Service Bulletin 737–53–1187, dated November 2, 1995; or Part III of the Accomplishment Instructions of Boeing Service Bulletin 737–53–1187, Revision 1, dated January 16, 1997, except as required by paragraph (h)(4) of this AD. Boeing Service Bulletin 737–53–1187, dated November 2, 1995; and Boeing Service Bulletin 737–53–1187, Revision 1, dated January 16, 1997; are not incorporated by reference in this AD.

(n) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (o)(1) of this AD. Information may be emailed to: *9-ANM-LAACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Los Angeles ACO, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane and the approval must specifically refer to this AD.

(4) AMOCs approved for repairs for AD 2009–21–01 are approved as AMOCs for the corresponding provisions of paragraph (g) of this AD.

(5) Except as specified in paragraph (n)(6) of this AD, AMOCs approved for previous modifications done as optional terminating action for AD 2009–21–01 are approved as AMOCs for the modification required by paragraph (l) of this AD provided the previous modification was done after the airplane had accumulated 53,000 total flight cycles or more.

(6) AMOCs approved for previous modifications done as optional terminating action for AD 2009–21–01 are approved as AMOCs for the modification required by paragraph (l) of this AD provided the skin modification replacement is done using the skin panel kit specified Boeing Service Bulletin 737–53–1187.

(o) Related Information

(1) For more information about this AD, contact Jennifer Tsakoumakis, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles ACO, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5264; fax: 562–627–5210; email: *jennifer.tsakoumakis@faa.gov.*

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (p)(3) and (p)(4) of this AD.

(p) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Boeing Special Attention Service Bulletin 737–53–1187, Revision 3, dated July 10, 2015.

(ii) Reserved.

(3) For Boeing service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone: 562–797–1717; Internet: *https://www.myboeingfleet.com.*

(4) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on May 2, 2017.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2017–10286 Filed 5–26–17; 8:45 am]

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1 and 23

RIN 3038–AE36

Recordkeeping

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (the ''Commission'') is amending the recordkeeping obligations set forth in Commission regulations along with corresponding technical changes to certain provisions regarding retention of oral communications and record retention requirements applicable to swap dealers and major swap participants, respectively. The amendments modernize and make technology neutral the form and manner in which regulatory records must be kept, as well as rationalize the rule text for ease of understanding for those persons required to keep records pursuant to the Commodity Exchange Act (the ''CEA'' or ''Act'') and regulations promulgated by the Commission thereunder. The amendments do not alter any existing requirements regarding the types of regulatory records to be inspected, produced, and maintained set forth in other Commission regulations.

DATES: The effective date for this final rule is August 28, 2017.

FOR FURTHER INFORMATION CONTACT: Eileen T. Flaherty, Director, (202) 418–5326, *eflaherty@cftc.gov;* Frank Fisanich, Chief Counsel, (202) 418–5949, *ffisanich@cftc.gov;* Andrew Chapin, Associate Chief Counsel, (202) 418–5465, *achapin@cftc.gov;* Katherine Driscoll, Associate Chief Counsel, (202) 418–5544, *kdriscoll@cftc.gov;* C. Barry McCarty, Special Counsel, (202) 418–6627, *cmccarty@cftc.gov;* or Jacob Chachkin, Special Counsel, (202) 418–5496, *jchachkin@cftc.gov,* Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, 1155 21st Street NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

In response to petitions for rulemaking from various industry groups requesting amendments to § 1.31, the Commission published in the **Federal Register** on January 19, 2017 a proposal (''Proposal'') to amend the recordkeeping obligations applicable to all persons required to keep records pursuant to the Act and Commission regulations promulgated thereunder (referred to in the Proposal as ''records entities'').[1] Regulation 1.31 sets forth the form and manner in which all regulatory records must be kept by records entities. Regulation 1.31 does not specify the types of regulatory records that must be kept, rather it specifies the form and manner in which regulatory records required by other Commission regulations are maintained and produced to the Commission. The proposed amendments to § 1.31, and related technical amendments to §§ 1.35 and 23.203, would modernize and make technology neutral the form and manner in which regulatory records must be kept, as well as rationalize the current rule text for ease of understanding. Under the proposed amendments, records entities would have greater flexibility regarding the retention and production of all regulatory records

[1] Recordkeeping, 82 FR 6356 (Jan. 19, 2017).

under a less-prescriptive, principles-based approach.

Among other proposed changes requested in the petitions for rulemaking, the Commission proposed to eliminate the requirement for a records entity to: (1) Keep electronic regulatory records in their native file format (*i.e.,* in the format in which it was originally created); (2) retain any electronic record in a non-rewritable, non-erasable format (*i.e.,* the ''write once, read many'' or ''WORM'' requirement); and (3) engage a third-party technical consultant and for the consultant to file certain representations with the Commission regarding access to the records entity's electronic regulatory records. These proposed changes would be universal to all records entities, including intermediaries registered or required to be registered with the Commission; registered entities such as designated contract markets, swap execution facilities, and derivatives clearing organizations; and any other persons required to produce certain regulatory records as set forth in other Commission regulations.

II. Summary of Comments

The Commission received sixteen comment letters on the Proposal from a wide range of records entities, including registrants, registered entities and other persons subject to the Commission's recordkeeping obligations set forth in § 1.31.[2] All commenters generally supported the Commission's efforts to modernize and make technology neutral the existing recordkeeping obligations. One commenter requested that the Commission limit changes to § 1.31 to the elimination of the native file format, WORM, and third-party technical consultant requirements, and withdraw the remainder of the proposal.[3] As outlined below, several commenters also suggested modifications to the proposed rule text, including the requirement for records entities to establish, maintain, and implement written policies and procedures reasonably designed to ensure that the records entity complies with its recordkeeping obligations. For reasons provided below, the Commission has accepted certain of these recommendations in the amendments being adopted today, but has declined to accept certain other recommendations, including recommendations beyond the scope of the Proposal.

