

SUPPORTING STATEMENT
for the Paperwork Reduction Act New 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; and (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 (“covered persons”) of every member of a national securities exchange, broker, dealer, registered transfer agent, and registered clearing agency (“covered entities” or “respondents”) 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 maintain and preserve the processed fingerprint card or any appropriate substitute record together with any information received from the Attorney General for the duration of a covered person’s employment or relationship with the entity and for a period of not less than three years after termination of a covered person’s employment or relationship with the entity. However, subparagraph (2) of the rule permits a self-regulatory organization (“SRO”) that is also the designated examining authority for a member of a national securities exchange, broker, or dealer to maintain and preserve the records required to be kept by this rule. Subparagraph (3) permits the required records to be maintained on microfilm.

2. Purpose and Use of the Information Collection

¹ 15 U.S.C. 78q(f).

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

Retention of fingerprint records by covered entities enables the Commission or other examining authority to ascertain whether all covered persons are being fingerprinted and whether proper procedures regarding fingerprinting are being followed. Retention of these records for a period of not less than three years after termination of a covered person's employment or relationship with a covered entity ensures that law enforcement officials will have easy access to fingerprint cards on timely basis. This in turn acts as an effective deterrent to employee misconduct.

3. Consideration Given to Information Technology

Subparagraphs (2) and (3) of the rule authorize SROs to maintain and preserve fingerprint cards that they submit on behalf of covered entities and permits them to 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 for a member of a national securities exchange, broker, or dealer to maintain and preserve records on behalf of that member, broker or dealer, such small entities will receive the benefit of economies of scale.

6. Consequences of Not Conducting Collection

If information were collected less frequently, the Commission's ability to ascertain whether all covered persons are being fingerprinted and whether proper procedures regarding fingerprinting are being followed would be weakened.

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

Rule 17f-2(d) was adopted by the Commission after notice and comment. Since the rule remains unchanged, there has been no need for consultation outside the agency. Furthermore, the Commission has not received any substantial number of complaints about the rule.

9. Payment or Gift

There were no payments or gifts to respondents.

10. Confidentiality

No assurance of confidentiality is provided by Rule 17f-2(d); information collected will otherwise be kept private to the extent protected by law.

11. Sensitive Questions

No questions of a sensitive nature are asked. The information collection does not collect any Personally Identifiable Information (PII).

12. Burden of Information Collection

Rule 17f-2(d) requires covered entities to retain fingerprint records for the duration of a covered person's employment or relationship with the entity and for a period of not less than three years after termination of a covered person's employment or relationship with a covered entity. 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 maintains an approximate average of 60 new records per year, each of which takes approximately 2 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 respondents is 10,600 (5,300 respondents times 2 hours). We note that FINRA maintains and preserves 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 respondents to comply with Rule 17f-2(d) reflects the cost to maintain and preserve fingerprint records that were returned to the respondent by the FBI. Again, we note that because FINRA maintains and preserves the records on behalf of many covered entities, the direct burden such entities bear is minimal, if any. Such records may be preserved in paper or microfilm format. The physical requirements associated with such record retention (e.g., file cabinets in designated records storage areas) are commonplace in an office environment.

We estimate that 10% of the respondents (530 respondents) retain third party storage vendors to preserve the required records offsite. Storage vendors' 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 the required records is approximately \$100 per year because the volume of 17f-2(d) records is fairly low (about 1 cubic foot). Thus, we estimate that the total cost to these respondents is \$53,000 (530 respondents times \$100).

In addition, there is capital and start-up cost. We estimate that about 5% of the respondents (265 respondents) use microfilm to retain the fingerprint records and that half of these respondents (132 respondents) 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 such respondent over three years for purposes of this PRA approval is \$500 (\$1,500 divided by 3) and the total industry start-up cost is \$66,000 (132 respondents times \$500).

Therefore, the total estimated cost to respondents is approximately \$119,000 (\$53,000 in 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 SROs or the covered entities themselves. Second, while the Commission periodically reviews the covered entities' fingerprinting retention policies and practices, the cost to the federal government 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

There are no changes to the overall burden.

16. Information Collection Planned for Statistical Purposes

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

17. Approval to Omit OMB Expiration Date

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

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.