

SUPPORTING STATEMENT FOR AMENDED INFORMATION COLLECTIONS

Position Limits for Derivatives

OMB CONTROL NUMBER 3038-0013

Justification

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.

On July 21, 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) went into effect.¹ Title VII of the Dodd-Frank Act amends the Commodity Exchange Act (“CEA” or “Act”)² to establish a comprehensive new regulatory framework for swaps and security-based swaps. In Section 737 of the Dodd-Frank Act, Congress amended section 4a of the CEA to broaden the Commodity Futures Trading Commission’s (“Commission” or “CFTC”) authority to impose speculative position limits, as appropriate, from futures (and options thereon) and significant price discovery contracts traded on an electronic trading facility,³ to now include futures (and options thereon) traded on a Designated Contract Market (“DCM”), swaps traded on a DCM or Swap Execution Facility (“SEF”), and swaps not traded on a DCM or SEF that perform or affect a significant price discovery function (“SPDF” or “SPDF swaps”) with respect to a registered entity. In addition to expanding the Commission’s overall authority to impose position limits, Congress specifically directed the Commission in new section 4a(a)(2) and 4a(a)(5) of the Act to establish position limits for physical commodity DCM futures contracts and options thereon (chiefly exempt and agricultural commodities), as well as swaps that are economically equivalent to the physical commodity futures and option contracts. Congress also directed that the Commission establish these position limits within 180 days for exempt commodities, and 270 days for agricultural commodities. The rulemaking establishes federal position limits for certain DCM futures and their economically equivalent swaps (collectively “referenced contracts”), and also requires that DCMs and SEFs that are trading facilities establish position limits for all physical commodity contracts.

Section 4a of the CEA and the proposed rules adopted thereunder are designed to prevent excessive speculation and manipulation in a manner, in the Commission’s discretion, that maximizes the goals of preserving market liquidity for bona fide hedgers while protecting the price discovery process. On July 22, 2010 the Commission published a final rule (“Swaps Large Trader Reporting Rule”) that the Commission deemed necessary for purposes of monitoring and enforcing the position limits established for the current proposed rule. In addition to the

¹ See Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

² 7 U.S.C. 1 *et seq.*

³ Title XIII of the Food, Conservation and Energy Act of 2008, Pub. L. No. 110-246, 122 Stat. 1624 (June 18, 2008).

reporting and recordkeeping requirements contained in the Swaps Large Trader Reporting Rule, the Commission is imposing additional reporting and record-keeping requirements on various market participants in order to establish an effective, efficient and comprehensive position limits regime. The collections of information contained in this rulemaking are necessary for the Commission to, among other things, establish the size of an applicable speculative position limit, establish an exemption process for certain positions, and improve the Commission's ability generally to monitor and surveil the markets.

The proposed rulemaking affects two separate collections of information currently approved by OMB: OMB Control No. 3038-0009 and OMB Control No. 3038-0013. The Commission is proposing to reorganize the information found in the OMB Collection Numbers associated with its position limits regulations. In particular, the Commission proposes that the burdens related to series '04 forms be moved from OMB Collection #3038-0009 to OMB Collection #3038-0013. This change is non-substantive but allows for all information collections related to exemptions from speculative position limits to be housed in one collection, making it simpler for market participants to know where to find the relevant PRA burdens. If adopted, OMB Collection #3038-0009 would hold collections of information related to parts 15, 17, and 18-20 while OMB Collection #3038-0013 would hold collections of information related to parts 19 and 150.

2. Indicate how, by whom, and for what purpose the data would be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

The Commission currently uses the information received from collection 3038-0013 to administer its speculative position limit regime, to ensure the validity of exemptions granted from that regime, and to monitor and surveil its markets.

As discussed above, sections 4a(a)(2) and 4a(a)(5) of the Act mandate that the Commission establish concurrently, speculative position limitations, as appropriate, on DCM physical commodity futures contracts (specifically exempt and agricultural contracts) and swaps that are economically equivalent to those futures contracts. Congress directed the Commission to establish these position limits within 180 days for exempt commodities and 270 days for agricultural commodities. The reporting and record-keeping requirements proposed herein would be used by the Commission to establish levels for position limits, verify exceptions to position limits such as bona-fide hedge exemptions, and for general surveillance purposes. This additional data would enhance the ability of the Commission to monitor and surveil the markets. Toward these ends, the proposed amendments provide for the following specific reporting and record-keeping requirements:

1. Proposed § 150.2(a)(3)(ii) would require Designated Contract Markets ("DCMs") that list the core referenced futures contracts designated in proposed § 150.2(d) to calculate and submit estimates of the deliverable supply available in each of the underlying commodities. Submissions would be required biennially, at staggered intervals, in order to alleviate some of the burden on DCMs. Proposed § 150.2(a)(3)(ii) would also allow exchanges to petition the Commission to not change a limit

level, and estimates relating to the burden of submitting such a petition are included herein.

2. Proposed § 150.3(g) would require any person claiming an exemption from federal position limits under part 150 to keep and maintain comprehensive books and records concerning all details of their related cash, forward, futures, options and swap positions and transactions to serve as a reasonable basis to demonstrate reduction of risk on each day that the exemption was claimed. Proposed § 150.3(g)(2) requires a person claiming a pass-through swap offset hedging exemption to obtain a representation that the swap qualifies as a pass-through swap for purposes of a bona fide hedging position; proposed § 150.3(g)(3) requires a person making such a representation to keep and maintain records supporting such a representation.
3. Proposed § 150.3(h) would provide that upon call from the Commission any person claiming an exemption from speculative position limits under proposed § 150.3 must provide to the Commission any information as specified in the call.
4. Proposed § 150.2(a)(2)(ii) would require traders who wish to avail themselves of any exemption from a DCM or SEF's speculative position limit rules to submit an application to the DCM or SEF explaining how the exemption would be in accord with sound commercial practices and would allow for a position that could be liquidated in an orderly fashion. The Commission understands that requiring traders to apply for exemptive relief comports with existing DCM practice; thus, the Commission anticipates that the codification of this requirement will have the practical effect of incrementally increasing, rather than creating, the burden of applying for such exemptive relief.
5. Proposed § 19.01(a)(1) requires persons claiming a conditional spot month limit exemption pursuant to § 150.3 to file new Form 504 for natural gas. A Form 504 filing shows the composition of the cash position of natural gas underlying a referenced contract that is held or controlled for which the exemption is claimed, including the "as of" date, the quantity of stocks owned of such commodity, the quantity of fixed-price purchase commitments open providing for receipt of such cash commodity, the quantity of fixed-price sale commitments open providing for delivery of such cash commodity, the quantity of unfixed-price purchase commitments open providing for receipt of such cash commodity, and the quantity of unfixed-price sale commitments open providing for delivery of such cash commodity.
6. Proposed § 19.01(a)(2) would require persons claiming a pass-through swap exemption pursuant to § 150.3 to file new Form 604 showing various data depending on whether the offset is for non-referenced contract swaps or spot-month swaps including, at a minimum, the underlying commodity or commodity reference price, the applicable clearing identifiers, the notional quantity, the gross long or short position in terms of futures-equivalents in the core referenced futures contracts, and the gross long or short positions in the referenced contract for the offsetting risk position.

7. Traders claiming anticipatory bona fide hedging exemptions would be required to file proposed Form 704 for the initial statement/application pursuant to proposed § 150.7(d), along with an annual update on the same form. Annual updates require mostly the same information as the initial statement, allowing market participants to update only fields that have changed since the initial statement was filed rather than having to update the entire form.
8. Proposed §§150.9(a)(3), 150.10(a)(3), and 150.11(a)(2) require designated contract markets and swap execution facilities that elect to process applications to establish an application process that elicits sufficient information to allow the designated contract market or swap execution facility to determine, and the Commission to verify, whether it is appropriate to recognize a commodity derivative position as a non-enumerated bona fide hedging position, exempt spread position or enumerated anticipatory bona fide hedge, respectively. Pursuant to §§ 150.9(a)(4)(i), 150.10(a)(4), and 150.11(a)(3), an applicant would be required to update an application at least on an annual basis. Further, DCMs and SEFs have authority under §§ 150.9(a)(6), 150.10(a)(6), and 150.11(a)(5) to require that any such applicant file a report with the designated contract market or swap execution facility pertaining to the use of any exemption that has been granted.
9. Further under proposed §§ 150.9, 150.10, and 150.11, designated contract markets and swap execution facilities that elect to process the recognition of non-enumerated bona fide hedging positions, exempt spread positions, or enumerated anticipatory bona fide hedging positions must file new rules or rule amendments pursuant to Part 40 of this chapter, establishing or amending its application process for recognition of the above-referenced positions.
10. Proposed §§ 150.9(a), 150.10(a), and 150.11(a) require an exchange that elects to process applications may incur a burden related to the review and disposition of such applications. The review of an application is required to include analysis of the facts and circumstances of such application to determine whether the application meets the standards established by the Commission. Exchanges are required to notify the applicant regarding the disposition of the application, including whether the application was approved, denied, referred to the Commission, or requires additional information.
11. Exchanges that elect to process the applications under proposed §§ 150.9 and 150.10 may incur burdens to publish on their Web sites summaries of the unique types of non-enumerated bona fide hedging position positions and spread positions, respectively. This requirement is new even for exchanges that already have a similar process under exchange-set limits.
12. Designated contract markets and swap execution facilities that elect to process applications would be required under proposed §§ 150.9(b), 150.10(b), and 150.11(b) to keep full, complete, and systematic records, which include all pertinent data and

memoranda, of all activities relating to the processing and disposition of applications for recognition of non-enumerated bona fide hedging positions, exempt spread positions, and enumerated anticipatory bona fide hedges.

13. Exchanges that elect to process applications for recognition of non-enumerated bona fide hedging positions, spread exemptions, and enumerated anticipatory bona fide hedges would be required to file two types of reports. In particular, §§ 150.9(c) and 150.10(c) require a designated contract market or swap execution facility that elects to process applications for non-enumerated bona fide hedging positions and exempt spread positions to submit to the Commission (i) a summary of any non-enumerated bona fide hedging position and exempt spread position newly published on the designated contract market or swap execution facility's website; and (ii) no less frequently than monthly, any report submitted by an applicant to such designated contract market or swap execution facility pursuant to rules authorized under §§ 150.9(a)(6) and 150.10(a)(6), respectively.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.

The Commission is committed to utilizing technology in order to reduce reporting burdens for respondents. Accordingly, the Commission has provided for the electronic transmission of the required submissions. The Commission anticipates that 100% of the collection of information would be submitted electronically.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.

This question does not apply.

5. If the collection of information involves small business or other small entities (Item 5 of OMB 83-I), describe the methods used to minimize burden.

CFTC regulation part 150 would not have a significant economic impact on a substantial number of small businesses. Although proposed § 150.3(g)(3) would require counterparties to pass-through swaps to keep records supporting the transaction's qualification for an enumerated hedge, the marginal burden of this requirement is mitigated through overlapping recordkeeping requirements for reportable futures traders (Commission regulation 18.05) and reportable swap traders (Commission regulation 20.6(b)). Further, the Commission understands that entities subject to the recordkeeping requirements for their swaps transactions maintain records of these contracts, as they would other documents evidencing material financial relationships, in the ordinary course of their businesses. The remaining collections of information do not apply to small businesses as that term is defined under the Regulatory Flexibility Act.

6. Describe the consequence to the Federal Program or policy activities if the collection were conducted less frequently as well as any technical or legal obstacles to reducing burden.

The Commission would not be able to effectively carry out the congressional directive to establish position limits under section 4a of the CEA. To ensure the validity of exemptions granted by exchanges for contracts not subject to federal, Commission-set limits, the Commission requires traders to submit an application to the exchange for any exemptions. Expanded recordkeeping obligations aid in the Commission's ability to properly enforce position limits by ensuring that supporting documentation is available upon request to Commission staff. Further, in order to properly set spot-month position limits, the Commission will need estimates of deliverable supply from DCMs on the relevant underlying commodities.

7. Explain any special circumstances that require the collection to be conducted in a manner:

- requiring respondents to report information to the agency more often than quarterly;

The Commission generally regulates the trading of commodity derivatives, including futures and swaps, which are used to price a wide range of physical and financial commodity transactions. These transactions are vital to national and international commerce. The exercise of regulatory oversight for the purpose of conducting market surveillance, financial surveillance, and monitoring of trading for abusive conduct, by necessity, requires the collection of transactional and position information on a monthly, weekly, or daily basis depending on the exact nature of the information required to be collected.

- requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it:

Commodity derivatives are used to price a wide range of physical and financial commodity transactions. In this collection, the "special call" provisions would be the only instances where respondents would be required to prepare a written response to a collection of information within fewer than 30 days after receipt. These provisions allow the Commission to prevent potential abuse or manipulation of commodity derivatives swiftly, minimizing the potential impact to national and international commerce and consumers.

- requiring respondents to submit more than an original and two copies of any document;

Respondents are required to submit only a single copy to the Commission.

- requiring respondents to retain records other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;

Proposed § 150.5 would require exchanges to maintain records in accordance with § 1.31, which requires persons to maintain records for at least five years. The marginal burden of this requirement is mitigated through such overlapping recordkeeping requirements. Further, the Commission understands that entities subject to the recordkeeping requirements maintain records in the ordinary course of their businesses, including in order to comply with regulations from other governmental agencies. Thus, the Commission does not believe the required recordkeeping burden would be overly cumbersome.

The Commission notes that other recordkeeping provisions under the proposed rules, including § 150.3(g), require records to be maintained for only two years.

- In connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;

The proposed rules do not involve statistical surveys.

- requiring the use of a statistical data classification that has not been reviewed and approved by OMB;

The proposed rules do not involve statistical data classifications.

- that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or

The proposed rules do not directly involve any specific pledge of confidentiality regarding the collection of data (see answer to question 10).

- requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

The proposed rules would require the submission of data involving confidential information or proprietary trade secrets. The Commission would protect sensitive information according to the Freedom of Information Act and 17 CFR part 145, "Commission Records and Information." In addition, the Commission fully complies with section 8(a) of the Commodity Exchange Act, which strictly prohibits the Commission, unless specifically authorized by the Commodity Exchange Act, 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."

8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice required by 5 C.F.R. 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in

response to these comments. Specifically address comments received on cost and hour burden.

The Commission is affirmatively seeking comment from the public on the proposed collection of information. A copy of the notice of the proposed rulemaking has been submitted to the Federal Register for publication and public comment.

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping disclosure, or reporting format (if any, and on the data elements to be recorded, disclosed, or reported.

Opportunity for public comment will be provided when the notice of proposed rulemaking is published the Federal Register. Further, contact with the reporting entities and market participant is maintained on a continuous and ongoing basis to resolve reporting problems and address concerns. Commission staff has met, and will continue to meet, with various entities that could be covered in the proposed rules to discuss the scope of the rulemaking.

Position Limits for Derivatives was Reproposed, Dec. 30, 2016, *81 FR 96704*.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every three years—even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

No such circumstances are anticipated.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

This question does not apply.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulations, or agency policy.

The Commission would protect sensitive information according to the Freedom of Information Act and 17 CFR part 145, "Commission Records and Information." In addition, the Commission fully complies with section 8(a) of the Commodity Exchange Act, which strictly prohibits the Commission, unless specifically authorized by the Commodity Exchange Act, 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."

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered

private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

This question does not apply.

12. Provide estimates of the hour burden of the collection of information. The Statement should:

- Indicate the number of respondents, frequency of response, annual hour burden and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than ten) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.
- If the request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB 83-I.
- Provide estimates of annualized cost to respondents for the hours burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 13.

The proposed amendments to parts 19 and 150 of the Commission's regulations would result in collections of information related to position limits. The Commission estimates that the total labor burden associated with complying with the proposed rules would be approximately 195,734 hours or \$23,815,823 across approximately 431 entities.⁴ Specifically, the proposed rules would result in the following reporting and record-keeping labor burdens:

⁴ The Commission's estimates concerning wage rates are based on 2013 salary information for the securities industry compiled by the Securities Industry and Financial Markets Association ("SIFMA"). The Commission is using a figure of \$122 per hour, which is derived from a weighted average of salaries across different professions from the SIFMA Report on Management & Professional Earnings in the Securities Industry 2013, modified to account for an 1800-hour work-year, adjusted to account for the cumulative rate of inflation since 2013. This figure was then multiplied by 1.33 to account for benefits, and further by 1.5 to account for overhead and administrative expenses. The Commission anticipates that compliance with the provisions would require the work of an information technology professional; a compliance manager; an accounting professional; and an associate general counsel. Thus, the wage rate is a weighted national average of salary for professionals with the following titles (and their relative weight); "programmer (average of senior and non-senior)" (15% weight), "senior accountant" (15%) "compliance manager" (30%), and "assistant/associate general counsel" (40%). All monetary estimates below have been rounded to the dollar.

1. Form 204: Previously, the Commission estimated the combined annual labor hours for both Form 204 and Form 304 to be 1,350 hours, which amounted to a total labor cost to industry of \$68,850 per annum. Here, the Commission has estimated the costs for each form separately. As proposed, Form 204 would be required to be filed when a trader accumulates a net long or short commodity derivative position that exceeds a federal limit in a referenced contract. Form 204 would inform the Commission of the trader's cash positions underlying those commodity derivative contracts for purposes of claiming bona fide hedging exemptions. The Commission estimates that approximately 425 traders would be required to file Form 204 once a month (12 times per year) each. At an estimated 3 labor hours to complete and file each Form 204 report for a total annual burden to industry of 15,300 labor hours, the Form 204 reporting requirement would cost industry \$1,866,600 in labor costs.
2. Form 304: As proposed, Form 304 would be required to be filed by merchants and dealers in cotton and contains information on the quantity of call cotton bought or sold on a weekly basis. Form 304 would be required in order for the Commission to produce its weekly cotton "on call" report. The Commission estimates that approximately 200 traders would be required to make a Form 304 submission for call cotton 52 times per year each. At 1 hour to complete each submission for a total annual burden to industry of 10,400 labor hours, the Form 304 reporting requirement would impose upon industry \$1,268,800 in labor costs.
3. Form 504: As proposed, § 19.01(a)(1) would require persons claiming a conditional spot month limit exemption pursuant to § 150.3(c) to file Form 504. Unlike other series '04 forms, Form 504 would apply only to commodity derivative contracts in natural gas markets. A Form 504 filing would show the composition of the natural gas cash position underlying a referenced contract that is held or controlled for which the exemption is claimed. The Commission notes that this form should be submitted daily for each day of the 3-day spot period for the core referenced futures contract in natural gas. The Commission estimates that approximately 40 traders would claim a conditional spot month limit 12 times per year, and each corresponding submission would take 15 labor hours to complete and file. Therefore, the Commission estimates that the proposed Form 504 reporting requirement would result in approximately 7,200 total annual labor hours for an additional industry-wide labor cost of \$878,400. The Commission requests comment on its estimates regarding new Form 504.
4. Form 604: Persons claiming a pass-through swap exemption pursuant to § 150.3(a) would be required to file proposed Form 604 showing various data (depending on whether the offset is for non-referenced contract swaps or spot-month swaps) including, at a minimum, the underlying commodity or commodity reference price, the applicable clearing identifiers, the notional quantity, the gross long or short position in terms of futures-equivalents in the core referenced futures contracts, and the gross long or short positions in the referenced contract for the offsetting risk position. For proposed Form 604 reports filed for positions held outside of the spot month, the Commission estimates that approximately 250 traders would claim a pass-

- through swap exemption an average of 10 times per year each. At approximately 30 labor hours to complete each corresponding submission for a total burden to traders of 75,000 annual labor hours, compliance with the proposed Form 604 filing requirements industry-wide would impose an additional \$9,150,000 in labor costs.
5. Form 704: Traders claiming anticipatory bona fide hedging exemptions would be required to file proposed Form 704 for the initial statement/application pursuant to § 150.7(d), along with an annual update on the same form. Because annual update requires mostly the same information as the initial statement, allowing market participants to update only fields that have changed since the initial statement was filed rather than having to update the entire form, the Commission anticipates the annual update requiring about half the time to complete. The Commission estimates that approximately 250 traders would claim anticipatory exemptions by filing an initial statement approximately once per year. At an estimated 15 labor hours to complete and file an initial statement on Form 704 for a total annual burden to traders of 3,750 labor hours, the anticipatory exemption filing requirement would cost industry an additional \$457,500 in labor costs. The annual update to proposed Form 704 is estimated to be required of the same 250 traders once a year, at an estimated 8 hours to complete and file, for an industry-wide burden of 2,000 hours and \$244,000 in labor costs.
 6. Recordkeeping for Market Participants: Any person claiming an exemption from federal position limits under part 150 would be required to keep and maintain books and records concerning all details of their related cash, forward, futures, options and swap positions and transactions to serve as a reasonable basis to demonstrate reduction of risk on each day that the exemption was claimed. These records would be required to be comprehensive, in that they must cover anticipated requirements, production and royalties, contracts for services, cash commodity products and by-products, pass-through swaps, cross-commodity hedges, and more. The Commission estimates that approximately 425 traders would claim an average of 50 exemptions each per year that fall within the scope of the recordkeeping requirements of proposed § 150.3(g). At approximately one hour per exemption claimed to keep and maintain the required books and records, the Commission estimates that industry would incur a total of 20,000 annual labor hours amounting to \$2,592,500 in additional labor costs.
 7. Special Calls: In addition, proposed § 150.3(h) would provide that upon call from the Commission any person claiming an exemption from speculative position limits under proposed § 150.3 must provide to the Commission any information as specified in the call. It is difficult to determine in advance of any such call who may be required to submit information under proposed § 150.3(h), how that information may be submitted, or how many labor hours it may take to prepare and submit such information. However, for the purposes of the PRA, the Commission has made estimates regarding the potential burden. The Commission estimates that approximately 425 traders would be eligible to be called upon for additional information under proposed § 150.3(h) each year. At approximately two hours per exemption claimed to keep and maintain the required books and records, the

Commission estimates that industry would incur a total of 850 annual labor hours amounting to \$103,700 in additional labor costs.

8. Exchange-Set Limits: Traders who wish to avail themselves of any exemption from a DCM or SEF's speculative position limit rules would need to submit an application to the DCM or SEF explaining how the exemption would be in accord with sound commercial practices and would allow for a position that could be liquidated in an orderly fashion. As noted supra, the Commission understands that requiring traders to apply for exemptive relief comports with existing DCM practice; thus, the Commission anticipates that the proposed codification of this requirement would have the practical effect of incrementally increasing, rather than creating, the burden of applying for such exemptive relief. The Commission estimates that approximately 425 traders would claim exemptions from DCM or SEF-established speculative position limits each year, with each trader on average making 1 application to the DCM or SEF each year. Each submission is estimated to take 2 hours to complete and file, meaning that these traders collectively would incur a total burden of 850 labor hours per year for an industry-wide additional labor cost of \$39,976.
9. Non-Enumerated Hedging Exemption Applications: The Commission anticipates that market participants would be mostly familiar with the non-enumerated bona fide hedging position application provided by exchanges that currently process such applications, and thus believes that the burden for applying to an exchange would be minimal. The Commission estimates that 325 entities would file an average of 2 applications each year to obtain recognition of certain positions as non-enumerated bona fide hedges and that each application, including any usage report that may be required by the DCM or SEF, would require approximately 4 burden hours to complete and file. Thus, the Commission estimates an average per entity burden of 8 labor hours and an industry-wide burden of 2,600 labor hours annually. The Commission estimates an average cost of approximately \$976 per entity or \$317,200 for the industry as a whole for applications under § 150.9(a)(3).
10. Spread Exemption Applications: The Commission anticipates that market participants would be mostly familiar with the spread exemption application provided by exchanges that currently process such applications, and thus believes that the burden for applying to an exchange would be minimal. The Commission estimates that 85 entities would file an average of 2 applications each year to obtain an exemption for certain spread positions and that each application, including any usage report required by the DCM or SEF, would require approximately 3 burden hours to complete and file. Thus, the Commission approximates an average per entity burden of 6 labor hours and an industry-wide burden of 510 labor hours annually. The Commission estimates an average cost of approximately \$732 per entity or \$62,220 for the industry as a whole for applications under § 150.10(a)(2).
11. Anticipatory Hedging Exemption Applications: The Commission anticipates that market participants would be mostly familiar with the enumerated anticipatory bona fide hedge application provided by exchanges that currently process such

applications, and thus believes that the burden for applying to an exchange would be minimal. The application is required to include, at a minimum, the information required under § 150.7(d). The Commission estimates that 90 entities would file an average of 2 applications each year to obtain recognition that certain positions are enumerated anticipatory bona fide hedges and that each application would require approximately 3 burden hours to complete and file. Thus, the Commission estimates an average per entity burden of 6 labor hours and an industry-wide burden of 510 labor hours annually. The Commission estimates an average cost of approximately \$732 per entity or \$65,880 for the industry as a whole for applications under proposed § 150.11(a)(2).

12. DCM Submission of Estimates of Deliverable Supply: For purposes of assisting the Commission in resetting spot-month limits, proposed § 150.2(e)(3)(ii) would require DCMs to supply the Commission with an estimated spot-month deliverable supply for each core referenced futures contract listed. The estimate must include documentation as to the methodology used in deriving the estimate, including a description and any statistical data employed. The Commission estimates that the submission would require a labor burden of approximately 20 hours per estimate. Thus, a DCM that submits one estimate may incur a burden of 20 hours for a cost of approximately \$2,440. DCMs that submit more than one estimate may multiply this per-estimate burden by the number of estimates submitted to obtain an approximate total burden for all submissions, subject to any efficiencies and economies of scale that may result from submitting multiple estimates. The Commission notes that, in response to comments, the Commission proposes to allow a DCM that does not wish a spot-month limit level to be changed to petition the Commission to not change the limit level and, if the petition is approved, the DCM would not need to submit deliverable supply estimates for such a commodity. A DCM that submits one petition may incur a burden of one hour, resulting in an estimated per-petition cost of approximately \$488. Again, DCMs that submit more than one petition may multiply this per-petition burden by the number of petitions submitted.
13. Filing New or Amended Rules: Designated contract markets and swap execution facilities that elect to process the recognition of non-enumerated bona fide hedging positions, exempt spread positions, or enumerated anticipatory bona fide hedging positions would be required to file new rules or rule amendments pursuant to Part 40 of this chapter, establishing or amending its application process for recognition of the above-referenced positions, consistent with the requirements of proposed §§ 150.9, 150.10, and 150.11. The Commission anticipates that the exchanges that would elect to process applications under these sections are likely to have processes for recognizing such exemptions currently, and so would need to file amendments to existing exchange rules rather than adopt new rules. Thus, the Commission approximates an average per entity burden of 10 labor hours. The Commission estimates an average cost of approximately \$1,220 per entity for filing revised rules under part 40 of the Commission's regulations.

14. Review and Disposition of Applications: An exchange that elects to process applications may incur a burden related to the review and disposition of such applications pursuant to proposed §§ 150.9(a), 150.10(a), and 150.11(a). The review of an application would be required to include analysis of the facts and circumstances of such application to determine whether the application meets the standards established by the Commission. Exchanges would be required to notify the applicant regarding the disposition of the application, including whether the application was approved, denied, referred to the Commission, or requires additional information. The Commission estimates that each exchange would process approximately 325 non-enumerated bona fide hedging position applications per year and that each application would require 7 hours to process, for an average per entity burden of 2,275 labor hours annually. The Commission estimates an average cost of approximately \$277,500 per entity under § 150.9(a). The Commission estimates that each exchange would process about 85 spread exemption applications per year and that each application would require 7 hours to process, for an average per entity burden of 595 labor hours annually. The Commission estimates an average cost of approximately \$72,590 per entity under proposed § 150.10(a). The Commission invites comments on these estimates. The Commission estimates that each entity would process about 90 anticipatory hedging applications per year and that each application would require 7 hours to process, for an average per entity burden of 630 labor hours annually. The Commission estimates an average cost of approximately \$76,860 per entity under proposed § 150.11(a).
15. Publication of Summaries: Exchanges that would elect to process the applications under proposed §§ 150.9 and 150.10 may incur burdens to publish on their Web sites summaries of the unique types of non-enumerated bona fide hedging position positions and spread positions, respectively. This requirement would be new even for exchanges that already have a similar process under exchange-set limits. The Commission estimated in the 2016 Supplemental Position Limits Proposal that a single summary would require 5 hours to write, approve, and post. An exchange also commented that these summaries would likely require seven hours per summary to prepare. Thus, the Commission now estimates that each exchange would post approximately 40 summaries per year, with an average per summary burden of 7 labor hours. The Commission estimates an average cost of approximately \$34,160 per entity, representing the combined burdens of §150.9(a)(7) and § 150.10(a)(7). The Commission invites comments on these estimates.
16. Recordkeeping for Exchanges: Designated contract markets and swap execution facilities that elect to process applications are required under proposed §§ 150.9(b), 150.10(b), and 150.11(b) to keep full, complete, and systematic records, which include all pertinent data and memoranda, of all activities relating to the processing and disposition of applications for recognition of non-enumerated bona fide hedging positions, exempt spread positions, and enumerated anticipatory bona fide hedges. The Commission believes that exchanges currently process applications for recognition of non-enumerated bona fide hedging positions, exempt spread positions, and enumerated anticipatory bona fide hedges maintain records of such applications

as required pursuant to other Commission regulations, including § 1.31. However, the Commission also believes that the rules may confer additional recordkeeping obligations on exchanges that elect to process applications for recognition of non-enumerated bona fide hedging positions, exempt spread positions, and enumerated anticipatory bona fide hedges. The Commission estimates that 6 entities would have recordkeeping obligations pursuant to proposed §§ 150.9(b), 150.10(b), and 150.11(b). Thus, the Commission approximates an average per entity burden of 90 labor hours annually for all three sections. The Commission estimates an average cost of approximately \$10,980 per entity for records and filings under §§ 150.9(b), 150.10(b), and 150.11(b).

17. Reporting: The Commission anticipates that exchanges that elect to process applications for recognition of non-enumerated bona fide hedging positions, spread exemptions, and enumerated anticipatory bona fide hedges would be required to file two types of reports. In particular, proposed §§ 150.9(c) and 150.10(c) would require a designated contract market or swap execution facility that elects to process applications for non-enumerated bona fide hedging positions and exempt spread positions to submit to the Commission (i) a summary of any non-enumerated bona fide hedging position and exempt spread position newly published on the designated contract market or swap execution facility's website; and (ii) no less frequently than monthly, any report submitted by an applicant to such designated contract market or swap execution facility pursuant to rules authorized under proposed §§ 150.9(a)(6) and 150.10(a)(6), respectively. The Commission estimates that 6 entities would have weekly reporting obligations pursuant to re-proposed §§ 150.9(c)(1), 150.10(c)(1), and 150.11(c). The Commission is revising its estimate to reflect the commenter's assertion that the weekly report will require a burden of approximately 6 hours to complete and submit. Thus, the Commission estimates an average per entity burden of 936 labor hours annually. The Commission estimates an average cost of approximately \$114,192 per entity for weekly reports pursuant to all three related sections. The Commission invites comments on its estimates. The Commission also estimates that 6 entities would have monthly reporting obligations pursuant to re-proposed §§ 150.9(c)(2) and 150.10(c)(2). The Commission also estimates that the monthly report would require a burden of approximately 6 hours to complete and submit. Thus, the Commission approximates an average per entity burden of 144 labor hours annually. The Commission estimates an average cost of approximately \$17,568 per entity for monthly reports under both sections.

In Attachment A the Commission has provided the key assumptions and calculations used to derive labor burden estimates.

13. Provide an estimate of the total annual cost burden to respondents or record-keepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14).
- The cost estimate should be split into two components; (a) a total capital and start-up cost component (annualized over its expected useful life) and (b) a total

operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major costs factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software, monitoring, sampling, drilling and testing equipment, and record storage facilities.

- If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate, agencies may consult with a sample of respondents (fewer than ten), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.
- Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.

The Commission estimates that the total annualized capital, operational, and maintenance costs associated with complying with the proposed rules would be approximately \$59,875,000 across approximately 441 firms. Of this, \$47,800,000 would be from annualized capital and start-up costs and \$12,075,000 would be from operating and maintenance costs. These cost estimates are based on Commission staff's estimated costs to develop the reports and recordkeeping required in the proposed rules.

The Commission maintains its belief that market participants will be able to leverage existing systems and strategies for tracking and reporting positions. As noted above, the Commission recognizes that expanding the federal speculative position limits regime into additional commodities beyond the legacy agricultural commodities will increase monitoring costs for firms. However, the Commission continues to expect that firms trading in the commodities subject to federal limits under § 150.2 do currently monitor for exchange-set and/or federal limits, and submit reports to claim exemptions in contracts for future delivery in such commodities. The Commission therefore continues to believe that costs for futures market participants resulting from the rules adopted herein are marginal increases upon existing costs, rather than entirely new burdens. Further, the Commission notes that it is difficult to ascertain an estimate of the average cost to market participants, as, depending on its size and complexity, a market participant could comply with position limits using anything from an Excel spreadsheet to multiple transaction capture systems.

The Commission is increasing its estimates to respond to commenters. For swaps market participants unused to speculative position limits on swaps contracts, the Commission continues to estimate a greater cost to start and continue monitoring for and complying with speculative position limits.

In Attachment B the Commission has provided the key assumptions and calculations used to derive these annualized capital and start-up and annual total operating and maintenance cost estimates.

13. Provide estimates of the annualized costs to the Federal Government. Also provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing and support staff), and any other expense that would not have been incurred without this collection of information. Agencies may also aggregate cost estimates from Items 12, 13, and 14 in a single table.

The Commission estimates that the equivalent of approximately 75,078 annual labor hours would be required in order to review, process, and respond to the relevant reports provided for in proposed rules. The staff needed would include attorneys, industry economists, and information technology staff, including computer programmers. These estimates are based on estimated labor costs associated with processing analogous reporting for existing federal position limits for certain agricultural futures contracts. At an average CT-13 pay grade for Commission employees in Washington, D.C. for 2016, or \$110,066, multiplied by 1.3 and 1.25 to account for overhead and benefits respectively, each employee would cost the Commission approximately \$178,847.25. This would amount to approximately \$7,460,135.90 per year in total labor costs to the Commission.

The Commission does not anticipate the need for additional capital or operational items to fulfill its mandate to impose position limits.

14. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB 83-I.

This question does not apply.

15. For collection of information whose results are planned to be published for statistical use, outline plans for tabulation, statistical analysis, and publication. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

This question does not apply.

16. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

This question does not apply.

17. Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submissions," of OMB 83-I.

There are no exceptions to the certification statement. The Commission is able to certify compliance with the provisions of 5 CFR 1320.9.

Attachment A
13. Annual Reporting and Recordkeeping Hour Burden
Position Limits for Derivatives
OMB Collection Number 3038-0013

Number of Respondents:	431
Estimated Total Annual Responses	195,734
Estimated Average Hours Per Response:	3.91
% of Responses Collected Electronically:	100%
Estimated Total Annual Labor Costs:	\$23,815,823
Frequency of Reporting:	Depends based on type of reporting or recordkeeping requirement (see below)

Required Record or Report	Total Number of Respondents (13.a)	Total Annual Responses (13.b.2)	Burden Hours Per Response (13.c)	Total Annual Hours Requested (13.c)	Total Labor Costs
New or amended rule filings under part 40 per § 150.9(a) (1), (a)(6)	6	12	5	60	\$7,320
New or amended rule filings under part 40 per § 150.10(a)(1), (a)(6)	6	12	5	60	\$7,320
New or amended rule filings under part 40 per § 150.11(a)(1), (a)(5)	6	12	5	60	\$7,320
Collection, review, and disposition of application per § 150.9(a)	6	1,950	7	13,650	\$1,665,300

Collection, review, and disposition of application per § 150.10(a)	6	510	7	3,570	\$435,540
Collection, review, and disposition of application per § 150.11(a)	6	540	7	3,780	\$461,160
Summaries Posted Online per § 150.9(a)	6	180	7	1,260	\$153,720
Summaries Posted Online per § 150.10(a)	6	60	7	420	\$51,240
§ 150.9(b) Recordkeeping	6	6	30	180	\$21,960
§ 150.10(b) Recordkeeping	6	6	30	180	\$21,960
§ 150.11(b) Recordkeeping	6	6	30	180	\$21,960
§ 150.9(c)(1) Weekly Report	6	312	6	1,872	\$228,384
§ 150.10(c)(1) Weekly Report	6	312	6	1,872	\$228,384
§ 150.11(c) Weekly Report	6	312	6	1,872	\$228,384
§ 150.9(c)(2) Monthly Report	6	72	6	432	\$52,704
§ 150.10(c)(2) Monthly Report	6	72	6	432	\$52,704
§ 150.2(a)(3)(ii) DS Estimate Submission Petition	6	24	1	24	\$2,928
§ 150.2(a)(3)(ii) DS Estimate Submission	6	24	20	480	\$58,560
§ 150.5(a)(2)(ii) Exchange-Set Limit Exemption Application	6	2,550	2	5,100	\$622,200

§ 150.5(a)(2)(ii) Exchange-Set Limit Exemption Application	425	425	2	850	\$39,976
§ 150.9(a)(3) NEBFH Application	325	650	4	2,600	\$317,200
§ 150.10(a)(3) Spread Exemption Application	85	170	3	510	\$62,220
§ 150.11(a)(2) Application On Form 704	90	180	3	540	\$65,880
§ 150.3(g) Recordkeeping	425	21,250	1	21,250	\$2,592,500
§ 19.01(a)(1) Form 504	40	480	15	7,200	\$878,400
§ 19.01(a)(2)(i) Form 604 Non Spot Month	250	2,500	30	75,000	\$9,150,000
§ 19.01(a)(2)(ii) Form 604 Spot Month	100	1,000	20	20,000	\$2,440,000
§ 19.02 Form 304	200	10,400	1	10,400	\$1,268,800
§ 19.01(a)(3) Form 204	425	5,100	3	15,300	\$1,866,600
§ 150.3(h) Special Call	425	425	2	850	\$103,700
§ 150.7(a) Form 704 Initial Statement	250	250	15	3,750	\$457,500
§ 150.7(a) Form 704 Annual Update	250	250	8	2,000	\$244,000

Attachment B
14. Annual Reporting and Recordkeeping Cost Burden
Position Limits for Derivatives
OMB Collection Number 3038-0013

Number of Respondents: 441

Estimated Total Annualized Annualized Capital and Start-up Costs: \$47,800,000

Estimated Total Annual Operating and Maintenance Costs:

\$12,075,000

Type of Respondent	Total Number of Respondents	Total Annualized Capital/Start-up Costs (14(a))	Total Annual Operating & Maintenance Costs (14(b))
§§ 19 and 150 – Futures & Swaps Participants	425	\$42,500,000	\$10,625,000
§§ 19 and 150 - Swaps Only Participants	10	\$5,000,000	\$1,000,000
§ 150 - Exchanges	6	\$300,000	\$450,000