III. Final Rule

The Commission has considered the comments it received in response to the Proposal and is adopting the rule amendments as proposed, with the following exceptions: (1) Revising the definition of ''regulatory records'' in § 1.31(a); (2) deleting proposed § 1.31(b) regarding the requirement for a records entity to establish, maintain, and implement written policies and procedures designed to ensure compliance with all obligations under § 1.31; (3) amending § 1.31(c) to limit the retention period for pre- trade communications required by § 23.202(a)(1) and § 23.202(b)(1)–(3) to five years from the date the communication was created; (4) deleting from § 1.31(d)(2)(i) the requirement that a records entity retain systems that maintain the ''chain of custody elements'' of any electronic regulatory record; and (5) re-lettering § 1.31(c)–(f) to account for the deletion of proposed § 1.31(b). Specific provisions of the final rules are addressed below.

A. Regulation 1.31(a): Definitions

The Commission proposed to define in § 1.31(a) the terms ''electronic regulatory records,'' ''records entity,'' and ''regulatory records'' as used elsewhere in the section.

The Commission received several comments regarding the proposed definition of ''records entity'' to be any person required by the Act or Commission regulations to keep regulatory records. A few commenters requested that the Commission exclude from the definition of ''records entity'' those persons that are neither registrants nor registered entities.[4] One commenter [5] further suggested that compliance with the proposed changes would impose greater costs on records entities that are neither registrants nor registered entities.[6] In light of these comments, the Commission notes that the final rule as adopted by this release does not impose any new recordkeeping requirements on any records entity, including those that are neither registrants nor registered entities, such as commercial end-users. Rather, the final rule merely modernizes and makes technology neutral the form and manner in which regulatory records must be kept. Further, the final rule is clear that it does not override other methods of maintaining records that may be specified elsewhere in the Act or other Commission regulations.[7] Thus, commercial end-users that are records entities, for example, may continue to maintain records in accordance with their current practices if such are permitted by the Act, Commission regulations, or existing relief or guidance.[8] Further, as stated above, the final rule removes several obligations regarding the form and manner in which regulatory records must be kept that should lessen the compliance costs associated with the recordkeeping requirements set forth in § 1.31. Given the foregoing, the Commission has determined not to exclude any persons required to keep regulatory records from the definition of ''records entity.''

Regarding the definition of ''regulatory records,'' the Commission specifically requested comment whether the term ''metadata''—or data about data—should be defined. The Commission recognized in the Proposal that the term metadata may be generally understood by practitioners notwithstanding a lack of universal agreement on an exact definition. A majority of commenters on the issue agreed that metadata need not be defined at this time as that would be inconsistent with the Commission's stated goal to provide for less-prescriptive recordkeeping obligations.[9] Further, one commenter asserted that including metadata within the

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[2] Comment letters were submitted by the following entities: The Securities Industry and Financial Markets Association (''SIFMA''); CME Group Inc. (''CME''); NASDAQ Futures, Inc. (''NASDAQ''); the National Futures Association (''NFA''); SunTrust Bank; the Futures Industry Association (''FIA''); the Edison Electric Institute and National Rural Electric Cooperative (''EEI & NREC''); the Investment Company Institute (''ICI''); Managed Funds Association, Investment Adviser Association, Alternative Investment Management Association, and SIFMA Asset Management Group (''Associations''; the Minneapolis Grain Exchange (''MGEX''); The Depository Trust & Clearing Corporation (''DTCC''); ICE Futures U.S., Inc. (''ICE''); the Commercial Energy Working Group (''Working Group''); the International Swaps and Derivatives Association, Inc. (''ISDA''); the Federal Home Loan Banks (''FHLBanks''); and the International Energy Credit Association (''IECA''). All comment letters are available on the Commission's Web site at *https://comments.cftc.gov/PublicComments/CommentList.aspx?id=1774.*

[3] *See* CME comment letter.

[4] *E.g.,* ISDA, ICI, and Associations comment letters.

[5] *See* ISDA comment letter.

[6] *E.g.,* § 1.35(a) (Unregistered members of a DCM or SEF required to retain records of commodity interests and related cash or forward transactions) and §§ 32.2, 32.3, 45.2, and 45.6 (Non-Swap Dealer/Major Swap Participants (''Non-SD/MSPs'') are subject to trade option requirements including recordkeeping).

[7] *See* text of final rule, § 1.31(b), (c), and (d), each stating, ''[u]nless specified elsewhere in the Act or Commission Regulations. . . .''

[8] *E.g.,* Revised recordkeeping requirements for trade option counterparties that are Non-SD/MSPs, Trade Options, 81 FR 14966, 14970 (Mar. 21, 2016); and Relief for Unregistered Members from retaining text messages and maintaining required records in a particular form and manner, Records of Commodity Interest and Related Cash or Forward Transactions, 80 FR 80247, 80250–51 (Dec. 24, 2015).

[9] *E.g.,* FIA and ICE comment letters.

definition of a ''regulatory record'' would greatly increase the amount and associated costs of data to be stored and potentially subject to production requests.[10] Another commenter stated that records entities would be required to pursue, develop, and purchase additional technological solutions to ensure compliance if metadata were defined.[11]

The Commission notes that it and other federal agencies, including the Securities and Exchange Commission (''SEC''), have been requesting metadata in conjunction with information requests to industry for more than five years through standardized data delivery standards.[12] The Commission believes that the § 1.31(a) definition of ''regulatory record,'' *i.e.,* all data produced and stored electronically describing how and when such books and records were created, formatted, or modified, is sufficient to support its statutory inspection and investigative functions. Thus, the Commission has determined that there is no need to define metadata at this time.

The Commission further noted in the Proposal that the proposed definition of ''regulatory records'' would more clearly state the existing requirement for each records entity to maintain a regulatory record and any subsequent versions of such record. Multiple commenters questioned whether the revised language was, in fact, imposing a new requirement to maintain versions of a regulatory record before it becomes in fact a regulatory record (*i.e.,* drafts of an agreement created during a negotiation but prior to execution).[13] To clarify that the Commission did not intend to require versions of a regulatory record prior to its becoming a regulatory record, the Commission is modifying the definition of ''regulatory records'' to indicate that the term means all books and records required to be kept by the Act or Commission regulations, including any record of any correction or other amendment to such books and records, provided that, with respect to such books and records stored electronically, regulatory records shall also include: (i) Any data necessary to access, search, or display any such books and records; and (ii) all data produced and stored electronically describing how and when such books and records were created, formatted, or modified. The Commission believes the definition as revised makes clear that a records entity only has the obligation to maintain data about a regulatory record after it is created and not about the record before it becomes a regulatory record.

