



COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 146

RIN 3038-AF22

Privacy Act Regulations

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (CFTC or Commission) is adopting amendments to certain of its regulations regarding exemptions for certain systems of records from one or more provisions of the Privacy Act of 1974 (Privacy Act) in order to better conform to the requirements of the Privacy Act and the guidance contained in Office of Management and Budget (OMB) Circular A-108, *Federal Agency Responsibilities for Review, Reporting, and Publication Under the Privacy Act* (OMB A-108). The final rule more specifically identifies the systems of records currently included in the regulation, adds additional systems of records that the Commission is exempting, enumerates the sections of the Privacy Act from which the Commission is exempting each system of records, sets forth the reasons for those exemptions, and reorganizes the regulations for ease of reference.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Kellie Cosgrove Riley, Chief Privacy Officer, privacy@cftc.gov, 202-418-5610, Office of the General Counsel, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

A. *The Privacy Act*

The Privacy Act¹ establishes a code of fair information practice principles that govern Federal agencies' collection, maintenance, use, and dissemination of an individual's personal information. The Privacy Act applies to information that is maintained in a "system of records," defined as a group of any records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.²

In addition to establishing a code of fair information practice principles, the Privacy Act restricts disclosure of records containing personal information that an agency maintains.³ The Privacy Act also grants individuals an increased right of access to records maintained about themselves as well as the right to request amendment of those records upon a showing that they are not accurate, relevant, timely, or complete.⁴ The Privacy Act also permits agencies, where certain requirements are met and subject to limitations set forth in the Privacy Act, to specifically exempt systems of records from certain provisions of the Privacy Act, mainly pertaining to the Privacy Act's provisions permitting individuals to access and request amendment of their records.⁵ In order to claim an exemption, the agency must engage in a rulemaking process pursuant to the Administrative Procedure Act⁶ and make clear to the public why particular exemptions are being invoked.⁷

II. The Proposal

¹ 5 U.S.C. 552a.

² 5 U.S.C. 552a(a)(5).

³ 5 U.S.C. 552a(b).

⁴ 5 U.S.C. 552a(d).

⁵ 5 U.S.C. 552a(j) and (k).

⁶ 5 U.S.C. 553.

⁷ 5 U.S.C. 552a(j) and (k).

On February 2, 2024, the Commission published a notice of proposed rulemaking (NPRM)⁸ to revise certain of the Commission's part 146 regulations.⁹ Current Commission regulations §§ 146.12 and 146.13 (together, Privacy Act regulations) assert exemptions for certain of the Commission's systems of records that contain records related to the Commission's investigatory mission and personnel security obligations. After reviewing those regulations, the Commission preliminarily determined that the current Privacy Act regulations do not include all of the systems of records for which the Commission would, in fact, assert exemptions, and those systems of records that are currently referenced are not clearly identified with each system of records' number and accurate title. The Commission also preliminarily determined to add more specificity regarding the rationale for exempting each of the systems of records in order to better demonstrate the Commission's compliance with sections (j) and (k) of the Privacy Act¹⁰ and the corresponding guidance in OMB Circular A-108.¹¹ OMB A-108, issued in 2016, provides that, at minimum, an agency's Privacy Act exemption regulations shall include the specific name of any systems of records that will be exempt pursuant to the regulations, the specific provisions of the Privacy Act from which the systems of records will be exempt and the reasons therefor, and an explanation of why the exemption is necessary and appropriate.

In the NPRM, the Commission proposed to identify more specifically CFTC-10 Investigatory Records, CFTC-31 Closed Commission Meetings, and CFTC-44 Personnel Clearance System, identified in the current Privacy Act regulations as Exempted Investigatory Records, Exempted Closed Commission Meetings, and Exempted

⁸ 89 FR 7307 (Feb. 2, 2024).

⁹ 17 CFR part 146.

¹⁰ 5 U.S.C. 552a(j) and (k).

¹¹ OMB A-108, available at https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/circulars/A108/omb_circular_a-108.pdf, at page 25.

Employee Background Investigation Material, respectively; and proposed to add CFTC-1 Enforcement Matter Register and Matter Indices, CFTC-12 National Futures Association (NFA) Applications Suite System, and CFTC-49 Whistleblower Records. The Commission also proposed to remove Privacy Act regulation § 146.13, which provides for exempting CFTC-32 Office of the Inspector General Investigative Files, in favor of incorporating that system of records and the corresponding exemptions into Privacy Act regulation § 146.12. In addition, for all of the identified systems of records, the Commission proposed to specifically enumerate each provision of the Privacy Act from which each system of records was being exempted and the rationale for each exemption. Finally, the Commission proposed to reorganize the regulations for ease of reference.

III. Comments

The Commission requested comment on the justification for and the scope of each of the proposed exemptions. The Commission received no comments regarding the proposed modification to its Privacy Act regulations nor regarding any of the related matters for which comment was requested in the NPRM. Accordingly, the Commission is adopting the proposed modifications with no changes for the reasons set forth in the NPRM, as explained below.

