

limitations listed in the logbook that the instructor considers necessary for the safety of the flight;

\* \* \* \* \*

## PART 183—REPRESENTATIVES OF THE ADMINISTRATOR

14. The authority citation for part 183 continues to read as follows:

**Authority:** 31 U.S.C. 9701; 49 U.S.C. 106(g), 40113, 44702, 45303.

15. Amend § 183.21 by revising paragraph (c) and removing and reserving paragraph (d) to read as follows:

### § 183.21 Aviation Medical Examiners.

\* \* \* \* \*

(c) Issue or deny medical certificates in accordance with part 67 of this chapter, subject to reconsideration by the Federal Air Surgeon or his or her authorized representatives within the FAA; and

\* \* \* \* \*

Issued in Washington, DC, on November 10, 2010.

**John M. Allen,**

*Director, Flight Standards Service.*

[FR Doc. 2010-29192 Filed 11-18-10; 8:45 am]

BILLING CODE 4910-13-P

## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Part 3

RIN 3038-AC96

### Designation of a Chief Compliance Officer; Required Compliance Policies; and Annual Report of a Futures Commission Merchant, Swap Dealer, or Major Swap Participant

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commodity Futures Trading Commission (Commission or CFTC) is proposing rules to implement new statutory provisions enacted by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) regarding the compliance activities of certain registrants. The proposed rules require each futures commission merchant, swap dealer, and major swap participant to designate a chief compliance officer. The proposed rules also prescribe qualifications and duties of the chief compliance officer. Finally, the proposed rules require that the chief compliance officer prepare, certify, and furnish to the Commission an annual

report containing an assessment of the registrant's compliance activities.

**DATES:** Comments must be received on or before January 18, 2011.

**ADDRESSES:** You may submit comments, identified by RIN 3038-AC96 and CCO Designation, by any of the following methods:

- Agency web site, via its Comments Online process at <http://comments.cftc.gov>. Follow the instructions for submitting comments through the Web site.
- *Mail:* David A. Stawick, 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 <http://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, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in CFTC Regulation 145.9, 17 CFR 145.9.

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 <http://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 Freedom of Information Act.

#### FOR FURTHER INFORMATION CONTACT:

Sarah E. Josephson, Associate Director, Division of Clearing and Intermediary Oversight, (202) 418-5684, [sjosephson@cftc.gov](mailto:sjosephson@cftc.gov); or Claire Noakes, Attorney Advisor, Division of Clearing and Intermediary Oversight, (202) 418-5444, [cnoakes@cftc.gov](mailto:cnoakes@cftc.gov); Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

#### SUPPLEMENTARY INFORMATION:

## I. Introduction

On July 21, 2010, President Obama signed the Dodd-Frank Act.<sup>1</sup> Title VII of the Dodd-Frank Act amended the Commodity Exchange Act (CEA)<sup>2</sup> to establish a comprehensive new regulatory framework to reduce risk, increase transparency, and promote market integrity within the financial system by, among other things: (1) Providing for the registration and comprehensive regulation of swap dealers and major swap participants; (2) imposing clearing and trade execution requirements on standardized derivative products; (3) creating rigorous recordkeeping and real-time reporting regimes; and (4) enhancing the Commission's rulemaking and enforcement authorities with respect to all registered entities and intermediaries subject to the Commission's oversight.

The Dodd-Frank Act addresses the compliance activities of certain registrants in detail by requiring each futures commission merchant, swap dealer, and major swap participant to designate a chief compliance officer.<sup>3</sup> The Dodd-Frank Act also establishes duties of the chief compliance officer of a swap dealer or major swap participant,<sup>4</sup> and requires that the chief compliance officer of a swap dealer or major swap participant annually prepare, sign, and certify a report that is furnished to the Commission discussing the registrant's compliance policies and activities.<sup>5</sup> The Dodd-Frank Act requires the Commission to prescribe rules regarding the annual report prepared by the chief compliance officer of a swap dealer or major swap participant.<sup>6</sup> With regard to futures commission merchants, the Dodd-Frank Act does not set forth specific duties for the chief compliance officer or establish specific procedures for the preparation and submission of an annual report. Rather, the Dodd-Frank Act states that the chief compliance officer shall "perform such duties and responsibilities as shall be set forth in regulations to be adopted by the Commission."<sup>7</sup>

The Commission has determined to apply the same duties and responsibilities to a chief compliance officer of a futures commission merchant as are required for a chief

<sup>1</sup> See Dodd-Frank Act, Public Law 111-203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act may be accessed at: [http://www.cftc.gov/ucm/groups/public/@swaps/documents/file/hr4173\\_enrolledbill.pdf](http://www.cftc.gov/ucm/groups/public/@swaps/documents/file/hr4173_enrolledbill.pdf).

<sup>2</sup> 7 U.S.C. 1 *et seq.*

<sup>3</sup> 7 U.S.C. 6d(d), 6s(k)(1).

<sup>4</sup> 7 U.S.C. 6s(k)(2).

<sup>5</sup> 7 U.S.C. 6s(k)(3)(A-B).

<sup>6</sup> 7 U.S.C. 6s(k)(3)(A).