As noted in the Proposal this is the existing standard in § 1.31. Under existing § 1.31(b)(1)(ii)(A) electronic records are required to be preserved exclusively in a non-rewritable, non-erasable format. This provision was designed to ensure the ''trustworthiness of documents that may be relied upon by the Commission in conducting investigations and entered into evidence in administrative and judicial proceedings.'' [14] It therefore follows that each version of an electronic record and all subsequent versions would have to be maintained under the existing rule. This requirement provides for a comprehensive audit trail, which the Commission believes is vital to both the supervision and enforcement of the Act and Commission regulations.

Finally, another commenter also asserted that retaining all versions of a regulatory record is redundant and creates additional opportunities for data theft or loss.[15] The commenter did not provide any detail regarding how maintaining subsequent versions of a regulatory record, which is an existing requirement under § 1.31, raises new concerns about data theft or loss. Thus, the Commission is unable to address any such concern at this time.

B. Regulation 1.31(b): Regulatory Records Policies and Procedures

The Commission proposed to amend § 1.31(b) to require each records entity to establish, maintain, and implement written policies and procedures reasonably designed to ensure that the records entity complies with its obligations under Regulation 1.31. As proposed, the written policies and procedures would provide for, without limitation, appropriate training of officers and personnel of the records entity regarding their responsibility for ensuring compliance with the obligations of the records entity under § 1.31, and regular monitoring of such compliance.

Without an explanation of the differences, several commenters disagreed with the Commission that the proposed requirement for written policies and procedures is consistent with the existing § 1.31(b)(3) requirement for anyone using electronic storage media to develop and maintain written operational procedures and controls (*i.e.,* an ''audit system'') designed to provide accountability over both the initial entry of required records and the entry of each change made to any original or duplicate record.[16] Again without providing any explanation of the differences between the existing ''audit system'' requirement and the proposed requirement for written policies and procedures or any specific cost estimates, commenters also argued that the application of the proposed written policies and procedures requirement would create new regulatory obligations for records entities which are neither registrants nor registered entities, some of whom are commercial end-users.[17] As a result, commenters argued that this additional requirement could deter certain market participants from trading swaps and other derivatives products in order to avoid having to comply with burdensome recordkeeping requirements.[18] A few commenters argued that the specific reference to training is not consistent with the Commission's emphasis on a less-prescriptive, principles-based recordkeeping requirement.[19] Other commenters requested that the Commission provide a phase-in period for establishing, maintaining and implementing written policies and procedures.[20]

Having considered these comments, the Commission has determined not to adopt the written policies and procedures requirement for records entities set forth in proposed § 1.31(b). The final rule, as adopted, sets forth the form and manner in which regulatory records must be kept, the retention period for various types of regulatory records, and the standards for production of regulatory records to the Commission. Given these clearly defined obligations, the Commission agrees with commenters that the requirement for written policies and procedures is unnecessary. As the Commission noted in the Proposal, the obligation to satisfy the requirements

[10] *See* CME comment letter.

[11] *See* Associations comment letter.

[12] The Commission publishes the CFTC Data Delivery Standards on its Web site at: *http://www.cftc.gov/idc/groups/public/@lrenforcementactions/documents/file/enfdatadeliverystandards052716.pdf.* The Commission notes that other federal agencies, such as the SEC (*https://www.sec.gov/divisions/enforce/datadeliverystandards.pdf*), the Department of Justice (*https://www.justice.gov/atr/case-document/file/494686/download*) and the Department of Treasury Office of Foreign Asset Control (*https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Documents/ofac_data_delivery.pdf*) have similar data delivery standards.

[13] *E.g.,* Associations, CME, and ICE comment letters.

[14] *See* 58 FR at 27460.

[15] *See* CME comment letter.

[16] *E.g.,* ISDA comment letter.

[17] *E.g.,* IECA comment letter.

[18] *See* ISDA comment letter.

[19] *E.g.,* Associations comment letter.

[20] *See* MGEX and Working Group comment letters.

regarding § 1.31 is one that a records entity ignores at its peril. It is ultimately the duty and responsibility of records entities to ensure accurate and reliable records. The Commission also notes that registrants are subject to a duty to diligently supervise all activities relating to its business as a Commission registrant, pursuant to § 166.3. The Commission does not consider the withdrawal of a requirement for written policies and procedures to create an explicit or implicit defense against recordkeeping violations or failure to supervise violations.

C. Regulation 1.31(b): Duration of Retention

The Commission proposed to amend § 1.31(c)(re-lettered as § 1.31(b) in the final rule) to re-state and clarify the existing retention period requirements for categories of regulatory records set forth in existing § 1.31(a), including the requirement that certain records associated with a swap be retained for the duration of the swap plus five years. The Commission also proposed to distinguish between electronic regulatory records and those records exclusively created and maintained on paper by requiring a records entity to keep electronic regulatory records readily accessible for the duration of the required record keeping period, and not just for the first two years. The Commission noted that this standard is consistent with the SEC's standard for certain intermediaries.[21] For ease of understanding, the Commission also proposed to amend §§ 1.35(a) and 23.203(b)(1) and (2) to make technical changes regarding regulatory records related to oral communications and swaps-related information maintained by swaps dealers and major swap participants, respectively. The Commission received several comments regarding various aspects of proposed § 1.31(c).

