest in other funds and therefore are required to include the additional fee and expense information, and does not affect reports for pools that do not invest in other funds. In addition, because the previous submission of this collection contained a calculation error with respect to the total number of respondents, the burden has been recalculated and the corrected numbers are included in the current estimate.

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.

Attachment A

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 RECORD KEEPERS PER YEAR	POOLS BY EACH RESPONDEN T	REPORTS		ESTIMATED AVERAGE NUMBER OF HOURS PER RESPONSE	ESTIMATED TOTAL NUMBER OF HOURS OF ANNUAL BURDEN IN FISCAL YEAR
			ANNUALLY BY EACH POOL OR RESPONDENT, AS APPLICABLE	TOTAL ANNUAL RESPONSES		
REPORTING						
4.12(b) (Exemption from Certain CPO Requirements)	25		1	25	0.5	12.50
4.14(a)(8) (Notice of Exemption from CTA Registration)	210		1	210	0.5	105.00
4.5 (Notice of Exclusion from CPO Definition)	1,080.00		1	1,080.00	0.5	540.00
4.7 (Notice of Claim for Exemption for Pool Offered to QEPs)	600	1	1	600	0.5	300.00
4.7(b)(2) (QEP Pool Periodic Reports)	700	3	4	2,800.00	2	5,600.00
4.7(b)(3) (QEP Pool Annual Report)	700	3	1	2,100.00	7.58	15,918.00
4.13(b)(1) (Disclosures- Exempt CPOs)	1,500.00	1	1	1,500.00	0.5	750.00
4.13(b)(2) (Reporting- Exempt CPOs)	325	1	12	325	0.1	32.50
4.21, 4.26 (CPO Disclosure Documents)	160		3	480	3.25	1,560.00
4.22(a) (Pool Account Statements)	500	3	9	13,500.00	3.85	51,975.00
4.22(c) (Pool Annual Reports)	500		3	1,500.00	9.58	14,370.00
4.22(f) (Extension for Pool Annual Report)	275		1	275	0.5	137.50
4.31, 4.36 (CTA Disclosure Documents)	450		1	450	1.85	832.50
1.33(d) (FCM Reports)	100		12	1,200.00	6	7,200.00
SUBTOTAL REPORTING	7125.00			26045.00		99333.00
RECORDKEEPING						
4.7(b)(4) (CPOs)	700		1	700	42	29,400.00
4.13(b)(2)(ii) (Exempt CPOs)	325		1	325	13	4,225.00
4.23 (CPOs)	500		1	500	52	26,000.00
4.33 (CTAs)	464		1	464	18	8,352.00
SUBTOTAL RECORDKEEPING	1989.00			1989.00		67977.00
GRAND TOTAL	9114.00			28034.00		167310.00