IV. Final Rule

The Commission is modifying Privacy Act regulation § 146.12 to add additional systems of records that the Commission is exempting from certain provisions of the Privacy Act, clearly identify those which it has previously exempted, remove current Privacy Act regulation § 146.13 in favor of adding the exemptions for the Office of Inspector General's system of records to §146.12, and add more specificity regarding the rationale for exempting each of the systems of records in order to better demonstrate the Commission's compliance with sections (j) and (k) of the Privacy Act¹² and the

¹² 5 U.S.C. 552a(j) and (k).

corresponding guidance in OMB Circular A-108.¹³ Specifically, the Commission is exempting the following systems of records:

1. CFTC-1 Enforcement Matter Register and Matter Indices (CFTC-1)

CFTC-1 contains an index and registry of enforcement investigations. The Commission is exempting this system of records because the records are compiled for law enforcement purposes and must be protected from disclosure in order to maintain the integrity of the investigative process and not provide to any individual an opportunity to access records and compromise that process, such as through the destruction of evidence, interference with witnesses, or otherwise. In addition, the Commission is exempting this system of records in order to keep confidential the identity of sources who provided information to the Commission during the course of the investigation under an express promise that their identities would remain confidential. If an individual can access the identities of confidential sources, those sources may be unwilling to provide information that the Commission needs for its law enforcement activities. Specifically, the Commission is exempting CFTC-1, pursuant to section (k)(2) of the Privacy Act¹⁴ and subject to the requirements and limitations set forth therein, from the following provisions of the Privacy Act: 5 U.S.C. 552a (c)(3); (d)(1) through (4); (e)(1); (e)(4)(G) through (I); and (f).

2. CFTC-10 Investigatory Records (CFTC-10)

CFTC-10 contains records compiled for law enforcement purposes, including records developed during an investigation of violations or potential violations of the Commodity Exchange Act (CEA or Act).¹⁵ The Commission is identifying this system of records by its proper title and number, rather than as “Exempted Investigatory Records”

¹³ OMB A-108, available at https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/circulars/A108/omb_circular_a-108.pdf, at page 25.

¹⁴ 5 U.S.C. 552a(k)(2).

¹⁵ 7 U.S.C. 1 *et seq.*

as it was previously identified in the regulations, and setting forth the specific reasons for which it is being exempted from particular provisions of the Privacy Act. To that end, the Commission is exempting this system of records because the records must be protected from disclosure in order to maintain the integrity of the investigative process and not provide an individual an opportunity to access records and compromise that process, such as through the destruction of evidence, interference with witnesses, or otherwise. In addition, the Commission is exempting this system of records in order to keep confidential the identity of sources who provided information to the Commission during the course of the investigation under an express promise that their identities would remain confidential. If an individual can access the identities of confidential sources, those sources may be unwilling to provide information that the Commission needs for its law enforcement activities. Specifically, the Commission is exempting CFTC-10, pursuant to section (k)(2) of the Privacy Act¹⁶ and subject to the requirements and limitations set forth therein, from the following provisions of the Privacy Act: 5 U.S.C. 552a (c)(3); (d)(1) through (4); (e)(1); (e)(4)(G) through (I); and (f).

3. CFTC-12 National Futures Association (NFA) Applications Suite System
(CFTC-12)

CFTC-12 contains records held by NFA on behalf of the Commission by delegated authority to support the Commission's registration and other regulatory authority. These records include records pertaining to the fitness of individuals to be registered with the Commission and engage in business activities that are subject to the Commission's jurisdiction and records pertaining to disciplinary or other adverse action investigated or taken with respect to individual registrants. The Commission is exempting this system of records because, to the extent the records pertaining to individuals that NFA holds on behalf of the Commission are investigatory records

¹⁶ 5 U.S.C. 552a(k)(2).

compiled for law enforcement purposes, they must be protected from disclosure in order to maintain the integrity of the investigative process and not provide to any individual an opportunity to access records and compromise that process, such as through the destruction of evidence, interference with witnesses, or otherwise. In addition, the Commission is exempting this system of records in order to keep confidential the identity of sources who provided information to NFA acting on behalf of the Commission during the course of the investigation under an express promise that their identities would remain confidential. If an individual can access the identities of confidential sources, those sources may be unwilling to provide information that the Commission needs for its law enforcement activities. Specifically, the Commission is exempting CFTC-12, pursuant to section (k)(2) of the Privacy Act¹⁷ and subject to the requirements and limitations set forth therein, from the following provisions of the Privacy Act: 5 U.S.C. 552a (c)(3); (d)(1) through (4); (e)(1); (e)(4)(G) through (I); and (f).