Two commenters[22] requested that the Commission reduce the retention standard for electronic pre-execution communications required by § 23.202 in relation to a swap to five years from the date of creation of the regulatory record rather than the current standard of the duration of the swap plus five years.[23] The commenters stated that the longer retention period ''places an unnecessary retention burden on firms, which exceeds most statutes of limitations or utility with respect to underlying transactions.'' [24] Another commenter stated that increasing retention periods for the storage of sensitive information in electronic form could put records entities, and their third-party service providers, at greater risk in the event of a data breach.[25]

The Commission recognizes the increased burden and risk of a longer retention period as pointed out by commenters, and, having considered such increased burden and risk in light of the nature of the affected regulatory records, has determined to require retention of electronic communications specified in § 23.202(a)(1) and § 23.202(b)(1)–(3) only for a period of five years from the date of creation of the required record. The Commission notes that these are records of pre-execution communications and, as such, are likely to be useful for regulatory oversight purposes for a shorter length of time than records regarding execution of transactions or records of events that effect transactions following execution.

For the avoidance of doubt, the Commission is not changing the retention period for execution trade information under § 23.202(a)(2), post-execution trade information under § 23.202(a)(3), the ledgers required under § 23.202(a)(4), or the daily trading records for related cash and forward transactions in § 23.202(b)(4)–(7). However, as previously stated, the Commission will continue to monitor changes in information technology and consider whether the recordkeeping regulation should be adjusted to reflect technological developments.

Certain commenters requested clarification whether the requirements as adopted apply to existing records.[26] The Commission confirms that the requirements adopted by this release do apply to existing records. However, the Commission notes that existing recordkeeping methods remain valid for compliance with the new rule, and that for many records entities, applying the new regime will reduce regulatory burdens. For example, many records entities will be permitted to maintain existing electronic records in a manner other than in their native file format and will no longer be required to retain a third-party technical consultant with authority to access a records entity's existing electronic records.[27]

D. Regulation 1.31(c): Form and Manner of Retention

The Commission proposed to adopt § 1.31(d) (re-lettered as § 1.31(c) in final rule) to describe recordkeeping requirements regarding the form and manner in which regulatory records are retained by records entities. Consistent with the Commission's emphasis on a less-prescriptive, principles-based approach, proposed § 1.31(d)(1) would rephrase the existing requirements in the form of a general standard for each records entity to retain all regulatory records in a form and manner necessary to ensure the records' and recordkeeping systems' authenticity and reliability. The Commission proposed to adopt § 1.31(d)(2) to set forth additional controls for records entities retaining electronic regulatory records. The Commission emphasized in the Proposal that the proposed regulatory text does not create new requirements, but rather updates the existing requirements so that they are set out in a way that appropriately reflects technological advancements and changes to recordkeeping methods since the prior amendments of § 1.31 in 1999.

Various commenters proposed technical amendments to proposed § 1.31(d)(2). Multiple commenters[28] requested that the Commission delete the ''chain of custody'' provision in proposed § 1.31(d)(2)(i) because it is a legal evidentiary standard which does not translate clearly to the technological requirements for recordkeeping. Another commenter similarly noted that the ''chain of custody'' requirement is redundant and unnecessarily prescriptive given that records entities are required under proposed Regulation 1.31(d)(1) to keep regulatory records in a form and manner that ensures the authenticity and reliability of such records.[29] Moreover, one of the commenters noted that the proposed definition of ''regulatory records'' in proposed § 1.31(a) already includes a chain of custody requirement based on the following language: ''data that describes how, when, and, if relevant, by whom such electronically stored information was collected, created, accessed, modified, or formatted.'' [30] The Commission has considered the comment that the term ''chain of custody'' may cause confusion given that it currently exists as a legal evidentiary standard and, given that the Commission is also persuaded that the concept is adequately covered under the

[21] SEC Rule 17a–4(f).

[22] *See* SIFMA and ISDA comment letters.

[23] *See* § 23.202(a)(1).

[24] *See* SIFMA comment letter.

[25] *See* Associations comment letter.

[26] *See* FIA and Working Group comment letters.

[27] The amendments adopted herein however would not excuse non-compliance with existing § 1.31 prior to the effective date of such amendments.

[28] *See* SIFMA, ISDA, and Associations comment letters.

[29] *See* Working Group comment letter.

[30] *See* SIFMA comment letter.

definition of ''regulatory records'' it has determined to delete the ''chain of custody elements'' from the electronic regulatory records systems requirement in amended § 1.31(c)(2)(i). The Commission notes, however, that the deletion of the term ''chain of custody'' does not change the practical requirement that records entities maintain a comprehensive audit trail for all electronic regulatory records.

One commenter also requested that the Commission amend proposed § 1.31(d)(2)(ii) to incorporate existing business continuity planning regulations in lieu of the proposed language: ''in the event of an emergency or other disruption of the records entity's electronic record retention systems[.]'' [31] The Commission is not making this requested change because records entities are not prohibited by the rule from incorporating their obligations to maintain availability of regulatory records into their existing business continuity planning. The Commission does not believe that the general standard in new § 1.31(c)(2)(ii) creates an obligation that would conflict with a records entity's existing business continuity procedures.

The same commenter also requested that the Commission amend the proposed records inventory requirement in new § 1.31(c)(2)(iii) to not require system descriptions and information necessary for accessing or producing electronic regulatory records because introducing concepts related to access and production of records in this section is potentially confusing.[32] For clarity, the Commission notes that data necessary to access and produce electronic regulatory records is itself a regulatory record under the definition thereof in § 1.31(a). Thus, the requirement in new § 1.31(c)(2)(iii) is simply a requirement that a records entity keep an up-to-date inventory of the systems where such data is maintained.

Another commenter requested that the Commission delete from proposed § 1.31(d)(2)(i) the language ''and to monitor compliance with the Act and Commission regulations in this Chapter'' because such an ''obligation to comply would not normally be embodied in a recordkeeping system.'' [33] The Commission understands this comment to mean that the commenter reads proposed § 1.31(d)(2)(1) (re-lettered as § 1.31(c)(2)(1) in the final rule) as a stand-alone obligation to ''monitor compliance with the Act. . . .'' To clarify, the Commission notes that the requirement is to establish systems that maintain the security, signature, and data regarding electronic regulatory records to ensure that the records entity can monitor compliance with the Act. Thus the requirement is not a stand-alone obligation to ''monitor compliance with the Act and Commission regulations. . . .''

