

(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 expected 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 not affect the Commission’s right, authority, or obligation to disclose information in any other context.

(b) *Scope.* The provisions of this section shall apply only where the Commission has not specified that an alternative procedure be utilized in connection with a particular study, report, investigation, or other matter.

(c) *Definitions.* The following definitions apply to this section:

(1) *Submitter.* A “submitter” is any person who submits any information or material to the Commission or who permits any information or material to be submitted to the Commission. For purposes of paragraph (d)(1)(ii) of this section only, “submitter” includes any person whose information has been submitted to a designated contract market or registered futures association that in turn has submitted the information to the Commission.

(2) *FOIA requester.* A “FOIA requester” is any person who files with the Commission a request to inspect or

copy Commission records or documents pursuant to the Freedom of Information Act, 5 U.S.C. 552.

(d) *Written request for confidential treatment.* (1) Any submitter may request in writing that the Commission afford confidential treatment under the Freedom of Information Act to any information that he or she submits to the Commission. Except as provided in paragraph (d)(4) of this section, no oral requests for confidential treatment will be accepted by the Commission. The submitter shall specify the grounds on which confidential treatment is being requested but need not provide a detailed written justification of the request unless required to do so under paragraph (e) of this section. Confidential treatment may be requested only on the grounds that disclosure:

(i) Is specifically exempted by a statute that either requires that the matters be withheld from the public in such manner as to leave no discretion on the issue or establishes particular criteria for withholding or refers to particular types of matters to be withheld.

(ii) Would reveal the submitter's trade secrets or confidential commercial or financial information.

(iii) Would constitute a clearly unwarranted invasion of the submitter's personal privacy.

(iv) Would reveal investigatory records compiled for law enforcement purposes whose disclosure would deprive the submitter of a right to a fair trial or an impartial adjudication.

(v) Would reveal investigatory records compiled for law enforcement purposes whose disclosure would constitute an unwarranted invasion of the personal privacy of the submitter.

(vi) Would reveal investigatory records compiled for law enforcement purposes when disclosure would interfere with enforcement proceedings or disclose investigative techniques and procedures, provided that the claim may be made only by a designated contract market or registered futures association with regard to its own investigatory records.

(2) The original of any written request for confidential treatment must be sent to the Assistant Secretary of

the Commission for FOI, Privacy and Sunshine Acts Compliance. A copy of any request for confidential treatment shall be sent to the Commission division or office receiving the original of any material for which confidential treatment is being sought.

(3) A request for confidential treatment shall be clearly marked "FOIA Confidential Treatment Request" and shall contain the name, address, and telephone number of the submitter. The submitter is responsible for informing the Assistant Secretary of the Commission for FOI, Privacy and Sunshine Acts Compliance of any changes in his or her name, address, and telephone number.

(4) A request for confidential treatment should accompany the material for which confidential treatment is being sought. If a request for confidential treatment is filed after the filing of such material, the submitter shall have the burden of showing that it was not possible to request confidential treatment for that material at the time the material was filed. A request for confidential treatment of a future submission will not be processed. All records which contain information for which a request for confidential treatment is made or the appropriate segregable portions thereof should be marked by the person submitting the records with a prominent stamp, typed legend, or other suitable form of notice on each page or segregable portion of each page stating "Confidential Treatment Requested by [name]." If such marking is impractical under the circumstances, a cover sheet prominently marked "Confidential Treatment Requested by [name]" should be securely attached to each group of records submitted for which confidential treatment is requested. Each of the records transmitted in this matter should be individually marked with an identifying number and code so that they are separately identifiable. In some circumstances, such as when a person is testifying in the course of a Commission investigation or providing documents requested in the course of a Commission inspection, it may be impractical to submit a written request for confidential treatment at the time the information is first provided to the

Commission. In no circumstances can the need to comply with the requirements of this section justify or excuse any delay in submitting information to the Commission. Rather, in such circumstances, the person testifying or otherwise submitting information should inform the Commission employee receiving the information, at the time the information is submitted or as soon thereafter as practicable, that the person is requesting confidential treatment for the information. The person shall then submit a written request for confidential treatment within 30 days of the submission of the information. If access is requested under the Freedom of Information Act with respect to material for which no timely request for confidential treatment has been made, it may be presumed that the submitter of the information has waived any interest in asserting that the material is confidential.