4. CFTC-31 Closed Commission Meetings (CFTC-31)

CFTC-31 contains records about individuals who are the subject of discussion at closed Commission meetings, including those who are the subject of investigations or who are being considered for employment. The Commission is identifying this system of records by its proper title and number rather than “Exempted Closed Commission Meetings” as it was previously identified in the regulations and setting forth the specific reasons for which it is being exempted from particular provisions of the Privacy Act. To that end, to the extent the records in this system of records pertain to law enforcement investigations, the Commission is exempting this system of records because the records must be protected from disclosure in order to maintain the integrity of the investigative process and not provide to any individual an opportunity to compromise that process, such as through the destruction of evidence, interference with witnesses, or otherwise. In

¹⁷ 5 U.S.C. 552a(k)(2).

addition, the Commission is exempting this system of records in order to keep confidential the identity of sources who provided information to the Commission during the course of the investigation under an express promise that their identities would remain confidential. If an individual can access the identities of confidential sources, those sources may be unwilling to provide information that the Commission needs for its law enforcement activities. Finally, to the extent records in this system of records are compiled solely for the purpose of determining the suitability, eligibility, or qualifications of an individual who is being considered for employment with the Commission, the Commission is exempting this system of records where the disclosure of records would reveal the identity of somebody who provided information in the context of the Commission's determination and who had expressly requested that their identity remain confidential. The Commission has determined that such an exemption is necessary in order to obtain information relevant to its eligibility determinations. Accordingly, the Commission is exempting CFTC-31, pursuant to sections (k)(2) and (5) of the Privacy Act¹⁸ and subject to the requirements and limitations set forth therein, from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3); (d)(1) through (4); (e)(1); (e)(4)(G) through (I); and (f).

5. CFTC-32 Office of the Inspector General Investigative Files (CFTC-32)

CFTC-32 contains records relevant to criminal and civil investigations conducted by the Office of the Inspector General (OIG). This system of records was previously included in the Commission regulation § 146.13 with exemptions promulgated pursuant to sections (j)(2) and (k)(2) of the Privacy Act, the former for records related to the OIG's criminal law enforcement activities and the latter for investigatory records compiled for law enforcement purposes not within the scope of section (j)(2). The Commission concluded that a separate Privacy Act regulation § 146.13 for exemptions taken for this

¹⁸ 5 U.S.C. 552a(k)(2) and (5), respectively.

OIG system of records is not required by the Privacy Act or OMB guidance.

Accordingly, the Commission, after consultation with the OIG, is removing current Commission regulation § 146.13 and incorporating the exemptions for CFTC-32 into Commission regulation § 146.12. Moreover, the Commission is setting forth the specific reasons for which this system of records is being exempted from particular provisions of the Privacy Act. To that end, the Commission is exempting this system of records because the records must be protected from disclosure in order to maintain the integrity of the investigative process and not provide to any individual an opportunity to access records and compromise that process, such as through the destruction of evidence, interference with witnesses, or otherwise. In addition, the Commission is exempting this system of records in order to keep confidential the identity of sources who provided information to the Commission during the course of the investigation under an express promise that their identities would remain confidential. This is consistent with the Inspector General Act of 1978, as amended, which prohibits disclosing the identities of Federal employees who submit complaints or other information related to investigations to the Office of the Inspector General.¹⁹

If an individual can access the identities of confidential sources, those sources may be unwilling to provide information that the Commission needs for its law enforcement activities, Federal employee and contractor witnesses may risk retaliation in the Federal workplace, and any witness may risk witness interference tactics including threats, harassment, and physical and emotional harm. Specifically, the Commission is exempting this system of records, pursuant to section (j)(2) of the Privacy Act²⁰ and subject to the requirements and limitations set forth therein, from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3) and (4); (d)(1) through (4); (e)(1)

¹⁹ 5 U.S.C. 407(b).

²⁰ 5 U.S.C. 552a(j)(2).

through (3), (e)(4)(G) through (I), (e)(5) and (8); (f); and (g). In addition, the Commission is exempting this system of records, pursuant to section (k)(2) of the Privacy Act²¹ and subject to the requirements and limitations set forth therein, from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3); (d)(1) through (4); (e)(1); (e)(4)(G) through (I); and (f).

6. CFTC-44 Personnel Clearance System (CFTC-44)

CFTC-44 contains records related to the background investigations and security clearances of individuals who have been or are being considered for access to Commission facilities, information technology systems, and classified or confidential information. These records may include statements from individuals who have provided information in the course of a background investigation and have requested that their identity remain confidential, and records that constitute investigatory materials compiled for law enforcement purposes. The Commission is identifying this system of records by its proper title and number, rather than as “Exempted Employee Background Investigation Material” as it was previously identified in the regulations, and setting forth the specific reasons for which it is being exempted from particular provisions of the Privacy Act pursuant to both section (k)(2) and (5) of the Privacy Act.²² To that end, to the extent records in this system of records are compiled solely for the purpose of determining an individual’s suitability, eligibility, or qualifications for employment with the Commission, the Commission is explaining in Commission regulation § 146.12 that this system of records is exempt where the disclosure of records would reveal the identity of somebody who provided information in the context of the Commission’s determination and who had expressly requested that their identity remain confidential in order to maintain the promised confidentiality and enable the Commission to obtain

²¹ 5 U.S.C. 552a(k)(2).

