

## 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 or Act) 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, all of which are found in title 17 of the Code of Federal Regulations.

The disclosure, filing, and recordkeeping requirements within part 4 of the Commission's regulations were established to assist customers, to facilitate the Commission and the National Futures Association (NFA) in monitoring compliance with the part 4 rules, and to enable the Commission to better monitor the market risks posed by the Commission's registrants. The information collections are necessary to enable the Commission and NFA to accomplish the purposes of the compliance regime set forth in part 4 of the Commission's regulations.

Following the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) 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. In 2012, the Commission adopted Regulation 4.27, which requires registered CPOs to report certain information on its Form CPO-PQR.<sup>1</sup> In the intervening seven years, the Commission has also developed a regime for reporting detailed information about commodity interest trading by market participants, including CPOs and the pools they operate. The Commission believes that the reporting available from other sources enables it to oversee the activities of CPOs in the commodity interest markets, thereby obviating the need to continue collecting less timely, and therefore necessarily less actionable, information on Form CPO-PQR. The Commission further recognizes that the analytics used by NFA to determine its examination schedule for CPOs are robust and provide a strong, data-driven basis for conducting oversight of CPOs. Accordingly, the Commission proposed via Notice of Proposed Rulemaking (NPRM) to streamline Form CPO-PQR in a manner that it expects will better focus Commission efforts on the most useful data collected by the form and potentially improve overall data quality.<sup>2</sup> After considering the proposed amendments and comments received, the Commission adopted these

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<sup>1</sup> The adoption of Form CPO-PQR was driven by concerns reflected in the Dodd-Frank Act following the 2008 financial crisis.

amendments as final at a public Commission meeting recently held on October 6, 2020 (CPO-PQR Final Rule).

Specifically, the Commission adopted revisions to Form CPO-PQR that simplify its structure and content by: (a) eliminating existing Schedules B and C of Form CPO-PQR, except for the Pool Schedule of Investments; (b) amending the remaining information requirements and instructions to request Legal Entity Identifiers for CPOs and their operated pools that have them, and to delete questions regarding pool auditors and marketers; and (c) making certain other changes to the form due to the rescission of Schedules B and C, including the elimination of all reporting thresholds. The Commission is also requiring all registered CPOs to file Form CPO-PQR, as revised by the attached CPO-PQR Final Rule, on a quarterly basis, with the NFA's own Form PQR additionally accepted by the Commission as substituted compliance.<sup>3</sup> The purpose of this Supporting Statement is to amend this information collection, such that its burden hour estimates are consistent with the restructuring and amendments to Form CPO-PQR, and reflect the expected adjustment in burden hours for registered CPOs filing the revised form.

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 disclosure, filing, and recordkeeping requirements within part 4 of the Commission's regulations were promulgated to establish customer protection initiatives for investors, to facilitate the Commission and NFA in monitoring compliance with the part 4 rules, and to enable the Commission to better monitor the market risks posed by the Commission's registrants. 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.

In March 2009, the Commission adopted requirements for electronic filing of CTA and CPO disclosure documents with NFA. 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. In 2012, the Commission adopted the requirement for electronic filing of Forms CPO-PQR and CTA-PR, as well as the annual affirmations of exemptions from CPO and CTA registration. The

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<sup>2</sup> Amendments to Compliance Requirements for Commodity Pool Operators on Form CPO-PQR, 85 FR 26378 (May 4, 2020).

<sup>3</sup> 17 CFR 4.27(c)(2), added by the CPO-PQR Final Rule.

Commission and NFA permit electronic filings to minimize the burden on registrants and to streamline the process of sending, receiving, and reviewing the filings.

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 duplication in-house is therefore avoided. Some of the respondents, however, are also registered with the Securities and Exchange Commission (SEC), which has its own requirements. However, the information collected is neither already collected by the SEC or any other agency, nor is the SEC form adaptable for Commission purposes.

5. If the collection of information involves small business or other small entities 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 Regulatory Flexibility Act (“RFA”). The Commission determined that registered CPOs are not small entities for the purpose of the RFA. With respect to CPOs exempt from 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). Because the attached CPO-PQR Final Rule adopts regulations that apply to persons registered with the Commission as CPOs, and by providing them relief from the current compliance burdens of existing Form CPO-PQR, the Commission generally believes the RFA is not impacted, and is therefore not applicable.