<sup>7</sup> 7 U.S.C. 6d(d).

compliance officer of a swap dealer or a major swap participant. In particular, the Commission is prescribing rules that (i) require the chief compliance officer of a registrant prepare, sign, and certify an annual report discussing the registrant's compliance policies and activities that is furnished to the Commission; (ii) clarify that a chief compliance officer of a registrant would be a "principal" as defined under Commission regulation 3.1(a); and (iii) require that specified recordkeeping and inspection requirements for the compliance documents discussed in the proposed rule be satisfied. The proposed rules also would require that each futures commission merchant, swap dealer, and major swap participant provide the chief compliance officer with the responsibility and authority, in consultation with the board of directors or the senior officer, to develop and enforce appropriate policies and procedures to fulfill the assigned duties of the position. The Commission specifically requests comment on its decision to apply the duties and responsibilities for chief compliance officers set forth for swap dealers and major swap participants to futures commission merchants.

The proposed rules reflect consultation with staff of the following agencies: (i) The Securities and Exchange Commission; (ii) the Board of Governors of the Federal Reserve System; (iii) the Office of the Comptroller of the Currency; and (iv) the Federal Deposit Insurance Corporation. Staff from each of these agencies has had the opportunity to provide oral and/or written comments to the proposal, and the proposed rules incorporate elements of the comments provided.

The Commission requests comment on all aspects of the proposed rules, as well as comment on the specific provisions and issues highlighted in the discussion below.

## II. Proposed Regulations

### A. Chief Compliance Officers

The Dodd-Frank Act requires that each futures commission merchant, swap dealer, and major swap participant designate an individual to serve as its chief compliance officer. The proposed rules codify this requirement, and prescribe certain qualifications of the position. The individual serving as chief compliance officer must have the appropriate background and skills to perform the compliance duties of the position, and must not fall into the categories that would disqualify him or her from registration under section 8a(2)

and (3) of the CEA.<sup>8</sup> Although the chief compliance officer would not register with the Commission, as the primary individual with responsibility for ensuring the registrant's legal compliance, the chief compliance officer would have to meet the same standard as those individuals who are required to register, as set forth in the list of statutory disqualifications. Furthermore, the proposed rules amend the definition of "principal" that applies to all registrants under regulation 3.1(a) to clarify that the chief compliance officer position is considered to be similar in status and responsibility to the enumerated list of positions found in that definition, such as the chief executive officer. Like other principals of registrants, the chief compliance officer would have to submit a Form 8-R, and, if required, fingerprint cards to the National Futures Association, and would be subject to a background check.

The Dodd-Frank Act requires that the chief compliance officer of a swap dealer or major swap participant "report directly to the board or to the senior officer" of the entity. The proposed rules establish the reporting structure to which the chief compliance officer would be subject by specifying that only the board of directors or the senior officer of the registrant would be permitted to take action to designate the chief compliance officer or determine the compensation of the chief compliance officer. The rule text substitutes the term "board of directors" for "board," and the term "board of directors" is defined to include any governing body of an organization. The clarification is intended to account for all forms of business associations (for example, partnerships and limited liability companies) that may have forms of governing bodies other than boards of directors. The proposed rules also extend the reporting structure requirement to futures commission merchants.

The Commission specifically seeks comment on the degree of flexibility in the reporting structure for chief compliance officers that should be afforded under the proposed rules. Specifically, the Commission requests comment on: (i) Whether it would be more appropriate for a chief compliance officer to report to the senior officer or the board of directors; (ii) whether the senior officer or board of directors generally is a stronger advocate of compliance matters within an organization; (iii) whether the proposed rules allow for sufficient flexibility with regard to a registrant's business

structure; (iv) whether the proposed reporting structure should be amended to address any issues related to affiliates; and (v) whether the rule should include a provision requiring a majority of a board of directors to remove the chief compliance officer.

The Commission also is seeking comment on whether additional limitations should be placed on the persons who may be designated as a chief compliance officer. For example, should the Commission restrict the chief compliance officer position from being held by an attorney who represents the registrant or its board of directors, such as an in-house or general counsel? The rationale for such a restriction is based on the concern that the interests of defending the registrant would be in tension with the duties of the chief compliance officer.

The Commission specifically seeks comment on whether there is a need to insulate the chief compliance officer of registrants from undue pressure and coercion. Is it necessary to adopt rules to address the potential conflict between and among compliance interests, commercial interests, and ownership interests of a futures commission merchant, swap dealer, and major swap participant? If there is no need for such a provision, how would such possible conflicts be addressed?

The Dodd-Frank Act sets forth certain duties to be performed by a chief compliance officer of a swap dealer or major swap participant, and requires the Commission to promulgate rules concerning the duties of a chief compliance officer of a futures commission merchant. The proposed rules codify the duties set forth in the Act and apply them uniformly to futures commission merchants, swap dealers, and major swap participants. The Commission believes the statutory duties are largely self-explanatory, but in the interest of clarity, those duties will be discussed briefly below.