²² 5 U.S.C. 552a(k)(2) and (5).

information relevant to its eligibility determinations. In addition, to the extent records in this system of records pertain to law enforcement investigations, the Commission is exempting this system of records because the records must be protected from disclosure in order to maintain the integrity of the investigative process and not provide to any individual the opportunity to compromise that process, such as through the destruction of evidence, interference with witnesses, or otherwise. The Commission also is exempting this system of records in order to keep confidential the identity of sources who provided information to the Commission during the course of the investigation under an express promise that their identities would remain confidential. If an individual can access the identities of confidential sources, those sources may be unwilling to provide information that the Commission needs for its law enforcement activities. Specifically, the Commission is exempting this system of records, pursuant to sections (k)(2) and (5) of the Privacy Act²³ and subject to the requirements and limitations set forth therein, from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3); (d)(1) through (4); (e)(1); (e)(4)(G) through (I); and (f).

7. CFTC-49 Whistleblower Records (CFTC-49)

CFTC-49 contains records related to whistleblower tips, complaints and referrals, records related to investigations and inquiries into whistleblower complaints, and records related to the whistleblower award claim and determination process. The Commission is exempting this system of records because the records are compiled for law enforcement purposes and must be protected from disclosure in order to maintain the integrity of the whistleblower process and not provide to any individual an opportunity to access records and compromise an investigation, such as through the destruction of evidence, interference with witnesses, or otherwise. In addition, the Commission is exempting this system of records in order to keep confidential the identity of sources who provided

²³ 5 U.S.C. 552a(k)(2) and (5).

information during the course of the investigation under an express promise that their identities would remain confidential. If an individual can access the identities of confidential sources, those sources may be unwilling to provide information that the Commission needs to investigate whistleblower tips, complaints, and referrals. Specifically, the Commission is exempting this system of records, pursuant to section (k)(2) of the Privacy Act²⁴ and subject to the requirements and limitations set forth therein, from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3); (d)(1) through (4); (e)(1); (e)(4)(G) through (I); and (f).

V. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires Federal agencies to consider whether the rules they adopt will have a significant economic impact on a substantial number of small entities and, if so, to provide a regulatory flexibility analysis regarding the economic impact on those entities.²⁵ This final rule provides additional specificity regarding the systems of records that the Commission is exempting from the Privacy Act, sets forth the reasons for those exemptions, and reorganizes the regulations for ease of reference. These changes clarify the exemptions established under the Commission's regulations and do not impose any additional burden on individuals who may seek access to records under the Privacy Act.

Moreover, the final rules will not impact small entities as defined under the RFA. The modified regulations, issued under the Privacy Act, exempt certain systems of records maintained by the Commission from certain provisions of the Privacy Act, primarily those provisions related to an individual's right to access and seek amendment of those records. Individuals are defined in the Privacy Act as United States citizens or

²⁴ 5 U.S.C. 552a(k)(2).

²⁵ 5 U.S.C. 601 *et seq.*

aliens lawfully admitted to the United States for permanent residence.²⁶ Small entities, as defined in the RFA, are not individuals under the Privacy Act and are not provided rights thereunder; therefore, the final rules do not impact small entities as defined under the RFA. Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act (PRA) imposes certain requirements on Federal agencies in connection with their conducting or sponsoring any collection of information.²⁷ The Commission may not conduct or sponsor, and a respondent is not required to respond to, a request for collection of information unless the information collection request displays a currently valid control number issued by OMB. This rule does not contain a “collection of information,” as defined in the PRA. Accordingly, the requirements imposed by the PRA are not applicable to this rule.

C. Cost-Benefit Considerations

Section 15(a) of the CEA provides that, before promulgating a regulation under the CEA or issuing an order, the Commission shall consider the costs and benefits of the action of the Commission.²⁸ Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of the futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations.²⁹ The modified rules are being promulgated under the Privacy Act and pertain to the rights of individuals with respect to records the

²⁶ 5 U.S.C. 552a(a)(2).

²⁷ 5 U.S.C. 3501 *et seq.*

²⁸ 7 U.S.C. 19(a).

²⁹ 7 U.S.C. 19(a)(2).

Commission maintains about them. The modified rules are not being promulgated under the CEA. Therefore, the Commission finds that the considerations enumerated in section 15(a)(2) of the CEA are not applicable here.

D. Antitrust Considerations

Section 15(b) of the CEA requires the Commission to “take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the purposes of this Act, in issuing any order or adopting any Commission rule or regulation (including any exemption under section 4(c) or 4c(b)), or in requiring or approving any bylaw, rule, or regulation of a contract market or registered futures association established pursuant to section 17 of this Act.”³⁰

The Commission believes that the public interest to be protected by the antitrust laws is generally to protect competition. The Commission requested comment on whether the proposed rule implicates any other specific public interest to be protected by the antitrust laws; the Commission received no comments in response to this request.

The Commission has considered the modified rule to determine whether it is anticompetitive and has preliminarily identified no anticompetitive effects. The Commission requested comment on whether the proposed rule is anticompetitive and, if it is, what the anticompetitive effects are; the Commission received no comments in response to this request.

Because the Commission has determined that the modified rule is not anticompetitive and has no anticompetitive effects, the Commission has not identified any less anticompetitive means of achieving the purposes of the Act. The Commission requested comment on whether there are less anticompetitive means of achieving the relevant purposes of the Act that would otherwise be served by adopting the proposed rule; the Commission received no comments in response to this request.

