effective September 15, 2016, is amended as follows:

Paragraph 2004 Jet Routes.

* * * * *

J–25 [Amended]

From INT United States/Mexico border and Brownsville, TX, 221° radial; Brownsville; INT Brownsville 358° and Corpus Christi, TX, 178° radials; Corpus Christi; INT Corpus Christi 311° and San Antonio, TX, 174° radials; San Antonio; Centex, TX; Waco, TX; Ranger, TX; Tulsa, OK; Kansas City, MO; Des Moines, IA; Mason City, IA; to Gopher, MN.

* * * * *

Paragraph 6010 Domestic VOR Federal Airways.

* * * * *

V–55 [Amended]

From Dayton, OH; Fort Wayne, IN; Goshen, IN; Gipper, MI; Keeler, MI; Pullman, MI; Muskegon, MI; INT Muskegon 327° and Green Bay, WI, 116° radials; Green Bay; Stevens Point, WI; INT Stevens Point 281° and Eau Claire, WI, 107° radials; Eau Claire; to Siren, WI. From Park Rapids, MN; Grand Forks, ND; INT Grand Forks 239° and Bismarck, ND, 067° radials; to Bismarck.

* * * * *

V–82 [Amended]

From Baudette, MN; to INT Baudette 194° and Park Rapids, MN, 003°T/359°M radials. From Gopher, MN; Farmington, MN; Rochester, MN; Nodine, MN; to Dells, WI.

* * * * *

V–161 [Amended]

From Three Rivers, TX; Center Point, TX; Llano, TX; INT Llano 026° and Millsap, TX, 193° radials; Millsap; Bowie, TX; Ardmore, OK; Okmulgee, OK; Tulsa, OK; Oswego, KS; Butler, MO; Napoleon, MO; Lamoni, IA; Des Moines, IA; Mason City, IA; Rochester, MN; Farmington, MN; to Gopher, MN. From International Falls, MN; to Winnipeg, MB, Canada, excluding the airspace within Canada.

* * * * *

V–218 [Amended]

From International Falls, MN; Grand Rapids, MN; Gopher, MN; Waukon, IA; to Rockford, IL. From Keeler, MI; to Lansing, MI.

* * * * *

V–413 [Amended]

From Gopher, MN; INT Gopher 109° and Eau Claire, WI, 269° radials; Eau Claire; to Ironwood, MI.

* * * * *

Paragraph 6011 United States Area Navigation Routes.

* * * * *

T–330 Grand Forks, ND (GFK) to Gopher, MN (GEP) [New]

Grand Forks, ND (GFK)	VOR/DME	(Lat. 47°57'17.39'' N., long. 097°11'07.33'' W.)
BYZIN, ND	WP	(Lat. 47°29'03.97''N., long. 096°13'28.09''W.)
TAMMR, MN	WP	(Lat. 46°53'33.48''N., long. 095°42'56.42''W.)
WATAM, MN	FIX	(Lat. 46°25'52.91''N., long. 095°09'06.92''W.)
MAFLN, MN	WP	(Lat. 46°02'22.73''N., long. 094°37'21.86''W.)
DAYLE, MN	FIX	(Lat. 45°37'24.75''N., long. 093°55'34.20''W.)
Gopher, MN (GEP)	VORTAC	(Lat. 45°08'44.47''N., long. 093°22'23.45''W.)

* * * * * * *

T–354 Park Rapids, MN (PKD) to Siren, WI (RZN) [New]

Park Rapids, MN (PKD)	VOR/DME	(Lat. 46°53'53.34''N., long. 095°04'15.21''W.)
BRNRD, MN	WP	(Lat. 46°20'53.81''N., long. 094°01'33.54''W.)
Siren, WI (RZN)	VOR/DME	(Lat. 45°49'13.60''N., long. 092°22'28.26''W.)

* * * * * * *

T–383 Gopher, MN (GEP) to BLUOX, MN [New]

Gopher, MN (GEP)	VORTAC	(Lat. 45°08'44.47''N., long. 093°22'23.45''W.)
BRNRD, MN	WP	(Lat. 46°20'53.81''N., long. 094°01'33.54''W.)
BLUOX, MN	FIX	(Lat. 47°34'33.13'' N., long. 095°01'29.11'' W.)

* * * * * * *

Issued in Washington, DC, on January 10, 2017.

Leslie M. Swann,

Acting Manager, Airspace Policy Group.

[FR Doc. 2017–01034 Filed 1–18–17; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1 and 23

RIN 3038–AE36

Recordkeeping

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule.

SUMMARY: The Commodity Futures Trading Commission (the ''Commission'') is proposing to amend the recordkeeping obligations set forth in certain provisions of the Commission's regulations. The proposed amendments would permit recordkeepers to leverage advances in information technology as a means to reduce costs associated with the retention and production of paper and electronic records and to decrease the risks of cybersecurity threats, while maintaining necessary safeguards to ensure the integrity, availability, and accessibility of records required to be kept pursuant to the Commodity Exchange Act (the ''CEA'') or Commission regulations. In addition to providing recordkeepers with greater flexibility regarding the retention and production of regulatory records, the proposed amendments would remove the requirements for electronic records to be kept in their native file format and for recordkeepers to enter into an arrangement with a third-party technical consultant with respect to electronically stored information.

DATES: Comments must be received on or before March 20, 2017.

ADDRESSES: You may submit comments, identified by RIN 3038–AE36, by any of the following methods:

- *CFTC Web site: https://comments.cftc.gov.* Follow the instructions for submitting comments through the Comments Online process on the Web site.
- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading

Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

• *Hand Delivery/Courier:* Same as Mail, above.

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Please submit your comments using only one method.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act (''FOIA''), a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the FOIA.

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

A. Regulation 1.31 Recordkeeping Requirements

Commission regulation 1.31 sets forth recordkeeping requirements for all books and records required to be kept by the CEA and Commission regulations, and implements the Commission's inspection and examination authority over such records.[2] Examination of books and records is one of the Commission's principal means of determining compliance with the CEA and Commission regulations.[3]

Paragraph (a) of § 1.31 describes the general requirement that books and records must be kept for five years and be readily accessible during the first two years. Different retention periods apply to certain oral communications and records of any swap or related cash or forward transaction. Paragraph (a) also provides that paper records shall be kept in their original form and electronic records in the format in which they were originally created (referred to as ''native file format''), and defines the inspection and production rights of representatives of the Commission and the Department of Justice. In particular, § 1.31(a)(2) requires that production shall be made in a form specified by any representative of the Commission upon the representative's request.