(5) A request for confidential treatment shall state the length of time for which confidential treatment is being sought.

(6) A request for confidential treatment (as distinguishing from the material that is the subject of the request) shall be considered a public document. When a submitter deems it necessary to include, in its request for confidential treatment, information for which it seeks confidential treatment, the submitter shall place that information in an appendix to the request.

(7) On 10 business days notice from the Assistant Secretary, a submitter shall submit a detailed written justification of a request for confidential treatment, as specified in paragraph (e) of this section. Upon request and for good cause shown, the Assistant Secretary may grant an extension of such time. The Assistant Secretary will notify the submitter that failure to provide timely a detailed written justification will be deemed a waiver of the submitter's opportunity to appeal an adverse determination.

(8)(i) Requests for confidential treatment for any reasonably segregable material that is not exempt from public disclosure under the Freedom of Information Act, as implemented in §145.5, shall be summarily rejected under §145.9(d)(9). Requests for con-

fidential treatment of public information contained in financial reports as specified in §1.10 shall not be processed. A submitter has the burden of specifying clearly and precisely the material that is the subject of the confidential treatment request. A submitter may be able to meet this burden in various ways, including:

(A) Segregating material for which confidential treatment is being sought;

(B) Submitting two copies of the submission: a copy from which material for which confidential treatment is being sought has been obliterated, deleted, or clearly marked and an unmarked copy; and

(C) Clearly describing the material within a submission for which confidential treatment is being sought.

(ii) A submitter shall not employ a method of specifying the material for which confidential treatment is being sought if that method makes it unduly difficult for the Commission to read the full submission, including all portion claimed to be confidential, in its entirety.

(9) If a submitter fails to follow the procedures set forth in paragraphs (d)(1) through (d)(8) of this section, the Assistant Secretary of the Commission for FOI, Privacy and Sunshine Acts Compliance or his or her designee may summarily reject the submitter's request for confidential treatment with leave to the submitter to refile a proper petition. Failure of the Assistant Secretary or his or her designee summarily to reject a confidential treatment request pursuant to this paragraph shall not be construed to indicate that the submitter has complied with the procedures set forth in paragraphs (d)(1) through (d)(8) of this section.

(10) Except as provided in paragraph (d)(9) of this section, no determination with respect to any request for confidential treatment will be made until the Commission receives a Freedom of Information Act request for the material for which confidential treatment is being sought.

(e) *Detailed written justification of request for confidential treatment.* (1) If the Assistant Secretary or his or her designee determines that a FOIA request seeks material for which confidential

§ 145.9

17 CFR Ch. I (4-1-06 Edition)

treatment has been requested pursuant to § 145.9, the Assistant Secretary or his or her designee shall require the submitter to file a detailed written justification of the confidential request within ten business days (unless under § 145.9(d)(7) an extension of time has been granted) of that determination unless, pursuant to an earlier FOIA request, a prior determination to release or withhold the material has been made, the submitter has already provided sufficient information to grant the request for confidential treatment; or the material is otherwise in the public domain. The detailed written justification shall be filed with the Assistant Secretary of the Commission for FOI, Privacy and Sunshine Acts Compliance. It shall be clearly marked "Detailed Written Justification of FOIA Confidential Treatment Request" and shall contain the request number supplied by the Commission. The submitter shall also send a copy of the detailed written justification to the FOIA requester at the address specified by the Commission.

(2) The period for filing a detailed written justification may be extended upon request and for good cause shown.

(3) The detailed written justification of the confidential treatment request shall contain:

(i) The reasons, referring to the specific exemptive provisions of the Freedom of Information Act listed in paragraph (d)(1) of this section, why the information that is the subject of the FOIA request should be withheld from access under the Freedom of Information Act;

(ii) The applicability of any specific statutory or regulatory provisions that govern or may govern the treatment of the information;

(iii) The existence and applicability of prior determinations by the Commission, other federal agencies, or courts concerning the specific exemptive provisions of the Freedom of Information Act pursuant to which confidential treatment is being requested. Submitters shall satisfy any evidentiary burdens imposed upon them by applicable Freedom of Information Act case law.

