

SUPPORTING STATEMENT FOR NEW AND REVISED INFORMATION COLLECTIONS

OMB CONTROL NUMBER 3038-0043

(Review of National Futures Association Decisions in Disciplinary,
Membership Denial, Registration, and Member Responsibility Actions)

1. Explain the circumstances that make the collection of information necessary. Include identification of any legal or administrative requirements that necessitate the collection.

The Commodity Exchange Act ("Act") permits the Commission to grant registration to futures associations that meet certain conditions. The Commission has granted such a registration to the National Futures Association ("NFA"). Section 17(h) (2) of the Act provides that if a registered futures association such as NFA takes a final disciplinary action against a member, denies admission to an applicant for membership or bars any person from being associated with a member, such action "shall be subject to review by the Commission." The Act also permits the Commission to delegate its registration authority under the statute to a registered futures association. The Commission has made such a delegation to NFA. Section 17(o)(2) of the Act states that when a registration order is issued pursuant to a Commission delegation, any person against whom the order is issued "may petition the Commission to review the decision."

The reporting requirements included in the Part 171 Rules are either directly required by Section 17(h), 17(i), or 17(o) of the Act or are necessary to the type of appellate review role Congress intended the Commission would undertake when it adopted that provision.

The rules establish procedures and standards for Commission review of the NFA decisions in disciplinary, membership denial, registration, and member responsibility actions. The procedures impose three general notice requirements solely on NFA (Rules 171.21, 171.42, and 171.40). These requirements are designed to provide basic information relevant to the basis of NFA's decision or the appellate rights of aggrieved individuals. These notices must be provided to both the Commission and the parties to each action. The rules also establish notice requirements that apply solely to parties to an action other than NFA who wish to appeal a decision to the Commission (Rules 171.23 and 171.44). In addition, the rules impose one notice requirement on interested persons who were not parties to the proceeding before NFA but wish to participate in the decision of the appeal before the Commission (Rule 171.27).

In addition to these general notice requirements, the procedural rules provide for submission of petitions and argument to the Commission relating to the appropriate short-term effect of NFA's determination. There are two rules governing submission of

arguments by NFA and other parties to the NFA proceeding requesting the Commission to alter the effective date of NFA's final decision (Rules 171.22 and 171.43). Another rule permits parties to a member responsibility action to submit petitions and argument to the Commission for a stay of the effective date of the action pending further proceedings by NFA (Rule 171.41).

Once a final decision by NFA has been appealed to the Commission, NFA is required to provide the Commission with two copies of the record of its proceeding and to serve all appealing parties with an index of that record (Rule 171.24). In general, an appealing party must also submit a brief setting forth the reasons for the appeal (Rule 171.25). Several rules also permit NFA or other parties to a review proceeding to respond to arguments submitted by the opposing side (Rules 171.27, 171.28). Rule 171.32 allows parties to request that the Commission permit oral argument in a case. These submissions are permissive, however, rather than mandatory.

2. Indicate how, by whom, and for what purpose the data is to be used and the actual use the agency has made of the information.

In general, the information is used by the Commission and the parties to the Commission review proceedings. The information submitted is ordinarily available to the general public, however, and may be submitted to a court if an aggrieved party seeks judicial review of the Commission's determination. The Commission would be unable to fulfill its responsibilities under the Act as an appellate review forum without the information required by these rules.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.

Respondents are permitted to submit responses electronically.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purpose(s) described in 2.

Commission staff regularly reviews the CFTC's regulations for duplication with other provisions. These regulations do not duplicate other existing regulations.

5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.

The information collected does not involve small businesses.

6. Describe the consequences to Federal program or policy activities if the collection were conducted less frequently.

The major notice requirements of the rules are mandated by statute and arise when NFA issues a decision in a disciplinary, membership denial, registration, or member responsibility action. The Commission's statutory oversight responsibilities require that the Commission receive notice of all such decisions by NFA. The frequency of other submissions described in Part 171 depends on the independent determination of a person affected by a NFA action to seek Commission review. The Commission could not limit the frequency of such submissions without interfering with the individual legal rights of such persons.

7. Explain any special circumstances that require the collection to be conducted in a manner: requiring respondents to report information to the agency more often than quarterly; requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it; requiring respondents to submit more than an original and two copies of any document; requiring respondents to retain records other than health, medical, government contract, grant-in-aid, or tax records, for more than three years; in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study; requiring the use of a statistical data classification that has not been reviewed and approved by OMB; that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

This question does not apply. Nevertheless, the Commission has procedures to protect the confidentiality of an applicant's or registrant's data. These are set forth in the Commission's regulations at parts 145 and 147 of title 17 of the Code of Federal Regulations.

8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice required by 5 C.F.R 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every three years-even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

The Commission published the notice required by 5 CFR 1320.8 (d), soliciting comments on this information collection in the Federal Register on on November 14, 2018, 83 FR 56827. No relevant comments were received.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

This question does not apply.

10. Describe any assurance of confidentiality provide to respondents and the basis for the assurance in statute, regulations, or agency policy.

This question does not apply. Nevertheless, the Commission fully complies with section 8(a)(1) of the Commodity Exchange Act, which strictly prohibits the Commission, unless specifically authorized by the Commodity Exchange Act, from making public “data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers.” The Commission has procedures to protect the confidentiality of an applicant’s or registrant’s data. These are set forth in the Commission’s regulations at parts 145 and 147 of title 17 of the Code of Federal Regulations.

11. Provide additional justification of any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

The Part 171 Rules do not require the submission of sensitive information as that term is used in question 11.

12. Provide estimates of the hour burden of the collection of information.

The three responses should require one hour per response, resulting in an aggregate annual burden of three hours for all respondents combined. See Attachment A.

- 13. Provide an estimate of the total annual cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14).**

\$284.19 There are no capital costs or operating and maintenance costs associated with this collection.

- 14. Provide estimates of the annualized costs to the Federal Government. Also provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing and support staff), and any other expense that would not have been incurred without this collection of information. Agencies may also aggregate cost estimates from Items 12, 13, and 14 in a single table.**

The estimated annualized cost to the Federal Government is \$4,973. This figure is obtained by taking an appropriate portion of the salaries of persons who review the information submitted to the Commission pursuant to the Part 171 Rules.¹ On average, an employee will spend 50 hours per year reviewing the three responses, researching relevant case law, drafting a recommendation memo to the Commission, and then drafting the Commission order.

- 15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB Form 83-I.**

The number of respondents, number of responses per respondent, and time per response have not changed. The cost per response has been changed to reflect the change in cost per working hour.²

- 16. For collection of information whose results are planned to be published for statistical use, outline plans for tabulation, statistical analysis, and publication. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.**

This question does not apply.

¹ The average salary of the federal government employee reviewing this information is \$188,000, based on the average base salary for a senior attorney at the Commission. There are 252 business days, and 7.5 working hours per day. Accordingly, there are 1,890 working hours per year, resulting in a cost of \$99.47 per working hour. On average, an employee will spend 50 hours per year reviewing the three responses by researching relevant case law and drafting the recommendation to the Commission. Accordingly, the annual cost to the federal government is $\$99.47 \times 50 = \$4,973$.

² Average salary for a private sector attorney is \$178,480 per year according to the Bureau of Labor Statistics (BLS) data for the legal profession. There are 252 business days, and 7.5 working hours per day. Accordingly, there are 1,890 working hours per year, resulting in a cost of \$94.43 per working hour. Since the burden estimate is 1 hour per response, the cost estimate has been changed to \$94.43 per response.

- 17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.**

This question does not apply.

- 18. Explain each exception to the certification statement identified in Item 19, “Certification for Paperwork Reduction Act Submissions,” of OMB Form 83-I.**

This question does not apply.

ATTACHMENT A

The Commission estimates the burden of this collection of information as follows:

| Estimated Annual Reporting Burden | | | | | | | |
|-----------------------------------|-----------------------|------------------------|--------------------|-------------|-------------------|--------------------------|--|
| Annual Number of Respondents | Frequency of Response | Total Annual Responses | Hours per Response | Total Hours | Cost per response | Total annual cost burden | |
| 1 | On occasion | 3 | 1 | 3 | \$94.73 | \$284.19 | |

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