Notwithstanding the CPO-PQR Final Rule, qualifying CPOs continue to qualify for exemption from registration with the Commission, and therefore, are not required to report on Form CPO-PQR; 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, as amended in the manner discussed above, 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. Form CTA-PR is required of all registered CTAs, which necessarily includes entities that the Commission would consider small. The majority of the information requested on Schedule A is information that is readily available to the CTA or readily calculable by the CTA, regardless of size. The Commission previously determined that Form CTA-PR does not create a significant economic impact on a substantial number of small entities, due to the minimal amount of information requested.

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, who could, as a consequence, be less informed as to the status or performance of their investments, to greater opportunities for fraud and mismanagement by entities acting as CPOs or CTAs, 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 will 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 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 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

The rules do not involve a pledge of confidentiality that is not supported by authority established in statute or regulation.

- 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 involve submission of proprietary trade secrets to the Commission with respect to the information requested on Forms CPO-PQR and CTA-PR regarding position information, trading strategy, and stress testing. 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.

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.

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 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.

The Commission sought public comment in the proposing Federal Register release on all aspects of the NPRM, and in particular, any aspect of the proposed amendments to this information collection. 85 FR 26378, 26386 (May 4, 2020). The Commission received no specific comments on the NPRM's Paperwork Reduction Act analysis, and through the CPO-PQR Final Rule, the Commission is adopting the amendments largely as proposed.

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 other than 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 CEA, 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.

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. The regulations covered by this collection do not require sensitive or private 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.
- 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.

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.

This information collection does not result in any annualized costs to the Federal Government.

15. Explain the reasons for any program changes or adjustments.

The Commission is no longer estimating burden hours for each individual Schedule of Form CPO-PQR because, pursuant to the Final Rule, Schedule A, along with the “Schedule of Investments” from Schedule B, will be the only surviving portions of Form CPO-PQR. Therefore, the Commission is amending this information collection to include a single burden hours estimate for Form CPO-PQR for each registered CPO completing the revised form in its entirety. The Commission believes further that the “Schedule of Investments” comprised a considerable portion of the burden hours previously associated with completing Schedule B. Although the only surviving portion of the form will be technically former Schedule A, the Commission is adjusting the average hours per response to reflect the inclusion of the Schedule of Investments therein. The burden hour estimate for Form CPO-PQR has been revised to make this information collection accurately reflect the recently finalized amendments to Form CPO-PQR. Therefore, the burden calculations presented in this Supporting Statement will be a more accurate estimate of the total burden hours under this information 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.

No exceptions exist.



## Attachment A

### OMB Control Number 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<sup>4</sup>

#### Reporting Burden

1. Regulation(s)	2. Estimated Number of Respondent s	2.a Estimated Number of Pools per Respondent	3. Estimated Number of Reports by Each Respondent	4. Estimate d Average Number of Burden Hours per Response	5. Annual Number of Burden Hours per Responden t (3 x 4)	6. Estimated Average Burden Hour Cost <sup>5</sup>	7. Total Average Hour Burden Cost Per Respondent (5 x 6)	8. Total Annual Response s (2 x 3)	9. Total Annual Number of Burden Hours (2 x 5)	10. Total Annual Burden Hour Cost of All Responses (2 x 7)
4.12(b)	10	1	1	.5	.5	\$57	\$28.5	10	5	\$285

<sup>4</sup> OMB control number 3038-0005 covers two separate Information Collections (“IC”): Part-4 Commodity Pool Operators and Commodity Trading Advisors IC and Commodity Pool Operator Annual Report IC. The estimates in this Attachment A reflect changes made by the CPO-PQR Final Rule to the current active information collection estimates for the Part-4 Commodity Pool Operators and Commodity Trading Advisors IC, approved by OMB on March 6, 2020 (ICR Reference No. 201912-3038-001).

<sup>5</sup> 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/> (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 and exclusion 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(s)	2. Estimated Number of Respondents	2.a Estimated Number of Pools per Respondent	3. Estimated Number of Reports by Each Respondent	4. Estimated Average Number of Burden Hours per Response	5. Annual Number 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 Number of Burden Hours (2 x 5)	10. Total Annual Burden Hour Cost of All Responses (2 x 7)
4.12(d)	418	3	3	2	6	\$57	\$342	1,254	2,508	\$142,956
4.12(c)	368		1	15	15	\$57	\$855	368	5,520	\$314,640
4.14(a)(8)	300		1	.5	.5	\$57	\$28.5	300	150	\$8,550
4.5	7,955	1	1	.5	.5	\$57	\$28.5	7,955	3,978	\$226,718
4.7	3,900	1	1	.5	.5	\$57	\$28.5	3,900	1,950	\$111,150

1. Regulation(s)	2. Estimated Number of Respondents	2.a Estimated Number of Pools per Respondent	3. Estimated Number of Reports by Each Respondent	4. Estimated Average Number of Burden Hours per Response	5. Annual Number 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 Number of Burden Hours (2 x 5)	10. Total Annual Burden Hour Cost of All Responses (2 x 7)
4.7(b)(3)	3,900	3	12	2	24	\$57	\$1,368	46,800	93,600	\$5,335,200
4.7(b)(4)	3,900	3	3	9.58	28.74	\$57	\$1,638	11,700	112,086	\$6,388,902
4.13(b)(1)	8,600	3	3	.3	1	\$57	\$57	25,800	8,600	\$490,200
4.21, 4.26	180		1.8	2.88	5.2	\$57	\$296	324	936	\$53,280
4.22(a)	180	1.5	13.5	3.85	52	\$57	\$2,964	2,430	9,360	\$533,520

1. Regulation(s)	2. Estimated Number of Respondents	2.a Estimated Number of Pools per Respondent	3. Estimated Number of Reports by Each Respondent	4. Estimated Average Number of Burden Hours per Response	5. Annual Number 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 Number of Burden Hours (2 x 5)	10. Total Annual Burden Hour Cost of All Responses (2 x 7)
4.22(c)	180	1.5	1.5	9.58	14.37	\$57	\$819	270	2,587	\$147,436
4.22(d)(2) <sup>6</sup>	10	1.5	1.5	1	1.5	\$57	\$85.5	15	15	\$855
4.22(f)	962	1	1	.5	.5	\$57	\$28.5	962	481	\$27,417
4.22(g)(2)(ii) <sup>7</sup>	12	1	1	2	2	\$57	\$114	12	24	\$1,368

<sup>6</sup> This estimate is accounted for in the separate Commodity Pool Operator Annual Report IC under OMB control no. 3038-0005 and is not affected by the CPO-PQR Final Rule.

<sup>7</sup> This estimate is accounted for in the separate Information Collection (Commodity Pool Operator Annual Report) under OMB control no. 3038-0005 and is not affected by the CPO-PQR Final Rule.

1. Regulation(s)	2. Estimated Number of Respondents	2.a Estimated Number of Pools per Respondent	3. Estimated Number of Reports by Each Respondent	4. Estimated Average Number of Burden Hours per Response	5. Annual Number 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 Number of Burden Hours (2 x 5)	10. Total Annual Burden Hour Cost of All Responses (2 x 7)
4.31, 4.36	450		1	1.85	1.85	\$57	\$105	450	833	\$47,453
1.33(d)	100		12	6	72	\$57	\$4,104	1,200	7,200	\$410,400
4.27 (Form CPO-PQR or NFA Form PQR)	1,700		4	8	32	\$57	\$1,824	6,800	54,400	\$3,100,800
4.27 (Form CTA-PR)	880		1	.5	.5	\$57	\$28.5	880	440	\$25,080
<b>Total Burden Hours/Cost:</b>									304,673	\$17,366,310

## Recordkeeping Burden

1. Regulation(s)	2. Estimated Number of Respondents	3. Estimated Number of Reports by Each Respondent	4. Estimated Average Number of Burden Hours per Response	5. Annual Number 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 Number of Burden Hours (2 x 5)	10. Total Annual Burden Hour Cost of All Responses (2 x 7)
4.7(b)(5)	3,900	1	2	2	\$57	\$114	3,900	7,800	\$444,600
4.7(c)(2)	1,278	4	2	8	\$57	\$456	5,112	10,224	\$582,768
4.13(c)(1)(i) and(ii)	8,800	1	11.4	11.4	\$57	\$650	8,800	100,320	\$5,718,240
4.23(CPOs of Registered Investment Companies)	418	1	2	2	\$57	\$114	418	836	\$47,652
4.23 (except CPOs of Registered Investment Companies and 4.23(c))	180	1	2	2	\$57	\$114	180	360	\$20,520

1. Regulation(s)	2. Estimated Number of Respondents	3. Estimated Number of Reports by Each Respondent	4. Estimated Average Number of Burden Hours per Response	5. Annual Number 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 Number of Burden Hours (2 x 5)	10. Total Annual Burden Hour Cost of All Responses (2 x 7)
4.33	450	1	18	18	\$57	\$1,026	450	8,100	\$461,700
<b>Total Burden Hours/Cost :</b>								127,640	\$7,275,480