

**CONSOLIDATED SUPPORTING STATEMENT FOR AMENDED INFORMATION  
COLLECTIONS BY FINAL RULE COLLECTIONS**

**OMB CONTROL NUMBER 3038-0009**

**OMB CONTROL NUMBER 3038-0013**

**OMB CONTROL NUMBER 3038-0093**

**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. Section 737 of the Dodd-Frank Act amended section 4a of the Commodity Exchange Act (“CEA” or “Act”) and specifically directed the Commodity Futures Trading Commission (“Commission”) to establish limits on positions, as the Commission determines to be necessary, for exchange traded futures, including any option contract thereon, and swaps that are economically equivalent to those contracts for physical commodities other than excluded commodities, as appropriate.<sup>1</sup> CEA section 4a directs the Commission to establish limits on speculative positions, as the Commission determines to be necessary, to prevent the harms caused by excessive speculation.

On January 30, 2020, the Commission approved a proposed rulemaking on speculative position limits to conform to the Dodd-Frank Act amendments to CEA section 4a (“2020 Proposal”).<sup>2</sup> On October 15, 2020, the Commission voted 3-2 to adopt the 2020 Proposal with certain amendments (“Final Rule”), completing the Commission’s major rulemakings related to implementation of the Dodd-Frank Act.

The Final Rule results in modified collections of information currently approved by OMB in OMB control numbers: (i) 3038-0009, (ii) 3038-0013, and (iii) 3038-0093.

Furthermore, the Commission is reorganizing the information found in the OMB control numbers associated with its position limits regulations. In particular, the Commission is moving from OMB control number 3038-0009 to OMB control number 3038-0013 the burdens related to collections of information under part 19 (Reports by Persons Holding Bona Fide Hedge Positions and By Merchants and Dealers in Cotton) related to position limit requirements.

Finally, the modified collection under OMB control number 3038-0013 is renamed as “Position Limits.” This renaming change is non-substantive and allows for all collections of information related to the federal position limits requirements, including exemptions from

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<sup>1</sup> See 7 U.S.C. 6a(a)(2) and 7 U.S.C. 6a(a)(5).

<sup>2</sup> Proposed Rule, *Position Limits for Derivatives*, RIN 3038-AD99, issued by the Commission on January 31, 2020 (“2020 Proposal”).

speculative position limits and the collections of information being moved from OMB control number 3038-0009 (*i.e.*, the related large trader reporting), to be housed in one collection. The remaining collections of information under OMB control number 3038-0009 cover reports by various entities under parts 15, 17, and 21<sup>3</sup> of the Commission's regulations, while OMB control number 3038-0013 holds collections of information arising from parts 19 and 150.

Other than moving the existing aforementioned collections of information under part 19 from OMB control number 3038-0009 to OMB control number 3038-0013, the Final Rule does not make any other substantive changes to OMB control number 3038-0009 for the purposes of the Paperwork Reduction Act ("PRA"). The existing reporting rules covered by OMB control number 3038-0009 are structured to ensure the Commission receives adequate information to carry out its market and financial surveillance programs.<sup>4</sup> The reporting rules are implemented by the Commission partly pursuant to the authority of sections 4a, 4c(b), 4g, and 4i of the Act.<sup>5</sup> Section 4a of the Act permits the Commission to set and approve exchange-set limits and enforce speculative position limits.<sup>6</sup> Section 4c(b) of the Act gives the Commission plenary authority to regulate transactions that involve commodity options.<sup>7</sup> Section 4g of the Act imposes reporting and recordkeeping obligations on registered entities, and requires each registrant, whether a futures commission merchant ("FCM"), introducing broker, floor broker, or floor trader, to file such reports as the Commission may require on proprietary and customer positions executed on any board of trade in the United States or elsewhere.<sup>8</sup> Lastly, section 4i of the Act requires the filing of such reports as the Commission may require when positions made or obtained on designated contract markets or derivatives transaction execution facilities equal or exceed Commission-set levels.<sup>9</sup>

The collections of information covered by OMB control number 3038-0013 are necessary for the Commission to determine whether to recognize a trader's position as a bona fide hedge exempted from position limit requirements. They also ensure that exchange-set limits comply with Commission regulations, including that such limits are no higher than the applicable federal level; that the exchanges establish minimum standards needed to administer the exchange's position limits framework; and that the Commission is able to oversee an exchange's exemptions process to ensure it does not undermine the federal position limits framework. In addition, they

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<sup>3</sup> Note that OMB control number 3038-0009 generally covers Commission regulations in parts 15 through 21. However, it does not cover §§ 16.02, 17.01, 18.04, or 18.05, which are under OMB control number 3038-0103. See 78 FR 69178 at 69200 (Nov. 18, 2013) (transferring §§ 16.02, 17.01, 18.04, and 18.05 to OMB Control Number 3038-0103).

<sup>4</sup> The market surveillance programs analyze market information to detect and prevent market disruptions and enforce speculative position limits. The financial surveillance programs combine market information with financial data to assess the financial risks presented by large customer positions to Commission registrants and clearing organizations. See 69 FR 76392 (December 21, 2004).

<sup>5</sup> 7 U.S.C. 1 *et seq.*

<sup>6</sup> 7 U.S.C. 6a.

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

<sup>8</sup> 7 U.S.C. 6g.

<sup>9</sup> 7 U.S.C. 6i. In addition, CEA section 8a(5) is an enabling provision that grants to the Commission the authority to adopt regulations that in its judgment are reasonably necessary to accomplish any of the purposes of the Act. 7 U.S.C. 12a(5). Pursuant to CEA section 3(b), the Act seeks to ensure the financial integrity of regulated transactions and to prevent price manipulation and other disruptions to market integrity. 7 U.S.C. 5(b). Collectively, these purposes warrant the maintenance of an effective and vigorous system of market and financial surveillance.

also help ensure that any person claiming any exemption can demonstrate compliance with the applicable requirements.

Also, the collections of information covered by OMB control number 3038-0093 are necessary to capture the new non-enumerated bona fide hedge process in the exchanges' rulebooks, which are subject to Commission approval. The Commission's answers to the questions below further explain how the Final Rule impacts the three OMB control numbers 3038-0009, 3038-0013, and 3038-0093. Except when specified, the answers apply to all three OMB control numbers.

**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.**

**A. OMB Control Number 3038-0009 – Large Trader Reports**

The Commission employs a comprehensive reporting system to enforce speculative position limits and assess the activities and market power of traders in an effort to detect and deter manipulation of its jurisdictional markets. The information collected is used primarily by Commission analysts for daily market surveillance and the enforcement of speculative position limits. The data also provides a basis for periodic Commission publications and is used by Commission economists and the public for research.

The Commission's Final Rule amends part 19 to remove these reporting obligations associated with Form 204 and Parts I and II of Form 304 ("series '04 reports"). To effect these changes to traders' reporting obligations, the Commission is eliminating (i) existing § 19.00(a) (1), which requires the applicable persons to file a Form 204; and (ii) existing § 19.01, which among other things, sets forth the cash-market information required to be submitted on the Forms 204 and 304. The Commission is maintaining Part III of Form 304, which requests information on unfixed-price "on-call" purchases and sales of cotton and which the Commission utilizes to prepare its weekly cotton on-call report. The Commission is also maintaining its existing special call authority under part 19, as discussed below.

Position information collected pursuant to special call under part 21 (17 CFR part 21) of the Commission's regulations is submitted by reporting firms and may be used to audit large trader reports and is used to investigate potential market abuses. Although similar to the standardized information routinely collected under part 17 of the Commission's regulations (17 CFR part 17) for reportable accounts, such data is submitted in response to customized requests for information and may regard accounts and positions that are not reportable. In contrast to special calls for identifying data made under Commission regulation 18.04 (17 CFR 18.04), special calls made under any provision of part 21 of the Commission's regulations (17 CFR part 21) generally occur only when a particular market shows a potential for disruption or there is an investigation of possible violations of the Act or the regulations thereunder. Authority to issue special calls under Part 21 is delegated to the Directors of the Divisions of Enforcement and Clearing and Risk.

**B. OMB Control Number 3038-0013 – Position Limits**

Generally, the Commission currently uses the information received from OMB control number 3038-0013, which is submitted by exchanges, defined under the regulations as Designated Contract Markets (“DCMs”), or by market participants directly, to administer its speculative position limit regime and to ensure the validity of exemptions granted from that regime. The information is also critical in the operation of the Commission’s activities to monitor and surveil its markets. In addition, information on large traders under existing part 19 of the Commission’s regulations is provided on a case-by-case basis to representatives of other federal agencies and Congress.

The reporting and recordkeeping requirements included in the Final Rule will be used by the Commission to verify exemptions from position limit requirements on a universe of 25 physically-settled futures contracts (the “Core Referenced Futures Contracts” or “CRFCs”) and their linked cash-settled futures, options on futures, and “economically equivalent” swaps (collectively, “Referenced Contracts”). Part 150 establishes an amended process for traders to obtain a bona fide hedge exemption or recognition, which includes: (i) a new bona fide hedging definition in § 150.1, (ii) a new streamlined process involving the exchanges in § 150.9 for recognizing non-enumerated bona fide hedging exemptions for federal limit requirements, and (iii) an amended process in § 150.3 to apply directly to the Commission for certain spread exemptions or for recognition of non-enumerated bona fide hedging positions. Regulation 150.3 also includes new exemption types not explicitly listed in existing § 150.3.

The Commission believes the collections of information in part 150 are necessary for the exchange and the Commission to process requests for recognition of bona fide hedges for purposes of both exchange-set position limits and federal position limits. The information will be used by the exchange and the Commission to determine whether the facts and circumstances demonstrate it is appropriate to recognize a position as a non-enumerated bona fide hedging transaction or position.

Overall, the data will continue to support the Commission’s ability to monitor and surveil the markets, particularly in contract markets that will be newly subject to federal position limit requirements.

### **C. OMB Control Number 3038-0093 – Provisions Common to Registered Entities**

The requested information is essential to the staff’s review of exchange rulebook submissions and the Commission’s oversight of each registered entity’s self-regulatory actions. Staff generally conducts a due diligence review of new submissions and makes an independent determination concerning the registered entity’s compliance with the Act and regulations thereunder.

- 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 for the three OMB control numbers 3038-0009, 3038-0013, and 3038-0093. The Commission anticipates that 100% of the collection of information will 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.**

The Final Rule includes several measures that are meant to reduce duplication. For example, the Commission is eliminating the requirement on market participants to submit the Form 204 and Form 304 respective statements of commodity cash positions to the Commission as such information is already required to be provided as part of the market participant's exemption application to an exchange.

In addition, the Commission is establishing a streamlined process for addressing requests for non-enumerated bona fide hedging positions. The new process leverages existing exchange processes as well as exchange expertise and resources.

Under the Final Rule, market participants can provide one application to an exchange to request a non-enumerated bona fide hedge, and receive approval of such request from the exchange for the purpose of exchange-set limits and from the Commission for the purpose of federal limits (the Commission will receive the application directly from the exchange).

For OMB control number 3038-0093, the statute and regulations require registered entities to submit certain information—product terms and conditions, explanations of the cash market and other aspects of the product and its compliance with applicable law, rule changes and explanations of the operation, purpose and effect of such changes, and notices of the certain risk management rules that is not available from any other source and generally is specific to the registered entity.

**5. If the collection of information involves small business or other small entities, describe the methods used to minimize burden.**

The Chairman has certified on behalf of the Commission that the Final Rule (including the collections of information) will not have a significant economic impact on a substantial number of small entities. The requirements related to the Final Rule fall mainly on registered entities such as exchanges (*i.e.*, DCMs and swap execution facilities (“SEFs”)), FCMs, swap dealers, clearing members, foreign brokers, and large traders. The Commission has determined that registered DCMs, SEFs, FCMs, swap dealers, major swap participants, eligible contract participants, clearing members, foreign brokers, and large traders are not small entities for purposes of 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.**

#### **A. OMB Control Number 3038-0009 – Large Trader Reports**

The Commission would not be able to conduct its oversight responsibilities for these markets without surveillance. The frequency of the collection requirements is essential to executing the Commission’s mission to foster open, transparent, competitive, and financially sound markets; to avoid systemic risk; and to protect the market users and their funds, consumers, and the public from fraud, manipulation, and abusive practices related to derivatives and other products that are subject to the CEA.

Market activities require surveillance on a daily basis because situations such as attempted manipulations or congestion can develop rapidly. Adequate surveillance would be impossible if transactional and position reports were received on less than a daily basis.

#### **B. OMB Control Number 3038-0013 – Position Limits**

The Commission would not be able to effectively carry out the congressional directive to establish position limits, as the Commission deems necessary, under section 4a of the CEA if the collections were conducted less frequently than as adopted. The Final Rule sets forth a streamlined process in which a trader can apply indirectly to the Commission through an exchange to request a non-enumerated bona fide hedging recognition from federal position limits. Conducting the collections less frequently will hinder the Commission’s ability to consider the traders’ applications when requesting non-enumerated bona fide hedge exemptions from federal or exchange-set limits and allows the Commission to assess the validity of exemptions. In addition, conducting the recordkeeping obligations less frequently will not aid in the Commission’s ability to properly enforce federal position limits as the Final Rule’s requirements ensure that supporting documentation is available upon request to Commission staff.

Further, in order to properly set federal spot-month position limits, the Commission will need the DCMs to submit initial estimates of deliverable supply on the relevant underlying commodities.

#### **C. OMB Control Number 3038-0093 – Provisions Common to Registered Entities**

The Commission’s Part 40 regulations do not require the submission of information on a periodic basis. Rather, submissions are required only at such time that registered entities seek to list new products or adopt new rules or rule amendments. The regulations provide for the minimum frequency of the required submissions, which depends on the frequency that registered entities seek to take one or more actions that require a filing with the Commission.

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 or compliance with position limit requirements, 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:**

In this collection, § 150.9 provides for instances where respondents may be required, in some instances if necessary, 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, and to quickly provide regulatory certainty to market participants.

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

Not applicable.

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

Section 5(d)(18) of the CEA requires DCMs to maintain records of all activities related to the business of the market in a form and manner acceptable to the Commission for a period of five years. 7 U.S.C. 7(d)(18). In addition, section 4g of the CEA imposes reporting and recordkeeping obligations on registered entities and registrants (whether an FCM, introducing broker, floor broker, or floor trader). The amended recordkeeping requirements must be kept in accordance with § 1.31, which requires persons to maintain records for at least five 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;**

Not applicable. The Final Rule does not involve statistical surveys.

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

Not Applicable. The Final Rule does 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 collection does not involve any pledge of confidentiality, 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 Final Rule does not directly involve any specific pledge of confidentiality regarding the collection of data. The Final Rule requires the submission of data involving confidential information or proprietary trade secrets. The Commission protects 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 CEA, which 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."

- 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 CFR 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 published a notice of proposed rulemaking in the *Federal Register*, 85 FR 11596 (Feb. 27, 2020). The Commission did not receive any public comment in response to the proposed rule.

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

Not applicable.

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

The Commission protects 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 CEA, which 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."

- 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.**

Not applicable.



**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 Form 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 out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 13.**

Attachment A provides a specific breakdown of the estimated burden for the collections of information for the Final Rule, including the number of respondents, frequency of response, and annual hour burden cost.<sup>10</sup> Below is a descriptive overview of the burdens.

**A. OMB Control Number 3038-0009 – Large Trader Reports**

As noted above, the Final Rule does not substantively change existing OMB control number 3038-0009, other than moving existing collections of information under part 19 of the Commission’s regulations to existing OMB control number 3038-0013. As a result, OMB control number 3038-0009 will change only to reflect a decrease in the collections of information and related burden hours associated with part 19 of the Commission’s regulations.

Furthermore, the Commission notes that the previous renewal application for OMB control number 3038-0009 (ICR Ref. No. 201906-3038-008) was received on June 27, 2019 by OMB and concluded on Sept. 4, 2019, according to the records on [www.reginfo.gov](http://www.reginfo.gov).<sup>11</sup>

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<sup>10</sup> The Commission has updated the mean hourly wage rate for Lawyers from \$96 to \$97 from its estimate submitted in connection with the 2020 Proposal to reflect the increase for this occupation as reported by the U.S. Bureau of Labor Statistics (“BLS”) in May 2019. See May 2019 National Industry-Specific Occupational Employment and Wage Estimates, NAICS 523000 - Securities, Commodity Contracts, and Other Financial Investments and Related Activities, [https://www.bls.gov/oes/current/naics4\\_523000.htm](https://www.bls.gov/oes/current/naics4_523000.htm). As a result, there is a slight increase from the 2020 Proposal with respect to the specific breakdown of the estimated burden for the collections of information in Attachment A, and as described below. The Commission notes that this increase is not material.

<sup>11</sup> See ICR Ref. No. 201906-3038-008, available at <https://www.reginfo.gov/public/do/PRAOMBHistory?ombControlNumber=3038-0009#>.

Accordingly, the descriptions and estimates below substantially reflect the Commission's previous submission and related estimates, as the Commission's estimates have not materially changed within the intervening 9 months between its submission in connection with the issuance of the 2020 Proposal and its present submission for purposes of the Final Rule.

However, the Commission is updating the blended wage rates from its previous estimate based on the latest U.S. Bureau of Labor Statistics. With respect to revised costs, the Commission is providing a blended rate using estimated industry specific wages for (1) General and Operations Managers, (2) Lawyers, and (3) Compliance Officers. Per the U.S. Bureau of Labor Statistics, national industry-specific occupational employment and wage estimates from May 2019 (the most recent available), the mean hourly wage for a general and operations manager is \$91 (a decrease from \$93 as reported by the BLS in May 2018), lawyer is \$97 (an increase from \$96 as reported by the BLS in May 2018), and compliance officer is \$44 (an increase from \$43 as reported by the BLS in May 2018). The average of those wages remains the same as the previous estimate of \$77.<sup>12</sup>

i. Clearing Member Reports

The Final Rule does not change the collections of information or related burden estimates under Commission regulation 16.00 (17 CFR 16.00), in which the Commission obtains clearing member reports from the reporting markets or the clearing organizations of each reporting market. Reporting markets<sup>13</sup> routinely provide this data to each clearing member. Since the data is routinely provided to clearing members, the reporting burden for this set of data is estimated at 20 minutes for each trading day. The Commission continues to estimate that 14 respondents each provide 250 reports annually on average to clearing members, with the total burden hours across all respondents to be estimated at 1,166 hours. On average, it is expected that about 20 minutes per trading date is expended by respondents, making the total annual burden per exchange 83.333 hours (250 reports x .333 average number of burden hours per response). Using the blended professional wage rate of \$77 per hour described above, the estimated total cost to the exchanges is \$89,838 (83.333 hours x \$77 per hour = \$6,417; \$6,417 x 14 respondents = \$89,838).

ii. Reports by Reporting Firms

(1) The Final Rule does not change the collections of information or related burden estimates under part 17 of the Commission's regulations (17 CFR part 17), in which routine reports are filed only for accounts with futures and option positions that exceed levels set by the Commission in regulation 15.03(b) (17 CFR 15.03(b)). In reviewing the responses received by the Commission in 2014, 326 respondents filed at least one report. The number of responses submitted by these 326 entities ranged from 1 to 258 and the mean number of responses was 208. Using 2014 as a baseline for estimating the burdens associated with regulation 17.00, the

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<sup>12</sup> See May 2019 National Industry-Specific Occupational Employment and Wage Estimates, NAICS 523000 - Securities, Commodity Contracts, and Other Financial Investments and Related Activities, [https://www.bls.gov/oes/current/naics4\\_523000.htm](https://www.bls.gov/oes/current/naics4_523000.htm).

<sup>13</sup> 17 CFR 16.00 defines a reporting market as a DCM or a registered entity under section 1a(40) of the Act. The term registered includes DCMs, SEFs, derivatives clearing organizations, and swap data repositories. See 7 U.S.C. 1a(40).

Commission continues to estimate that 326 respondents may be required to file 208 daily reports annually on average. This information is currently reported as a data stream that is transmitted using internet data transmissions. The reporting burden consists of staff initializing the system for new contracts and new accounts. On average it is expected that about 15 minutes per trading day is expended by these staff, making the burden approximately 16,952 hours. Using a wage rate of \$77 per hour, we estimate costs to be \$1,305,304 annually.

(2) Under part 21 of the Commission's regulations (17 CFR part 21), the Commission may make special calls for additional cash and futures data concerning traders. In addition, under part 21 of the Commission's regulations (17 CFR part 21), the Commission may request upon call identifying information regarding persons who exercise trading control over accounts. Considering the higher limits and smaller universe of traders who will likely exceed the position limits, the Commission estimates that it is likely to issue a special call for information to four reportable traders under all of the provisions of part 21 of the Commission's regulations (17 CFR part 21) and that each response to a call will require approximately 5 hours. Using a wage rate of \$77 per hour, costs are estimated at \$1,540 per annum.

Based on the above, annual costs associated with these burden hours total is \$1,396, 682 (\$89,838 + \$1,305,304 + \$1,540 = \$1,396, 682).

As discussed further below, the Commission's Final Rule transfers the existing information collections and related burdens under part 19 of the Commission's regulations under OMB control number 3038-0009 to OMB control number 3038-0013.

## **B. OMB 3038-0013 – Position Limits**

Generally, the Final Rule will result in the following reporting and record-keeping labor burdens:

### **i. Non-Enumerated Bona Fide Hedging Exemption Applications**

Regulations 150.3 and 150.9 establish an amended process for obtaining a bona fide hedge exemption or recognition. The Commission estimates that very few or no traders will request recognition of a non-enumerated bona fide hedge, and those traders that do will likely prefer the streamlined process in § 150.9 (discussed further below) rather than apply directly to the Commission under § 150.3(b). Similarly, the Commission estimates that very few or no traders will submit a request for a spread exemption since the Commission has determined that the most common spread exemptions are included in the adopted "spread transaction" definition and therefore will be self-effectuating and will not need approval for purposes of federal position limits. In the event a trader submits such request under § 150.3(b), the Commission estimates that traders will file one request per year for a total of one annual request for all respondents. The Commission further estimates that in such situation, it will take 20 hours to complete and file each report, for a total of 20 aggregate annual burden hours for all traders. Assuming an estimated average burden hour cost of \$97, the total annual burden hour cost for the one respondent is approximately \$1,940.

The Commission estimates under § 150.5(a) that 425 traders will submit applications to claim spread exemptions and bona fide hedge recognitions from exchange-set position limits on commodity derivatives contracts subject to federal limits set forth in § 150.2. The Commission estimates that each trader on average will submit five applications to an exchange each year for a total of 2,125 applications for all respondents. The Commission further estimates that it will take 2 hours to complete and file each application for a total of 10 annual burden hours for each trader and 4,250 aggregate burden hours for all traders. Assuming an estimated average burden hour cost of \$97, the total annual burden hour cost for all 425 respondents is approximately \$412,250.

ii. Exchange-Set Limits

Regulation § 150.5(a)(4) requires each exchange to provide a monthly report showing the disposition of any exemption application, including the recognition of any position as a bona fide hedge, the exemption of any spread transaction, the renewal, revocation, or modification of a previously granted recognition or exemption, or the rejection of any application.<sup>14</sup> The Commission estimates under § 150.5(a)(4) that six exchanges will provide monthly reports for a total of 72 monthly reports for all exchanges.<sup>15</sup> The Commission further estimates that it will take approximately 5 hours to complete and file each monthly report for a total of 60 annual burden hours for each exchange and 360 annual burden hours for all exchanges.<sup>16</sup> Assuming an estimated average burden hour cost of \$97, the total annual burden hour cost for all 6 respondents is approximately \$34,920.

Under § 150.5(b)(3), where multiple exchanges list contracts that are substantially the same, including physically-settled contracts that have the same underlying commodity and delivery location, or cash-settled contracts that are directly or indirectly linked to a physically-settled contract, the exchange must either adopt “comparable” limits for such contracts, or demonstrate to the Commission how the non-comparable levels comply with the standards set forth in § 150.5(b)(1) and (2). The Commission estimates that under § 150.5(b)(3), six exchanges will make submissions to demonstrate to the Commission how the non-comparable levels comply with the standards set forth in § 150.5(b)(1) and (2). The Commission estimates that each exchange on average will make 3 submissions each year for a total of 18 submissions for all exchanges. The Commission further estimates that it will take 10 hours to complete and file each submission for a total of 30 annual burden hours for each exchange and 180 burden

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<sup>14</sup> Additionally, each report should include the following details: (A) The date of disposition; (B) The effective date of the disposition; (C) The expiration date of any recognition or exemption; (D) Any unique identifier(s) the DCM or SEF may assign to track the application, or the specific type of recognition or exemption; (E) If the application is for an enumerated bona fide hedging transaction or position, the name of the enumerated bona fide hedging transaction or position listed in Appendix A to this part; (F) If the application is for a spread transaction listed in the spread transaction definition in § 150.1, the name of the spread transaction as it is listed in § 150.1; (G) The identity of the applicant; (H) The listed commodity derivative contract or position(s) to which the application pertains; (I) The underlying cash commodity; (J) The maximum size of the commodity derivative position that is recognized by the DCM or SEF as a bona fide hedging transaction or position, specified by contract month and by the type of limit as spot month, single month, or all-months-combined, as applicable; (K) Any size limitations or conditions established for a spread exemption or other exemption; and (L) For bona fide hedging transactions or positions, a concise summary of the applicant’s activity in the cash markets and swaps markets for the commodity underlying the commodity derivative position for which the application was submitted.

<sup>15</sup> 6 exchanges x 12 months = 72 total monthly reports per year.

<sup>16</sup> 5 hours per monthly report x 12 months = 60 hours per year for each exchange. 60 annual hours x 6 exchanges = 360 aggregate annual hours for all exchanges.

hours for all exchanges.<sup>17</sup> Assuming an estimated average burden hour cost of \$97, the total annual burden hour cost for all 6 respondents is approximately \$17,460.

Regulation 150.5(b)(4) permits exchanges to grant exemptions from any exchange limit established for physical commodity contracts not subject to federal limits. To grant such exemptions, exchanges must require traders to file an application to show whether the requested exemption from exchange-set limits would be in accord with sound commercial practices in the relevant commodity derivative market and/or that may be established and liquidated in an orderly fashion in that market. The Commission estimates that 200 traders will submit one application each year and that each application will take approximately two hours to complete, for an aggregate total of 400 burden hours per year for all traders. Assuming an estimated average burden hour cost of \$97, the total annual burden hour cost for all 200 respondents is approximately \$38,800.

### iii. DCM Submission of Estimates of Deliverable Supply

Under § 150.2(f), upon request from the Commission, DCMs listing a core referenced futures contract are required to supply to the Commission deliverable supply estimates for each core referenced futures contract listed at that DCM. DCMs will only be required to submit estimates if requested to do so by the Commission on an as-needed basis. When submitting deliverable supply estimates, DCMs will be required to provide a description of the methodology used to derive the estimate, as well as any statistical data supporting the estimate. Appendix C to part 38 sets forth guidance regarding estimating deliverable supply.

Submitting deliverable supply estimates upon demand from the Commission for contracts subject to federal limits will be a new reporting obligation for DCMs. The Commission estimates that six DCMs will be required to submit initial deliverable supply estimates. The Commission estimates that it will request each DCM that lists a core referenced futures contract to file one initial report for each core referenced futures contract it lists on its market. Such requests from the Commission will result in one initial submission for each of the twenty-five core referenced futures contracts. The Commission further estimates that it will take 20 hours to complete and file each report for a total annual burden of 500 hours for all respondents.<sup>18</sup> Accordingly, the changes to § 150.2(f) will result in an initial, one-time increase to the current burden estimates of OMB control number 3038-0013 by 25 submissions across six respondent DCMs for the initial number of submissions for the twenty-five core referenced futures contracts and an initial, one-time burden of 500 hours. Assuming an estimated average burden hour cost of \$77, the total annual burden hour cost for all 6 respondents is approximately \$38,496.

### iv. Special Calls

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<sup>17</sup> 18 estimated annual submissions x 10 burden hours per submission = 180 aggregate annual burden hours. The preamble to the Final Rule states that it will take 10 hours to complete and file each submission for a total of 18 annual burden hours as opposed to 30 annual burden hours for each exchange, but correctly notes that 180 burden hours is the total amount of burden hours for all exchanges.

<sup>18</sup> 20 initial hours x 25 core referenced futures contracts = 500 one-time, aggregate burden hours. While there is an initial annual submission, the Commission does not expect to require the exchanges to resubmit the supply estimates on an annual basis.

The Commission is moving existing § 150.3(b), which currently allows the Commission or certain Commission staff to make special calls to demand certain information regarding persons claiming exemptions, to § 150.3(e), with some modifications to include swaps. The Commission estimates that § 150.3(e) will impose information collection burdens related to special calls by the Commission on approximately 18 additional respondents, for an estimated 20 special calls per year. The Commission estimates that these 20 market participants will provide one submission per year to respond to the special call for a total of 20 annual submissions for all respondents. The Commission estimates it will take a market participant approximately 10 hours to complete a response to a special call. Therefore, the Commission estimates responses to special calls for information will take an aggregate total of 200 burden hours for all traders. Assuming an estimated average burden hour cost of \$97, the total annual burden hour cost for all 20 respondents is approximately \$19,400.

v. Other Burdens

Regulation 150.3(d) establishes recordkeeping requirements for persons who claim any exemptions or relief under § 150.3. First, under § 150.3(d)(1), any person claiming an exemption is required to keep and maintain complete books and records concerning certain details.<sup>19</sup> Regulation 150.3(d)(1) establishes recordkeeping requirements for any person relying on an exemption granted directly from the Commission under § 150.3(a). The Commission estimates that 425 traders will create five records each for a total of 2,125 annual records for all respondents.<sup>20</sup> The Commission further estimates that it will take one hour to comply with the recordkeeping requirement of § 150.3(d)(1) for a total of five aggregate annual burden hour for all traders. Assuming an estimated average burden hour cost of \$77, the total annual burden hour cost for all record keepers is approximately \$163,625.

Second, under § 150.3(d)(2), a pass-through swap counterparty, as defined by § 150.1, that relies on a representation received from a bona fide hedging swap counterparty that the swap qualifies in good faith as a “bona fide hedging position or transaction,” as defined under § 150.1, is required to: (i) maintain the relevant books and records of any such written representation for at least two years following the expiration of the swap; and (ii) furnish any books and records of such written representation to the Commission upon demand. Regulation 150.3(d)(2) creates a new recordkeeping obligation for certain persons relying on the pass-through swap representations, and the Commission estimates that 425 traders will be requested to maintain the required records. The Commission estimates that each trader will maintain at least 5 records per year for a total of 2,125 aggregate annual records for all respondents. The Commission further estimates that it will take one hour to comply with the recordkeeping requirement of § 150.3(d) for a total of five annual burden hour for each trader and 2,125 aggregate annual burden hours for all traders. Assuming an estimated average burden hour cost of \$77, the total annual burden hour cost for the estimated one record-keeper is approximately \$163,625.

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<sup>19</sup> The requirement includes all details of related cash, forward, futures, options, and swap positions and transactions, including anticipated requirements, production and royalties, contracts for services, cash commodity products and by-products, cross-commodity hedges, and a record of bona fide hedging swap counterparties.

<sup>20</sup> As discussed above, the Commission anticipates that most traders will apply for exemptions under the process established under § 150.9, rather than under the §150.3 process.

Regulation 150.9 establishes a new streamlined process in which a trader can apply with an initial submission through an exchange to request a non-enumerated bona fide hedging recognition from federal position limits. As part of the process, § 150.9 creates certain recordkeeping and reporting obligations on the market participant and the exchange, including: (i) an application to request non-enumerated bona fide hedge recognitions, which the trader submits to the exchange and which the exchange subsequently provides to the Commission if the exchange approves the application for purposes of exchange-set limits; (ii) a notification to the Commission and the applicant of the exchange's determination for purposes of exchange limits regarding the trader's request for recognition of a bona fide hedge exemption; (iii) and a requirement to maintain full, complete and systematic records for Commission review of the exchange's decisions. The Commission believes that the exchanges that will elect to process applications for non-enumerated bona fide hedging exemptions under § 150.9 already have similar processes for the review and disposition of such exemption applications in place through their rulebooks for purposes of exchange-set position limits.

Accordingly, the estimated burden on an exchange to comply with § 150.9 will be less burdensome because the exchanges may leverage their existing policies and procedures to comply with the Final Rule. The Commission estimates that six exchanges will elect to process applications for non-enumerated bona fide hedge recognitions that satisfy the federal position limit requirements under § 150.9, and will be required to file amended rulebooks pursuant to part 40 of the Commission's regulations. The Commission bases its estimate on the number of exchanges that have submitted similar rules to the Commission in the past.

Regulation 150.9(c) requires a trader to submit an application with certain information to enable the exchange to determine whether it should recognize a position as a bona fide hedge for purposes of exchange-set position limits. Each applicant will need to reapply to the exchange for its non-enumerated bona fide hedge recognition for the purpose of exchange-set position limits at least on an annual basis by updating its original application. The Commission expects that traders will benefit from the streamlined framework established under § 150.9 because traders may submit one application to obtain a non-enumerated bona fide hedge recognition for purposes of both exchange-set and federal position limits, as opposed to submitting separate applications to the Commission for federal position limit purposes and separate applications to an exchange for exchange limit purposes.<sup>21</sup>

Accordingly, the estimated burden for traders requesting non-enumerated bona fide hedge recognitions from exchange-set limits under § 150.5(a) will subsume the burden estimates in connection with § 150.9 for requesting non-enumerated bona fide hedge recognitions from federal position limits since the Commission believes exchanges will combine the two processes (*i.e.*, any trader who applies through an exchange under § 150.9 for a non-enumerated bona fide hedge for federal position limits purposes also will be deemed to be applying at the same time under § 150.5(a) for exchange position limits purposes and thus it would not be appropriate to

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<sup>21</sup> The Commission believes the collections of information set forth above are necessary for the exchange to process requests for recognition of non-enumerated bona fide hedges for purposes of exchange-set position limits, and separately, if applicable, for the Commission to make its determination for purposes of federal position limits. The information is used by the exchange to determine, and the Commission to review and determine, whether the facts and circumstances demonstrate it is appropriate to recognize a position as a non-enumerated bona fide hedging transaction or position.

distinguish between the two for PRA purposes). Accordingly, the Commission anticipates that six exchanges each will receive only one application for a non-enumerated bona fide hedge recognition under § 150.9 for a total of six aggregate annual applications for all exchanges; however, as noted above, this amount is included in the Commission's estimate in connection with § 150.5(a).<sup>22</sup> Specifically, as discussed above in connection with § 150.5(a), the Commission estimates under §§ 150.5(a) and 150.9(a) that 425 traders will submit applications to claim exemptions and/or bona fide hedge recognitions for contracts subject to federal position limits as set forth in § 150.2.<sup>23</sup>

Regulation 150.9(d) requires exchanges to keep full, complete, and systematic records, including all pertinent data and memoranda, of all activities relating to the processing of such applications and the disposition thereof. In addition, as provided for in § 150.9(g) and existing § 1.31, the Commission may, in its discretion, at any time, review the exchange's records retained pursuant to § 150.9(d) or request additional information pursuant to § 150.9(e)(5). The recordkeeping requirement is necessary for the Commission to review the exchanges' processes, retention of records, and compliance with requirements established and implemented under § 150.9. The Commission estimates that six exchanges will each create one record in connection with § 150.9 each year for a total of six annual records for all respondents. The Commission further estimates that it will take five hours to comply with the recordkeeping requirement of § 150.9(d) for a total of five annual burden hours for each exchange and 30 aggregate annual burden hours across all exchanges. Assuming an estimated average burden hour cost of \$77, the total annual burden hour cost for all six exchanges is approximately \$2,310.

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<sup>22</sup> As discussed above, the process and estimated burdens under § 150.9 do not apply to § 150.5(b) because § 150.5(b) applies to those physical commodity contracts that are not subject to federal position limits (as opposed to § 150.5(a), which applies to those contracts subject to federal position limits). As a result, a trader that would use the process established under § 150.5(b) for exchange-set limits will not need to apply under § 150.9 since the trader would not need a bona fide hedge recognition or an exemption from federal position limits.

<sup>23</sup> As discussed in connection with § 150.5(a) above, the Commission estimates that each trader on average will make five applications each year for a total of 2,125 applications across all exchanges. The Commission further estimates that, for §§ 150.5(a) and 150.9(a), taken together, it will take two hours to complete and file each application for a total of ten annual burden hours for each trader and 4,250 aggregate annual burden hours for all traders (2,125 annual applications x two burden hours per application = 4,250 aggregate annual burden hours). The Commission anticipates that compared to § 150.5(a), fewer traders will apply under § 150.9 since § 150.9 applies only to non-enumerated bona fide hedge recognitions for federal purposes. In comparison, while § 150.5 encompasses these same applications for non-enumerated bona fide hedge recognitions (but for the purpose of exchange-set limits), § 150.5(a) also includes enumerated bona fide hedge applications along with spread exemption requests. The Commission's estimate of 4,250 aggregate annual burden hours encompasses all such requests from all traders. However, for the sake of clarity, the Commission anticipates that six exchanges each will receive one application per year for a non-enumerated bona fide hedge under § 150.9 (for a total of six applications across all exchanges); as noted, this burden is included in the Commission's estimate of 425 annual applications in connection with its estimate under § 150.5(a).



Regulation 150.9(d)(2), allows the Commission to inspect such books and records.<sup>24</sup> In the event the Commission exercises its authority to inspect such books and records, it estimates that the Commission will conduct an inspection of two exchanges per year and each exchange will incur four hours to make its books and records available to the Commission for review for a total of eight aggregate annual burden hours for the two estimated respondent exchanges.<sup>25</sup> Assuming an estimated average burden hour cost of \$77, the total annual burden hour cost for all 2 respondents is approximately \$1,232.

Under § 150.9(e), an exchange needs to provide an applicant and the Commission with notice of any approved application of an exchange's determination to recognize bona fide hedges with respect to its own position limits for purposes of exceeding the federal position limits. The Commission estimates that under § 150.9(e), 6 exchanges will submit such notifications. The Commission estimates that each exchange on average will make 2 notifications: one notification each to the applicant trader and to the Commission each year for a total of 12 notices for all exchanges. The Commission further estimates that it will take 0.5 hours to complete and file each notification for a total of one annual burden hour for each exchange and six burden hours for all exchanges.<sup>26</sup> Assuming an estimated average burden hour cost of \$77, the total annual burden hour cost for all 6 respondents is approximately \$462.

In addition to submitting a copy of any exchange-approved non-enumerated bona fide hedge application to the Commission under § 150.9(e), the preamble to the Final Rule clarifies that an exchange may, on a voluntary basis, send the Commission an advance courtesy copy of the non-enumerated bona fide hedge application when the exchange first receives it from the applicant. Although this advance courtesy copy would be a voluntary submission, it is still considered a new information collection under the PRA. However, the Commission believes there is no corresponding burden for this filing because the Commission considers this practice to be in the ordinary course of business as it is usual and customary for exchanges to provide the Commission with advance copies of various filings under other Commission regulations.<sup>27</sup> In the event that this practice is not considered usual and customary, the Commission estimates that the burden of such filing will be *de minimis* and take about five minutes for an exchange to send an application to the Commission, if the exchange elects to do so (30 total minutes in the aggregate across all 6 exchanges: 6 exchanges x 1 advance copy x 5 minutes = 30 minutes). Assuming an

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<sup>24</sup> Regulation 150.9(d)(1) requires the exchange to keep full, complete, and systematic records, which include all pertinent data and memoranda, of all activities relating to the processing of such applications and the disposition thereof. This requirement working in concert with § 1.31 allows the Commission to inspect any such records. Separately, under § 150.9(e)(5), if the Commission determines additional information is required to conduct its review, then it would notify the exchange and the relevant market participant of any issues identified and provide them with an opportunity to provide supplemental information. Further, Regulation 150.9(g)(1) provides the Commission's authority to, at its discretion, and at any time, review the exchange's processes, retention of records, and compliance with requirements established and implemented under this section. Under § 150.9(g)(2), if the Commission determines additional information is required to conduct its review, pursuant to § 150.9(g)(1), then it would notify the exchange and the relevant market participant of any issues identified and provide them with ten business days to provide supplemental information.

<sup>25</sup> Two exchanges per year subject to a Commission inspection x 4 hours per inspection request = 8 aggregate annual burden hours for all exchanges.

<sup>26</sup> Twelve notices for all exchanges x 0.5 hours per notice = six (6) total burden hours across all exchanges.

<sup>27</sup> For example, exchanges have frequently submitted advance courtesy copies of new rule filings and product filings to the Commission under the part 40 regulations.

estimated average burden hour cost of \$77, the total annual burden hour cost for all 6 respondents is approximately \$38.34.

As outlined in Attachment A, annual costs associated with these burden hours total is \$1,250,687.34<sup>28</sup> (\$755,770 reporting burden + \$494,917.34 recordkeeping burden).

vi. Reports by Reporting Firms

As discussed above under OMB control 3038-0009, the existing information collections and related burdens under part 19 of the Commission's regulations are moved to OMB control number 3038-0013.

Based on more current and recent 2019 submission data, the Commission revised its existing estimates slightly higher for the series '04 reports under part 19. Based on revised estimates of the current collections of information under existing part 19, approximately 105 reportable traders<sup>29</sup> file a total of 3,460 responses annually<sup>30</sup> resulting in an aggregate annual burden of 1,730 hours.<sup>31</sup> The Commission's Final Rule reduces the current OMB control number 3038-0009 by these revised burden estimates under part 19 as they are transferred to OMB control number 3038-0013. At the same time, with respect to the overall collections of information that are transferred to OMB control number 3038-0013, the Commission estimates that the Final Rule reduces the collections of information in part 19 by 600 reports<sup>32</sup> and by 300 annual aggregate burden hours since the Commission's Final Rule eliminates Form 204, as discussed above.<sup>33</sup>

The Commission does not expect a change in the number of reportable traders that are required to file Part III of Form 304.<sup>34</sup> Thus, the Commission continues to expect approximately 55 weekly Form 304 reports, for an annual total of 2,860 reports<sup>35</sup> for an aggregate total of 1,430 burden hours, which information collection burdens will be transferred to OMB control number 3038-0013.<sup>36</sup> Assuming an estimated average burden hour cost of \$77, the total annual burden hour cost for the 55 respondents is approximately \$110,110. Accordingly, the information collections and related burden hours under OMB control number 3038-0013 will be increased by 2,860 total reports and 1,430 corresponding annual burden hours.

<sup>28</sup> This value excludes the estimated reporting burden of \$110,000 for § 19.02, discussed below, which is included in Attachment A (OMB 3038-0013).

<sup>29</sup> 55 Form 304 reports + 50 Form 204 reports = 105 reportable traders.

<sup>30</sup> 2,860 Form 304s + 600 Form 204s = 3,460 total annual series '04 reports.

<sup>31</sup> 3,460 series '04 reports x 0.5 hours per report = 1,730 annual aggregate burden hours. These revised estimates result in an increased estimate under existing part 19 of 355 series '04 reports submitted by traders (3,460 estimated series '04 reports – 3,105 submissions from the Commission's previous estimate = an increase of 355 response difference); an increase of 177 aggregate burden hours across all respondents (1,730 aggregate burden hours – 1,553 aggregate burden hours from the Commission's previous estimate = an increase of 177 aggregate burden hours); and a decrease of 30 respondent traders (105 respondents – 135 respondents from the Commission's previous estimate = a decrease of 30 respondents).

<sup>32</sup> 50 monthly Form 204 reports x 12 months = 600 total annual reports.

<sup>33</sup> 600 Form 204 reports x 0.5 burden hours per report = 300 aggregate annual burden hours.

<sup>34</sup> Since the Commission's Final Rule eliminates Parts I and II of Form 304, amended Form 304 only refers to existing Part III of that form.

<sup>35</sup> 55 weekly Form 304 reports x 52 weeks = 2,860 total annual Form 304 reports.

<sup>36</sup> 2,860 Form 304 reports x 0.5 burden hours per report = 1,430 aggregate annual burden hours.

### **C. OMB 3038-0093 – Provisions Common to Registered Entities**

Under § 150.9(a), exchanges that would like for their market participants to be able to exceed federal position limits based on a non-enumerated bona fide hedge recognition granted by the exchange with respect to its own limits must have rules, adopted pursuant to the rule approval process in § 40.5 of the Commission's regulations, establishing processes consistent with the provisions of § 150.9. The collection of information is necessary to capture the new non-enumerated bona fide hedge process in the exchanges' rulebook, which is subject to Commission approval. The information will be used to assess the process put in place by each exchange submitting amended rulebooks.

The Commission estimates that six exchanges will make one initial § 40.5 rule filings for a total of six one-time initial submissions for all exchanges. The Commission further estimates that the exchanges will employ a combination of in-house and outside legal and compliance counsel to update existing rulebooks and it will take approximately 25 hours to complete and file each rule for a total 25 one-time burden hours for each exchange and 150 one-time burden hours for all exchanges. Based on an estimated average burden hour cost of \$97, the total annual burden hour cost for all 6 respondents is approximately \$14,550.

**13. Provide an estimate of the total annual cost burden to respondents or recordkeepers 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.**

**A. OMB 3038-0009 – Large Trader Reports**

In its previously concluded submission to OMB in connection with the renewal of OMB control number 3038-0009 on Sept. 4, 2019, the Commission stated that there are no applicable capital, start up, maintenance, or purchase of service cost component. The Commission continues to believe that there are no applicable capital, start up, or maintenance costs involved for OMB control number 3038-0009.

**B. OMB 3038-0013 – Position Limits**

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. In addition, the Commission maintains its belief that market participants will be able to leverage existing systems and strategies for tracking and reporting positions.

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 Final Rule adopted herein are marginal increases upon existing costs, rather than entirely new burdens. The Commission estimates that the total annualized capital, operational, and maintenance costs associated with complying with the Final Rule will be approximately \$53,875,000 across approximately 431 firms. Of this, \$42,800,000 will be from annualized capital and start-up costs and \$11,075,000 will 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 Final Rule.

**C. OMB 3038-0093 – Provisions Common to Registered Entities**

The Commission estimates that there is no applicable capital, start up or maintenance costs involved for OMB control number 3038-0093.

- 14. 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.**

**A. OMB 3038-0009 – Large Trader Reports**

The Commission estimates that the equivalent of a mix of approximately 30 Market and Surveillance Analysts along with technical support staff will expend approximately 5 hours per day over 250 trading days to collect and analyze the information submitted under the market and large trader reporting rules within the Collection. Assuming, on average, at a minimum CT-13 pay grade for Commission employees in Washington, D.C. for 2019, or \$121,611, multiplied by 1.3 and 1.25 to account for overhead and benefits respectively, each employee would cost the Commission approximately \$188,497. At approximately 1,920 annual hours worked per employee, this results in an average annual salary and benefits rate of \$98 per hour for a full-time employee ( $\$188,497 / 1,920 \text{ hours} = \$ 98 \text{ per hour}$ ). Accordingly, the Commission estimates that the cost to the government will be approximately \$3,675,000 annually (30 analysts x 5 hours per day x 250 trading days x \$98 per hour = \$3,675,000).

#### **B. OMB 3038-0013 – Position Limits**

The Commission estimates that the equivalent of approximately 75,000 annual labor hours will be required in order to review, process, and respond to the relevant reports provided for in the Final Rule. The staff needed includes 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. Assuming, on average, at a minimum CT-13 pay grade for Commission employees in Washington, D.C. for 2019, or \$121,611, multiplied by 1.3 and 1.25 to account for overhead and benefits respectively, each employee will cost the Commission approximately \$188,497. At approximately 1,920 annual hours worked per employee, this results in an average annual salary and benefits rate of \$98 per hour for a full-time employee ( $\$188,497 / 1,920 \text{ hours} = \$ 98 \text{ per hour}$ ). Accordingly, the Commission estimates that the cost to the government will be approximately \$ 4,777,500 annually (39 analysts x 5 hours per day x 250 trading days x \$98 per hour = \$4,777,500).

#### **C. OMB 3038-0093 – Provisions Common to Registered Entities**

The Commission estimates that there is no applicable annualized cost to the Federal Government involved for OMB control number 3038-0093.

#### **15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14.**

Changes in Items 13 or 14 are due to (i) amendments to collections of information due to the Final Rule; and (ii) the Commission altering the current costs to provide a more accurate estimate of the associated wages.

#### **16. 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.**

Not applicable.

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

Not applicable.

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

Not applicable.

## Attachment A

### OMB Control Number 3038-0009

#### Reporting Burden

1. Regulation(s)	2. Estimated Number of Respondents	3. Estimated Number of Reports by Each Respondent	4. Estimated Average Number of Burden Hours per Response	5. Annual Number of Burden Hours per Respondent (3 x 4)	6. Estimated Average Burden Hour Cost <sup>37</sup>	7. Total Average Hour Burden Cost Per Respondent (5 x 6)	8. Total Annual Responses (2 x 3)	9. Total Annual Burden Number of Burden Hours (2 x 5)	10. Total Annual Burden Hour Cost of All Responses (2 x 7)
<b>R. 16.00 (Reporting Markets)</b>	14	250	0.333	83.333	\$77	\$6,417	3,500	1,166	<b>\$89,838</b>
<b>R. 17.00 (Reporting Firms)</b>	326	208	0.25	52	\$77	\$4,004	67,808	16,952	<b>\$1,305,304</b>
<b>Part 21 – Special Call (Reporting Firms)</b>	4	1	5	5	\$77	\$385	4	20	<b>\$1,540</b>
<b>Total</b>	344 (distinct entities or persons)	207 <sup>38</sup>	0.25 <sup>39</sup>	53 <sup>40</sup>	\$77	\$4,060 <sup>41</sup>	71,312	18,138	<b>\$1,396,682</b>

<sup>37</sup> The Commission is providing a blended rate using estimated industry specific wages for General and Operations Managers, Lawyers and Compliance Officers. Per the BLS, national industry-specific occupational employment and wage estimates with data collected from employers in the securities, commodity contracts, and other financial investments and related activities provides that the mean hourly wage for a general and operations manager is \$91, lawyer is \$97, and compliance officer is \$44. The average of those wages is \$77.

<sup>38</sup> 71,312 total annual responses (column 8) / 344 distinct entities or persons (column 2) = 207.3 (rounded to 207) average responses per respondent.

<sup>39</sup> 18,138 total annual number of burden hours (column 9) / 71,312 total annual responses (column 8) = 0.254.

<sup>40</sup> 18,138 total annual burden hours (column 9) / 344 total respondents (column 2) = 52.7 (rounded up to 53).

<sup>41</sup> \$1,396,682 (total annual burden hours cost in column 10) / 344 (total estimated respondents in column 2) = \$4,060 average burden hours cost per respondent.

## OMB Control Number 3038-0013 – Position Limits

### Reporting Burden

1. Regulation(s)	2. Estimated Number of Respondents	3. Estimated Number of Reports by Each Respondent	4. Estimated Average Number of Burden Hours per Response	5. Annual Number of Burden Hours per Respondent (3 x 4)	6. Estimated Average Burden Hour Cost <sup>42</sup> , <sup>43</sup>	7. Total Average Hour Burden Cost Per Respondent (5 x 6)	8. Total Annual Responses (2 x 3)	9. Total Annual Number of Burden Hours (2 x 5)	10. Total Annual Burden Hour Cost of All Responses (2 x 7)
19.02	55	52	0.5	26	77	2,002	2,860	1,430	<b>\$110,110</b>
150.2(f)	6	4.16 <sup>44</sup>	20	83.3	77	6,416	24.96	500 <sup>45</sup>	<b>\$38,496</b>
150.3(b)	1	1	20	20	97	1,940	1	20	<b>\$1,940</b>
150.3 (e)	20	1	10	10	97	970	20	200	<b>\$19,400</b>
150.5(a)	425	5	2	10	97	970	2,125	4,250	<b>\$412,250</b>
150.5(a)(4)	6	12	5	60	97	5,820	72	360	<b>\$34,920</b>

<sup>42</sup> The Commission is providing a blended rate using estimated industry specific wages for General and Operations Managers, Lawyers and Compliance Officers. Per the BLS, national industry-specific occupational employment and wage estimates with data collected from employers in the securities, commodity contracts, and other financial investments and related activities provides that the mean hourly wage for a general and operations manager is \$91, lawyer is \$97, and compliance officer is \$44. The average of those wages is \$77. See May 2019 National Industry-Specific Occupational Employment and Wage Estimates, NAICS 523000 - Securities, Commodity Contracts, and Other Financial Investments and Related Activities, *available at*: [https://www.bls.gov/oes/current/naics4\\_523000.htm](https://www.bls.gov/oes/current/naics4_523000.htm).

<sup>43</sup> The Commission is providing an industry specific wage for lawyers, who are likely to be primarily responsible for handling certain activities. Per the BLS, national industry-specific occupational employment and wage estimates with data collected from employers in the securities, commodity contracts, and other financial investments and related activities provides that the mean hourly wage for a lawyer is \$97. See May 2019 National Industry-Specific Occupational Employment and Wage Estimates, NAICS 523000 - Securities, Commodity Contracts, and Other Financial Investments and Related Activities, *available at*: [https://www.bls.gov/oes/current/naics4\\_523000.htm](https://www.bls.gov/oes/current/naics4_523000.htm).

<sup>44</sup> The Commission expects to request one initial submission for each of the 25 core referenced futures contracts to be subject to position limits, which requires only the exchange that lists the product to make a filing. This will not be an annual obligation.

<sup>45</sup> This number has been rounded up to 500 because the 25 applications are spread across 6 respondent exchanges.



150.5(b)(3)	6	3	10	30	97	2,910	18	180	<b>\$17,460</b>
150.5(b)(4)	200	1	2	2	97	194	200	400	<b>\$38,800</b>
<b>Total</b>	719 (distinct entities or persons) <sup>46</sup>	79.16	69.5	241.3	736	21,222	5,320.9 <sup>47</sup>	7,340	<b>\$673,376</b>

### Recordkeeping Burden

1. Regulation(s)	2. Estimated Number of Respondents	3. Estimated Number of Reports by Each Respondent	4. Estimated Average Number of Burden Hours per Response	5. Annual Number of Burden Hours per Respondent (3 x 4)	6. Estimated Average Burden Hour Cost <sup>48</sup>	7. Total Average Hour Burden Cost Per Respondent (5 x 6)	8. Total Annual Responses (2 x 3)	9. Total Annual Number of Burden Hours (2 x 5)	10. Total Annual Burden Hour Cost of All Responses (2 x 7)
150.3(d)(1)	425	5	1	5	77	385	2,125	2,1251	<b>\$163,625</b>
150.3(d)(2)	425	10	1	10	77	770	4,250	4,250	<b>\$327,250</b>
150.9(d)	6	1	5	5	77	385	6	30	<b>\$2,310</b>

<sup>46</sup> The 6 exchanges are only counted once towards the total.

<sup>47</sup> The total number of responses for all respondents is the product of the applicable responses for each applicable reporting or recordkeeping requirement to the effected respondent and not the product of the total number of responses per respondent set forth in the total for column 2.

<sup>48</sup> The Commission is providing a blended rate using estimated industry specific wages for General and Operations Managers, Lawyers and Compliance Officers. Per the BLS, national industry-specific occupational employment and wage estimates with data collected from employers in the securities, commodity contracts, and other financial investments and related activities provides that the mean hourly wage for a general and operations manager is \$91, lawyer is \$97, and compliance officer is \$44. The average of those wages is \$77. See May 2019 National Industry-Specific Occupational Employment and Wage Estimates, NAICS 523000 - Securities, Commodity Contracts, and Other Financial Investments and Related Activities, available at: [https://www.bls.gov/oes/current/naics4\\_523000.htm](https://www.bls.gov/oes/current/naics4_523000.htm).

150.9(e)	6	2	.5	1	77	77	12	6	<b>\$462</b>
150.9(e) <sup>49</sup>	6	1	.0833	.0833	77	6.391	6	.498	<b>\$38.34</b>
150.9(d) (2) <sup>50</sup>	2	1	8	8	77	616	2	16	<b>1,232</b>
<b>Total:</b>	870	20	15.5	29	385	2,239	6,401 <sup>51</sup>	6,427	<b>\$494,917</b>

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<sup>49</sup> In addition to submitting a copy of any exchange-approved non-enumerated bona fide hedge application to the Commission under § 150.9(e), the preamble to the Final Rule clarifies that an exchange may, on a voluntary basis, send the Commission an advance courtesy copy of the non-enumerated bona fide hedge application when the exchange first receives it from the applicant.

<sup>50</sup> Regulation 150.9(d)(1) requires the exchange to keep full, complete, and systematic records, which include all pertinent data and memoranda, of all activities relating to the processing of such applications and the disposition thereof. This requirement working in concert with § 1.31 allows the Commission to inspect any such records.

<sup>51</sup> See supra comment 47.

**OMB Control Number 3038-0093 – Provisions Common to Registered Entities**

Reporting Burden

1. Regulation(s)	2. Estimated Number of Respondents	3. Estimated Number of Reports by Each Respondent	4. Estimated Average Number of Burden Hours per Response	5. Annual Number of Burden Hours per Respondent (3 x 4)	6. Estimated Average Burden Hour Cost <sup>52</sup>	7. Total Average Hour Burden Cost Per Respondent (5 x 6)	8. Total Annual Responses (2 x 3)	9. Total Annual Number of Burden Hours (2 x 5)	10. Total Annual Burden Hour Cost of All Responses (2 x 7)
150.9(a)	6	1	25	25	97	2,425	6	150	<b>\$14,550</b>
<b>Total:</b>	6	1	25	25	97	2,425	6	150	<b>\$14,550</b>

<sup>52</sup> The Commission is providing a blended rate using estimated industry specific wages for General and Operations Managers, Lawyers and Compliance Officers. Per the BLS, national industry-specific occupational employment and wage estimates with data collected from employers in the securities, commodity contracts, and other financial investments and related activities provides that the mean hourly wage for a general and operations manager is \$91, lawyer is \$97, and compliance officer is \$44. The average of those wages is \$77. See May 2019 National Industry-Specific Occupational Employment and Wage Estimates, NAICS 523000 - Securities, Commodity Contracts, and Other Financial Investments and Related Activities, available at: [https://www.bls.gov/oes/current/naics4\\_523000.htm](https://www.bls.gov/oes/current/naics4_523000.htm).