Another commenter objected to the proposed amendments that would impose the requirements of proposed § 1.31(d) (re-lettered as § 1.31(c) in the final rule) on commercial end-users that happen to be records entities, including the requirements that ''each records entity maintaining electronic regulatory records shall establish appropriate systems and controls that ensure the authenticity and reliability of electronic regulatory records[.]'' [34] The commenter stated that commercial end-users should not be subject to the obligation to establish ''systems and controls . . . that ensure the authenticity of the information . . . and . . . monitor compliance with the Act and Commission regulations in this chapter[]'' because the expense and burden of that obligation goes beyond the recordkeeping methods allowed in other Commission regulations allowing commercial end-users to retain and maintain their records in the ordinary or normal course of business.[35] Moreover, the commenter stated that the creation of an ''up-to-date inventory'' appears to impose an entirely new regulatory recordkeeping expense that will require a commercial end-user to produce an inventory of its electronic records, and keep that inventory up to date, with respect to the ''electronic records'' that a commercial end-user is allowed in other Commission regulations to retain and maintain in the ordinary or normal course of business.[36]

The Commission declines to revise the rule in response to this comment because, as noted previously, § 1.31(d) (re-lettered as § 1.31(c) in the final rule) does not impose any new recordkeeping requirements on any records entity, including those that are commercial end-users. Rather, the final rule merely modernizes and makes technology neutral the form and manner in which regulatory records must be kept. Further, the final rule is clear that it does not override other methods of maintaining records that may be specified elsewhere in the Act or other Commission regulations. Thus, commercial end-users that are records entities, for example, may continue to maintain records in accordance with their current practices if such are permitted by the Act, Commission regulations, or existing relief or guidance. Finally, as described above, the final rule removes several obligations regarding the form and manner in which regulatory records must be kept that should lessen the compliance costs associated with the recordkeeping requirements set forth in § 1.31 generally.

In response to a specific question in the Proposal as to whether the Commission should routinely publish guidelines regarding the technical standards for electronic regulatory records, one commenter argued that publication of such standards likely would result in increased cost and devotion of technical resources to ensure compliance with any changing standards.[37] The commenter specifically requested that the Commission avoid publishing guidelines for technical standards of regulatory records and simply monitor records entities to ensure that regulatory records are retained in a ''form and manner necessary to ensure the records' and recordkeeping systems' authenticity and reliability.'' Given that only one commenter responded to the request for comment, and responded negatively, the Commission is persuaded that publishing guidelines regarding the technical standards for electronic regulatory records would not be helpful at this time.

Regarding the form and manner of retention of electronic regulatory records, one commenter requested confirmation that the specific means of electronic storage that the commenter employs is an acceptable means for storing electronic regulatory records.[38] As noted throughout this adopting release the Commission believes that the amendments to § 1.31 are intended to be technology neutral and therefore the Commission is not requiring or endorsing any type of record retention system or technology.

With respect to the effective date of these regulations, a few commenters requested a three- or six-month phase-in period for compliance.[39] Although the Commission has noted throughout this adopting release that it believes that the amendments adopted today are not

[31] *Id.*

[32] *Id.*

[33] *See* Associations comment letter.

[34] *See* IECA comment letter.

[35] *See e.g.,* § 20.6(c) regarding large trader reporting for physical commodity swaps.

[36] *See e.g.,* §§ 32.2, 32.3, 45.2, and 45.6 regarding trade option requirements for Non-SD/MSPs.

[37] *See* MGEX comment letter.

[38] *See* DTCC comment letter.

[39] *See* MGEX and Working Group comment letters.

creating any new compliance obligations for any records entities, it is nevertheless persuaded that a three-month phase-in for compliance is a reasonable request. Thus, the Commission has determined that the effective date for the proposed amendments will be 90 days from the date of publication.

E. Regulation 1.31(d): Inspection and Production of Regulatory Records

The Commission proposed to adopt new § 1.31(e) (re-lettered as § 1.31(d) in the final rule) to re-state and clarify the right of inspection of the Commission and the United States Department of Justice in existing § 1.31(a)(1). One commenter requested that the Commission engage in a dialogue with industry to address challenges presented by the production requirements of § 1.31, including the scope of what is subject to a production request and who may make such a request.[40] In particular, the commenter stated that § 1.31 should recognize the long standing protections of attorney-client privilege and expressly exclude such information from the rule's production requirement.

The Commission believes that the proposed amendment to § 1.31(e) does not alter the existing right of inspection regarding regulatory records and notes that attorney-client protections are addressed elsewhere in federal and state law.[41]

F. Comments Beyond the Scope of the Proposed Rulemaking

Although the Commission stated that the Proposal was limited to amendments to § 1.31 and related technical amendments, the Commission received several comments regarding matters outside the scope of the Proposal, as discussed below.

The petitioners for rulemaking restated their request from their original petition that the Commission adopt amendments to Part 4 of the Commission's regulations regarding certain recordkeeping requirements applicable to commodity pool operators and commodity trading advisors.[42] The Proposal did not address any such amendments and thus such amendments are outside of the scope of this rulemaking.

Another commenter[43] acknowledged that the Regulation AT rulemaking[44] addresses source code issues outside the scope of the Proposal, but nonetheless requested the Commission provide additional guidance regarding any requests for source code information by the Commission subject to § 1.31. In response to this request, the Commission reiterates that production of source code is outside the scope of this rulemaking.

Finally, another commenter[45] recommended that the SEC amend SEC Rule 17a–4 regarding the recordkeeping obligations of broker-dealers, some of whom are also registered as futures commission merchants with the Commission. The Commission does not have jurisdiction with respect to SEC regulations and thus such recommendation is outside of the scope of this rulemaking.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'')[46] requires Federal agencies, in promulgating regulations, to consider whether the rules they propose will have a significant economic impact on a substantial number of small entities and, if so, to provide a regulatory flexibility analysis regarding the economic impact on those entities. In the Proposal, the Commission certified that the Proposal would not have a significant economic impact on a substantial number of small entities. The Commission received no comments with respect to the RFA.

As discussed above, because the final rule relates to most recordkeeping obligations under the Act and the Commission's regulations, it may affect the full spectrum of Commission registrants, all persons required to register but not registered with the Commission, and certain persons that are neither registered nor required to register with the Commission. The Commission has previously determined that certain registrants are not small entities for purposes of the RFA and, therefore, the requirements of the RFA do not apply to those entities.[47] For other registrants, however, the Commission has found it appropriate to consider whether such registrants should be deemed small entities for purposes of the RFA on a case-by-case basis, in the context of the particular Commission regulation at issue.[48] As certain persons affected by the final rule, including Commission registrants, may be small entities for purposes of the RFA, the Commission considered whether this rulemaking would have a significant economic impact on any such persons.

As discussed in the Proposal, the final rule generally updates and simplifies existing Commission regulation 1.31 with new provisions that maintain the ability of the Commission to examine and inspect regulatory records. It accomplishes this by deleting outdated terms and revising provisions to reflect advances in information technology, allowing records entities to benefit from evolving technological developments while maintaining necessary safeguards to ensure the reliability of the recordkeeping process. It also reduces the retention period for certain regulatory records related to swaps and related cash and forward transactions, as discussed above.

The Commission believed that the Proposal would impose only limited additional costs on small entities related to the requirement that they establish written recordkeeping policies and procedures. However, for the reasons discussed above, the Commission has been persuaded to not require such written recordkeeping policies and procedures.

As a result, the final rule is not expected to impose any new burdens on market participants. The Commission

[40] *See* CME comment letter.

[41] *See* Wigmore on Evidence: Evidence in Trials at Common Law—Wigmore, Rule 502. Attorney-Client Privilege and Work Product (online version updated 4/2017), for a comprehensive list of attorney-client protections under federal and state law. Further, in 1999, the Commission addressed the waiver of privilege issue as follows: ''As is currently the case with all Commission required records, recordkeepers may not deny authorized Commission representatives access to any individual storage medium that includes Commission-required records or delay production while the individual storage medium is reviewed for the presence of privileged material. The final rule merely eliminates the regulatory inference that the commingling of Commission-required records with non-Commission-required records necessarily amounts to a waiver of any privilege otherwise covering the latter category of records.'' *See* Recordkeeping, 64 FR 28735, 28740, note 40 (May 27, 1999).

[42] *See* Associations and ICI comment letters.

[43] *See* FIA comment letter.

[44] *See* Regulation Automated Trading, 81 FR 85334 (Nov. 25, 2016).

[45] *See* SIFMA comment letter.

[46] 5 U.S.C. 601 *et seq.*

[47] *See, e.g.,* Policy Statement and Establishment of Definitions of ''Small Entities'' for Purposes of the Regulatory Flexibility Act, 47 FR 18618 (Apr. 30, 1982) (futures commission merchants and commodity pool operators); Leverage Transactions, 54 FR 41068 (Oct. 5, 1989) (leverage transaction merchants); Regulation of Off-Exchange Retail Foreign Exchange Transactions and Intermediaries, 75 FR 55410, 55416 (Sept. 10, 2010) (retail foreign exchange dealers); and Registration of Swap Dealers and Major Swap Participants, 77 FR 2613, 2620 (Jan. 19, 2012) (swap dealers and major swap participants).

[48] *See* 47 FR at 18620 (commodity trading advisors and floor brokers); Registration of Floor Traders; Mandatory Ethics Training for Registrants; Suspension of Registrants Charged With Felonies, 58 FR 19575, 19588 (Apr. 15, 1993) (floor traders); and Introducing Brokers and Associated Persons of Introducing Brokers, Commodity Trading Advisors and Commodity Pool Operators; Registration and Other Regulatory Requirements, 48 FR 35248, 35276 (Aug. 3, 1983) (introducing brokers).

does not, therefore, expect small entities to incur any additional costs as a result of the final rule. In addition, the Commission does not expect the economic value of the benefit to small entities of the final rule to be significant. Consequently, the Commission finds that no significant economic impact on small entities will result from the final rule.

Accordingly, for the reasons stated above, the Commission believes that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, the Acting Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the final rule being published today by this **Federal Register** release will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

1. Background

The Paperwork Reduction Act of 1995 (''PRA'')[49] imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. The final rule does not impose any new recordkeeping or information collection requirements, or other collections of information that require approval of the Office of Management and Budget (''OMB'') under the PRA.

As discussed above, the Proposal would have replaced the existing audit system requirements in Commission regulation 1.31 with a requirement that records entities establish written recordkeeping policies and procedures. Such changes would have resulted in revisions to ''Adaptation of Regulations to Incorporate Swaps-Records of Transactions, OMB control number 3038–0090''. Because the Commission has been persuaded not to require such written recordkeeping policies and procedures, the Commission will not be modifying this OMB control number to reflect the addition of the proposed recordkeeping policies and procedures requirement. As discussed in the Proposal, however, the Commission will submit to OMB revisions to OMB control number 3038–0090 to reflect the final rule's removal of the audit system requirements in current Commission regulation 1.31.

2. Information Collection Comments

In the Proposal, the Commission invited the public and other Federal agencies to comment on any aspect of the information collection requirements discussed therein, including that the only collection of information within the meaning of the PRA added or modified by the Proposal would be in respect of the proposed, but not adopted, requirement that records entities establish recordkeeping policies and procedures. The Commission did not receive any such comments.

C. Cost-Benefit Considerations

Section 15(a) of the Act[50] requires the Commission to consider the costs and benefits of its actions before issuing a regulation under the Act. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of the following five broad areas of market and public concern: (i) Protection of market participants and the public; (ii) efficiency, competitiveness and financial integrity of futures markets; (iii) price discovery; (iv) sound risk management practices; and (v) other public interest considerations. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the Section 15(a) considerations.

1. Costs

As discussed above in relation to the RFA, the Proposal generally updates and simplifies existing Commission regulation 1.31 by deleting outdated terms and revising provisions to reflect advances in information technology while safeguarding the reliability of the recordkeeping process. The Commission believes that the final rule does not impose any additional costs on records entities.

2. Benefits

The Commission is committed to reviewing its regulations to ensure they keep pace with technological developments and industry trends, and reduce regulatory burden. The Commission believes that the final rule will allow records entities to benefit from evolving technology while maintaining necessary safeguards to ensure the reliability of the recordkeeping process. By deleting outdated terms and revising provisions to reflect advances in information technology, the final rule will allow records entities to utilize a wider range of currently available technology than previously allowed and remove or modify requirements that the Commission believes are now obsolete (*e.g.,* removing the requirements to have an audit system, to maintain electronic records in limited specified formats, and to retain a Technical Consultant, and reducing the retention period for certain regulatory records of swaps and related cash or forward transactions), allowing records entities to reduce their costs. In addition, the Commission believes that the flexibility provided by the final rule will, without further Commission rulemaking, allow records entities to adopt new technologies as such technologies evolve, allowing such persons to reduce future costs.

Moreover, the Commission expects that the added flexibility provided by the final rule will encourage records entities to utilize electronic storage rather than maintain paper regulatory records. The Commission expects that this conversion will benefit the Commission, the Department of Justice, and the commodity interest industry, generally, by making the universe of regulatory records more accessible and searchable.

3. Section 15(a) Factors

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA or issuing certain orders. CEA Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (i) Protection of market participants and the public; (ii) efficiency, competitiveness, and financial integrity of futures markets; (iii) price discovery; (iv) sound risk management practices; and (v) other public interest considerations.

i. Protection of Market Participants and the Public

Because the final rule does not alter any existing requirements regarding the type of regulatory records to be produced and maintained, but, rather, modernizes and makes technology neutral the form and manner in which certain regulatory records must be kept the Commission believes that the final rule will continue to protect the public by maintaining necessary safeguards to ensure the reliability of the recordkeeping process while allowing records entities to benefit from evolving technology.

ii. Efficiency, Competitiveness, and Financial Integrity of Markets

As discussed above, the final rule, by providing additional flexibility to records entities to electronically store their regulatory records, may increase resource allocation efficiency by improving the way in which such records are maintained. Apart from that,

[49] 44 U.S.C. 3501 *et seq.*

[50] 7 U.S.C. 19(a).

the Commission anticipates minimal change to the efficiency, competitiveness, and financial integrity of the markets, because this rulemaking only affects recordkeeping and not how these markets otherwise operate.

iii. Price Discovery

The Commission believes that the final rule may increase confidence and participation in the markets by lowering costs for records entities and by encouraging the electronic storage of regulatory records, allowing such records to be more easily accessed and searched. Nevertheless, the Commission does not anticipate a significant increase in liquidity or a significant improvement in price discovery as a result of the final rule.

iv. Sound Risk Management Practices

The Commission does not believe that the final rule will have any significant impact on sound financial risk management practices because this rulemaking only affects recordkeeping and not how market participants conduct financial risk management. The Commission believes that the final rule may result in minor improvements to operational risk management because, as noted above, it will provide additional flexibility to records entities to electronically store their regulatory records.

v. Other Public Interest Considerations

The Commission has not identified any additional public interest considerations.

4. Comments on Cost-Benefit Considerations

The Commission invited public comment on its cost-benefit considerations in the Proposal, including the Section 15(a) factors described above. Commenters were invited to submit with their comment letters any data or other information that they had that quantified or qualified the costs and benefits of the Proposal. The Commission received a number of comments on the Proposal as described above; however, none of the persons who commented on the Proposal submitted any data or other information that quantified or qualified the costs and benefits of the Proposal. Nevertheless, in response to certain comments on the Proposal, and to reduce the costs of the final rule on records entities, the Commission has been persuaded not to require in the final rule the written recordkeeping policies and procedures that had been proposed in § 1.31(b) because the alternative suggested by commenters achieves all the recordkeeping objectives of the Commission.

List of Subjects

17 CFR Part 1

Commodity futures, Reporting and recordkeeping requirements.

17 CFR Part 23

Authority delegations (Government agencies), Commodity futures, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Commodity Futures Trading Commission amends 17 CFR chapter I as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

■ 1. The authority citation for part 1 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 5, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6l, 6m, 6n, 6o, 6p, 6r, 6s, 7, 7a–1, 7a–2, 7b, 7b–3, 8, 9, 10a, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, and 24 (2012).

■ 2. Revise § 1.31 to read as follows:

§ 1.31 Regulatory records; retention and production.

(a) *Definitions.* For purposes of this section:

Electronic regulatory records means all regulatory records other than regulatory records exclusively created and maintained by a records entity on paper.

Records entity means any person required by the Act or Commission regulations in this chapter to keep regulatory records.

Regulatory records means all books and records required to be kept by the Act or Commission regulations in this chapter, including any record of any correction or other amendment to such books and records, provided that, with respect to such books and records stored electronically, regulatory records shall also include:

(i) Any data necessary to access, search, or display any such books and records; and

(ii) All data produced and stored electronically describing how and when such books and records were created, formatted, or modified.

(b) *Duration of retention.* Unless specified elsewhere in the Act or Commission regulations in this chapter:

(1) A records entity shall keep regulatory records of any swap or related cash or forward transaction (as defined in § 23.200(i) of this chapter), other than regulatory records required by § 23.202(a)(1) and (b)(1)–(3) of this chapter, from the date the regulatory record was created until the termination, maturity, expiration, transfer, assignment, or novation date of the transaction and for a period of not less than five years after such date.

(2) A records entity that is required to retain oral communications, shall keep regulatory records of oral communications for a period of not less than one year from the date of such communication.

(3) A records entity shall keep each regulatory record other than the records described in paragraphs (b)(1) or (b)(2) of this section for a period of not less than five years from the date on which the record was created.

(4) A records entity shall keep regulatory records exclusively created and maintained on paper readily accessible for no less than two years. A records entity shall keep electronic regulatory records readily accessible for the duration of the required record keeping period.

(c) *Form and manner of retention.* Unless specified elsewhere in the Act or Commission regulations in this chapter, all regulatory records must be created and retained by a records entity in accordance with the following requirements:

(1) *Generally.* Each records entity shall retain regulatory records in a form and manner that ensures the authenticity and reliability of such regulatory records in accordance with the Act and Commission regulations in this chapter.

(2) *Electronic regulatory records.* Each records entity maintaining electronic regulatory records shall establish appropriate systems and controls that ensure the authenticity and reliability of electronic regulatory records, including, without limitation:

(i) Systems that maintain the security, signature, and data as necessary to ensure the authenticity of the information contained in electronic regulatory records and to monitor compliance with the Act and Commission regulations in this chapter;

(ii) Systems that ensure the records entity is able to produce electronic regulatory records in accordance with this section, and ensure the availability of such regulatory records in the event of an emergency or other disruption of the records entity's electronic record retention systems; and

(iii) The creation and maintenance of an up-to-date inventory that identifies and describes each system that maintains information necessary for accessing or producing electronic regulatory records.

(d) *Inspection and production of regulatory records.* Unless specified elsewhere in the Act or Commission regulations in this chapter, a records entity, at its own expense, must produce or make accessible for inspection all regulatory records in accordance with the following requirements:

(1) *Inspection.* All regulatory records shall be open to inspection by any representative of the Commission or the United States Department of Justice.

(2) *Production of paper regulatory records.* A records entity must produce regulatory records exclusively created and maintained on paper promptly upon request of a Commission representative.

(3) *Production of electronic regulatory records.* (i) A request from a Commission representative for electronic regulatory records will specify a reasonable form and medium in which a records entity must produce such regulatory records.

(ii) A records entity must produce such regulatory records in the form and medium requested promptly, upon request, unless otherwise directed by the Commission representative.

(4) *Production of original regulatory records.* A records entity may provide an original regulatory record for reproduction, which a Commission representative may temporarily remove from such entity's premises for this purpose. Upon request of the records entity, the Commission representative shall issue a receipt for any original regulatory record received. At the request of a Commission representative, a records entity shall, upon the return thereof, issue a receipt for the original regulatory record returned by such representative.

■ 3. In § 1.35, revise paragraph (a)(5) to read as follows:

§ 1.35 Records of commodity interest and related cash or forward transactions.

(a) * * *

(5) *Form and manner.* All records required to be kept pursuant to paragraphs (a)(1), (a)(2), (a)(3), and (a)(4) of this section, other than pre-trade communications, shall be kept in a form and manner that allows for the identification of a particular transaction.

* * * * *

PART 23—SWAP DEALERS AND MAJOR SWAP PARTICIPANTS

■ 4. The authority citation for part 23 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 6, 6a, 6b, 6b–1, 6c, 6p, 6r, 6s, 6t, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21.

Section 23.160 also issued under 7 U.S.C. 2(i); Sec. 721(b), Pub. L. 111–203, 124 Stat. 1641 (2010).

■ 5. In § 23.203, amend paragraph (b) as follows:

■ a. Revise paragraph (b)(1); and

■ b. Remove and reserve paragraph (b)(2).

The revisions to read as follows:

§ 23.203 Records; retention and inspection.

* * * * *

(b) *Record retention.* (1) The records required to be maintained by this chapter shall be maintained in accordance with the provisions of § 1.31 of this chapter, except as provided in paragraph (b)(3) of this section. All such records shall be open to inspection by any representative of the Commission, the United States Department of Justice, or any applicable prudential regulator. Records relating to swaps defined in section 1a(47)(A)(v) shall be open to inspection by any representative of the Commission, the United States Department of Justice, the Securities and Exchange Commission, or any applicable prudential regulator.

(2) [Reserved]

* * * * *

Issued in Washington, DC, on May 23, 2017, by the Commission.

Christopher J. Kirkpatrick,

Secretary of the Commission.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix to Recordkeeping—Commission Voting Summary

On this matter, Acting Chairman Giancarlo and Commissioner Bowen voted in the affirmative. No Commissioner voted in the negative.

[FR Doc. 2017–11014 Filed 5–26–17; 8:45 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 165

RIN 3038–AE50

Whistleblower Awards Process

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (''Commission'') is amending its regulations and forms to enhance the process for reviewing whistleblower claims and to make related changes to clarify staff authority to administer the whistleblower program. The Commission also is making appropriate rule amendments to implement its reinterpretation of the Commission's anti-retaliation authority.

DATES: This final rule is effective July 31, 2017.

FOR FURTHER INFORMATION CONTACT: Anthony Hays, Counsel, (202) 418–5584, *ahays@cftc.gov,* Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION: The Commission is amending its rules in §§ 165.1 through 165.19 and appendix A, and adopting new rule § 165.20 and appendix B as well as amending Forms TCR (''Tip, Complaint or Referral'') and WB–APP (''Application for Award for Original Information Provided Pursuant to Section 23 of the Commodity Exchange Act'').

I. Background

In 2011, the Commission adopted its part 165 regulations, which implement Section 23 of the Commodity Exchange Act (''CEA''), 7 U.S.C. 26, by establishing a regulatory framework for the whistleblower program.[1] Part 165 provides for the payment of awards, subject to certain limitations and conditions, to whistleblowers who voluntarily provide the Commission with original information about a violation of the CEA that leads to the successful enforcement of an action brought by the Commission that results in monetary sanctions exceeding $1,000,000 (''Covered Action''), or the successful enforcement of a Related Action, as that term is defined in the rules.

The award amount must be between 10 and 30 percent of the amount of monetary sanctions collected in a Covered Action or a Related Action and is paid from the CFTC Customer Protection Fund. The Commission has discretion regarding the amount of an award based on the significance of the information, the degree of assistance provided by the whistleblower, and other criteria.

Since the whistleblower program was established in 2011, the need for certain improvements has become apparent. In order to address that need the Commission proposed amendments to the part 165 rules (''Proposal'').[2] As explained further below, these rules provide for targeted revisions to the claims review process and to the authority of staff to administer the

[1] *See* Whistleblower Incentives and Protection, 76 FR 53172 (Aug. 25, 2011).

[2] Whistleblower Awards Process, 81 FR 59551 (Aug. 30, 2016).