The duty to report to the board or the senior officer under section 4s(k)(2)(A) of the CEA<sup>9</sup> is addressed in the rule as discussed above. The duty to review compliance under section 4s(k)(2)(B) of the CEA<sup>10</sup> is combined with the duty to ensure compliance under section 4s(k)(2)(E),<sup>11</sup> and the duty to administer required policies under section 4s(k)(2)(D).<sup>12</sup> The duty to resolve conflicts of interest under section 4s(k)(2)(C) of the CEA<sup>13</sup> is codified in

<sup>9</sup> 7 U.S.C. 6s(k)(2)(A).

<sup>10</sup> 7 U.S.C. 6s(k)(2)(B).

<sup>11</sup> 7 U.S.C. 6s(k)(2)(E).

<sup>12</sup> 7 U.S.C. 6s(k)(2)(D).

<sup>13</sup> 7 U.S.C. 6s(k)(2)(C).

<sup>8</sup> 7 U.S.C. 12a(2-3).

the rules. The duty to identify noncompliance issues and establish procedures for their remediation in section 4s(k)(2)(F) of the CEA<sup>14</sup> is codified as well, as are other duties with respect to noncompliance issues in section 4s(k)(2)(G).<sup>15</sup> Underlying all of these duties are two fundamental acknowledgements: The chief compliance officer can only ensure the registrant's compliance to the full capacity of an individual person, and the duties of the chief compliance officer do not elevate the position above the board of directors, or otherwise contradict basic and well-established tenets of law regarding the allocation of responsibility within a business association.

The Commission would also require the chief compliance officer to meet annually with the board of directors or the senior officer to discuss the effectiveness of the compliance policies adopted by the registrant, as well as the administration of those policies by the chief compliance officer. The session would create an opportunity for a chief compliance officer and the directors or the senior officer to speak freely about any sensitive issues of concern to any of them, including any reservations about the cooperativeness or compliance practices of the registrant's employees.

The term "compliance policies" is defined to include all the written policies and procedures that are required to be adopted or established by a registrant under the CEA and the rules of the Commission. Specifically, the Commission intends for chief compliance officers to administer compliance policies that include, but are not limited to, all the new policies and the code of ethics required to be established or adopted by a registrant under these proposed rules, as well as all the policies currently required to be established or adopted by a registrant under the existing rules, such as risk management policies, trading rules, customer record protection procedures, and safeguards for electronic signatures. Finally, the proposed rules include as a duty the statutory requirement to prepare, sign,<sup>16</sup> and certify<sup>17</sup> the annual report, which is further discussed below.

### *B. Annual Report*

The Dodd-Frank Act requires that the chief compliance officer of a swap dealer or major swap participant annually prepare, sign, and certify a

report containing a description of the registrant's compliance with the CEA and regulations promulgated under the CEA, and a description of each policy and procedure of the chief compliance officer, including the code of ethics and conflicts of interest policies. The Dodd-Frank Act also requires, and the Commission is codifying, that a swap dealer and major swap participant furnish the report to the Commission simultaneously with each appropriate financial report that is required to be furnished to the Commission. The report would include a certification by the chief compliance officer that, under penalty of law, the annual report is accurate and complete. As discussed below, the Commission is proposing to apply these requirements to futures commission merchants as well.

More specifically, the Commission would require the annual report to be furnished simultaneously with the futures commission merchant's Form 1-FR-FCM or FOCUS report, and the swap dealer or major swap participant's financial condition report, the scope of which shall be defined in a future rulemaking pursuant to new section 4s of the CEA. The proposed rules elaborate on the certification of the annual report by specifying that the chief compliance officer must sign a statement that to the best knowledge and reasonable belief of the chief compliance officer, and under penalty of law, the information contained in the annual report is accurate and complete.

The proposed rules would also permit a registrant to request an extension of time to furnish the report; require that any material error or omission within a previously furnished annual report be promptly corrected; and allow for annual reports to cross-reference sections from recently furnished annual reports by the same entity, even in a different registration capacity.

Regarding the last provision, for example, if a company has submitted an annual report in the previous reporting period with a description of a compliance policy that is unchanged, then the company could incorporate by reference that description in an annual report furnished in the current reporting period, if it remains an accurate description that fulfills a content requirement of the current year's annual report. As another example, if a company is registered as both a swap dealer and a futures commission merchant, and the description of the company's code of ethics is the same under each registrant's annual report, then a cross-reference to one of the reports would satisfy the content requirements of the other report.

Importantly, the Commission would extend to chief compliance officers of futures commission merchants the Dodd-Frank Act's requirement that a chief compliance officer of a swap dealer or major swap participant prepare, sign, and certify an annual report to be furnished to the Commission. An annual report is intended to promote compliance behavior by requiring a registrant to conduct a periodic self-evaluation and to inform the Commission of possible compliance weaknesses that should be addressed. The Commission believes that it is beneficial to receive self-evaluation and compliance information from futures commission merchants as well as from swap dealers and major swap participants. Furthermore, the Commission believes this comports with Congressional intent in requiring that futures commission merchants designate a chief compliance officer under the Dodd-Frank Act.

The contents of the annual report are specified in the Dodd-Frank Act to include a description of the compliance of the registrant with the CEA and the Commission's rules, and each policy and procedure of the chief compliance officer of the registrant, including the code of ethics and conflict of interest policies. The proposed rules codify these requirements by reference to the defined term "compliance policies," and also require a discussion of any material changes to the registrant's compliance policies made during the reporting period.

Additionally, the proposed rules would require that the annual report include a certification of compliance under the provisions of sections 619 and 716 of the Dodd-Frank Act, which may impose obligations on registrants. Section 619, subject to limited exceptions, prohibits banking entities, as defined in that section, from engaging in proprietary trading or acquiring or retaining any equity, partnership, or other ownership interest in, or sponsoring, a hedge fund or private equity fund. Section 716 prohibits any swaps entity from receiving federal assistance, as defined in that section. The Commission requests comment on this proposed rule, including the scope of its application.

The annual report also would be required to contain a discussion of the execution of the chief compliance officer's duty to resolve conflicts of interest and to identify and resolve noncompliance issues. Additionally, the annual report would be required to contain a description of the financial, managerial, operational, and staffing resources set aside for compliance with

<sup>14</sup> 7 U.S.C. 6s(k)(2)(F).

<sup>15</sup> 7 U.S.C. 6s(k)(2)(G).

<sup>16</sup> 7 U.S.C. 6s(k)(3)(A).

<sup>17</sup> 7 U.S.C. 6s(k)(3)(B)(ii).

the CEA and the Commission's rules, including any deficiencies in such resources. The annual report would also be required to delineate the roles and responsibilities of various registrant personnel in addressing any conflicts, including any necessary coordination with, or notification of regulators, self-regulatory organizations, and others who may be involved in addressing the conflict.

Finally, the Commission would require that both the annual report and any related records be subject to the record keeping and inspection provisions of regulation 1.31. The requirement with respect to records related to the annual report is intended to preserve the Commission's ability to reconstruct why certain information was included or excluded in an annual report, in the event of an audit or investigation.

The Commission specifically seeks comment regarding: (i) The required content of the annual report; (ii) whether any additional content should be included therein; (iii) whether the Commission should require explicit approval of the annual report by the registrant's board of directors prior to the submission of the annual report to the Commission; (iv) whether additional provisions are necessary to ensure that individual directors or employees have an adequate opportunity to register their concerns or objections to the contents of the annual report; and (v) whether additional guidance is needed on what efforts by the chief compliance officer would be required to permit the chief compliance officer to certify that, to the best of his knowledge and reasonable belief, the annual report is accurate and complete.

Liability for false, incomplete, or misleading statements or representations made in the annual report could rest with the registrant or the chief compliance officer or both, either directly or vicariously, and could be administrative, civil, and/or criminal. Possible violations could include, among other things, a claim of failure to supervise or false statements to the Commission. The Commission could seek an injunction against future violations, civil monetary penalties, and/or any other appropriate remedial relief. Criminal penalties could be sought by appropriate criminal authorities.

### III. Transition Period

Futures commission merchants are currently required to be registered under regulation 3.10. The Dodd-Frank Act requires the Commission to promulgate rules providing for the registration of

swap dealers and major swap participants no later than July 21, 2011.<sup>18</sup> In order to provide for sufficient time for existing and new registrants to come into compliance with these proposed rules, the Commission is proposing to establish a delayed compliance date. The Commission specifically seeks comment on how long it might take for a registrant to hire a chief compliance officer and how long it might take for the registrant to implement the required policies and procedures under these proposed rules.

## IV. Related Matters

### A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA),<sup>19</sup> requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The Commission previously has established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such entities in accordance with the RFA.<sup>20</sup> The proposed rules would affect futures commission merchants, swap dealers, and major swap participants, entities that are required to be registered with the Commission. The Commission previously has determined that registered futures commission merchants are not small entities for the purposes of the RFA. The Commission's determination was based, in part, upon the obligation of futures commission merchants to meet minimum financial requirements established by the Commission to enhance the protection of customers' segregated funds and protect the financial condition of futures commission merchants generally.<sup>21</sup>

Swap dealers and major swap participants are new categories of registrant. Accordingly, the Commission has not previously addressed the question of whether such persons are, in fact, small entities for the purposes of the RFA. However, like futures commission merchants, swap dealers will be subject to minimum capital and margin requirements. Swap dealers are expected to comprise the largest global financial firms, and the Commission is required to exempt from designation entities that engage in a *de minimis* level of swaps dealing in connection with transactions with or on behalf of customers. Accordingly, for purposes of the RFA for this rulemaking, the Commission is hereby proposing that swap dealers not be considered small entities for essentially the same reasons

that futures commission merchants previously have been determined not to be small entities and in light of the exemption from the definition of swap dealer for those engaging in a *de minimis* level of swap dealing. The Commission anticipates that this exemption would tend to exclude small entities from registration.

The Commission also has previously determined that large traders are not small entities for RFA purposes.<sup>22</sup> In that determination, the Commission considered that a large trading position was indicative of the size of the business. Major swap participants, by the statutory definition, maintain substantial positions in swaps or maintain outstanding swap positions that create substantial counterparty exposure that could have serious adverse effects on the financial stability of the United States banking system or financial markets. Accordingly, for purposes of the RFA for this rulemaking, the Commission is hereby proposing that major swap participants not be considered small entities for the same reasons that large traders have previously been determined not to be small entities.

The Commission is carrying out Congressional mandates by proposing this regulation. Specifically, the Commission is proposing these rules to comply with the Dodd-Frank Act, the aim of which is to reduce systemic risks presented by swap dealers and major swap participants through comprehensive regulation. The Commission does not believe that there are regulatory alternatives to those being proposed that would be consistent with the statutory mandate. Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that these proposed rules will not have a significant economic impact on a substantial number of small entities.

### B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA)<sup>23</sup> imposes certain requirements on Federal agencies in connection with their conducting or sponsoring any collection of information as defined in the PRA. Certain provisions of this proposed rule would result in new collection of information requirements within the meaning of the PRA. The Commission therefore is submitting this proposal to the Office of Management and Budget (OMB) for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for this

<sup>18</sup> 7 U.S.C. 6s(b)(5).

<sup>19</sup> 5 U.S.C. 601-611.

<sup>20</sup> 47 FR 18618, Apr. 30, 1982.

<sup>21</sup> *Id.* at 18619, 18620.

<sup>22</sup> *Id.* at 18620.

<sup>23</sup> 44 U.S.C. 3501 *et seq.*

collection of information is “Annual Report for Chief Compliance Officer of Registrants.” The OMB has not yet assigned this collection a control number. 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.

The collection of information under these proposed rules is necessary to implement certain provisions of the CEA, as amended by the Dodd-Frank Act, and to assure that futures commission merchants, swap dealers, and major swap participants maintain comprehensive policies and procedures. The Commission’s staff would use the information collected when conducting examination and oversight of futures commission merchants, swap dealers, or major swap participants for compliance with the CEA and Commission regulations.

If adopted, responses to this new collection of information would be mandatory. The Commission will protect proprietary information according to the Freedom of Information Act and 17 CFR part 145, “Commission Records and Information.” In addition, section 8(a)(1) of the CEA strictly prohibits the Commission, unless specifically authorized by the CEA, from making public “data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers.” The Commission also is required to protect certain information contained in a government system of records according to the Privacy Act of 1974.<sup>24</sup>

#### 1. Information Provided by Reporting Entities/Persons

The burden associated with the proposed regulation is estimated to be 136 hours, at a cost of \$13,600 annually for each respondent. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a federal agency. This burden will result from the requirements that the respondent: (1) Prepare and file a Form 8–R designating the chief compliance officer; (2) draft and maintain various compliance policies and procedures; (3) annually prepare and furnish to the Commission an annual report that describes the respondent’s compliance policies and resources and the respondent’s compliance with the CEA and Commission regulations; (4) amend a previously furnished annual report

when material errors or omissions are identified; and (5) maintain records related to respondent’s compliance policies and annual reports.

The respondent burden for preparing and filing a Form 8–R designating the respondent’s chief compliance officer as a principal of the firm is expected to be 1 hour. It is estimated that each respondent would spend 80 hours annually in connection with the proposed requirement that respondent’s chief compliance officer establish various compliance policies and procedures. This estimate includes the time needed to review applicable laws and regulations; develop compliance policies and procedures; and consult with respondent’s board of directors or senior officer on compliance policies, as required. It is estimated that each respondent will spend an additional 40 hours drafting and submitting its annual report. This estimate includes the time needed to collect and analyze the information that underlies the contents of the annual report, to formulate recommendations to existing compliance policies, and to draft the report. The Commission notes that it has attempted to reduce the burden of this particular requirement by including a provision in the proposed regulation that: (1) Permits a respondent to incorporate by reference sections of an annual report that has been furnished within the current or immediately preceding reporting period and (2) where a respondent is registered in more than one capacity with the Commission, to incorporate by reference sections in the annual report that the registrant has furnished within the current or immediately preceding reporting period as another type of registrant. The Commission additionally estimates that a respondent may spend an average of 5 hours annually amending an annual report if material errors are found. Finally, each respondent is expected to spend 10 hours annually satisfying the record retention requirements of the rule. This would include the time to be expended maintaining records of the firm’s compliance policies; compiling and indexing records relevant to the annual report; and maintaining reports and other materials furnished to the respondent’s board of directors or senior officer in connection with its review of the report. The Commission does not expect respondents to incur any start-up costs in connection with this proposed regulation as it anticipates that respondents already maintain compliance personnel and systems for regulatory reporting and recordkeeping.

There are 159 futures commission merchants currently registered with the Commission and it is anticipated that there will be approximately 250 swap dealers and 50 major swap participants that will register with the Commission. Thus, the total number of respondents is expected to be 459. According to the Bureau of Labor Statistics, the mean hourly wage of an employee under occupation code 13–1041, “Compliance Officers, Except Agriculture, Construction, Health and Safety, and Transportation,” that is employed by the “Securities and Commodity Contracts Intermediation and Brokerage” industry is \$38.77.<sup>25</sup> Because futures commission merchants, swap dealers and major swap participants include large financial institutions whose employee salaries may exceed the mean wage, the Commission has taken the more conservative approach of estimating the cost burden of these proposed regulations based upon an average compliance officer salary of \$100 per hour. Accordingly, the estimated burden was calculated as follows:

#### *Preparation and Filing of Form 8–R*

*Number of respondents:* 459

*Estimated number of responses:* 459

*Estimated total burden on respondents:* 1 hour

*Frequency of collection:* One initial collection and on occasion thereafter

*Aggregate reporting burden:* 459 respondents × 1.0 hours = 459 burden hours

#### *Drafting and Updating Compliance Policies and Procedures*

*Number of respondents:* 459

*Estimated number of responses:* 459

*Estimated total annual burden on respondents:* 80 hours

*Frequency of collection:* Annually

*Aggregate reporting burden:* 459 respondents × 80 hours = 36,720 burden hours

#### *Preparation and Furnishing Annual Report*

*Number of respondents:* 459

*Estimated number of responses:* 459

*Estimated total annual burden on respondents:* 40 hours

*Frequency of collection:* Annually

*Aggregate reporting burden:* 459 respondents × 40 hours = 18,360 burden hours

#### *Preparation and Furnishing Amended Annual Report*

*Number of respondents:* 459

*Estimated number of responses:* 459

*Estimated total annual burden on respondents:* 5 hours

*Frequency of collection:* Annually

*Aggregate reporting burden:* 459

<sup>24</sup> 5 U.S.C. 552a.

<sup>25</sup> <http://www.bls.gov/oes/current/oes131041.htm>.

respondents × 5 hours = 2,295  
burden hours

*Recordkeeping Related to Compliance  
Policies and Annual Report*

Number of respondents: 459

Estimated number of responses: 459

Estimated total annual burden on  
respondents: 10 hours

Frequency of collection: Annually

Aggregate reporting burden: 459  
respondents × 10 hours = 4,590  
hours

Based upon the above, the aggregate cost for all respondents is 62,424 burden hours [136 hours × 459 respondents] and \$6,242,400 [62,424 burden hours × \$100 per hour].

2. Information Collection Comments

The Commission invites the public and other federal agencies to comment on any aspect of the reporting and recordkeeping burdens discussed above. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments in order to: (i) 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; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) 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 e-mail at [OIRASubmissions@omb.eop.gov](mailto: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 collections of information discussed above may be obtained by visiting [RegInfo.gov](http://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**. Consequently, a comment to OMB is most assured of being fully effective if received by OMB (and the Commission) within 30 days after publication.

*C. Cost-Benefit Analysis*

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before issuing new rules under the Act. By its terms, it does not require the Commission to quantify the costs and benefits of new rules or to determine whether the benefits of the proposed rules outweigh their costs. Rather, it requires the Commission to "consider the cost and benefits" of the subject rules.

Section 15(a) of the CEA further specifies that the costs and benefits of the proposed rules shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of the futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may, in its discretion, give greater weight to any one of the five enumerated areas of concern and may, in its discretion, determine that, notwithstanding its costs, a particular rule is necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the CEA.

The proposed rules would improve compliance by registrants with applicable laws and rules by requiring designation of a chief compliance officer, prescribing the duties of that position, and requiring preparation of a report on compliance activities of the registrant, to be furnished to the Commission for its review.

With respect to costs, the Commission has determined that costs to futures commission merchants, swap dealers, and major swap participants include the costs associated with the designation of a chief compliance officer, maintaining compliance policies, preparing the annual report, and satisfying applicable recordkeeping requirements. As noted above, the Commission has estimated these costs of preparing the annual report and the recordkeeping costs to be \$13,600 per year per respondent. However, there is little doubt that futures commission merchants, swap dealers, and major swap participants already expend resources on compliance activities and compliance personnel. For these entities, the proposed rule would not substantially increase costs.

With respect to benefits, the Commission has determined that there would be benefits to both the registrants and to the financial system as a whole if registrants undertake regular and

comprehensive self-evaluations regarding their level of compliance with laws and regulations. Also, the decision to devote sufficient resources to compliance with laws and regulations is a core component of sound risk management practices. Providing periodic notification to the Commission of how compliance is undertaken, whether there are compliance issues, and what resources are allocated for compliance activities would enable the Commission to better exercise its oversight authority and further the goal of avoiding market disruptions and financial losses to market participants and the general public.

The Commission invites public comment on its cost-benefit considerations. Commenters are also invited to submit any data or other information that they may have quantifying or qualifying the costs and benefits of these proposed rules with their comment letters.

**List of Subjects in 17 CFR Part 3**

Administrative practice and procedure, Brokers, Commodity futures, Major swap participants, Reporting and recordkeeping requirements, Swap dealers.

For the reasons stated in the preamble, the Commission proposes to amend 17 CFR part 3 as follows:

**PART 3—REGISTRATION**

**Authority and Issuance**

1. The authority citation for part 3 is revised to read as follows:

**Authority:** 5 U.S.C. 552, 552b; 7 U.S.C. 1a, 2, 6a, 6b, 6b-1, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6n, 6o, 6p, 6s, 8, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21, 23, unless otherwise noted.

2. Amend § 3.1 by revising paragraph (a)(1) and by adding paragraphs (g) and (h) to read as follows:

**§ 3.1 Definitions.**

(a) \* \* \*

(1) If the entity is organized as a sole proprietorship, the proprietor; if a partnership, any general partner; if a corporation, any director, the president, chief executive officer, chief operating officer, chief financial officer, and any person in charge of a principal business unit, division or function subject to regulation by the Commission; if a limited liability company or limited liability partnership, any director, the president, chief executive officer, chief operating officer, chief financial officer, the manager, managing member or those members vested with the management authority for the entity, and any person in charge of a principal business unit, division or function subject to

regulation by the Commission; and, in addition, any person occupying a similar status or performing similar functions, such as the chief compliance officer, having the power, directly or indirectly, through agreement or otherwise, to exercise a controlling influence over the entity's activities that are subject to regulation by the Commission;

\* \* \* \* \*

(g) *Compliance policies.* Compliance policies means all policies, procedures, codes, safeguards, rules, programs, and internal controls required to be adopted or established by a registrant pursuant to the Act and Commission regulations, including a code of ethics.

(h) *Board of directors.* Board of directors means the board of directors, board of governors, or equivalent governing body of a registrant.

3. Add § 3.3 to read as follows:

*§ 3.3 Chief compliance officer.*

(a) *Designation.* Each futures commission merchant, swap dealer, and major swap participant shall designate an individual to serve as its chief compliance officer, and provide the chief compliance officer with the full responsibility and authority to develop and enforce, in consultation with the board of directors or the senior officer, appropriate policies and procedures to fulfill the duties set forth in the Act and Commission regulations.

(1) The chief compliance officer shall report to the board of directors or the senior officer of the futures commission merchant, swap dealer, or major swap participant. The board of directors or the senior officer shall approve the compensation of the chief compliance officer and meet with the chief compliance officer at least once a year to discuss the effectiveness of the compliance policies, as defined in § 3.1(g), as well as the administration of those policies by the chief compliance officer.

(2) The board of directors or the senior officer of the futures commission merchant, swap dealer, or major swap participant may not delegate its authority over the chief compliance officer, including authority to remove the chief compliance officer.

(b) *Qualifications.* The individual designated to serve as chief compliance officer shall have the background and skills appropriate for fulfilling the responsibilities of the position. No individual disqualified from registration under section 8a(2)–(3) of the Act may serve as a chief compliance officer.

(c) *Submission with registration.* Each application for registration as a futures commission merchant under § 3.10, a

swap dealer under § 23.21, or a major swap participant under § 23.21, must include a designation of a chief compliance officer by submitting a Form 8–R for the chief compliance officer as a principal of the applicant pursuant to § 3.10(a)(2).

(d) *Chief compliance officer duties.* The chief compliance officer's duties shall include, but are not limited to:

(1) Establishing, in consultation with the board of directors or the senior officer, compliance policies, as defined in § 3.1(g);

(2) In consultation with the board of directors or the senior officer, resolving any conflicts of interest that may arise;

(3) Reviewing and ensuring compliance by the futures commission merchant, swap dealer, or major swap participant with compliance policies, as defined in § 3.1(g), and all applicable laws, rules, and regulations, including, but not limited to the requirements set forth in the Act and Commission regulations;

(4) Establishing procedures, in consultation with the board of directors or the senior officer, for the remediation of noncompliance issues identified by the chief compliance officer through a compliance office review, look-back, internal or external audit finding, self-reported error, or validated complaint;

(5) Establishing procedures, in consultation with the board of directors or the senior officer, for the handling, management response, remediation, retesting, and closing of noncompliance issues; and

(6) Preparing, signing, and certifying the annual report required under paragraph (d) of this section.

(d) *Annual report.* The chief compliance officer annually shall prepare a written report that covers the most recently completed fiscal year of the futures commission merchant, swap dealer, or major swap participant, and provide the annual report to the board of directors or the senior officer. The annual report shall, at a minimum:

(1) Contain a description of the compliance by the futures commission merchant, swap dealer, or major swap participant with respect to the Act and Commission regulations and each of the registrant's compliance policies, as defined in § 3.1(g);

(2) Review each applicable requirement under the Act and Commission regulations, and with respect to each:

(i) Identify the policies and procedures that ensure compliance with the requirement under the Act and Commission regulations;

(ii) Provide an assessment as to the effectiveness of these policies and procedures; and

(iii) Discuss areas for improvement, and recommend potential or prospective changes or improvements to its compliance program and resources devoted to compliance;

(3) Provide a statement of certification of compliance with sections 619 and 716 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, and any rules adopted pursuant thereto;

(4) List any material changes to compliance policies during the coverage period for the report;

(5) Describe the financial, managerial, operational, and staffing resources set aside for compliance with respect to the Act and Commission regulations, including any deficiencies in such resources;

(6) Describe any non-compliance issues identified, and the corresponding action taken; and

(7) Delineate the roles and responsibilities of its board of directors or senior officer, relevant board committees, and staff in addressing any conflicts of interest, including any necessary coordination with, or notification of, other entities, including regulators.

(e) *Furnishing the annual report to the Commission.*

(1) Prior to furnishing the annual report to the Commission, the chief compliance officer shall provide the annual report to the board of directors or the senior officer of the futures commission merchant, swap dealer, or major swap participant for its review. Furnishing the annual report to the board of directors or the senior officer shall be recorded in the board minutes or otherwise, as evidence of compliance with this requirement.

(2) The annual report shall be furnished electronically to the Commission not more than 90 days after the end of the fiscal year of the futures commission merchant, swap dealer, or major swap participant, simultaneously with the submission of Form 1–FR–FCM, as required under § 1.10(b)(2)(ii), simultaneously with the Financial and Operational Combined Uniform Single Report, as required under § 1.10(h), or simultaneously with the financial condition report, as required under section 4s(f) of the Act, as applicable.

(3) The report shall include a certification by the chief compliance officer that, to the best of his or her knowledge and reasonable belief, and under penalty of law, the information contained in the annual report is accurate and complete.

(4) The futures commission merchant, swap dealer, or major swap participant shall promptly furnish an amended annual report if material errors or omissions in the report are identified. An amendment must contain the certification required under paragraph (e)(3) of this section.

(5) A futures commission merchant, swap dealer, or major swap participant may request from the Commission an extension of time to furnish its annual report, provided the registrant's failure to timely furnish the report could not be eliminated by the registrant without unreasonable effort or expense. Extensions of the deadline will be granted at the discretion of the Commission.

(6) A futures commission merchant, swap dealer, or major swap participant may incorporate by reference sections of an annual report that has been furnished within the current or immediately preceding reporting period to the Commission. If the futures commission merchant, swap dealer, or major swap participant is registered in more than one capacity with the Commission, and must submit more than one annual report, an annual report submitted as one registrant may incorporate by reference sections in the annual report furnished within the current or immediately preceding reporting period as the other registrant.

(f) *Recordkeeping.*

(1) The futures commission merchant, swap dealer, or major swap participant shall maintain:

(i) A copy of the compliance policies, as defined in § 3.1(g), and all other policies and procedures adopted in furtherance of compliance with the Act and Commission regulations;

(ii) Copies of materials, including written reports provided to the board of directors or the senior officer in connection with the review of the annual report under paragraph (d) of this section; and

(iii) Any records relevant to the annual report, including, but not limited to, work papers and other documents that form the basis of the report, and memoranda, correspondence, other documents, and records that are created, sent or received in connection with the annual report and contain conclusions, opinions, analyses, or financial data related to the annual report.

(2) All records or reports that a futures commission merchant, swap dealer, or major swap participant are required to maintain pursuant to this section shall be maintained in accordance with § 1.31 and shall be made available promptly upon request to representatives of the Commission and to representatives of

the applicable prudential regulator, as defined in 1a(39) of the Act.

Issued in Washington, DC, on November 10, 2010, by the Commission.

**David A. Stawick,**

*Secretary of the Commission.*

**Statement of Chairman Gary Gensler**

Designation of a Chief Compliance Officer; Required Compliance Policies; and Annual Report of a Futures Commission Merchant, Swap Dealer, or Major Swap Participant

I support the proposed rulemaking establishing requirements for the designation, qualifications and duties of a chief compliance officer of swap dealers, major swap participants and futures commission merchants. These rules are intended to ensure that sufficient resources are devoted to compliance with laws and regulations, which is a core component of sound risk management practices. The proposed rules fulfill the Dodd-Frank Act's requirements that intermediaries have chief compliance officers and establish and administer compliance policies, as well as resolve certain conflicts of interest.

[FR Doc. 2010-29021 Filed 11-18-10; 8:45 am]

**BILLING CODE 6351-01-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R08-OAR-2010-0909; FRL-9228-9]

**Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revision**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** Pursuant to sections 110(a)(2)(H) and 110(k)(5) of the Clean Air Act, EPA is proposing to find that the Utah State Implementation Plan (SIP) is substantially inadequate to attain or maintain the national ambient air quality standards or to otherwise comply with the requirements of the Clean Air Act. Specifically, the SIP includes Utah rule R307-107, which exempts emissions during unavoidable breakdowns from compliance with emission limitations. This rule undermines EPA's, Utah's, and citizens' ability to enforce emission limitations that have been relied on to ensure attainment or maintenance of the national ambient air quality standards or meet other Clean Air Act requirements. If EPA finalizes this proposed finding of substantial inadequacy, Utah will be required to revise its SIP to correct this deficiency within 12 months of the effective date

of our final rule. If EPA finds that Utah has failed to submit a complete SIP revision as required by a final rule or if EPA disapproves such a revision, such finding or disapproval would trigger clocks for mandatory sanctions and an obligation for EPA to impose a Federal Implementation Plan. EPA is also proposing that if EPA makes such a finding or disapproval, sanctions would apply consistent with 40 CFR 52.31, such that the offset sanction would apply 18 months after such finding or disapproval and highway funding restrictions would apply six months later unless EPA first takes action to stay the imposition of the sanctions or to stop the sanctions clock based on the State curing the SIP deficiencies. EPA is also requesting comment on whether EPA should exercise its discretionary authority under the Clean Air Act to impose highway funding restrictions in all areas of the State, not just in nonattainment areas.

**DATES:** Comments must be received on or before December 20, 2010.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R08-OAR-2010-0909, by one of the following methods:

- <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- *E-mail:* [russ.tim@epa.gov](mailto:russ.tim@epa.gov).
- *Mail:* Callie A. Videtich, Director, Air Program, Environmental Protection Agency, Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129.

- *Fax:* (303) 312-6064 (please alert the individual listed in **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).

- *Hand Delivery:* Callie A. Videtich, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-R08-OAR-2010-0909. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise