

## 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.

The Commodity Exchange Act (“CEA”) empowers the Commission with the authority to require commodity pool operators (CPOs) and commodity trading advisors (CTAs) to maintain books and records and to file reports as required by the Commission. The Commission also has the power to promulgate such regulations as it deems necessary to implement the purposes of the CEA. It is pursuant to this authority that the Commission has promulgated the current reporting requirements for CPOs in Part 4 of the Commission’s regulations.

Pursuant to Regulation 4.27 a CPO must file on a quarterly basis a report on Form CPO-PQR with respect to pool assets. The instructions for Form CPO-PQR require that financial information be presented and computed in accordance with generally accepted accounting principles (“U.S. GAAP”).

In November 2016, the Commission amended Regulation 4.22 to provide to eligible CPOs an optional alternative to complying with the requirement to compute and present the financial statements in a pool Annual Report in accordance with U.S. GAAP (or in accordance with IFRS) (*see* 81 Fed. Reg. 85147 (November 25, 2016)). At the same time, the Commission provided that a CPO electing to use a permitted alternative to U.S. GAAP could also present and compute the financial information in Form CPO-PQR in accordance with the same alternative accounting principles, standards or practices elected for purposes of the CPO’s pool Annual Report. Accordingly, a corresponding revision of the instructions for Form CPO-PQR is required. Under this collection, it has not been necessary to revise the existing burden figures because the amendment to the instructions for Form CPO-PQR does not increase or decrease the paperwork burden.

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.

Form CPO-PQR is necessary and used by Commission staff and staff of the National Futures Association (“NFA”) to monitor the risks posed by CPOs in the commodity futures and derivatives markets.

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.

Form CPO-PQR is required to be filed electronically by means of NFA's Internet web site.

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.

The information called for in Form CPO-PQR is not otherwise available to the Commission on a quarterly basis.

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.

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.

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 Part 4's disclosures, filings, and recordkeeping could expose the investing public to greater opportunities for fraud and mismanagement 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 rules in question do not require the respondent 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 because all responses are to be submitted electronically.

- 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 rules do not involve a statistical survey.

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

The rules do not involve the 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 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 rules do not involve a pledge of confidentiality that is not supported by authority established in statute or regulation or the submission of proprietary trade secrets or other confidential information. 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.

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 C.F.R. 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 proposed amendment to Form CPO-PQR was published in the *Federal Register* on November 25, 2016, 81 FR 85209 and public comment on the Commission's discussion of the paperwork burden considerations was solicited in that release on page 85209. No comments were received.

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 has consulted with staff of NFA regarding electronic submission of the amended Form CPO-PQR. The Commission determined to amend the instructions for Form CPO-PQR in response to public comment received in response to its proposal to amend Regulation 4.22 (*see* 81 Fed. Reg. 85147, 85149).

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every three 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 with respect to this collection.

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, regulations, or agency policy.

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 regulations covered by this collection do not require the giving of sensitive information, as the 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.

The amendment to the instructions for Form CPO-PQR does not increase or decrease the existing burden of this collection.

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.

The amendment to the instructions for Form CPO-PQR does not increase or decrease the existing burden of this collection.

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.

This question does not apply.

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

The amendment to the instructions for Form CPO-PQR does not increase or decrease the existing burden of this collection.

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.

No exceptions exist.