Paragraph (b) of § 1.31 allows books and records to be stored on electronic storage or micrographic media, such as microfiche, provided that the recordkeeper complies with various technical requirements designed to ensure the integrity, availability, and accessibility of the electronically stored information. For example, this paragraph provides that any digital storage or medium or system must preserve the records exclusively in a non-rewritable, non-erasable format, known more commonly as the ''write once, read-many,'' or ''WORM'' requirement. In addition, paragraph (b) requires a recordkeeper utilizing electronic storage media to develop and maintain an audit system to provide accountability over both the initial entry and the entry of each change to any original or duplicate record. Further, any person who uses only electronic storage media to preserve some or all of its required records shall enter into an arrangement with a third-party technical consultant (''Technical Consultant'') capable of furnishing to the Commission or its representative any information stored electronically promptly upon request.

Paragraph (c) of § 1.31 requires recordkeepers to provide notice and a representation to the Commission prior to the initial use of an electronic storage system that the electronic storage system satisfies the requirements set forth in § 1.31(b). Lastly, paragraph (d) of § 1.31 requires certain paper records, such as trading cards and documents with written trading information, to be maintained in hard-copy for the applicable retention period.

The Commission recognizes that the most recent substantive amendments to § 1.31 were made in 2012 [4] and, prior to that, in 1999.[5] The 2012 Amendment clarified the retention period for records of oral communications leading to the execution of any swap or related cash or forward transaction for swap dealers and major swap participants, and to require that electronic records be retained in their native file format. The 1999 Amendment implemented all of the technical provisions regarding the use of electronic storage media in § 1.31(b) and (c), including the requirement to retain a Technical Consultant.

B. Petitions for Rulemaking

The Commission has received petitions for rulemaking from various industry groups requesting that the Commission amend § 1.31.[6] Generally, the Petitioners state that certain requirements set forth in § 1.31 that were reasonable and prudent when adopted have become outdated and irrelevant. Absent any change, the Petitioners stated that recordkeepers must choose between accepted electronic distributed storage systems, which are essential for disaster recovery and privacy protection, and compliance with the letter of the law.

Specifically, the Petitioners have requested the following changes to § 1.31:

1. Amend § 1.31(a) to no longer require electronic records to be kept in their native file format;

2. Amend § 1.31(b) to eliminate the WORM requirement for electronic records; and

[1] 17 CFR 145.9. Commission regulations referred to herein are found at 17 CFR chapter I.

[2] Proposed Rule Requiring that Records Subject to Inspection, and Copies Thereof, Be Provided to the Commission, 43 FR 50699 (Oct. 31, 1978).

[3] General Regulations; Inspection of Books and Records, 46 FR 21–01 (Jan. 2, 1981).

[4] Adaptation of Regulations to Incorporate Swaps, 77 FR 66288 (Nov. 2, 2012) (the ''2012 Amendment'').

[5] Recordkeeping, 64 FR 28735 (May 27, 1999) (the ''1999 Amendment'').

[6] Petition for Rulemaking to Amend 1.31, 4.7(b) and (c), 4.23 and 4.33, Managed Funds Association, Investment Adviser Association, and Alternative Investment Management Association, dated July 21, 2014, and Petition for Rulemaking to Amend CFTC Regulations 4.12(c)(3), 4.23 and 4.33 Investment Company Institute, dated March 11, 2014 (collectively, the ''Petitioners''). Regulations 4.23 and 4.33 set forth the recordkeeping requirements for commodity pool operators (''CPOs'') and commodity trading advisors (''CTAs''), respectively. These regulations require CPOs and CTAs to keep certain books and records in accordance with § 1.31.

3. Amend § 1.31(b) to eliminate the requirement to enter into an agreement with a Technical Consultant.

With respect to native file format, the Petitioners note that programs used to store records electronically routinely become outdated and obsolete, and/or are no longer supported by information technology manufacturers. As a result, as represented by the Petitioners, recordkeepers must bear the burden of retaining these electronic records while updating to other, advanced systems for newly created records. Accordingly, the Petitioners request that the Commission amend § 1.31 in a manner that does not specify the format of any particular electronic record, so long as there is demonstrable and auditable integrity and fidelity in the preservation of the underlying data and contents.

With respect to the WORM requirement, the Petitioners assert that it is based on a concept that was state of the art nearly twenty years ago. Records are no longer stored electronically on optical disks or CD–ROMs. Currently, state of the art information technology relies on storage subject to restricted access and includes storage logs that reflect every single change to a file, in addition to archived copies. Absent any change, the Petitioners state that recordkeepers will be required to maintain dual systems that preserve the WORM requirement but also permit them to more properly secure and manage electronic records. Accordingly, the Petitioners request that the Commission amend § 1.31 to remove the WORM requirement.

With respect to the Technical Consultant, the Petitioners state that the need to retain and train a third-party to serve as a surrogate for access and production to electronic records is no longer necessary given the in-house technical expertise regarding information technology throughout the industry. In addition to the increased costs associated with retaining a Technical Consultant, the Petitioners also note that providing additional third parties with access to sensitive, confidential, and proprietary information greatly increases the risk of cybersecurity intrusions. Accordingly, the Petitioners request that the Commission amend § 1.31 to remove the requirement to retain a Technical Consultant.

In support of their request, Petitioners note that the Securities and Exchange Commission (''SEC'') adopted a recordkeeping rule for investment companies and investment advisers consistent with the changes they propose.[7] Rule 204–2(g) under the Investment Advisers Act of 1940 sets forth general principles that investment advisers must follow when arranging, accessing and reproducing their records. Similar provisions apply to the operators of investment companies pursuant to Rule 31a–2. In particular, Rule 204–2(g) does not tether advisers to any particular format, *i.e.,* native file format, nor does it require the use of Technical Consultants. The Petitioners note that in the 1999 Amendment the Commission expressly stated its intent to track existing recordkeeping provisions similar to those adopted by the SEC,[8] and that, more recently in 2013, the Commission acknowledged that there are certain advantages to crafting regulations that ''allow the Commission to fulfill its regulatory mandate while, at the same time, avoiding unnecessary regulatory burdens on dually-regulated [entities] with respect to . . . Commission recordkeeping requirements.'' [9] Accordingly, the Petitioners request that the Commission amend § 1.31 in a manner consistent with SEC Rule 204–2(g).

