

SUPPORTING STATEMENT FOR NEW AND REVISED INFORMATION COLLECTIONS

OMB CONTROL NUMBER 3038-0023

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.

Persons engaging in specified activities involving some or all commodity interests are required pursuant to the Commodity Exchange Act (CEA or Act) and/or regulations of the Commodity Futures Trading Commission (Commission) to register with the Commission in certain registration categories. These include registration as a futures commission merchant, retail foreign exchange dealer, introducing broker, commodity pool operator (CPO), commodity trading advisor (CTA), swap dealer, major swap participant, leverage transaction merchant, floor broker, and floor trader. For definitions of terms used herein, please see section 1a of the CEA and parts 1 and 5 of the Commission's regulations, all of which are found in title 17 of the Code of Federal Regulations.

The CEA empowers the Commission with the authority to deny, revoke, or condition registration of CPOs and CTAs and to exclude any entity from the definition of CPO or CTA. 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 promulgated various exemptions from registration as a CPO as well as exclusions from the definition of CPO. The registration application, which must be updated as necessary, requires information about an applicant's or registrant's disciplinary history, so that the person's fitness for registration may be evaluated. In addition, basic identifying information is required so that a database will be available to current and prospective customers, the public and news media.

Following the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) in 2010, and consistent with its tenor, the Commission reconsidered the level of regulation that it believed appropriate with respect to entities participating in the commodity interest markets. The Commission believed it necessary to rescind or modify several of its registration exemptions and definitional exclusions with an aim to more effectively oversee its market participants and manage the risks that such participants pose to the markets the Commission regulates. After several years of becoming more familiar with the various types of entities that were initially captured within the Commission's jurisdiction post-Dodd-Frank and adjusting to the subsequent regulatory changes, the Commission has determined to propose via rulemaking several new exemptions and an exclusion that generally would provide relief from CPO and/or CTA registration and compliance. Accordingly, the Commission is proposing to amend this collection to reflect the deregistration of entities that were previously subject to registration as CPOs and/or CTAs under the CEA and the Commission's regulations. The expected burdens for registering have not changed under this collection, or its current revision,

but the Commission projects a decrease in the number of registrants consistent with its modifications in this proposed rule, and therefore, a decrease in the overall 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.

The information on registration applications is used to determine fitness for registration under the Act. This determination is normally made, in the first instance, by the National Futures Association (NFA), an industry-funded self-regulatory organization registered as a futures association under the Act that the Commission has authorized to perform registration functions. The information on registration applications is used to develop the NFA database known as BASIC (Background Affiliation Status Information Center), which is Internet-accessible and consulted frequently by customers, prospective customers, the general public and the news media to review data provided by applicants and registrants and to compare it to information provided by entities making solicitations. Notices filed to claim relief from registration, whether through exemption or exclusion, are used to assess the continued propriety of maintaining the applicable provision as is, or whether amendments are necessary to effectuate the Commission's obligations under the CEA.¹

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 information is collected electronically to the extent possible. Certain data, such as fingerprint cards, are generally provided by paper, although submission of fingerprints digitally has begun. The Commission anticipates that nearly 100% of the collection of information will be submitted electronically in the future.

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.

Information of the type required to be collected as part of the registration process is not otherwise collected by the Commission or other agency. If an applicant concurrently or recently (within the preceding 90 days) submits a fingerprint card to another federal agency (*e.g.*, the Securities and Exchange Commission), another set of fingerprints is not required.

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.

Information required by the registration process is essentially limited to statutorily mandated information or basic identifying data. Furthermore, with respect to CPOs exempt from

¹ The burden associated with the notice filings is reflected in the supporting statement and calculations associated with Collection 3038-0005.

registration, the Commission has previously determined that a CPO is a small entity if it meets the criteria for exemption from registration under current Regulation 4.13(a)(2). Such CPOs continue to qualify for exemption from registration with the Commission; however, they continue to have an annual notice filing obligation to confirm their eligibility for such registration exemption. The Commission still estimates that the time required to complete the annual notice filing does not amount to a significant time expenditure, and therefore, does not create a significant economic impact on a substantial number of small entities.

With respect to CTAs, the Commission has previously considered whether such registrants should be deemed small entities for purposes of the RFA on a case-by-case basis, in the context of the particular Commission regulation at issue. Moreover, with respect to the exemption from CTA registration in these proposed rules, the Commission has determined to make claiming such exemption self-effectuating and to forego any notice filing to claim the relief, a practice that is consistent with the majority of CTA exemptions in Regulation 4.14.

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 collection is only required once. Moreover, it is mandated by law.

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 covered by this collection do not require the respondent to report any information to the Commission more often than quarterly, or even as often as quarterly. However, updating of information is required whenever necessary to maintain accurate and current registration information.

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

This question does not apply.

- **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 Commission's regulations. For enforcement purposes, Commission Regulation 1.31 defines

“regulatory records,” in pertinent part, as “all books and records required to be kept by the [CEA] or Commission regulations in this chapter,” and requires that such regulatory records be kept “for a period of not less than five years from the date on which the record was created,” and “in a form and manner that ensures the authenticity and reliability of such regulatory records in accordance with the [CEA] and Commission regulations in this chapter.”

- **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 covered by this collection do not involve statistical surveys.

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

The regulations covered by this collection 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**

The regulations covered by this collection 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 Commission has procedures to protect the confidentiality of a respondent's information. These are set forth in the Commission's regulations at parts 145 and 147.

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.

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.

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.

In the proposing Federal Register release, the Commission is seeking input from outside sources through the public comment process on any aspect of the proposed collection of information.

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 CEA, which strictly prohibits the Commission, unless specifically authorized by the 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 a respondent’s data. These are set forth in the Commission’s regulations at parts 145 and 147.

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.

This question does not apply. None of the required information is sensitive, 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.**

See Attachment A. The Commission is proposing to reduce the number of registrants by the estimated number of claimants with respect to each of the registration exemptions and exclusion proposed today. Specifically, the Commission estimates 50 persons will claim relief from CPO registration under the 18-96 Exemption, 200 persons will claim relief from registration as the CPO of a qualifying Family Office, 100 persons will claim relief from registration as the CTA of a qualifying Family Office or Family Clients, and 50 persons will claim relief from registration associated with the operation of a BDC pursuant to the expanded exclusion in § 4.5.

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.**

There are no startup and operational costs associated with 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.

As noted above in the response to Question 2, the information on registration applications is used to determine fitness for registration under the Act. This determination is normally made, in the first instance, by NFA, an industry-funded self-regulatory organization registered as a futures association under the Act that the Commission has authorized to perform registration functions. The CFTC has oversight responsibilities with regard to NFA's registration program, and the costs associated with this are the salaries and benefits for Commission staff. The proposed rules should not add to these existing costs, because the information collected hereunder will remain the same; as stated above, this Collection is only being revised to reduce the number of entities subject to CPO and/or CTA registration, by virtue of the exemptions and exclusion for CPOs and CTAs proposed by the Commission.

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

Overall, estimated burden hours are decreased due to a decrease in the number of persons expected to apply for and maintain registration as a result of the proposed rulemaking. The total number of registrants is expected to decrease from year to year due to several factors, including, among other things, the adoption by the Commission of regulations that provide additional exemptions and exclusions from the requirement to register as a CPO or CTA, and the industry trend away from open outcry trading to electronic trading.

On Attachment A, the estimated number of respondents or recordkeepers per year does not correspond to the total annual responses because in many cases, a respondent registers with the Commission in more than one capacity. For example, a CPO may also register as a CTA, or a CTA may also register as an associated person. See Attachment A.

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.

This question does not apply.

Attachment A

1. Regulation	2. Estimated No. of Respondents	3. Estimated No. of Reports by Each Respondent	4. Estimated Average No. of Burden Hours per Response	5. Annual No. of Burden Hours per Respondent (3 x 4)	6. Estimated Average Burden Hour Cost ²	7. Total Average Burden Hour Cost Per Respondent (5 x 6)	8. Total Annual Responses (2 x 3)	9. Total Annual Burden Hours (2 x 5)	10. Total Annual Burden Hour Cost of All Responses (2 x 7)
3.21(e) Third Party Disclosure	198	1	2	2	\$57	\$114	198	396	\$22,572
3.21(e) Recordkeeping	198	1	.5	.5	\$57	\$28.5	198	99	\$5,643
Total Burden Hours/Cost:								495	\$28,215

² The Commission notes that the salary estimates are based upon the May 2017 Findings of National Occupational Employment and Wage Estimates from the Bureau of Labor Statistics. See Occupational Employment Statistics, Bureau of Labor Statistics, [available at https://www.bls.gov/oes/](https://www.bls.gov/oes/) (last visited July 23, 2018). The Commission’s estimate incorporates the mean hourly wage of persons employed in the “Securities, Commodity Contracts and Other Financial Investments and Related Activities” Industry, under the following occupation codes: Compliance Officers (13-1041) at \$43.27, Lawyers (23-1011), at \$94.20, and Paralegals and Legal Assistants (23-2011) at \$33.53. The Commission chose these occupational categories in recognition of the types of staff the Commission preliminarily believes would most commonly be responsible for evaluating eligibility and filing claims for the registration exemptions proposed herein. The \$57 per hour wage estimate is derived from a weighted average, rounded to the nearest dollar, with the salaries attributable to each of the three occupation codes given equal weight.

Total annual costs presented herein are rounded to the nearest dollar.

1. Regulation	2. Estimated No. of Respondents	3. Estimated No. of Reports by Each Respondent	4. Estimated Average No. of Burden Hours per Response	5. Annual No. of Burden Hours per Respondent (3 x 4)	6. Estimated Average Burden Hour Cost	7. Total Average Hour Burden Cost Per Respondent (5 x 6)	8. Total Annual Responses (2 x 3)	9. Total Annual Burden Hours (8 x 5)	10. Total Annual Burden Hour Cost of All Responses (8 x 7)
Part 3 (except 3.21(e))	77,457	1	0.09	0.09	\$57	\$5.13	77,689	6,992	\$398,544
Total Burden Hours/Cost:							77,689	6,992	\$398,544