³⁰ 7 U.S.C. 19(b).

List of Subjects in 17 CFR Part 146

Privacy.

For the reasons stated in the preamble, the Commodity Futures Trading Commission amends 17 CFR part 146 as follows:

PART 146—RECORDS MAINTAINED ON INDIVIDUALS

1. The authority citation for part 146 continues to read as follows:

Authority: 88 Stat. 1896 (5 U.S.C. 552a), as amended; 88 Stat. 1389 (7 U.S.C. 4a(j)).

2. Revise § 146.12 to read as follows:

§ 146.12 Exemptions.

The Commission is exempting from certain provisions of the Privacy Act the systems of records set forth in this section. In addition, when these systems of records and any other of the Commission's systems of records maintain a record received from another system of records that is exempted from one or more provisions of the Privacy Act, the Commission will claim the same exemptions for that record that are claimed for the system of records from which it originated.

(a) *CFTC-1 Enforcement Matter Register and Matter Indices.* The system of records identified as CFTC-1 Enforcement Matter Register and Matter Indices contains an index and registry of enforcement investigations. Pursuant to 5 U.S.C. 552a(k)(2) and subject to the requirements and limitations set forth therein, the Commission is exempting this system of records from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3); (d)(1) through (4); (e)(1); (e)(4)(G) through (I); and (f), and from the following corresponding sections of these rules: §§ 146.3; 146.5; 146.6(d); 146.11(a)(7) through (9); and 146.7(a). Exemptions from these particular sections of the Privacy Act and CFTC's rules promulgated thereunder are justified for the following reasons:

(1) From section (c)(3) (Accounting of Certain Disclosures), because release of the accounting of certain disclosures could alert the subject of an investigation to the existence and extent of that investigation and reveal the investigative interests of the Commission and the recipient entity. Release of such information to the subject of an investigation could reasonably be anticipated to impede and interfere with the Commission's efforts to identify and investigate unlawful activities.

(2) From sections (d)(1) through (4) (Access and Amendment), because individual access to these records could alert the subject of an investigation to the existence and extent of that investigation and reveal the investigative interests of the Commission and others. Providing a subject with access to these records could impair the effectiveness of the Commission's investigations and could significantly impede the investigation by providing the opportunity for the subject to destroy documentary evidence, improperly influence witnesses and confidential sources, fabricate testimony, and engage in other activities that could compromise the investigation. In addition, providing an individual with access to these records may reveal the identity of a source who furnished information under an express promise that their identity would remain confidential. Allowing the subject of the investigation to amend records in this system of records could likewise interfere with ongoing law enforcement proceedings and impose an impossible administrative burden by requiring law enforcement investigations to be continuously reinvestigated.

(3) From section (e)(1) (Relevancy and Necessity of Information), because in the course of investigations into potential violations of law, the significance of certain information may not be clear or the information may not be strictly relevant or necessary to a specific investigation; but, effective law enforcement requires the retention of all information that may aid in establishing patterns of unlawful activity and providing investigative leads.

(4) From section (e)(4)(G) through (I) (Agency Requirements), and (f) (Agency Rules), because the Commission is not required to establish requirements, rules, or procedures related to access and amendment of records in a system of records that is exempt from the individual access and amendment provisions in section (d) of the Privacy Act.

(b) *CFTC-10 Investigatory Records*. The system of records identified as CFTC-10 Investigatory Records contains records compiled for law enforcement purposes, including records developed during an investigation of violations or potential violations of the CEA. Pursuant to 5 U.S.C. 552a(k)(2) and subject to the requirements and limitations set forth therein, the Commission is exempting this system of records from the following provisions of the Privacy Act: 5 U.S.C. 552a (c)(3); (d)(1) through (4); (e)(1); (e)(4)(G) through (I); and (f), and from the following corresponding sections of these rules: §§ 146.3; 146.5; 146.6(d); 146.11(a)(7) through (9); and 146.7(a). Exemptions from these particular sections of the Privacy Act and CFTC's rules promulgated thereunder are justified for the following reasons:

(1) From section (c)(3) (Accounting of Certain Disclosures), because release of the accounting of certain disclosures could alert the subject of an investigation to the existence and extent of that investigation and reveal the investigative interests of the Commission and the recipient entity. Release of such information to the subject of an investigation could reasonably be anticipated to impede and interfere with the Commission's efforts to identify and investigate unlawful activities.

(2) From sections (d)(1) through (4) (Access and Amendment), because individual access to these records could alert the subject of an investigation to the existence and extent of that investigation and reveal the investigative interests of the Commission and others. Providing a subject with access to these records could impair the effectiveness of the Commission's investigations and could significantly impede the

investigation by providing the opportunity for the subject to destroy documentary evidence, improperly influence witnesses and confidential sources, fabricate testimony, and engage in other activities that could compromise the investigation. In addition, providing an individual with access to these records may reveal the identity of a source who furnished information under an express promise that their identity would remain confidential. Allowing the subject of the investigation to amend records in this system of records could likewise interfere with ongoing law enforcement proceedings and impose an impossible administrative burden by requiring law enforcement investigations to be continuously reinvestigated.

