



COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent to Revise Collection, Comment Request: Adoption of Revised Notice of Exemption

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Request (ICR) abstracted below has been forward to the Office of Information and Regulatory Affairs (OIRA), of the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected costs and burdens.

DATES: Comments must be submitted on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Written comments and recommendations for the proposed information collection should be submitted within 30 days of this notice’s publication to OIRA, at <https://www.reginfo.gov/public/do/PRAMain>. Please find this particular information collection by selecting "Currently under 30-day Review - Open for Public Comments" or by using the website’s search function. Comments can be entered electronically by clicking on the “comment” button next to the information collection on the “OIRA Information Collections Under Review” page, or the “View ICR – Agency Submission” page. A copy of the supporting statement for the collection of information discussed herein may be obtained by visiting <https://www.reginfo.gov/public/do/PRAMain>.

In addition to the submission of comments to <https://Reginfo.gov> as indicated above, a copy of all comments submitted to OIRA may also be submitted to the Commodity Futures Trading Commission (the “Commission” or “CFTC”) by clicking on the “Submit Comment” box next to the descriptive entry for OMB Control No. 3038-0005, at <https://comments.cftc.gov/FederalRegister/PublicInfo.aspx>

Or by either of the following methods:

- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail above.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments submitted to the Commission should include 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, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission’s regulations.¹ 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://www.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 ICR will be retained in the public comment file and will be considered as required

¹ 17 CFR 145.9.

under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

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

SUPPLEMENTARY INFORMATION:

Titles: 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: In *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), the Commission recently revised the notice of exemption required by Commission regulation 4.13(b)(1) of any person who desires to claim the relief from CPO registration.² Separately, in *Agency Information Activities: Notice of Intent to Revise Collection 3038-0005, Adoption of Revised Notice of Exemption Under Regulation 4.13(b)(1)*, 85 FR 47359 (Aug. 5, 2020) (60-Day Notice), the Commission addressed the PRA implications of revising the notice filing

² *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), *amending* 17 CFR 4.13(b)(1).

required by Commission regulation 4.13(b)(1).³ The various collections of information required by part 4 of the Commission's regulations, including that notice filing, 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 revised Commission regulation 4.13(b)(1) by adding a representation to the notice already required to be electronically filed with the Commission by persons claiming an exemption from CPO registration thereunder.⁴ 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 Commission regulation 4.13. The Commission intended this amendment to eliminate the inconsistent treatment of exempt CPOs as compared to registered CPOs (and the principals thereof), whereby certain persons could avoid the CEA's basic conduct requirements established for all persons registering as

³ Agency Information Activities: Notice of Intent to Revise Collection 3038-0005, Adoption of Revised Notice of Exemption Under Regulation 4.13(b)(1), 85 FR 47359 (Aug. 5, 2020) (60-Day Notice).

⁴ Statutory Disqualifications Final Rule, 85 FR at 40890.

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.⁵ Because the Statutory Disqualifications Final Rule resulted in a representation being added to the existing notice filing in Commission regulation 4.13(b), the Commission determined that this amendment constitutes the modification of an existing information collection; as such, the PRA implications of the revised notice filing were considered separately in the 60-Day Notice.⁶

By adding this representation to the notice of exemption from CPO registration required by Commission regulation 4.13(b)(1), the Commission recognizes that the existing information collection burden for that notice, currently estimated at 0.1 hours, is expected to increase. The Commission estimates that this amendment would add a total of 0.2 burden hours to the information collection burdens currently estimated for the notice of exemption under Commission 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 notice filing in Commission regulation 4.13(b)(1).

Comments

⁵ Statutory Disqualifications Final Rule, 85 FR at 40887.

⁶ 60-Day Notice, 85 FR at 47360-61.

In the 60-Day Notice, the Commission provided 60 days for public comment on the extension and revision of the currently approved information collection under OMB control number 3038-0005, including its estimates, restated above, regarding the impact of the revised notice filing on the burdens associated with Commission regulation 4.13(b)(1) and the number of expected respondents under that regulation. The Commission did not receive any comments that addressed any of its estimates or any other aspect of the information collection.

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

- *OMB control number 3038-0005:*

The Commission estimates that as a result of revising the notice of exemption under Commission regulation 4.13(b)(1), the burden of the collection of information under OMB control number 3038-0005⁷ would be as follows:

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

⁷ 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, 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.

Estimated number of respondents: 8,600.

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

Estimated total annual burden on respondents: 8,600 hours.⁸

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: October 15, 2020.

Robert Sidman,

Deputy Secretary of the Commission.

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⁸ 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.