II. The Proposal

The Commission noted in the 1999 Amendment the importance of conducting an ongoing review of the standards articulated in the recordkeeping regulation to ensure that the requirements reflect to the extent possible the reality of established technological innovation.[10] At the same time, the Commission recognized the value of consultation with the derivatives industry and its participants to determine how to best use available information technology that also is responsive to the Commission's legitimate need to have access to complete and accurate records when necessary.[11]

As the Petitioners highlighted, the Commission recognizes that recordkeeping has evolved significantly in the time since the last major revision to § 1.31 in 1999 from a paper-based system to electronically stored information systems that leverage computers, databases, and even cloud computing. Back then, most records were created and maintained on paper, but recordkeepers began to explore better ways to store information electronically. Now the paradigm has shifted, and most information is produced and stored electronically on complex systems tailored to the needs of a given recordkeeper. These advances in information technology may have rendered certain technical elements of § 1.31 obsolete or outdated.

Accordingly, the Commission proposes to amend § 1.31 to reorganize and update the existing recordkeeping regulation, eliminating certain outdated provisions while still maintaining the ability of the Commission to examine and inspect required records. The Proposal is intended to be technology neutral so as technology develops the regulation should withstand such changes. The updates include new definitions, deletion of outdated terms, and revision of certain provisions to reflect advances in information technology. The Commission notes that many of the existing provisions and principles in § 1.31 have been retained, albeit in a revised format. The proposed regulation is divided into five subsections: (a) Definitions; (b) regulatory records policies and procedures; (c) duration of retention; (d) form and manner of retention; and (e) inspection and production of regulatory records.

A. Regulation 1.31(a): Definitions

The Commission proposes to reorganize § 1.31 by revising paragraph (a) to define certain terms to be referenced elsewhere within the revised regulation. Specifically, the Commission proposes to define the terms ''electronic regulatory records'', ''records entity'', and ''regulatory records''. The Commission believes that defining these terms will provide greater clarity regarding the recordkeeping obligations applicable to all persons subject to § 1.31, particularly for those obligations related to electronic records.

For the ease of understanding and applying the proposed amendments to § 1.31, the Commission proposes to define ''records entity'' to mean ''any person required by the Act or Commission regulations to keep regulatory records.'' The Commission notes that numerous Commission regulations set forth particular requirements for CEA Section 1a(40) ''registered entities''—such as derivatives clearing organizations, designated contract markets, swap execution facilities, and swap data

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[7] *See* Electronic Recordkeeping by Investment Companies and Investment Advisers, 66 FR 29224 (May 30, 2001). Given that intermediaries may engage in both securities and derivatives transactions, operators of investment companies may be required to register with the Commission as CPOs, and investment advisers similarly may be required to register as CTAs.

[8] 64 FR at 28735.

[9] *See* Harmonization of Compliance Obligations for Registered Investment Companies Required to Register as Commodity Pool Operators, 78 FR 52308 at 52309 (Aug. 22, 2013).

[10] 64 FR at 28736.

[11] *Id.*

repositories—and for registrants—such as futures commission merchants, introducing brokers, CPOs, CTAs, floor brokers, floor traders, retail foreign exchange dealers, swap dealers, and major swap participants—to keep certain books and records in accordance with § 1.31. The Commission notes, however, that certain persons that are neither a registered entity nor a registrant may be required to keep certain books and records in accordance with § 1.31, as well.[12]

The Commission also proposes to replace existing references to ''books and records'' within § 1.31 with the term ''regulatory records'' and to differentiate between electronic and paper regulatory records. The Commission proposes to define ''regulatory records'' to mean ''all books and records required to be kept by the Act or Commission regulations.'' As a subset, the Commission proposes to define within § 1.31(a) ''electronic regulatory records'' to mean ''all regulatory records other than paper regulatory records exclusively created and maintained by a records entity on paper.'' The Commission has separately proposed Regulation Automated Trading and certain requirements regarding source code and manner of production of source code.[13] This proposal does not address source code or the production of source code.

The Commission recognizes that certain regulatory records are not created electronically and that certain records entities may elect not to convert any paper regulatory records into an electronic format. By differentiating between paper and electronic regulatory records, the Commission can better preserve existing recordkeeping obligations applicable solely to records entities that do not create anything other than paper regulatory records.[14]

The Commission also believes that the term ''books and records'' in the traditional sense may no longer adequately convey that § 1.31 recordkeeping obligations extend to all associated electronic data. However, contrary to prior revisions to § 1.31 where the Commission specifically delineated the types of allowable media for electronic records storage,[15] the Commission believes it is now appropriate to focus the recordkeeping obligations on the scope of required records, rather than a specific storage medium. Accordingly, the Commission proposes to further define the term ''regulatory records'' by adding the following descriptive language to include: 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) All data produced and stored electronically that describes, directly or indirectly, the characteristics of such books and records, including, without limitation, data that describes how, when, and, if relevant, by whom such electronically stored information was collected, created, accessed, modified, or formatted; and (ii) any data necessary to access, search, or display any such books and records.

The proposed language would more clearly state the existing requirement to maintain all prior versions of any regulatory record, no matter how modified. This is not a new recordkeeping obligation. Since 1993 the Commission has required electronic records to be created and maintained in a non-erasable, non-rewritable format for the retention period.[16] Because the existing regulation requires electronic records be preserved exclusively in a non-rewritable, non-erasable format, it follows that each version of an electronic record must be created and maintained in a non-erasable, non-rewritable format. Therefore, the Commission is confirming that both the initial record and all subsequent versions are records within the definition and must be created, maintained, accessible, and produced consistent with the regulation.[17]

The proposed language also would clarify that electronically stored regulatory records are not limited to the data within a particular database or application, for example, but includes the electronic information that identifies the manner in which any regulatory record is altered. The Commission understands that this information is more commonly known as ''metadata,'' and, at its core, is data about data. Regardless of the label, the Commission understands that metadata generally refers to any hidden text, formatting codes, formulae, history, tracking, and other information associated with an electronic file or data. Metadata is integral to the Commission's ability to carry out both the inspection and investigation functions it is charged with under the CEA. To fully understand the data within a database, for example, requires knowledge of data relationships, what the information represents, and how it was generated. Once properly assembled and formatted in the form of a report, data within a database is readily understandable.

The Commission does not find it necessary at this time to define specific, technical terms related to information technology and electronically stored information, such as metadata or databases, as these technical terms may change over time. The Commission believes these are terms generally understood by practitioners notwithstanding a lack of a universal agreement on exact definitions.

The Commission notes that the requirement to provide data about data is not new. As set forth in current § 1.31(a)(2), production of any books and records shall be made ''in a form specified by any representative of the Commission.'' For the purpose of facilitating production requests pursuant § 1.31(a)(2), the Commission's Division of Enforcement has developed and continually updates a document entitled ''CFTC Data Delivery Standards.'' [18] Such standards describe the technical requirements for electronic document production to the Commission and specifically provides for the production of metadata associated with electronic records.

Finally, the Commission further proposes not to retain within the definition section certain definitions in the existing regulation, such as ''native

[12] For example, Part 18 of the Commission's regulations requires every trader who owns, holds or controls a reportable futures or option to ''keep books and records showing all details concerning all positions and transactions in the commodity swap. . . .'' 17 CFR 18.05. Traders are not limited to any Commission registrant or registered entity.

[13] See Supplemental notice of proposed rulemaking, Regulation Automated Trading, 81 FR 85334 (Nov. 25, 2016).

[14] Records entities who are currently in compliance with current § 1.31 will continue to be in compliance with proposed § 1.31, provided that they have written policies and procedures that meet the requirements of the Proposal.

[15] *See* 36 FR 22286 (Nov. 24, 1971) (permitted the use of microfilm as a medium for maintaining certain records); 58 FR 27458 (May 10, 1993) (permitted the use of optical disk and CD–ROM); 64 FR 28735 (May 27, 1999) (permitted the use of other micrographic and electronic storage media).

[16] *See* § 1.31(b)(1)(ii)(A).

[17] Each version of a record must be retained for the applicable retention period which is based off the most recent version. For example, the initial record is created on Day 1 and the amended record is created on Year 4, Day 359. The amended record resets the retention period clock to Day 1 for both the initial record and amended record to ensure a comprehensive audit trail.

[18] 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.

file format'', ''micrographic media'' and ''electronic storage media.'' The Commission believes that the proposed revisions to § 1.31, described in greater detail below, obviate the need to retain these defined terms.

Request for comment: The Commission requests comment from all interested parties and the general public regarding the proposed definitions in § 1.31(a). The Commission encourages all comments including background information, actual market examples, best practice principles, and estimates of any asserted costs and expenses. Regarding the proposed definitions, the Commission specifically requests comment on the following questions:

- Should any of the proposed definitions be revised? If yes, please provide alternative suggestions.
- Should any of the proposed definitions be deleted?
- Should any previous definitions proposed for deletion, *e.g.,* ''micrographic media,'' be included in the revised regulation?
- Should other definitions be added, such as ''metadata'', or ''database'', or ''paper regulatory records''?

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

The Commission proposes to revise and re-state in new § 1.31(b) ongoing compliance obligations regarding written regulatory records policies and procedures currently set forth in § 1.31(b)(3). Specifically, the Commission proposes in revised § 1.31(b) to require all records entities to establish, maintain, and implement written policies and procedures reasonably designed to ensure that the records entity complies with its obligations under § 1.31, including 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 this section, and regular monitoring for such compliance.[19]

The Commission believes that the proposed obligations regarding written policies and procedures are generally consistent with the existing regulation and accepted industry practices. Currently, § 1.31(b)(3) requires anyone using electronic storage media to develop and maintain written operational procedures and controls (an ''audit system'') designed to provide accountability over both the initial entry of required records to the electronic storage media and the entry of each change made to any original or duplicate record maintained on the electronic storage media. Moreover, the written operational procedures and controls must be made available for examination at all times by any representative of the Commission.

With respect to training, the Commission does not find it necessary to prescribe specific requirements regarding the frequency and format of any training. Consistent with its approach towards mandatory ethics training for registrants, the Commission views the training on written policies and procedures as an ongoing responsibility rather than an episodic one.[20] The obligation to remain current on the legal requirements regarding compliance with § 1.31 is one that a records entity ignores at its peril. The Commission takes a similar view towards the proposed obligation for each records entity to monitor compliance with the entity's policies and procedures on a ''regular'' basis.

Request for comment: The Commission requests comment from all interested parties and the general public regarding the proposed obligations regarding regulatory records policies and procedures in proposed § 1.31(b). The Commission encourages all comments including background information, actual market examples, best practice principles, and estimates of any asserted costs and expenses. Regarding the written policies and procedures requirements, the Commission specifically requests comment on the following questions:

- Should the training requirement be scaled down, phased-in, or eliminated depending on the number of employees, or depending on the nature of the entity's business?

C. Regulation 1.31(c): Duration of Retention

The Commission proposes to re-state and clarify in revised § 1.31(c) the existing retention period requirements for categories of regulatory records currently set forth in § 1.31(a). Specifically, proposed § 1.31(c)(1) would state that a records entity shall keep regulatory records of any swap or related cash or forward transaction (as defined in § 23.200(i)), other than regulatory records of oral communications, 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. The Commission proposes to incorporate by reference the definition of the term ''related cash or forward transaction'' in § 23.200(i).

Similarly, proposed § 1.31(c)(2) would state that a records entity that is required to retain oral communications shall keep regulatory records of such oral communications for a period of not less than one year from the date of such communication. This is consistent with the existing standard. The Commission proposes, however, to eliminate references to §§ 1.35(a) and 23.202(a)(1) and (b)(1) with respect to ''oral communications'' as future changes to those regulations, or the promulgation of new types of oral communications requirements, would require the Commission to contemporaneously amend § 1.31. Based on the foregoing proposed amendments, the Commission believes that the existing provision in § 23.203(b)(2) regarding the retention period of swaps-related information for swap dealers and major swap participants is redundant and therefore should be repealed. For all other regulatory records not addressed in proposed § 1.31(c)(1) and (2), proposed § 1.31(c)(3) would require a records entity to keep such records for a period of not less than five years from the date on which such record was created. However, proposed § 1.31(c)(4) would retain the existing retention period for regulatory records exclusively created and maintained on paper, *i.e.,* records must be readily accessible for no less than two years. This standard is consistent with the SEC's standard applicable to investment advisers and operators of investment companies.[21] Consistent with this change, the Commission proposes to remove the duplicative language from § 23.203(b)(1).

Request for comment: The Commission requests comment from all interested parties and the general public regarding the proposed retention periods in § 1.31(c). The Commission encourages all comments including background information, actual market

[19] SEC Rule 204–2(a)(17) requires each investment adviser to maintain as part of its recordkeeping obligations, among other things, a copy of the adviser's policies and procedures, and any records documenting the adviser's annual review of those policies and procedures.

[20] 66 FR 53510 (Oct. 23, 2001) (''Rules Relating to Intermediaries of Commodity Interest Transactions''). With respect to mandatory ethics training, the Commission replaced prescriptive requirements set forth in § 3.34 with a Statement of Acceptable Practices.

[21] SEC Rule 204–2(e) states that all books and records shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in an appropriate office of the investment adviser. SEC Rule 31a–2 similarly requires the operator of an investment company to retain records for a minimum of six years the first two years in an easily accessible place.

examples, best practice principles, and estimates of any asserted costs and expenses. Regarding the proposed retention periods, the Commission specifically requests comment on the following questions:

- Are the proposed recordkeeping retention periods appropriate? If not, what modifications to the retention periods should be made?
- Given the advances in information technology, such as cloud storage, should the Commission extend the standard five year retention period?
- Is there a longer or shorter period of retention that would be appropriate for some records, and if so please specify which records and such time-frames?

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

The Commission proposes to revise § 1.31(d) to describe recordkeeping requirements regarding the form and manner in which regulatory records are retained by records entities. These proposed revisions are designed to ensure the integrity and availability of all regulatory records. The Commission is cognizant that other provisions of the Act and Commission regulations distinguish between different classes of records entities. In particular, the Commission recognizes that records entities that are not registered or required to be registered with the Commission in any capacity, nor are one of the enumerated ''registered entities'' defined in Section 1a(40) of the CEA or so required to be registered or designated,[22] currently are not required to comply with the full panoply of recordkeeping requirements.[23] It is the Commission's goal to preserve this distinction, especially in those cases where a records entity exclusively maintains paper regulatory records.

The Commission proposes to re-state and revise in new § 1.31(d) certain requirements for regulatory records currently set forth in § 1.31(b)(1) through (3). In doing so, the Commission proposes to adopt a general standard in § 1.31(d)(1) to require each records entity to retain all regulatory records in a form and manner necessary to ensure the records' and recordkeeping systems' authenticity and reliability. This general requirement would not distinguish between paper and non-paper regulatory records.

With respect to electronic regulatory records, the Commission proposes to set forth in new § 1.31(d)(2)(i) through (iii) additional controls for records entities retaining electronic regulatory records. In particular, each records entity would be required to:

(A) Have systems that maintain security, signature, chain of custody elements, and data as necessary to ensure the authenticity of the information contained in regulatory records and to monitor compliance with the Act and Commission regulations;

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

(C) Create and maintain an up-to-date inventory that identifies and describes each system that maintains information necessary for accessing or producing regulatory records.

The Commission believes that these requirements are not new and are consistent with certain SEC requirements.[24] Currently, § 1.31(b)(1)(ii)(B) mandates that electronic storage media verifies automatically the quality and accuracy of the storage media recording process. Existing rules require any records entity that utilizes electronic storage media to organize and maintain an accurate index of all information such that the location of any record may be immediately ascertained. Among other requirements, existing § 1.31(b)(3) requires any records entity that utilizes electronic storage media to keep current a copy of the physical and logical format of the electronic storage media, the file format of all different information types maintained, documentation and information necessary to access records and indexes maintained on the electronic media.

Finally, based on the foregoing proposed amendments, the Commission believes that the existing provision in § 1.35(a)(5)(i) regarding the form and manner in which records of commodity interest and cash forward transactions should be maintained is redundant and therefore should be repealed.

Request for comment: The Commission requests comment from all interested parties and the general public regarding the proposed standards for form and manner of retention of regulatory records in § 1.31(d). The Commission encourages all comments including background information, actual market examples, best practice principles, and estimates of any asserted costs and expenses. With respect to the authenticity and reliability of regulatory records and recordkeeping systems, the Commission specifically requests comment on the following questions:

- Should the Commission routinely publish guidelines regarding the technical standards for electronic regulatory records?

With respect to potential impacts of the Proposal, the Commission specifically requests comment on the following questions:

- Would the Proposal require market participants to change their existing recordkeeping procedures under the Proposal? What, if any, transition or ongoing costs would result from such changes? Please provide details and estimates regarding any asserted costs.
- For entities who maintain digitized copies of paper records, what costs or other impacts would result under the Proposal?

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

1. Inspection

The Commission proposes to re-state in revised § 1.31(e)(1) the right of inspection of the Commission and the United States Department of Justice (''DOJ'') in existing § 1.31(a)(1). Specifically, the Commission proposes § 1.31(e)(1) to state that all regulatory records shall be open to inspection by any representative of the Commission or the DOJ. The Commission previously determined that production of records is part of the Commission's inspection

[22] Section 1a(40) of the Act defines a ''registered entity'' to mean: (a) A board of trade designated as a contract market under section 5; (b) a derivatives clearing organization registered under section 5b; (c) a board of trade designated as a contract market under section 5f; (d) a swap execution facility registered under 5h; (e) a swap data repository registered under section 21; and (f) with respect to a contract that the Commission determines is a significant price discovery contract, any electronic trading facility on which the contract is executed or traded.

[23] For example, part 20 of the Commission's regulations sets forth requirements regarding large trader reporting for physical commodity swaps. Regulation 20.1 defines a ''reporting entity'' to mean a clearing member of a clearing organization or a swap dealer in one or more paired swaps or swaptions. Pursuant to § 20.6, only clearing organizations and reporting entities must keep all books and records in accordance with § 1.31. Any other person who exceeds the reportable level in any contract ''shall keep books and records . . . in the record retention format that such person has developed in the normal course of its business operations.'' All books and records kept pursuant to § 20.6, however, shall be furnished upon request to any Commission representative.

[24] With respect to electronic storage media, SEC Rule 204–2(g)(3) requires investment advisers to establish written procedures that: (1) Maintain and preserve the records, so as to reasonably safeguard them from loss, alteration, or destruction; (2) limit access to the records to properly authorized personnel and the SEC; and (3) reasonably ensure that any reproduction of a non-electronic original record on electronic storage media is complete, true, and legible when retrieved. SEC Rule 31a–2(f) sets forth similar requirements for the operators of investment companies.

powers.[25] Accordingly, the Commission has determined to limit reference to the DOJ in § 1.31 to a single reference in this paragraph. Any requirement for a records entity to produce regulatory records extends to DOJ as is currently the requirement.

Request for comment: The Commission requests comment from all interested parties and the general public regarding the proposed regulations set forth in § 1.31(e)(1). The Commission encourages all comments including background information, actual market examples, best practice principles, and estimates of any asserted costs and expenses.

2. Production

The Commission proposes to revise and re-state in new § 1.31(e)(2) the existing production requirement currently set forth in § 1.31(a)(2) and (b). Currently, a records entity is required to produce regulatory records in a form specified by any representative of the Commission, including the DOJ, upon the representative's request. If the requested book or record is stored either on micrographic media or electronic storage media, production shall be immediate.[26] Otherwise, all copies or originals shall be provided promptly.[27] The Commission proposes to amend this requirement in new § 1.31(e)(i) and (ii) to differentiate between the production of paper and electronic regulatory records, particularly with respect to the form and medium of requested electronic regulatory records.

With respect to the production of regulatory records exclusively created and maintained on paper, proposed § 1.31(e)(2) would require a records entity to produce such regulatory records promptly upon request. With respect to regulatory records other than paper regulatory records, proposed § 1.31(e)(3) would set forth the process by which a records entity must respond to a request from a Commission representative. In particular, § 1.31(e)(3)(i) would require a Commission representative to specify a reasonable form and medium in which a records entity must produce such regulatory records. Proposed § 1.31(e)(3)(ii) would require a records entity, at its own expense, to produce such regulatory records in the form and medium requested promptly, upon request, unless otherwise directed by the Commission representative.

The Commission recognizes that production, depending on the records, may require the records entity to engage multiple employees, officers, or directors in order to satisfy the production request, depending upon its size and scope. Historically, Commission staff has exercised broad discretion regarding production schedules and ''typically exhibits flexibility. . . .'' [28] However, timely production is a Commission priority and the proposed ''prompt'' standard should not be interpreted as sanctioning any unnecessary delay. It is the Commission's understanding that most registrants maintain records electronically and therefore would be required under existing § 1.31 to produce said records immediately, subject to the discretion of Commission staff. The prompt production standard is therefore consistent with the existing standard. The Commission notes that the standard ''promptly upon request'' is also consistent with SEC Rule 17a–4 applicable to broker-dealers thereby maintaining a harmonized standard for entities that may be dually registered with the SEC and the CFTC.[29]

In adopting this revised regulation, the Commission is cognizant of the need to balance the opportunities for recordkeepers to reduce costs and improve efficiencies regarding recordkeeping systems with the Commission's need for prompt access to complete and accurate records in a format that the Commission can process, *i.e.,* a useable format.[30] For the purposes of production, the Commission continues to believe that it is not sufficient to simply reduce electronic records to a paper format, *i.e.,* printing out data from a database and saving into a portable document file, or PDF. This type of production detracts from the Commission's ability to properly evaluate the integrity of the electronic records by accessing the associated metadata, for example. Based upon these principles, the Commission proposes to revise § 1.31 to permit a records entity that cannot promptly produce electronic regulatory records in the form and medium requested by the Commission the opportunity to produce records in an alternative manner sufficient for the Commission to adequately inspect the records. The ultimate goal is not necessarily to obtain records in their ''native file format,'' but rather in the most useable form and medium.

Finally, the Commission further proposes to adopt new § 1.31(e)(4) to preserve the existing right of a records entity to provide a representative of the Commission with an original regulatory record for reproduction by the representative in lieu of a copy currently set forth in § 1.31(a)(2). As with the existing provision, the Commission proposes to require the Commission representative to issue a receipt for the original regulatory record to the records entity upon request.

Request for comment: The Commission requests comment from all interested parties and the general public regarding the proposed inspection and production of regulatory records in § 1.31(e). The Commission encourages all comments including background information, actual market examples, best practice principles, and estimates of any asserted costs and expenses. Regarding the production of regulatory records, the Commission specifically requests comment on the following questions:

- Should the Commission impose a different standard with respect to the production of paper regulatory records or other regulatory records?
- Are there records entities that retain only paper regulatory records?

F. Other Matters

1. § 1.31(b)(4)—Technical Consultant

Consistent with the foregoing amendments and in response to the Petitioners' request, the Commission proposes to amend § 1.31(b)(4)(i) to remove the requirement for a records entity to enter into an arrangement with a Technical Consultant and provide the Technical Consultant with access to and the ability to download information from the records entity's electronic storage media to any acceptable medium. Further, the Commission proposes to remove the requirement set forth in § 1.31(b)(4)(ii) which requires the Technical Consultant to file with the Commission an acceptable undertaking regarding its ability and willingness to provide the Commission and DOJ with access to the information contained on the record entity's electronic storage media. The Commission concurs with the position taken by Petitioners that the information technology expertise within

[25] *See* 46 FR 21 (Jan. 3, 1981); *see also,* CFTC Letter 77–4 (Apr. 14, 1977).

[26] *See* § 1.31(b)(2)(i) and (ii). In addition, persons using electronic storage media must be ready at all times to provide, and immediately provide at the expense of the person required to keep such records, copies of such records on such compatible data processing media as defined in Commission regulation 15.00(d) which any representative of the Commission or the Department of Justice may request. Records must use a format and coding structure specified in the request. *See* § 1.31(b)(3)(i).

[27] *See* § 1.31(a)(2).

[28] FIA comment regarding proposed amendments to § 1.31. 64 FR 28735 at 28739 (May 27, 1999).

[29] SEC Rule 17a–1 similarly requires national securities exchanges and registered clearing agencies to ''promptly furnish'' records to any representative of the SEC upon request.

[30] *See* 77 FR at 66298 (referring to the 1999 Amendment).

the derivatives industry obviates the need for the Commission to require those records entities electing to store information electronically to engage a third party to ensure compliance with all applicable electronic recordkeeping obligations. However, to the extent that a records entity chose to use a third party or Technical Consultant, the records entity would remain responsible for compliance with the CEA and Commission regulations thereunder.

2. § 1.31(c)—Representation to the Commission

Consistent with the foregoing amendments and in response to the Petitioners' request, the Commission proposes to amend § 1.31 by removing existing § 1.31(c). This provision requires any person utilizing electronic storage media to provide a written representation to the Commission prior to the use of the system certifying that the system satisfies the requirements in existing paragraph (b)(1)(ii) and, where applicable, if the system will be using storage media other than optical disk or CD–ROM. Further, the written representation must include an affirmation from an individual consistent with § 1.10(d)(4), *i.e.,* the information provided is true and correct to the best knowledge and belief of the affirming individual. The Commission believes that the requirement set forth in proposed § 1.31(c)(2) regarding written policies and procedures for regulatory records obviates the need for any records entity to provide notice to the Commission regarding its compliance with § 1.31. Moreover, the Commission recognizes that references to optical disks and CD–ROM are outdated.

3. § 1.31(d)—Other Paper Regulatory Records

Consistent with the foregoing amendments, the Commission proposes to amend § 1.31 by removing current § 1.31(d). This provision states that certain paper records, such as trading cards and paper copies of electronically filed certified forms, must be retained in hard-copy for the required time period. The Commission believes that revised § 1.31 provides records entities with sufficient flexibility on how to retain regulatory records while maintaining the Commission's ability to access reliable regulatory information. Having eliminated the requirement for a records entity to retain regulatory records in a specific form and manner, the Commission believes that § 1.31(d) no longer serves any regulatory purpose.

Request for comment: The Commission requests comment from all interested parties and the general public regarding the proposed deletion of existing provisions in § 1.31(b)(4), (c) and (d); and § 1.35(a)(5)(i). The Commission encourages all comments including background information, actual market examples, best practice principles, and estimates of any asserted costs and expenses.

4. Potential Technical Amendments

In conjunction with the Proposal, the Commission is reviewing its regulations for potential technical amendments related to § 1.31, including those part 4 regulations cited by Petitioners. This review may or may not result in a new proposed rulemaking.

Request for comment: The Commission requests comment from all interested parties and the general public regarding potential technical amendments to Commission regulations related to § 1.31. The Commission specifically requests comment whether the proposed changes to § 1.31 will resolve all outstanding issues regarding compliance with part 4 of the Commission's regulations identified by Petitioners. The Commission encourages all comments including background information, actual market examples, best practice principles, and estimates of any asserted costs and expenses.

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') [31] 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.

As discussed above, because the Proposal relates to most recordkeeping obligations under the CEA 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.[32] 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.[33] As certain persons affected by the Proposal, 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 above, the Proposal generally updates and simplifies existing Commission regulation 1.31 with new provisions that safeguard the same statutory-based principles previously identified by the Commission. 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.

The Commission believes that the proposed rules would impose only limited additional costs on small entities related to the requirement that they establish written recordkeeping policies and procedures. However, this new requirement is replacing existing requirements applicable to such persons in many cases, including the existing similar requirements discussed above to (i) Maintain an audit system and (ii) under certain circumstances, retain a Technical Consultant. Further, as part of the Proposal, the Commission is proposing to remove existing requirements that are expected to lower costs for all records entities, including small entities, by removing requirements that certain records be kept in paper form.

In light of the limited scope of the proposed changes and the added flexibility and expected cost-savings provided to small entities thereby, the Commission does not expect small entities that are records entities to incur

[31] 5 U.S.C. 601 *et seq.*

[32] *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).

[33] *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).

new costs, on a net basis, as a result of the Proposal. Consequently, the Commission finds that no significant economic impact on small entities will result from the Proposal.

Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the Proposal 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'')[34] 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 Proposal would result in a collection of information within the meaning of the PRA, as discussed below. The Commission therefore is submitting the Proposal to the Office of Management and Budget (''OMB'') for review.

The Proposal contains a collection of information for which the Commission has previously received a control number from OMB. The title for this collection of information is ''Adaptation of Regulations to Incorporate Swaps-Records of Transactions, OMB control number 3038–0090''.[35] Collection 3038–0090 is currently in force with its control number having been provided by OMB.

The responses to the Proposal's collection of information are mandatory. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number issued by OMB.

As discussed above, in respect of collections of information, the Proposal would replace the existing audit system requirements with a requirement that records entities establish written recordkeeping policies and procedures. Such changes would result in revisions to collection 3038–0090. Therefore, the Commission proposes to revise collection 3038–0090 as described below.

2. Modification of Collection 3038–0090—Recordkeeping Policies and Procedures

The Commission estimates that the Proposal will require approximately 15,000 persons to develop and maintain recordkeeping policies and procedures. This estimate includes approximately 8,792 registrants, 15 designated contract markets, 23 swap execution facilities, 4 swap data repositories, 15 designated clearing organizations, and 3,200 unregistered members of designated contract markets or swap execution facilities, with the balance reflecting the Commission's estimate of those persons that are required to register with the Commission, but have not so registered, and other persons neither registered nor required to register with the Commission.[36]

Based on the above, the estimated additional hour burden for recordkeeping policies and procedures of 150,000 hours is calculated as follows:

Number of affected persons: 15,000.

Frequency of collection: Annually.

Estimated annual responses per registrant: 1.

Estimated aggregate number of annual responses: 15,000.

Estimated annual hour burden per registrant: 10.[37]

Estimated aggregate annual hour burden: 150,000 (15,000 registrants × 10 hours per registrant).[38]

3. Information Collection Comments

The Commission invites the public and other Federal agencies to comment on any aspect of the proposed information collection requirements discussed above. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments in order to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information; (3) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Comments may be submitted directly to the Office of Information and Regulatory Affairs, by fax at (202) 395–6566, or by email at *OIRAsubmissions@omb.eop.gov.* Please provide the Commission with a copy of submitted comments so that all comments can be summarized and addressed in the final rule preamble. Refer to the **ADDRESSES** section of this notice of proposed rulemaking for comment submission instructions to the Commission. A copy of the supporting statements for the collection of information discussed above may be obtained by visiting *www.RegInfo.gov.* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

C. Cost-Benefit Considerations

Section 15(a) of the CEA[39] requires the Commission to consider the costs and benefits of its actions before issuing a regulation under the CEA. 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 statutory-based principles previously identified by the Commission. The Commission preliminarily believes that the Proposal would impose certain costs on records entities. These costs are those necessary to establish and maintain required written recordkeeping policies and procedures. The Commission believes that these costs will be quite limited. At

[34] 44 U.S.C. 3501 *et seq.*

[35] *See* OMB Control No. 3038–0090, *http://www.reginfo.gov/public/do/PRAOMBHistory?omb ControlNumber=3038-0090#* (last visited Sep. 20, 2016).

[36] With respect to registrants and registered entities, these numbers are based on the number of such persons so registered with the Commission as of November 2, 2016. With respect to the number of unregistered members of designated contract markets or swap execution facilities, *see* Agency Information Collection Activities: Proposed Collection Revision, Comment Request: Final Rule for Records of Commodity Interest and Related Cash or Forward Transactions, 80 FR 80327 (Dec. 24, 2015).

[37] This burden hour estimate reflects the Commission's assumption that many records entities already have policies and procedures that, in whole or in part, satisfy the proposed recordkeeping policies and procedures requirement.

