

SUPPORTING STATEMENT
for the Paperwork Reduction Act Current Information Collection Submission for
Rule 17f-2(d)

A. JUSTIFICATION

1. Necessity of Information Collection

Congress added Section 17(f) to the Securities Exchange Act of 1934 (“Act”)¹ in 1975 as part of the Securities Acts Amendments of 1975² in order to respond to a large number of securities thefts that occurred in the late 1960s. Testimony before the Senate Permanent Subcommittee of Investigations between 1971 and 1974 indicated that the trafficking in stolen securities certificates was profitable for organized crime and that the failure to have available to the financial community a means of easily identifying security-risk personnel was a contributing factor to that problem. Specifically, Section 17(f)(2) requires every member of a national securities exchange, broker, dealer, registered transfer agent, and registered clearing agency to require that each of its partners, directors, officers, and employees be fingerprinted and submit such fingerprints to the U.S. Attorney General for identification and processing. This section also authorized the Commission to exempt, by rule, from the provisions of this paragraph any class of partners, directors, officers, and employees of any such member, broker, dealer, registered transfer agent, and registered clearing agency.

On March 16, 1976, the Commission adopted Rule 17f-2 under the Exchange Act. The general purposes of Rule 17f-2 are: (1) to identify security risk personnel (*i.e.*, persons with criminal history records for serious offenses); (2) to provide criminal record information so that employers can make fully informed employment decisions; (3) to deter persons with a criminal record from seeking employment or association with covered entities. The rule attempts to achieve these purposes primarily by requiring, subject to certain exceptions, every partner, director, officer, and employee of every member of a national securities exchange, broker, dealer, registered transfer agent, and registered clearing agency (“covered entities”) to be fingerprinted and submit such fingerprints to the U.S. Attorney General or its designee.

Rule 17f-2(d)(1) requires covered entities to keep the processed fingerprint card or any appropriate substitute record together with any information received from the Attorney General for the duration of that person’s employment or relationship with the organization and for a period of not less than three years after termination of that person’s employment or relationship with the organization. However, subparagraph (2) of the rule permits a self-regulatory organization (“SRO”) that is also the covered entities’ designated examining authority to store and maintain the records required to be kept by this rule. Subparagraph (3) permits the required records to be maintained on microfilm.

¹ 15 U.S.C. 78q(f).

² Pub. L. No. 94-29, 89 Stat. 97 (June 4, 1975).

2. Purpose of the Information Collection

Retention of fingerprint records enables the Commission or other examining authority to ascertain whether all required persons are being fingerprinted and whether proper procedures regarding fingerprinting are being followed. Retention of these records for the term of employment of all personnel plus three years ensures that law enforcement officials will have easy access to fingerprint cards on timely basis. This acts as an effective deterrent to employee misconduct.

3. Consideration Given to Information Technology

Subparagraphs (2) and (3) of the rule authorizes SROs to maintain fingerprint cards that they submit on behalf of covered entities and may do so using microfilm.

4. Duplication

Rule 17f-2(b) provides that if fingerprint cards have already been taken pursuant to any other federal or state law or regulation and are submitted to the U.S. Attorney General or its designee, the requirements of Section 17(f)(2) of the Act are satisfied.

5. Effect on Small Entities

Because the rule permits the designated examining authority to maintain records on behalf of covered entities, small entities will receive the benefit of economies of scale.

6. Consequences of Not Conducting Collection

If information were collected less frequently, the Commission would be less able to ascertain whether all required persons are being fingerprinted and whether proper procedures regarding fingerprinting are being followed.

7. Inconsistencies with Guidelines in 5 CFR 1320.8(d)

There are no special circumstances. This collection is consistent with the guidelines in 5 CFR 1320.8(d).

8. Consultations Outside the Agency

The required Federal Register notice with a 60-day comment period soliciting comments on this collection of information was published. No public comments were received.

9. Payment or Gift

There were no payments or gifts to respondents.

10. Confidentiality

The Privacy Act and the Freedom of Information Act provide protection from unwarranted disclosure.

11. Sensitive Questions

No questions of a sensitive nature are asked.

12. Burden of Information Collection

Rule 17f-2(d) requires covered entities to retain related fingerprint records for the term of employment plus 3 years. Therefore, the nature of the burden is an ongoing recordkeeping burden.

There are approximately 5,300 respondents that are subject to the recordkeeping requirements of the rule. This number is comprised of 4,900 registered broker-dealers, which also represent the majority of the members of national securities exchanges, 400 registered transfer agents, and 4 active registered clearing agencies. Each respondent keeps an average of approximately 60 new records per year, which take approximately 2 minutes per record for the respondent to maintain. Therefore, the average annual hourly burden per respondent is approximately 2 hours (60 records times 2 minutes) and the total annual hourly burden for all covered entities is 10,600 (5,300 respondents times 2 hours). We note that FINRA retains the records on behalf of many covered entities; many such entities therefore bear minimal, if any, direct burden.

13. Costs to Respondents

The total annual cost for covered entities to comply with Rule 17f-2(d) reflects the cost to retain fingerprint records that were returned to the covered entity by the FBI. Again, we note that FINRA retains the records on behalf of many covered entities; many such entities therefore bear minimal, if any, direct burden. Such records may be retained in paper or microfilm format. The physical requirements associated with such record retention are fairly commonplace in an office environment: file cabinets in designated records storage areas.

We estimate that 10% of the covered entities retain third party records storage vendors to retain the required records offsite. These records retention firms' pricing structures vary (e.g. differences in pickup, retrieval, monthly maintenance, contract termination, and storage fees) and it is difficult to distill accurate cost estimates of the marginal cost of Rule 17f-2(d) records. Nevertheless, we estimate the yearly third party offsite storage cost for these records is \$100 per year (the volume of 17f-2(d) records is fairly low, about 1 cubic foot) so the total cost to the industry is \$53,000 (530 firms times \$100).

In addition, there is capital and start up cost. We estimate that about 5% of the firms use microfilm to retain the fingerprint records and half of these firms will purchase a new microfilm machine over the next three years. A new microfilm machine that offers computer screen viewing,

printing, e-mailing, and saving to external media costs about \$1,500. The annualized cost per firm over three years for purposes of this PRA approval is \$500 and the total industry cost is \$66,000 (132 firms times \$500).

Therefore, the total cost to respondents is approximately \$119,000 (\$53,000 in estimate third party storage costs plus \$66,000 in capital and start up costs).

14. Costs to Federal Government

The costs to the federal government to administer Rule 17f-2(c) are zero. First, the fingerprint cards are retained by self-regulatory organizations or the covered entities themselves. Second, while the Commission periodically reviews the covered entities' fingerprinting retention policies and practices, the costs to the federal government for this aspect of the rule is composed solely of staff time to review such plans. For purposes of the Paperwork Reduction Act burden, this cost is considered zero.

15. Changes in Burden

The annual time burden on respondents has decreased due to the decrease in the number of respondents. The capital and start-up costs were not included in the 2008 ICR submission. They were inadvertently included in the internal labor costs. We have corrected this information in the 2011 submission to address start up costs.

16. Information Collection Planned for Statistical Purposes

The collections of information statistics for Rule 17f-2(e) will not be published.

17. Display of OMB Approval Date

The Commission is not seeking approval to not display the expiration date for OMB approval.

18. Exceptions to Certification for Paperwork Reduction Act Submissions

This collection complies with the requirements in 5 CFR 1320.9.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection does not involve statistical methods.