

§ 145.7

17 CFR Ch. I (4–1–13 Edition)

Privacy and Sunshine Acts Compliance, the request shall be made in writing and shall be addressed or otherwise directed to the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Requests for public records directed to a regional office of the Commission pursuant to §145.2 should be sent to:

Commodity Futures Trading Commission,
140 Broadway, New York, New York 10005,
Telephone: (646) 746-9700.

Commodity Futures Trading Commission,
525 West Monroe Street, Suite 1100 North,
Chicago, Illinois 60661, Telephone: (312) 596-0700.

Commodity Futures Trading Commission,
Two Emanuel Cleaver II Blvd., Suite 300,
Kansas City, Missouri 64112, Telephone:
(816) 960-7700.

(b)(1) The publicly available portions of Form 7-R (application for registration as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator or leverage transaction merchant), Form 8-R (application for registration as an associated person, floor broker, floor trader and biographical supplement to application on Form 7-R), Form 3-R (changes and corrections; multiple associations) Form 8-S (certificate of special registration), Form 8-T (notice of termination), Form 7-W (withdrawal from firm registration) and Form 8-W (withdrawal from floor broker or floor trader registration) will be available for public inspection and copying. Such registration forms will be available in the offices of the National Futures Association, 200 West Madison Street, Chicago, Illinois 60606. Telephone: (312) 781-1300.

(2) The fingerprint card and any supplementary attachments filed in response to:

(i) Items 6-9, 14-21, the "Personal Information," or the "Disciplinary Information" sections on Form 8-R;

(ii) Item 3 on Form 8-S;

(iii) Items 3-5, 9-11, the "Withdrawal Reasons," the "Disciplinary Information," or the "Matter Information" sections on Form 8-T;

(iv) Items 9-10 on Form 7-R;

(v) Item 7 and the "Additional Customer Information" section on Form 7-W; and

(vi) Item 7 on Form 8-W generally will not be available for public inspection and copying unless such disclosure is required under the Freedom of Information Act. Changes or corrections to those items reported on Form 3-R will be treated similarly. When such fingerprint cards or supplementary attachments are on file, the FOI, Privacy and Sunshine Acts compliance staff will decide any request for access in accordance with the procedures set forth in §§145.7 and 145.9.

(7 U.S.C. 2, 4, 6, and 12; secs. 2(a)(1), 4c, 4d, 4e, 4f, 4k, 4m, 4n, 4p, 8, 8a and 19 of the Commodity Exchange Act (7 U.S.C. 2 and 4, 6c, 6d, 6e, 6f, 6k, 6m, 6n, 6p, 12, 12a and 23 (1982)); 5 U.S.C. 552 and 552b)

[49 FR 39534, Oct. 9, 1984, and 51 FR 26870, July 28, 1986, as amended at 53 FR 8435, Mar. 15, 1988; 54 FR 19886, May 9, 1989; 57 FR 29203, July 1, 1992; 58 FR 19597, Apr. 15, 1993; 60 FR 49335, Sept. 25, 1995; 64 FR 26, Jan. 4, 1999; 67 FR 62353, Oct. 7, 2002; 67 FR 63539, Oct. 15, 2002; 69 FR 41426, July 9, 2004; 72 FR 16269, Apr. 4, 2007]

§ 145.7 Requests for Commission records and copies thereof.

Requests for Commission records and copies thereof shall specify the preferred form or format (including electronic formats) of the response. The Commission will accommodate requesters as to form or format if the record is readily available in that form or format. When requesters do not specify the form or format of the response, the Commission will respond in the form or format in which the document is most accessible to the Commission.

(a) *Public inquiries and inspection of public records.* Information concerning the nature and extent of available public records may be obtained in person, by telephone, via Internet (<http://www.cftc.gov>), or by writing to the Commission offices designated in §§145.2 and 145.6.

(b) *Requests for nonpublic records.* Except as provided in paragraph (a) of this section with respect to public records, all requests for records maintained by the Commission shall be in writing, shall be addressed to the Assistant Secretary of the Commission

for FOI, Privacy and Sunshine Acts Compliance, and shall be clearly marked "Freedom of Information Act Request".

(c) *Misdirected written requests/oral requests.* (1) The Commission cannot assure that a timely or satisfactory response will be given to requests for records that are directed to the Commission other than in the manner prescribed in paragraph (b) of this section. Any misdirected written request for nonpublic records should be promptly forwarded to the Assistant Secretary of the Commission for FOI, Privacy and Sunshine Acts Compliance. Misdirected requests for nonpublic records will be considered to have been received for purposes of this section only when they actually have been received by the Assistant Secretary. The Commission will not entertain an appeal under paragraph (h) of this section from an alleged denial or failure to comply with a misdirected request, unless the request was in fact received by the Assistant Secretary for FOI, Privacy and Sunshine Acts Compliance.

(2) While the Commission will attempt to comply with oral requests for copies of records designated by the Commission as public records, the Commission cannot assure a timely or satisfactory response to such requests. The Commission will not consider an oral request for nonpublic records. An appeal under paragraph (h) of this section from an alleged denial or failure to comply with an oral request will not be considered. Any person who has orally requested a copy of a record and who believes that the request was denied improperly should resubmit the request in writing in accordance with paragraph (b) of this section.

(d) *Description of requested records.* Each written request for Commission records made under paragraph (b) of this section shall reasonably describe the records sought with sufficient specificity to permit the records to be located among the records maintained by or for the Commission. The Commission staff may communicate with the requester (by telephone when practicable) in an effort to reduce the administrative burden of processing a broad request and to minimize fees for copying and search services.

(e) *Description of requester and intended use of requested records.* In each request for records, requesters shall reasonably identify themselves as a commercial user, educational institution, noncommercial scientific institution, or representative of the news media if one of these categories is applicable. The requester shall describe the use to which the records will be put.

(f) *Request for existing records.* The Commission's response to a request for nonpublic records will encompass all nonpublic records identifiable as responsive to the request that are in existence on the date that the written request is received by the Assistant Secretary for FOI, Privacy and Sunshine Acts Compliance. The Commission need not create a new record in response to a FOIA request.

(g) *Fee agreement.* A request for copies of records pursuant to paragraph (b) of this section must indicate the requester's agreement to pay all fees that are associated with the processing of the request, in accordance with the rates set forth in appendix B to part 145, or the requester's intention to limit the fees incurred to a stated amount. If the requester states a fee limitation, no work will be done that will result in fees beyond the stated amount. A requester who seeks a waiver or reduction of fees pursuant to paragraph (a)(8) of appendix B of this part must show that such a waiver or reduction would be in the public interest. If the Assistant Secretary receives a request for records under paragraph (b) of this section from a requester who has not paid fees from a previous request in accordance with appendix B of this part, the staff will decline to process the request until such fees have been paid.

(h) *Initial determination, denials.* (1) With respect to any request for nonpublic records as defined in §145.0(d), the Assistant Secretary of the Commission for FOI, Privacy and Sunshine Acts Compliance, or his or her designee, will forward the request to the Commission divisions or offices likely to maintain records that are responsive to the request. If a responsive record is located, the Assistant Secretary, or designee, will, in consultation with the Commission office in which the record

was located, determine whether to comply with such request. The Assistant Secretary may, in his or her discretion, determine whether to comply with any portion of a request for non-public records before considering the remainder of the request.

(2) Where it is determined to deny, in whole or in part, a request for non-public records, the Assistant Secretary, or designee, will notify the requester of the denial, citing applicable exemptions of the Freedom of Information Act or other provisions of law that require or allow the records to be withheld. The Assistant Secretary's response to the FOIA request should describe in general terms what categories of documents are being withheld under which applicable FOIA exemption or exemptions. The Assistant Secretary, in denying an initial request for records, is not required to provide the requester with an inventory of those documents determined to be exempt from disclosure.

(3) The Assistant Secretary, or his or her designee, will issue an initial determination with respect to a FOIA request within twenty business days after receipt by the Assistant Secretary. In unusual circumstances, as defined in this paragraph, the prescribed time limit may be extended by written notice to the person making a request for a record or a copy. The notice shall set forth the reasons for the extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten business days. As used in this paragraph, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of a particular request:

(i) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(ii) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request;

(iii) The need for consultation, which shall be conducted with all practicable

speed, with another agency having a substantial interest in the determination of the request or among two or more components in the Commission having substantial subject matter interest therein;

(iv) The need to coordinate a response with several Commission offices;

(v) The need to obtain records currently being used by members of the Commission, the Commission staff, or the public;

(vi) The need to respond to a large number of previously-filed FOIA requests.

(i) *Administrative review.* (1) Any person who has been notified pursuant to paragraph (g) of this section that his request for records has been denied in whole or in part may file an application for review as set forth below.

(2) An application for review must be received by the Office of General Counsel within 30 days of the date of the denial by the Assistant Secretary. This 30-day period shall not begin to run until the Assistant Secretary has issued an initial determination with respect to all portions of the request for nonpublic records. An application for review shall be in writing and shall be marked "Freedom of Information Act Appeal." The original shall be sent to the Commission's Office of General Counsel. If the appeal involves information as to which the FOIA requester has received a detailed written justification of a request for confidential treatment pursuant to §145.9(e), the requester must also serve a copy of the appeal on the submitter of the information.

(3) The applicant must attach to the application for review a copy of all correspondence relevant to the request, *i.e.*, the initial request, any correspondence amending or modifying the request, and all correspondence from the staff responding to the request.

(4) The application for review shall state such facts and cite such legal or other authorities as the applicant may consider appropriate. The application may, in addition, include a description of the general benefit to the public from disclosure of that information.

(5) If the appeal involves information that is subject to a petition for confidential treatment filed under §145.9, the submitter of the information shall have an opportunity to respond in writing to the appeal within 10 business days of the date of filing of the appeal. Any response shall be sent to the Commission's Office of General Counsel. Copies shall be sent to the Assistant Secretary of the Commission for FOI, Privacy and Sunshine Acts Compliance and to the person requesting the information.

(6) The General Counsel, or his or her designee, shall have the authority to consider all appeals under this section from initial determinations of the Assistant Secretary of the Commission for FOI, Privacy and Sunshine Acts Compliance. The General Counsel may:

(i) Determine either to affirm or to reverse the initial determination in whole or in part;

(ii) Determine to disclose a record, even if exempt, if good cause for doing so either is shown by the application or otherwise appears;

(iii) Remand the matter to the Assistant Secretary (A) to correct a deficiency in the initial processing of the request, or (B) when an investigation as to which the staff originally claimed exemption from mandatory disclosure on the basis of 5 U.S.C. 555(b)(7)(A) or 7 U.S.C. 12(a) is subsequently closed; or;

(iv) Refer the matter to the Commission for a decision.

(7) If the initial denial of the request for nonpublic records is reversed, the Office of General Counsel shall, in writing, advise the requester that the records will be available on or after a specified date. If, on appeal, the denial of access to a record is affirmed in whole or in part, the person who requested the information shall be notified in writing of (1) the reasons for the denial and (2) the provisions of 5 U.S.C. 552(a)(4) providing for judicial review of a determination to withhold records.

(j) *Expedited processing.* A request may be given expedited processing if the requester demonstrates a compelling need for the requested records. For purposes of this provision, the term "compelling need" means: That a failure to obtain requested records on an expedited basis could reasonably be ex-

pected to pose an imminent threat to the life or physical safety of an individual; or with respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged federal government activity. A requester who seeks expedited processing must demonstrate a compelling need by submitting a statement that is certified by the requester to be true and correct to the best of that person's knowledge and belief. The Assistant Secretary, or his or her designee, will determine whether to provide expedited processing, and notice of the determination will be provided to the requester, within ten days after the date of the request. If the request for expedited processing is denied, the requester may file an appeal with the Office of General Counsel within ten days of the date of the denial by the Assistant Secretary. The Office of General Counsel will respond to the appeal within ten days after the date of the appeal.

[51 FR 26870, July 28, 1986, as amended at 52 FR 19307, May 22, 1987; 62 FR 17069, Apr. 9, 1997; 69 FR 67507, Nov. 18, 2004]

§ 145.8 Fees for records services.

A schedule of fees for record services, including locating, and making records available, and copying, appears in appendix B to this part 145. Copies of the schedule of fees may also be obtained upon request made in person, by telephone or by mail from the FOI, Privacy and Sunshine Acts compliance staff, Office of the Secretariat or at any regional office of the Commission.

(7 U.S.C. 4a(j) and 16a as amended by Pub. L. 97-444, 96 Stat. 2294 (1983), and 5 U.S.C. 552, 552a and 552b)

[41 FR 16290, Apr. 16, 1976, as amended at 49 FR 12684, Mar. 30, 1984]

§ 145.9 Petition for confidential treatment of information submitted to the Commission.

(a) *Purpose.* This section provides a procedure by which persons submitting information in any form to the Commission can request that the information not be disclosed pursuant to a request under the Freedom of Information Act, 5 U.S.C. 552. This section does