[38] The Commission will also submit to OMB revisions to Collection 3038–0090 to reflect the Proposal's replacement of the audit system requirements in current Commission regulation 1.31.

[39] 7 U.S.C. 19(a).

the same time, the Commission preliminarily believes that the Proposal would also reduce current recordkeeping costs under Commission regulation 1.31, because the Proposal would increase flexibility provided to records entities and also eliminate certain requirements as described above (*e.g.,* removing the requirements to have an audit system, to maintain electronic records in limited specified formats, and to retain a Technical Consultant).

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 Proposal 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 Proposal will allow records entities to utilize a wider range of currently available technology than previously allowed and remove requirements that the Commission believes are now obsolete, allowing records entities to reduce their costs. In addition, the Commission believes that the flexibility provided by the Proposal will, without further Commission rulemaking, allow records entities to adopt new technologies as such technologies evolve, allowing such persons to reduce their future costs.

Moreover, the Commission expects that the added flexibility provided by the Proposal 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 DOJ, and the commodity interest industry, generally, by making the universe of regulatory records more accessible and searchable.

In addition, as a result of the Proposal codifying industry practices to require recordkeeping policies and procedures and, in doing so, providing records entities with an opportunity to examine their own recordkeeping practices, the Commission expects that records entities may improve the quality of such practices and, thus, the accuracy and integrity of their regulatory records.

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

The Proposal 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 Proposal may increase resource allocation efficiency by improving the way in which records are maintained. Otherwise, the Commission anticipates minimal change to the efficiency, competitiveness, and financial integrity of the markets.

iii. Price Discovery

The Commission believes that the Proposal may increase confidence and participation in the markets for the reasons discussed above. Nevertheless, the Commission does not anticipate a significant increase in liquidity or a significant improvement in price discovery as a result of this rulemaking.

iv. Sound Risk Management Practices

By improving recordkeeping policies and procedures, the Proposal may encourage records entities to analyze their recordkeeping practices and create or update policies and procedures related thereto.

v. Other Public Interest Considerations

The Commission has not identified any additional public interest considerations.

4. Request for Comments

The Commission invites public comment on its cost-benefit considerations, including the Section 15(a) factors described above. Commenters are also invited to submit any data or other information that they may have quantifying or qualifying the costs and benefits of the Proposal with their comment letters.

The Commission specifically seeks comment on the following:

- For those market participants with written operational procedures and controls that comply with current Commission regulation 1.31, what transition costs, if any, will the Proposal's requirement for written policies and procedures entail?
- Are there any costs or benefits associated with the Proposal that the Commission has not considered in the Proposal? Please provide details and estimates regarding any asserted costs or benefits.

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 stated in the preamble, the Commodity Futures Trading Commission proposes to amend 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) All data produced and stored electronically that describes, directly or indirectly, the characteristics of such books and records, including, without limitation, data that describes how, when, and, if relevant, by whom such electronically stored information was collected, created, accessed, modified, or formatted; and

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

(b) *Regulatory records policies and procedures.* Each records entity shall establish, maintain, and implement written policies and procedures reasonably designed to ensure that the records entity complies with its obligations under this section. Such policies and procedures shall 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 this section, and regular monitoring for such compliance.

(c) *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 of oral communications, 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 paragraph (c)(1) or (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.

(d) *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, chain of custody elements, 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.

(e) *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), (2), (3), and (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) * * * (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.

* * * * *

Issued in Washington, DC, on January 12, 2017, by the Commission.

Christopher J. Kirkpatrick,

Secretary of the Commission.

NOTE: The following appendices will not appear in the Code of Federal Regulations.

Appendices to Recordkeeping—Commission Voting Summary and Chairman's Statement

Appendix 1—Commission Voting Summary

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

Appendix 2—Statement of Chairman Timothy G. Massad

I have said many times that it is important for the CFTC to ensure its rules are up-to-date in light of technological changes, as outdated rules can create unnecessary burdens. That is why I'm pleased we are unanimously issuing this proposed rulemaking, which is in keeping with that goal.

Today's proposal will modernize recordkeeping and storage obligations set forth in CFTC rules, and make them technology neutral. By doing so, it will reduce costs for businesses and improve the quality of record preservation and production. Among other things, the proposal will provide greater flexibility when it comes to how records must be retained and produced. In this age where terabytes of storage easily fit in one's pocket, our rules should not refer to microfiche or require paper records.

Today's proposal is also an example of how the Commission is focusing on issues related to technological change generally in our markets. In this regard, there is much talk today about innovations that may come from financial technology. While it is the role of the private sector to develop innovations, I believe it is our role to ensure that the Commission's rules do not stand in the way of their potential. Today's proposal is a way to do just that.

I thank the CFTC staff for their work on this proposal and my fellow Commissioners for their support.

[FR Doc. 2017–01148 Filed 1–18–17; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 15

[Docket No. FDA–2016–N–1149]

Manufacturer Communications Regarding Unapproved Uses of Approved or Cleared Medical Products; Availability of Memorandum; Reopening of the Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Reopening of comment period related to public hearing; availability of memorandum.

SUMMARY: The Food and Drug Administration (FDA) is reopening the comment period for the notification of public hearing, published in the **Federal Register** of September 1, 2016 (81 FR 60299) concerning our comprehensive review of our regulations and policies governing manufacturer communications regarding unapproved uses of approved or cleared medical products. FDA is also announcing that it has added a document to the docket for the public hearing entitled ''Memorandum: Public Health Interests and First Amendment Considerations Related to Manufacturer Communications Regarding Unapproved Uses of Approved or Cleared Medical Products'' (Memorandum). The Memorandum provides additional background on the issues FDA is considering as part of its comprehensive review, including a discussion of First Amendment considerations. In addition, elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of two draft guidance for industry that address manufacturer communications, one entitled ''Drug and Device Manufacturer Communications With Payors, Formulary Committees, and Similar Entities—Questions and Answers,'' and the other entitled ''Medical Product Communications That Are Consistent With the FDA-Required Labeling—Questions and Answers.'' FDA is reopening the comment period to provide the public an opportunity to review the Memorandum as it relates to the specific questions and issues identified in the notification of public hearing as well as review the two draft guidances and provide additional or new comments.

DATES: Submit either electronic or written comments by April 19, 2017.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2016–N–1149 for ''Manufacturer Communications Regarding Unapproved Uses of Approved or Cleared Medical Products; Public Hearing; Requests for Comments.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper