



## COMMODITY FUTURES TRADING COMMISSION

### Agency Information Collection Activities: Notice of Intent to Revise Collection

### 3038-0005, Adoption of Revised Notice of Exemption under Regulation 4.13(b)(1)

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice.

**SUMMARY:** The Commodity Futures Trading Commission (CFTC or Commission) is announcing an opportunity for public comment on the recent revision to the collection of certain information by the Commission. Under the Paperwork Reduction Act (PRA), Federal agencies are required to publish notice in the *Federal Register* concerning each proposed collection of information and to allow 60 days for public comment. The Commission revised its regulation requiring the filing of a notice of exemption by persons seeking to claim relief from registration as a commodity pool operator (CPO). This *Federal Register* notice solicits comments on the PRA implications of the revision to that required notice of exemption, including comments addressing adjustments in burden to the relevant information collection requirement of the revised exemption notice.

**DATES:** Comments must be submitted on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** You may submit comments, identified by “OMB control number 3038-0005; Adoption of Revised Notice of Exemption under 17 CFR 4.13(b)(1),” by any of the following methods:

- *CFTC Comments Portal*: <https://comments.cftc.gov>. Select the “Submit Comments” link for this notice and follow the instructions on the Public Comment Form.
- *Mail*: Send to Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.
- *Hand Delivery/Courier*: Follow the same instructions as for Mail, above.

Please submit your comments using only one of these methods. Submissions through the CFTC Comments Portal are encouraged.

All comments must be submitted in English or, if not, be accompanied by an English translation. Comments will be posted as received to <https://comments.cftc.gov>. You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act (FOIA), a petition for confidential treatment of the exempt information may be submitted according to the procedures established in Commission regulation 145.9.<sup>1</sup>

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse, or remove any or all of your submission from <https://comments.cftc.gov> that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the information collection request will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the FOIA.

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<sup>1</sup> 17 CFR 145.9.

**FOR FURTHER INFORMATION CONTACT:** Joshua Sterling, Director, (202) 418-6700, [jsterling@cftc.gov](mailto:jsterling@cftc.gov); Amanda Olear, Deputy Director, (202) 418-5283, [aolear@cftc.gov](mailto:aolear@cftc.gov); or Elizabeth Groover, Special Counsel, (202) 418-5985, [egroover@cftc.gov](mailto:egroover@cftc.gov), Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, DC 20581.

**SUPPLEMENTARY INFORMATION:** Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. “Collection of Information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3 and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the *Federal Register* concerning each proposed collection of information before submitting the collection to OMB for approval. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB number. The Commission believes that its revision of the notice of exemption required by Regulation 4.13(b)(1), as discussed further below, results in a collection of information within the meaning of the PRA. As such, the Commission is publishing for notice and comment the following revisions to the information collection associated with that notice.

**Title:** Rules Relating to the Operations and Activities of Commodity Pool Operators and Commodity Trading Advisors and to Monthly Reporting by Futures Commission Merchants (OMB control number 3038-0005). This is a request for extension and revision of this currently approved information collection.

**Abstract:** The Commission recently revised the notice of exemption required by Regulation 4.13(b)(1) of any person who desires to claim the relief from CPO registration.<sup>2</sup> The various collections of information required by part 4 of the Commission's regulations, including the notice required by Regulation 4.13(b)(1), were previously approved by OMB in accordance with the PRA and assigned OMB control number 3038-0005. The Commission offers the following summary of the revision to the notice and the resulting estimated impact on existing burden hour estimates associated with this information collection.

***Revision to the Notice of Exemption***

On June 4, 2020, the Commission adopted an amendment to Regulation 4.13(b)(1) that added a representation to the notice already required to be electronically filed with the Commission by persons claiming an exemption from CPO registration thereunder.<sup>3</sup> With that amendment, the Commission is requiring persons filing a notice of exemption thereunder to also represent that neither the person nor any of its principals has in its background a statutory disqualification listed in section 8a(2) of the Commodity Exchange Act (CEA or Act) that would require disclosure, if the person sought registration. Subject to one limited exception, the amended regulation provides that a person who has, or whose principals have, in their backgrounds a statutory disqualification under CEA section 8a(2) will generally be prohibited from claiming an exemption from CPO registration under Regulation 4.13. The Commission intended this amendment to eliminate the inconsistent treatment of exempt CPOs as compared to

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<sup>2</sup> 17 CFR 4.13(b)(1).

<sup>3</sup> Amendments to Registration and Compliance Requirements for Commodity Pool Operators and Commodity Trading Advisors: Prohibiting Exemptions under Regulation 4.13 on Behalf of Persons Subject to Certain Statutory Disqualifications, 85 FR 40877 (July 8, 2020) (Statutory Disqualifications Final Rule).

registered CPOs (and the principals thereof), whereby certain persons could avoid the CEA's basic conduct requirements established for all persons registering as intermediaries with the Commission by claiming an exemption from CPO registration instead. Ultimately, the Commission's stated purpose in adopting this amendment was to improve the customer protection and general investor confidence experienced by exempt pool participants.

The Commission noted in the Statutory Disqualifications Final Rule that the amendment in its proposed form had not implicated an additional or existing collection of information, and thus, the proposed regulation was not considered in the PRA context.<sup>4</sup> Because the Statutory Disqualifications Final Rule resulted in a representation being added to the existing notice filing in Regulation 4.13(b), the Commission determined that this amendment constitutes the modification of an existing information collection; as such, its PRA implications are being considered in this separately published notice.

By adding this representation to the notice of exemption, the Commission recognizes that the existing information collection burden for that notice, currently 0.1 hours, is expected to increase. The Commission estimates that the representation would add a total of 0.2 burden hours to the information collection burdens currently estimated for the notice of exemption under Regulation 4.13(b)(1), for an aggregate total of 0.3 burden hours. Additionally, the Commission estimates that currently, approximately 8,600 respondents would claim an exemption via the Regulation 4.13(b)(1) notice filing.

### ***Invitation to Comment***

Regarding the information collection discussed above, the CFTC invites comments on:

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<sup>4</sup> Statutory Disqualifications Final Rule, 85 FR 40887.

- Whether the proposed revision to the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission’s estimate of the burden of the proposed revision to the collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of collection of information on those who are to respond, including through the further use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

**Burden Statement:** As explained above, the Commission believes that the addition of a representation to the notice of exemption required by Regulation 4.13(b)(1) increases the information collection burden associated with that notice under OMB control numbers 3038-0005.

*OMB Control Number 3038-0005:*

The Commission estimates that as a result of revising the notice of exemption under Regulation 4.13(b)(1), the burden of the collection of information under OMB control number 3038-0005<sup>5</sup> would be as follows:

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<sup>5</sup> OMB control number 3038-0005 currently covers two separate Information Collections (“IC”): (1) Part 4 Commodity Pool Operators and Commodity Trading Advisors IC, and (2) Commodity Pool Operator Annual Report IC. The estimates in this notice reflect changes specifically made by the Statutory Disqualifications Final Rule to the Part 4 Commodity Pool Operators and Commodity Trading Advisors IC, for which the current active information collection estimates of 43,397 respondents and 354,333 burden hours were approved by OMB on March 6, 2020 (ICR Reference No. 201912-3038-001). The aggregate burden for OMB control number 3038-0005 may be further impacted by a separate rulemaking,

*Respondents/Affected Entities:* (1) All persons filing a notice of exemption as required by Regulation 4.13(b)(1) for the purpose of claiming relief from CPO registration, and (2) all principals of such persons.

*Estimated number of respondents:* 8,600.

*Estimated number of exempt pools/reports per respondent:* 3.

*Estimated total annual burden on respondents:* 8,600 hours.<sup>6</sup>

*Frequency of collection:* Annually.

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 et seq.)

Dated: July 31, 2020.

**Christopher Kirkpatrick,**

*Secretary of the Commission.*

[FR Doc. 2020-17046 Filed: 8/4/2020 8:45 am; Publication Date: 8/5/2020]

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Amendments to Compliance Requirements for Commodity Pool Operators on Form CPO-PQR, published in the *Federal Register*, 85 FR 26378 (May 4, 2020). Neither the Statutory Disqualification Final Rule nor the Form CPO-PQR rulemaking impact the estimates of the Commodity Pool Operator Annual Report IC, which remain the same.

<sup>6</sup> The burden hour per response is 0.3 burden hour for an aggregate total of 0.9 burden hour for all three responses per respondent. This estimate has been rounded up to 1 burden hour for all three responses per respondent.