(iv) Such additional facts and authorities as the submitter may consider appropriate.

(4) The detailed written justification of a confidential treatment request shall be accompanied by affidavits to the extent necessary to establish the facts necessary to satisfy the submitter's evidentiary burden.

(5) The detailed written justification of a confidential treatment request (as distinguished from the material that is the subject of the request) shall be considered a public document. However, a submitter will be permitted to submit to the Commission supplementary confidential affidavits with his or her detailed written justification if that is the only way in which he or she can convincingly demonstrate that the material that is the subject of the confidential treatment request should not be disclosed to the FOIA requester.

(f) *Initial determination with respect to petition for confidential treatment.* (1) The Assistant Secretary for FOI, Privacy and Sunshine Acts Compliance or his or her designee, in consultation with the Office in which the record was located, shall issue an initial determination with respect to a confidential treatment request for material that is responsive to the FOIA request. This determination shall be issued at the same time as the initial determination with respect to the FOIA request. See § 145.7(g). To the extent that the initial determination grants a confidential treatment request in full or in part, it should specify the FOIA exemptions upon which this determination is based and briefly describe the material to which each exemption applies. See § 145.7(g)(2). To the extent that the initial determination denies confidential treatment to any material for which confidential treatment was requested, it should briefly describe the material for which confidential treatment is denied.

(2) If the Assistant Secretary or his or her designee determines that a confidential treatment request shall be denied in full or in part, the submitter shall be informed of his or her right to appeal to the Commission's General Counsel in accordance with the procedures set forth in paragraph (g) of this

section. The material for which confidential treatment was denied shall be released to the FOIA requester if the submitter does not file an appeal within 10 business days of the date on which his or her request was denied.

(3) If the Assistant Secretary or his or her designee determines that a confidential treatment request shall be granted in full or in part, the FOIA requester shall be informed of his or her right to appeal to the Commission's General Counsel in accordance with the procedures set forth in §145.7(h).

(g) *Appeal from initial determination that confidential treatment is not warranted.* (1) An appeal from an initial determination to deny a confidential treatment request in full or in part shall be filed with the General Counsel of the Commission. No disclosure of the material that is the subject of the appeal shall be made until the appeal is resolved. If both a submitter and a FOIA requester appeal to the General Counsel from a partial grant and partial denial of a confidential treatment request, those appeals shall be consolidated.

(2) Any appeal of a denial of a request for confidential treatment shall be in writing, and shall be clearly marked "FOIA Confidential Treatment Appeal." The appeal shall include a copy of the initial determination and shall clearly indicate the portions of the initial determination from which an appeal is being taken.

(3) The appeal shall be sent to the Commission's Office of General Counsel. A copy of the appeal shall be sent to the FOIA requester. The General Counsel or his or her designee shall have the authority to consider all appeals from initial determinations of the Assistant Secretary of the Commission for FOI, Privacy and Sunshine Acts compliance. The General Counsel may, in his sole and unfettered discretion, refer such appeals and questions concerning stays under paragraph (g)(10) of this section to the Commission for decision.

(4) In the appeal, the submitter may supply additional substantiation for his or her request for confidential treatment, including additional affidavits and additional legal argument.

Such submissions shall be governed by paragraph (e)(5) of this section.

(5) The FOIA requester shall have an opportunity to respond in writing to the appeal within 10 business days of the date of filing of the FOIA Confidential Treatment Appeal. The FOIA requester need not respond, however. Any response shall be sent to the Commission's Office of General Counsel. A copy shall be sent to the submitter.

(6) All FOIA Confidential Treatment Appeals and all responses thereto shall be considered public documents.

(7) The General Counsel will make a determination with respect to any appeal within twenty business days after receipt by the Office of General Counsel of such appeal or within such extended period as may be permitted in accordance with the standards set forth in §145.7(g)(3). Although other procedures may be employed, to the extent possible the General Counsel will decide the appeal on the basis of the affidavits and other documentary evidence submitted by the submitter and the FOIA requests.

(8) The General Counsel or his or her designee shall have the authority to remand any matter to the Assistant Secretary of the Commission for FOI, Privacy and Sunshine Acts Compliance to correct deficiencies in the initial processing of the confidential treatment request.

(9) If the General Counsel or his or her designee denies a confidential treatment appeal in full or in part, the information for which confidential treatment is denied shall be disclosed to the FOIA requester 10 business days later, subject to any stay entered pursuant to paragraph (g)(10) of this section.

(10) The General Counsel or his or her designee shall have the authority to enter and vacate stays as set forth below. If, within 10 business days of the date of issuance of a determination by the General Counsel or his or her designee to disclose information for which a submitter sought confidential treatment, the submitter commences an action in federal court concerning that determination, the General Counsel will stay the public disclosure of the information pending final judicial resolution of the matter. The General

Counsel or his or her designee may vacate a stay entered under this section, either on his or her own motion or at the request of the FOIA requester. If such a stay is vacated, the information will be released to the requester 10 business days after the submitter is notified of this action, unless a court orders otherwise.

(h) *Extensions of time limits.* Any time limit under this section may be extended for good cause shown, in the discretion of the Commission, the Commission's General Counsel, or the Assistant Secretary of the Commission for FOI, Privacy and Sunshine Acts Compliance.

(i) A submitter whose confidential treatment request has been upheld by the Commission shall, upon request of the General Counsel, aid the Commission in defending a court action to compel the Commission to disclose the information subject to the confidential treatment request. If the submitter is unwilling to aid the Commission in this regard, the General Counsel may, in appropriate cases, make the information available to the public.

[51 FR 26871, July 28, 1986, as amended at 64 FR 26, Jan. 4, 1999; 69 FR 67507, Nov. 18, 2004]

APPENDIX A TO PART 145—COMPILATION OF COMMISSION RECORDS AVAILABLE TO THE PUBLIC

The following documents are available, upon request, directly from the office indicated. Unless otherwise noted, the mailing address for the Commission offices listed below is Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

- (a) *Office of External Affairs.* (1) Commitments of Traders Reports.
- (2) Weekly Advisory (solely available on the Commission's Web site at <http://www.cftc.gov/cftc/cftcpressoffice.htm>).
- (3) Studies Prepared by Commission staff.
- (4) Educational material (*e.g.*, newsletters, brochures, annual reports, conference or advisory meetings, technical information about specific markets or contracts).
- (5) Press releases.
- (6) Rule enforcement and financial reviews (public version).
- (7) CFTC litigation documents (*e.g.* administrative and civil complaints, injunctions, initial decisions, opinions and orders).
- (8) Commission rules and regulations, FEDERAL REGISTER notices, interpretative letters.
- (9) Speeches, Commissioner biographies and photographs.

(10) Statistical data concerning the Commission's budget.

(11) Statistical data concerning specific contracts and markets.

(b) *Office of the Secretariat (Public reading area with copying facilities available).* (1) Comment letters and CFTC summaries of comment letters.

(2) Terms and conditions of proposed contracts.

(3) Registered entity filings relating to rules as defined in §40.1 of this chapter, unless covered by a request for confidential treatment.

(4) National Futures Association (NFA) rule amendments.

(5) Exchange and NFA disciplinary action notifications.

(6) Open Commission meeting minutes.

(7) Sunshine certificates for closed Commission meetings.

(8) CFTC Advisory Committee final reports.

(9) Opinions and orders of the Commission.

(10) Reparations orders and enforcement orders index.

(11) Rulemaking index.

(12) Exchange membership notification.

(13) Publicly available portions of applications to become a registered entity including the transmittal letter, proposed rules, proposed bylaws, corporate documents, any overview or similar summary provided by the applicant, any documents pertaining to the applicant's legal status and governance structure, including governance fitness information, and any other part of the application not covered by a request for confidential treatment.

(c) *Office of Proceedings.* (1) Documents contained in reparations and enforcement cases, unless subject to protective order.

(2) Complaint packages, which contain the Reparation Rules, Brochure "Questions and Answers About How You Can Resolve a Commodity-Market Related Dispute," and the complaint form.

(3) Rules of Practice concerning administrative enforcement proceedings.

(d) *Executive Director, Administrative Services Section.* Information Collection requests submitted to the Office of Management and Budget relating to requirements under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

(e) *Division of Market Oversight.* (1) Weekly stocks of grain reports.

(2) Weekly cotton or call reports.

(f) *Division of Enforcement.* Complaint package containing Division of Enforcement Questionnaire and list of federal, state and local enforcement authorities.

(g) *Division of Clearing and Intermediary Oversight.* Publicly available portions of registration documents are available from the National Futures Association, 200 West

Madison Street, Chicago, Illinois 60606. See Commission Rule 145.6.

[51 FR 26874, July 28, 1986, as amended at 57 FR 29203, July 1, 1992; 59 FR 5528, Feb. 7, 1994; 60 FR 49335, Sept. 25, 1995; 64 FR 27, Jan. 4, 1999; 67 FR 62353, Oct. 7, 2002; 67 FR 63539, Oct. 15, 2002; 69 FR 67507, Nov. 18, 2004]

APPENDIX B TO PART 145—SCHEDULE OF FEES

(a) *Charges for requests.* The following charges may be made where applicable for responding to requests for records.

(1) \$4.75 for each quarter hour spent by clerical personnel in searching for or reviewing records.

(2) When a search or review cannot be performed by clerical personnel, \$10.25 for each quarter hour spent by professional personnel in searching or reviewing records.

(3) When searches require the expertise of a computer specialist, staff time for programming and performing searches will be charged at \$10.25 per quarter hour. For searches of records stored on personal computers used as workstations by Commission staff and shared access network servers, the computer processing time is included in the search time for the staff member using the workstation as set forth in paragraph (a) of this appendix.

(4) Document duplication, including computer printouts, will be charged at \$0.15 per page.

(5) For copies of materials other than paper records, the requester will be charged the actual cost of materials and reproduction, including the time of clerical personnel at a rate of \$4.75 per quarter hour.

(6) When a request has been made and granted to examine Commission records at an office of the Commission other than the office in which the records are routinely maintained, the requester:

(i) Will reimburse the Commission for the actual cost of transporting the records; and

(ii) Will be charged at a rate of \$4.75 for each quarter hour spent by clerical personnel in preparing the records for transit.

(7) For certifying that requested records are true copies, the charge will be \$3.00 per certification.

(8) Upon request, records will be mailed by means of overnight or express mail at the fee of \$10.00 per package mailed.

(b) *Waiver or reduction of fees.* Fees will be waived or reduced by the Commission if:

(1) The fee is less than or equal to \$10.00, the approximate cost to the Commission of collecting the fee; or,

(2) If the Commission determines that the disclosure of the information is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(c) *Applicability of fees.* Fees shall be charged even if no records are ultimately furnished to the requester. Fees apply to various types of requests as follows.

(1) *Commercial use request.* Fees for search time, review time and duplication of records will be charged to requests from or on behalf of one who seeks information for a user or purpose that furthers the commercial, trade or profit interests of the requester or the person on whose behalf the request is made.

(2) *Educational institution or noncommercial scientific institution.* Only duplication fees will be charged to schools or to organizations which operate solely for the purpose of scientific research, the results of which are not intended to promote any particular product or industry. No charge will be made for the first 100 pages duplicated or for search or review time.

(3) *Representative of the news media.* Only duplication fees will be charged to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. No charge will be made for the first 100 pages duplicated or for search or review time.

(4) *Other requesters.* Fees for search time and duplication will be charged to requesters who are not covered by one of the categories above. No charge will be made for the first two hours of search time, the first 100 pages of duplication, or for review time. If the search is for records stored in a computer format, a combination of computer operation charges and search time charges will be waived up to the equivalent of two hours of professional search time.

(d) *Aggregation of requests.* For purposes of determining fees, the Commission may aggregate reasonably related requests if multiple requests are made within a 30-day period or if there is a solid basis for believing that multiple requests were made solely to avoid fees.

(e) *Notification of fees.* A request for Commission records may state that the party is willing to pay fees up to a stated limit for services to be provided in searching, reviewing and duplicating requested records. If such a statement is made, no work will be done that will result in fees beyond the stated limit without written authorization. If no limit is stated, no work will be done that will result in fees in excess of \$25.00 without written authorization from the requester.

(f) *Advance payment of fees.* The Commission may request advance payment of all or part of the fee (i) when fees are expected to exceed \$250; or (ii) when a requester has previously failed to pay fees in a timely fashion.

(g) *Payment of fees.* Payment should be made by check or money order payable to the Commodity Futures Trading Commission.

(h) *Interest on fees.* The Commission will begin charging interest on unpaid bills starting on the 31st day following the day on which the bill was sent. Interest will be at the rate prescribed in 31 U.S.C. 3717.

(i) *Collection of fees.* If fees not paid, the Commission may disclose debts to appropriate authorities for collection or to consumer reporting agencies.

[52 FR 19308, May 22, 1987, as amended at 64 FR 27, Jan. 4, 1999; 69 FR 67507, Nov. 18, 2004]

APPENDIX C TO PART 145 [RESERVED]

PART 146—RECORDS MAINTAINED ON INDIVIDUALS

Sec.

- 146.1 Purpose and scope.
- 146.2 Definitions.
- 146.3 Requests by an individual for information or access.
- 146.4 Procedures for identifying the individual making the request.
- 146.5 Disclosure of requested information to individuals; fees for copies of records.
- 146.6 Disclosure to third parties.
- 146.7 Content of systems of records.
- 146.8 Amendment of a record.
- 146.9 Appeals to the Commission.
- 146.10 Information supplied by the Commission when collecting information from an individual.
- 146.11 Public notice of records systems.
- 146.12 Exemptions.
- 146.13 Inspector General exemptions.

APPENDIX A TO PART 146—FEES FOR COPIES OF RECORDS REQUESTED UNDER THE PRIVACY ACT OF 1974

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

SOURCE: 41 FR 3212, Jan. 21, 1976, unless otherwise noted.

§ 146.1 Purpose and scope.

(a) This part contains the rules of the Commodity Futures Trading Commission implementing the Privacy Act of 1974 (Pub. L. 93-579, 5 U.S.C. 552a). These rules apply to all records maintained by this Commission which are not excepted or exempted as set forth in § 146.12, insofar as they contain personal information concerning an individual, identify that individual by name or other symbol and are contained in a system of records from which information is retrieved by the individual's name or identifying symbol. Among the primary purposes of these rules are to permit individuals to determine whether information about

them is contained in Commission files and, if so, to obtain access to that information; to establish procedures whereby individuals may have inaccurate and incomplete information corrected; and, to restrict access by unauthorized persons to that information.

(b) In this part the Commission is also exempting certain Commission systems of records from some of the provisions of the Privacy Act of 1974 that would otherwise be applicable to those systems. These exemptions are authorized under the Privacy Act, 5 U.S.C. 552a(k).

§ 146.2 Definitions.

For purposes of this part 146:

(a) The term *Commission* means the Commodity Futures Trading Commission;

(b) The term *Executive Director* refers to the executive level staff official appointed pursuant to section 2(a)(5) of the Commodity Exchange Act.

(c) The term *FOI, Privacy and Sunshine Acts compliance staff* refers to the staff in the Office of the Secretariat in the Commission's principal office in Washington, DC who are assigned to respond to requests and handle various other matters under the Freedom of Information Act, the Privacy Act of 1974 and the Government in the Sunshine Act;

(d) The term *individual* means a citizen of the United States or an alien lawfully admitted for permanent residence;

(e) The term *maintain* includes maintain, collect, use, or disseminate;

(f) The term *record* means any item, collection, or grouping of information about an individual that is maintained by the Commission, including but not limited to, his education, financial transactions, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual;

(g) The term *system of records* means a group of any records under the control of the Commission 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;