(3) From section (e)(1) (Relevancy and Necessity of Information), because in the course of investigations into potential violations of law, the significance of certain information may not be clear or the information may not be strictly relevant or necessary to a specific investigation; but, effective law enforcement requires the retention of all information that may aid in establishing patterns of unlawful activity and providing investigative leads.

(4) From sections (e)(4)(G) through (I) (Agency Requirements), and (f) (Agency Rules), because the Commission is not required to establish requirements, rules, or procedures related to access and amendment of records in a system of records that is exempt from the individual access and amendment provisions in section (d) of the Privacy Act.

(c) *CFTC-12 National Futures Association (NFA) Applications Suite System*. The system of records identified as CFTC-12 National Futures Association (NFA) Applications Suite System contains records held by NFA on behalf of the Commission, by delegated authority to support the Commission's registration and other regulatory authority. These records include records pertaining to the fitness of individuals to be registered with the Commission and engage in business activities that are subject to the

Commission's jurisdiction and records pertaining to disciplinary or other adverse action investigated or taken with respect to individual registrants. Pursuant to 5 U.S.C. 552a(k)(2) and subject to the requirements and limitations set forth therein, the Commission is exempting this system of records from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3); (d)(1) through (4); (e)(1); (e)(4)(G) through (I); and (f), and from the following corresponding sections of these rules: §§ 146.3; 146.5; 146.6(d); 146.11(a)(7) through (9); and 146.7(a). Exemptions from these particular sections of the Privacy Act are justified for the following reasons:

(1) From section (c)(3) (Accounting of Certain Disclosures), because release of accountings of certain disclosures could alert the subject of an investigation to the existence and extent of that investigation and reveal the investigative interests of the Commission and the recipient entity. Release of such information to the subject of an investigation could reasonably be anticipated to impede and interfere with the Commission's efforts to identify and investigate unlawful activities.

(2) From sections (d)(1) through (4) (Access and Amendment), because individual access to these records could alert the subject of an investigation to the existence and extent of that investigation and reveal the investigative interests of the Commission and others. Providing a subject with access to these records could impair the effectiveness of the Commission's investigations and could significantly impede the investigation by providing the opportunity for the subject to destroy documentary evidence, improperly influence witnesses and confidential sources, fabricate testimony, and engage in other activities that could compromise the investigation. In addition, providing an individual with access to these records may reveal the identity of a source who furnished information under an express promise that their identity would remain confidential. Allowing the subject of the investigation to amend records in this system of records could likewise interfere with ongoing law enforcement proceedings and impose

an impossible administrative burden by requiring law enforcement investigations to be continuously reinvestigated.

(3) From section (e)(1) (Relevancy and Necessity of Information), because in the course of investigations into potential violations of law, the significance of certain information may not be clear or the information may not be strictly relevant or necessary to a specific investigation; but, effective law enforcement requires the retention of all information that may aid in establishing patterns of unlawful activity and providing investigative leads.

(4) From sections (e)(4)(G) through (I) (Agency Requirements), and (f) (Agency Rules), because the Commission is not required to establish requirements, rules, or procedures related to access and amendment of records in a system of records that is exempt from the individual access and amendment provisions in section (d) of the Privacy Act.

(d) *CFTC-31 Closed Commission Meetings*. The system of records identified as CFTC-31 Closed Commission Meetings contains records about individuals who are the subject of discussion at closed Commission meetings, including those who are the subject of investigations or who are being considered for employment. These records may include statements from individuals who have provided information in the course of an applicant's or employee's background investigation or other Commission investigation and who have requested that their identities remain confidential. Pursuant to 5 U.S.C. 552a(k)(2) and (5) and subject to the requirements and limitations set forth therein, the Commission is exempting this system of records from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3); (d)(1) through (4); (e)(1); (e)(4)(G) through (I); and (f), and from the following corresponding sections of these rules: §§ 146.3; 146.5; 146.6(d); 146.11(a)(7) through (9); and 146.7(a). Exemptions from these particular sections of the Privacy Act are justified for the following reasons:

(1) From section (c)(3) (Accounting of Certain Disclosures), because release of the accounting of certain disclosures could alert the subject of an investigation to the existence and extent of that investigation and reveal the investigative interests of the Commission and the recipient entity. Release of such information to the subject of an investigation could reasonably be anticipated to impede and interfere with the Commission's efforts to identify and investigate unlawful activities.

(2) From sections (d)(1) through (4) (Access and Amendment), because individual access to these records could alert the subject of an investigation to the existence and extent of that investigation and reveal the investigative interests of the Commission and others. Providing a subject with access to these records could impair the effectiveness of the Commission's investigations and could significantly impede the investigation by providing the opportunity for the subject to destroy documentary evidence, improperly influence witnesses and confidential sources, fabricate testimony, and engage in other activities that could compromise the investigation. In addition, providing an individual with access to these records may reveal the identity of a source who furnished information under an express promise that their identity would remain confidential. Allowing the subject of the investigation to amend records in this system of records could likewise interfere with ongoing law enforcement proceedings and impose an impossible administrative burden by requiring law enforcement investigations to be continuously reinvestigated.

(3) From section (e)(1) (Relevancy and Necessity of Information), because in the course of investigations into potential violations of law, the significance of certain information may not be clear or the information may not be strictly relevant or necessary to a specific investigation; but, effective law enforcement requires the retention of all information that may aid in establishing patterns of unlawful activity and providing investigative leads.

(4) From section (e)(4)(G) through (I) (Agency Requirements), and (f) (Agency Rules), because the Commission is not required to establish requirements, rules, or procedures related to access and amendment of records in a system of records that is exempt from the individual access and amendment provisions in section (d) of the Privacy Act.

(e) *CFTC-32, Office of the Inspector General Investigative Files*. The system of records identified as CFTC-32 Office of the Inspector General Investigative Files contains records relevant to criminal and civil investigations conducted by the Office of the Inspector General, including records about individuals being investigated for fraudulent and abusive activities. Pursuant to 5 U.S.C. 552a(j)(2) and subject to the requirements and limitations set forth therein, the Commission is exempting this system of records from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3) and (4); (d)(1) through (4); (e)(1) through (3), (e)(4)(G) through (I), and (e)(5) and (8); (f); and (g), and from the following corresponding sections of these rules: §§ 146.3; 146.4; 146.5; 146.6(b), (d), and (e); 146.7(a), (c), and (d); 146.8; 146.9; 146.10; and 146.11(a)(7) through (9). In addition, pursuant to 5 U.S.C. 552a(k)(2) and subject to the requirements and limitations set forth therein, the Commission is exempting this system of records from the following provisions of the Privacy Act: 5 U.S.C. 552a (c)(3); (d)(1) through (4); (e)(1); (e)(4)(G) through (I); and (f), and from the following corresponding sections of these rules: §§ 146.3; 146.5; 146.6(d); 146.11(a)(7) through (9); and 146.7(a). Exemptions from these particular sections of the Privacy Act are justified for the following reasons:

(1) From section (c)(3) (Accounting of Certain Disclosures), because release of the accounting of certain disclosures could alert the subject of an investigation to the existence and extent of that investigation and reveal the investigative interests of the Commission and the recipient entity. Release of such information to the subject of an

investigation could reasonably be anticipated to impede and interfere with the Commission's efforts to identify and investigate unlawful activities.

(2) From section (c)(4) (Notice of Correction), because this system is exempt from the access and amendment provisions of section (d), as noted below.

(3) From sections (d)(1) through (4) (Access and Amendment), because individual access to these records could alert the subject of an investigation to the existence and extent of that investigation and reveal the investigative interests of the Commission and others. Providing a subject with access to these records could impair the effectiveness of the Commission's investigations and could significantly impede the investigation by providing the opportunity for the subject to destroy documentary evidence, improperly influence witnesses and confidential sources, fabricate testimony, and engage in other activities that could compromise the investigation. In addition, providing an individual with access to these records may reveal the identity of a source who furnished information under an express promise that their identity would remain confidential. Allowing the subject of the investigation to amend records in this system of records could likewise interfere with ongoing law enforcement proceedings and impose an impossible administrative burden by requiring law enforcement investigations to be continuously reinvestigated.

(4) From section (e)(1) (Relevancy and Necessity of Information) and (5) (Accuracy, Timeliness, Relevance, and Completeness), because in the course of investigations into potential violations of law, the significance of certain information may not be clear or the information may not be strictly relevant or necessary to a specific investigation; but, effective law enforcement requires the retention of all information that may aid in establishing patterns of unlawful activity and providing investigative leads.

(5) From section (e)(2) (Collect from Individual), because in a law enforcement investigation the requirement that information be collected to the greatest extent possible

from the subject individual would present a serious impediment to law enforcement, in that the subject of the investigation would be informed of the existence of the investigation and would therefore be able to avoid detection, apprehension, or legal obligations or duties.

(6) From section (e)(3) (Privacy Act Statement), because to comply with the requirements of this section during the course of an investigation could impede the information gathering process and hamper the investigation.

(7) From sections (e)(4)(G) through (I) (Agency Requirements), and (f) (Agency Rules), because the Commission is not required to establish requirements, rules, or procedures related to access and amendment of records in a system of records that is exempt from the individual access and amendment provisions in section (d) of the Privacy Act.

(8) From section (e)(8) (Serve Notice), because the application of this provision could prematurely reveal an ongoing criminal investigation to the subject of the investigation, present a serious impediment to law enforcement by interfering with the ability to issue subpoenas or otherwise gather information, and reveal investigative techniques, procedures, or evidence.

(9) From section (g) (Civil Remedies), because this system of records is exempt from the individual access and amendment provisions in section (d) of the Privacy Act for the reasons stated in paragraph (e)(3) of this section; therefore, the Commission is not subject to civil action for failure to adhere to those requirements.

(f) *CFTC-44 Personnel Clearance System.* The system of records identified as CFTC-44 Personnel Clearance System contains records related to the background investigations and security clearances of individuals who have been or are being considered for access to Commission facilities, information technology systems, and classified or confidential information. These records may include statements from

individuals who have provided information in the course of a background investigation and have requested that their identity remain confidential. Pursuant to 5 U.S.C. 552a(k)(2) and (5) and subject to the requirements and limitations set forth therein, the Commission is exempting this system of records from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3); (d)(1) through (4); (e)(1); (e)(4)(G) through (I); and (f), and from the following corresponding sections of these rules: §§ 146.3; 146.5; 146.6(d); 146.11(a)(7) through (9); and 146.7(a). Exemptions from these particular sections of the Privacy Act are justified for the following reasons:

(1) From sections (c)(3) (Accounting of Certain Disclosures), because release of the accounting of certain disclosures could alert the subject of an investigation to the extent of that investigation and reveal investigative interests of the Commission and the recipient entity that were previously unknown to the individual. Release of such information to the subject of an investigation could reasonably be anticipated to impede and interfere with the Commission's efforts to adequately assess an individual when making a decision about the individual's access to Commission facilities, information technology systems, and classified and confidential information.

(2) From sections (d)(1) through (4) (Access and Amendment), because the records contained in this system may be related to ongoing investigations, and individual access to these records could alert the subject of an investigation to the extent of that investigation and reveal investigative interests of the Commission and others that were previously unknown to the individual. Providing a subject with access to these records could impair the effectiveness of the Commission's investigations and could significantly impede the investigation by providing the opportunity for the subject to destroy documentary evidence, improperly influence witnesses and confidential sources, fabricate testimony, and engage in other activities that could compromise the investigation. In addition, providing an individual with access to these records may reveal the identity of a

source who furnished information under an express promise that their identity would remain confidential. Amendment of the records in this system of records would interfere with ongoing law enforcement proceedings and impose an impossible administrative burden by requiring law enforcement investigations to be continuously reinvestigated.

(3) From section (e)(1) (Relevancy and Necessity of Information), because in the course of conducting and adjudicating background investigations, the significance of certain information may not be clear or the information may not be strictly relevant or necessary to a specific investigation; but, effective investigations require the retention of all information that may aid in the investigation and provide investigative leads.

(4) From sections (e)(4)(G) through (I) (Agency Requirements), and (f) (Agency Rules), because the Commission is not required to establish requirements, rules, or procedures related to access and amendment of records in a system of records that is exempt from the individual access and amendment provisions in section (d) of the Privacy Act.

(g) *CFTC-49 Whistleblower Records*. The system of records identified as CFTC-49 Whistleblower Records contains records related to whistleblower tips, complaints and referrals, records related to investigations and inquiries into whistleblower complaints, and records related to the whistleblower award claim and determination process. Pursuant to 5 U.S.C. 552a(k)(2) and subject to the requirements and limitations set forth therein, the Commission is exempting this system of records from the following provisions of the Privacy Act: 5 U.S.C. 552a (c)(3); (d)(1) through (4); (e)(1); (e)(4)(G) through (I); and (f), and from the following corresponding sections of these rules: §§ 146.3; 146.5; 146.6(d); 146.11(a) through (9); and 146.7(a). Exemptions from these particular sections of the Privacy Act are justified for the following reasons:

(1) From section (c)(3) (Accounting of Certain Disclosures), because release of the accounting of certain disclosures could alert the subject of an investigation to the

existence and extent of that investigation and reveal the investigative interests of the Commission and the recipient entity. Release of such information to the subject of an investigation could reasonably be anticipated to impede and interfere with the Commission's efforts to identify and investigate unlawful activities.

(2) From sections (d)(1) through (4) (Access and Amendment), because individual access to these records could alert the subject of an investigation to the existence and extent of that investigation and reveal the investigative interests of the Commission and others. Providing a subject with access to these records could impair the effectiveness of the Commission's investigations and could significantly impede the investigation by providing the opportunity for the subject to destroy documentary evidence, improperly influence witnesses and confidential sources, fabricate testimony, and engage in other activities that could compromise the investigation. Allowing the subject of the investigation to amend records in this system of records could likewise interfere with ongoing law enforcement proceedings and impose an impossible administrative burden by requiring law enforcement investigations to be continuously reinvestigated.

(3) From section (e)(1) (Relevancy and Necessity of Information), because in the course of investigations, the significance of certain information may not be clear or the information may not be strictly relevant or necessary to a specific investigation; but, effective investigations require the retention of all information that may aid in the investigation or aid in establishing patterns of activity and provide investigative leads.

(4) From sections (e)(4)(G) through (I) (Agency Requirements) and (f) (Agency Rules), because the Commission is not required to establish requirements, rules, or procedures related to access and amendment of records in a system of records that is exempt from the individual access and amendment provisions in section (d) of the Privacy Act.

§ 146.13 [Removed]

3. Remove § 146.13.

Issued in Washington, DC on June 5, 2024, by the Commission.

Robert Sidman,

Deputy Secretary of the Commission.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix to Privacy Act Regulations —Voting Summary

Appendix 1—Voting Summary

On this matter, Chairman Behnam and Commissioners Johnson, and Goldsmith Romero, Mersinger, and Pham voted in the affirmative. No Commissioner voted in the negative.

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