

## SUPPORTING STATEMENT FOR NEW INFORMATION COLLECTIONS

### Part 151 – Position Limits for Futures and Swaps

OMB CONTROL NUMBER 3038-NEW

#### 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.<sup>1</sup> Title VII of the Dodd-Frank Act amends the Commodity Exchange Act (“CEA” or “Act”)<sup>2</sup> 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,<sup>3</sup> 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

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

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

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

enforcing the position limits established for the current proposed rule. In addition to the 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, aggregate positions, and improve the Commission's ability generally to monitor and surveil the markets.

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.

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, verify the aggregation of positions across multiple entities, 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 part 151 rules provide for the following specific reporting and record-keeping requirements:

1. Proposed regulation 151.4(a)(2) provides for a special conditional spot-month limit for traders under certain conditions, including the submission of a certification that the trader meets the required conditions. These certifications would be filed within a day after the trader exceeds a conditional spot-month limit. The final regulations eliminate this conditional limit; thus, in the final rules there are no conditional limit-related reporting or record-keeping requirements.
2. Proposed regulation 151.4(c) requires that DCMs submit an estimate of deliverable supply by the 31<sup>st</sup> of December of each calendar year for each referenced contract that is subject to a spot-month position limit and listed or executed pursuant to the rules of the DCM. Final regulations under 151.4(c) reduce the paperwork burden and instead require a biennial submission of deliverable supply estimates for agricultural referenced contracts that are subject to a spot-month position limit and listed or executed pursuant to the rules of the DCM.
3. Proposed regulation 151.5 sets forth the application procedure for bona fide hedgers and counterparties to bona fide hedging swap transactions that seek an exemption from the proposed Commission-set federal position limits for referenced contracts. If a bona fide hedger seeks to claim an exemption from position limits because of cash market activities, then the hedger would submit a 404 filing pursuant to proposed regulation 151.5(b). The 404 filing would be submitted when the bona fide hedger

claims an exemption or when its hedging needs increase. Parties to bona fide hedging swap transactions would be required to submit a 404S filing to qualify for a hedging exemption, which would also be submitted when the bona fide hedger claims an exemption or when its hedging needs increase. If a bona fide hedger seeks an exemption for anticipated commercial production or anticipatory commercial requirements, then the hedger would submit a 404A filing pursuant to proposed regulation 151.5(c). The 404A filing would be submitted at least ten days in advance of the date that transactions and positions would be established that would exceed a position limit. Further, on an annual basis or whenever a trader's anticipated hedge requirements exceed the amount of the most recent 404A filing, whichever is earlier, the trader would be required to file a supplemental report updating the information provided in the most recent 404A filing. Traders hedging commercial activity (or hedging swaps that in turn hedge commercial activity) that does not involve the same quantity or commodity as the quantity or commodity associated with positions in referenced contracts that are used to hedge shall submit the conversion methodology and information along with the appropriate 404, 404A, or 404S filing. The Commission anticipates that the compliance cost associated with all of these filings will be substantial, particularly in the case of the 404S filings, which may require the collection and storage of information on counterparties that firms have hitherto not conducted. For the final rules, the 404 and 404S filings would be submitted monthly as opposed to daily, while the 404A filings would be required annually or as needed.

4. Proposed regulation 151.5(e) specifies recordkeeping requirements for traders who claim bona fide hedge exemptions. These recordkeeping requirements include "complete books and records concerning all of their related cash, futures, and swap positions and transactions and make such books and records, along with a list of swap counterparties." Proposed regulations 151.5(g) and (h) provide procedural documentation requirements for those availing themselves of a bona fide hedging transaction exemption. These firms would be required to document a representation and confirmation by at least one party that the swap counterparty is relying on a bona fide hedge exemption, along with a confirmation of receipt by the other party to the swap. Paragraph (h) of Section 151.5 also requires that the written representation and confirmation be retained by the parties and available to the Commission upon request. The marginal impact of this requirement is limited because of its overlap with existing recordkeeping requirements under regulation 15.03. The final rules did not substantially alter these recordkeeping requirements.
5. Proposed regulation 151.6 would require those traders with positions exceeding visibility levels in referenced base and precious metals and energy commodities to submit additional information about cash market and derivatives activity in substantially the same commodity. Proposed regulation 151.6(b) would require the submission of a 401 filing which would provide basic position information on the position exceeding the visibility level. Proposed regulation 151.6(c) would require additional information, through a 402S filing, on a trader's uncleared swaps in substantially the same commodity. Proposed regulation 151.6(d) would require the reportable trader to submit information about cash market positions or anticipated

commercial requirements or production in substantially the same commodity, as described in proposed regulation 151.5(b) and (c), through a 404 or 404A filing, respectively. All of the proposed 151.6 reports would be submitted on a monthly basis for as long as a trader exceeds a visibility level. In the final regulations, forms 404S (visibility) and 404A (visibility) have been eliminated; as such, there are no reporting requirements associated with visibility-related forms 404S and 404A. The final regulations still require the filing of form 401 and form 404, but the reporting frequency has been reduced to one filing per trader per calendar quarter.

6. Proposed regulation 151.7 concerns the aggregation of trader accounts. Proposed regulation 151.7(g) would provide for a disaggregation exemption for: (1) a limited partner, shareholder or similar person with an ownership or equity interest of between 10 percent and 25 percent in a pool, if the trader does not have control over or knowledge of a pool's trading; (2) futures commission merchants that meet certain independent trading requirements; and (3) an independently controlled and managed trader, that is not a financial entity, in which another entity has an ownership or equity interest of 10 percent or greater. In all three cases, the exemption would become effective upon the Commission's approval of an application described in proposed regulation 151.7(g). These applications for exemptions would be submitted at the time a trader claims an exemption and within thirty calendar days of January 1 of each year following the initial application for exemption. In the final regulations, the Commission eliminated the application procedure and only requires that traders make a notice filing for the exemption, which should diminish the paperwork burden. Further, the Commission modified the scope of the exemptions in the final rule to generally conform to existing aggregation policy. The notice filings for the aggregation exemptions relate to: (1) a limited partner, shareholder or similar person with an ownership or equity interest of between 10 percent and 25 percent in a pool that is also a principal or affiliate of the operator of the pooled account, (2) futures commission merchants that meet certain independent trading requirements, (3) independent account controllers, (4) an exemption for underwriters, and (5) an exemption where the sharing of information for purposes of aggregation would constitute a violation of federal law.

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 nearly 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 151 would not have a significant economic impact on a substantial number of small businesses. Although regulation §151.5(h) of these rules requires 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 properly enforce Commission-set position limits, the Commission would need reports related to exemptions to position limits, a notice process for disaggregating positions of related entities, and other surveillance reports, such as position visibility levels that allow for adequate market surveillance. 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 filing of bona fide hedging forms on a monthly basis is necessary to ensure the proper application of this exemption. Given that position limits regime will be administered on an intraday basis, the Commission believes that monthly filing will reduce the burden on market participants while ensuring that the Commission has sufficient data to properly enforce the limits.

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

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 daily basis.

- 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;

The record-keeping duties imposed by the final regulation are to be in accordance with regulation 1.31. Most pertinently, regulation 1.31(a)(1) requires that these transaction records be kept for five years, the first two of which they “shall be readily accessible.” Such books and records “shall be open to inspection by any representative of the Commission.”

Final regulation 151.5(e) specifies recordkeeping requirements for traders who claim bona fide hedge exemptions. These recordkeeping requirements include “complete books and records concerning all of their related cash, futures, and swap positions and transactions and make such books and records, along with a list of swap counterparties.” Final regulations 151.5(g) and (h) provide procedural documentation requirements for those availing themselves of a bona fide hedging transaction exemption. These firms would be required to document a representation and confirmation by at least one party that the swap counterparty is relying on a bona fide hedge exemption, along with a confirmation of receipt by the other party to the swap. Paragraph (h) of Section 151.5 also requires that the written representation and confirmation be retained by the parties and available to the Commission upon request.

- 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 final rules do not involve statistical surveys.

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

The final 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 final 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 final rules do 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.

Comments on this information collection were solicited in the notice of proposed rulemaking, 76 FR 4752, page 4767 (26 January 2011). There were three comments on the information collection out of over 15,000 public comments that specifically addressed the burden estimates in the notice of proposed rulemaking. The World Gold Council stated that the recordkeeping and reporting costs were not addressed. The Minneapolis Grain Exchange ("MGEX") argued that the Commission's estimated burden for DCMs to determine deliverable supply levels was too low. Specifically, it commented that the Commission's estimate of "6,000 hours per year for all DCMs at a combined annual cost of \$50,000 among all DCMs" would result "in an hourly wage of less than \$10" to comply with the rules. The combined annual cost estimate cited by MGEX appears to be the amount the Commission estimated for annualized capital and start-up costs and annual total operating and maintenance costs (in fact, the number was \$55,000); this estimate is separate from any calculation of labor costs. The Working Group of Commercial Energy Firms commented that it could not meaningfully respond to the costs until it had a complete view of all Dodd-Frank rulemakings, that the Commission did not provide sufficient explanation for its estimates of the number of market participants affected by the final regulations, and that the Commission underestimated wage and personnel estimates. In particular, the Working Group claimed that, based on an informal survey of their member firms, the Commission's wage estimate of \$78.61 per hour was underestimated and that a more accurate cost would be around \$120 per hour. The Commission's wage estimate was based on weighted average salaries of personnel likely to be involved with this rule—including attorney staff, risk management staff, and information technology staff. The Commission believes that

the SIFMA industry average properly accounts for the differing entities that would be subject to these limits. In any event, even using the Working Group's higher estimated wage cost, the resulting cost per firm would not materially change the Commission's consideration of these costs in relation to the benefits from the limits.

Out of the approximately 15,000 comments, the Commission also received many regarding the general burden of complying with the proposed rules. The Commission responded to many of these comments throughout the preamble to the final rule, and in this Supplementary Statement as well as throughout the final rules, the Commission has detailed the modifications to the collections of information. (See this link for comments:

<http://comments.cftc.gov/PublicComments/CommentList.aspx?id=965>

For example, commenters such as Cargill and the Futures Industry Association argued that the bona fide hedging filing requirements should be on a monthly as opposed to a daily basis. As further discussed in the Commission's response to questions 12 and 13 of this supplementary statement, the general bona fide hedging filing requirements have been reduced from daily to monthly in these final rules. With regard to the position visibility reporting requirements, several commenters, such as the Working Group, questioned the benefits of position visibility and argued that the requirements in the proposed rules were too burdensome. In response to comments, the Commission raised the threshold that triggers position visibility reporting to reduce the number of traders subject to the reporting obligation. Further, the Commission reduced the reporting frequency from monthly to once every calendar quarter, and eliminated the forms 404S and 404A for purposes of position visibility to reduce the burden on affected entities.

In addition, commenters such as the Futures Industry Association argued that the application requirements to obtain an aggregation exemption were too onerous. In response to comments, the Commission modified the application procedure to a notice filing effective upon the filing of the notice. With regard to DCMs submitting estimates of deliverable supply to the Commission, commenters such as the CME Group commented that the annual submission of data on deliverable supply estimates was operationally infeasible. In response to the concerns of commenters, the Commission will require DCMs to submit data on deliverable supply for metals and energy Referenced Contracts on a biennial as opposed to annual basis. Further the Commission has staggered the dates on which estimates of deliverable supply shall be submitted by DCMs.

Several commenters also provided their opinions on the Commission's proposed disaggregation exemption filings. In response to comments, the Commission eliminated the requirement that a trader seeking to rely on a disaggregation exemption file an application for exemptive relief and annual renewals. Instead, the trader must file a notice, effective upon filing, setting forth the circumstances that warrant disaggregation and a certification that they meet the relevant conditions.

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 is provided when regulations are proposed or amended. Contact with the reporting entities and market participant is maintained on a continuous and ongoing basis to resolve reporting problems and address concerns. The Commission has solicited comments through publication of proposed rules in the Federal Register. Commission staff has also met with various entities that could be covered in the final rules to discuss the scope of the rulemaking. The Commission would also, on an ongoing basis, solicit public comments through the notice required by 5 CFR 1320.8(d).

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.

Proposed part 151 would result in collections of information related to Commission-set position limits. The Commission estimates that the total labor burden associated with complying with the proposed rule 151 would be approximately 307,460 hours or \$24.3 million across approximately 270.<sup>4</sup> Specifically, proposed part 151 would result in the following reporting and record-keeping labor burdens:

1. Proposed regulation 151.4(a)(2) provides for a special conditional spot-month limit for traders under certain conditions, including the submission of a certification that the trader meets the required conditions. These certifications would be filed within a day after the trader exceeds a conditional spot-month limit. The Commission anticipated that approximately 100 traders a year would submit conditional spot-month limit certifications, incurring a total burden of 2,400 annual labor hours resulting in a total of \$189,000 in annual labor costs. The Commission has eliminated conditional spot-month limits in the final regulations. Therefore, these and labor costs do not apply to the final regulations.
2. Proposed regulation 151.4(c) requires that DCMs submit an estimate of deliverable supply for each referenced contract that is subject to a spot-month position limit and

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<sup>4</sup> The Commission staff's estimates concerning the wage rates are based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association ("SIFMA"). The \$74.36 per hour is derived from figures from a weighted average of salaries and bonuses across different professions from the SIFMA Report on Management & Professional Earnings in the Securities Industry 2010, modified to account for an 1800-hour work-year and multiplied by 1.3 to account for overhead and other benefits. The wage rate is a weighted national average of salary and bonuses for professionals with the following titles (and their relative weight); "programmer (senior)" (60% weight), "compliance advisor (intermediate)" (20%), "systems analyst" (10%), and "assistant/associate general counsel" (10%).

listed or executed pursuant to the rules of the DCM. The Commission estimated that this proposed reporting regulation would affect approximately six entities annually resulting in a total marginal burden, across all of these entities, of 7,200 annual labor hours resulting in a total of \$565,000 in annual labor costs. In the final regulations, the Commission has determined to update spot-month limits biennially, staggering the dates on which estimates of deliverable supply shall be submitted by DCMs. The Commission currently believes that these reporting obligations will only impact five entities. As a result of the above changes to the reporting requirement, the Commission estimates that this reporting regulation will result in a total marginal burden, across the five affected entities, of 5,000 annual labor hours for a total of \$511,000 in annual labor costs.

3. Proposed regulation 151.5 sets forth the filing procedure for bona fide hedgers and counterparties to bona fide hedging swap transactions that seek an exemption from the proposed Commission-set federal position limits for referenced contracts. The Commission estimated that these bona fide hedging-related reporting requirements would affect approximately 160 entities annually and result in a total annual labor burden of 168,000 labor hours resulting in a total of \$13.2 million in annual labor costs. The final rule modifies certain reporting requirements associated with claiming a bona fide hedging exemption. These modifications which are generally burden reducing include the change from daily to monthly filings, the streamlining of the information required to claim a pass-through swap bona fide hedging exemption, and the simplification of bona fide hedging filing data elements. As a result of the modifications made to the proposed regulations, under the final regulations these bona fide hedging-related reporting requirements will affect approximately 160 entities annually and result in a total burden of approximately 29,700 annual labor hours resulting in a total of \$2.3 million in annual labor costs.
4. Proposed regulation 151.5(e) specifies recordkeeping requirements for traders who claim bona fide hedge exemptions. The Commission estimated that bona fide hedging-related proposed recordkeeping regulations would affect approximately 160 entities resulting in a total burden, across all of these entities, of 40,000 total annual labor hours resulting in a total of \$3.1 million in annual labor costs. These estimates have not changed in the final rule compared to the proposed rulemaking.
5. Proposed regulation 151.6 would require those traders with positions exceeding visibility levels in referenced base and precious metals and energy commodities to submit additional information about cash market and derivatives activity in substantially the same commodity. The Commission estimated that visibility level-related proposed reporting regulations would affect approximately 140 entities annually resulting in a total burden, across all of these entities, of 30,400 annual labor hours resulting in a total of \$2.4 million in annual labor costs. The final rule modifies and reduces the burden associated with position visibility-related filings. These changes include eliminating two of the four proposed filings required pursuant to position visibility rules, reduces the frequency of reporting from monthly to quarterly, and reducing the number of data elements submitted by traders exceeding such

position levels. As a result of modifications made to the proposed regulations, under the final regulations the Commission estimates that these position visibility-related reporting requirements will affect approximately forty-eight entities annually resulting in a total burden, across all of these entities, of 7,760 annual labor hours resulting in a total of \$610,000 in annual labor costs.

6. Proposed regulation 151.7 concerns the aggregation of trader accounts. The Commission estimated that these proposed reporting regulations would affect approximately sixty entities resulting in a total labor burden, across all of these entities, of 300,000 annual labor hours resulting in a total of \$23.5 million in annual labor costs. In the final regulations, the Commission eliminated the application procedure and only requires that traders make a notice filing for the exemption, which should diminish the paperwork burden. Further, the Commission modified the scope of the exemptions in the final rule to generally conform to existing aggregation policy. The notice filings for the aggregation exemptions relate to: (1) a limited partner, shareholder or similar person with an ownership or equity interest of between 10 percent and 25 percent in a pool that is also a principal or affiliate of the operator of the pooled account, (2) futures commission merchants that meet certain independent trading requirements, (3) independent account controllers, (4) an exemption for underwriters, and (5) an exemption where the sharing of information for purposes of aggregation would constitute a violation of federal law. As a result of the modifications made to the proposed regulations, under the final regulations the Commission estimates that these aggregation-related reporting requirements would affect approximately ninety entities resulting in a total burden, across all of these entities, of 225,000 annual labor hours resulting in a total of \$17.7 million in annual labor costs.

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 rule 151 would be approximately \$49.3 million across approximately 270 firms. Of this \$49.3 million, \$45.6 million would be from annualized capital and start-up costs and \$3.7 million is from operating and maintenance costs. These cost estimates are based on Commission staff's estimated costs to acquire needed equipment and contracted expertise to develop the reports and recordkeeping capabilities required in the proposed part 151. The specific figures are based on estimates provided to Commission staff in trade interviews with potentially affected parties.

1. Proposed regulation 151.4(a)(2) provides for a special conditional spot-month limit for traders under certain conditions, including the submission of a certification that the trader meets the required conditions. The Commission estimated that these proposed reporting regulations would result in a total of \$500,000 in annualized capital and \$500,000 in start-up costs and annual total operating and maintenance costs. The Commission has eliminated conditional spot-month limits in the final regulations. Therefore, these capital and operating costs do not apply to the final regulations.
2. Proposed regulation 151.4(c) requires that designated contract markets submit an estimate of deliverable supply for each referenced contract that is subject to a spot-month position limit and listed or executed pursuant to the rules of the designated contract market. The Commission estimated that this proposed reporting regulation would result in a total of \$25,000 in annualized capital and start-up costs and \$30,000 annual total operating and maintenance costs. In the final regulations, the Commission has determined to update spot-month limits biennially, staggering the dates on which estimates of deliverable supply shall be submitted by DCMs. As a result of changes made to the proposed regulations, the Commission estimates that the final regulations will result in a total of \$25,000 in annualized capital and start-up costs and \$25,000 annual total operating and maintenance costs.
3. Proposed regulation 151.5 sets forth the application procedure for bona fide hedgers and counterparties to bona fide hedging swap transactions that seek an exemption

from the proposed Commission-set federal position limits for referenced contracts. The Commission estimated that these bona fide hedging-related reporting requirements would affect approximately 160 entities annually and result in a total of \$34.7 in annualized capital and start-up costs and \$1.8 million in annual total operating and maintenance costs. The final rule modifies certain reporting requirements associated with claiming a bona fide hedging exemption. These modifications which are generally burden reducing include the change from daily to monthly filings, the streamlining of the information required to claim a pass-through swap bona fide hedging exemption, and the simplification of bona fide hedging filing data elements. As a result of the modifications made to the proposed regulations, under the final regulations these bona fide hedging-related reporting requirements will affect approximately 160 entities annually and result in a total burden of \$25.2 million in start-up and capital costs and \$1.1 million in annual total operating and maintenance costs.

4. Proposed regulation 151.5(e) specifies recordkeeping requirements for traders who claim bona fide hedge exemptions. The Commission estimated that bona fide hedging-related proposed recordkeeping regulations would affect approximately 160 entities resulting in a total burden, across all of these entities, of \$9.6 million in annualized capital and start-up costs and \$800,000 in annual total operating and maintenance costs. These estimates have not changed from the proposed rulemaking.
5. Proposed regulation 151.6 would require those traders with positions exceeding visibility levels in referenced base and precious metals and energy commodities to submit additional information about cash market and derivatives activity in substantially the same commodity. The Commission estimated that visibility level-related proposed reporting regulations would affect approximately 140 entities annually resulting in a total burden, across all of these entities, of \$25.8 in annualized capital and start-up costs and \$1.6 million in annual total operating and maintenance costs. The final rule modifies and reduces the burden associated with position visibility-related filings. These changes include eliminating two of the four proposed filings required pursuant to position visibility rules, reduces the frequency of reporting from monthly, and reducing the number of data elements submitted by traders exceeding such position levels. As a result of modifications made to the proposed regulations, under the final regulations the Commission estimates that these position visibility-related reporting requirements will affect approximately 48 entities annually resulting in a total burden, across all of these entities, of \$6.3 million in annualized capital and start-up costs and \$365,000 in annual total operating and maintenance costs.
6. Proposed regulation 151.7 concerns the aggregation of trader accounts. The Commission estimated that these proposed reporting regulations would affect approximately sixty entities resulting in a total of \$9.9 in annualized capital and start-up costs and \$1.6 million in annual total operating and maintenance costs. In the final regulations, the Commission eliminated the application procedure and only requires that traders make a notice filing for the exemption, which should diminish the

paperwork burden. Further, the Commission modified the scope of the exemptions in the final rule to generally conform to existing aggregation policy. The notice filings for the aggregation exemptions relate to: (1) a limited partner, shareholder or similar person with an ownership or equity interest of between 10 percent and 25 percent in a pool that is also a principal or affiliate of the operator of the pooled account, (2) futures commission merchants that meet certain independent trading requirements, (3) independent account controllers, (4) an exemption for underwriters, and (5) an exemption where the sharing of information for purposes of aggregation would constitute a violation of federal law. As a result of the modifications made to the proposed regulations, under the final regulations the Commission estimates that these aggregation-related reporting requirements would affect approximately ninety entities resulting in a total burden, across all of these entities, of \$4.5 million in annualized capital and start-up costs and \$1.4 million in annual total operating and maintenance costs.

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.

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.

The Commission estimates that the equivalent of approximately 31,500 annual labor hours would be required, or 18 new staff members, in order to process, analyze, and respond to the reports provided for in final part 151. In the proposed rule, the Commission estimated that the equivalent of approximately 63,500 annual labor hours would be required, or 35 new staff members, in order to process, analyze, and respond to the reports provided for the proposed part 151. 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 2010, or \$106,840, multiplied by 1.3 to account for overhead and other benefits, each employee would cost the Commission approximately \$138,892. This would amount to a total of \$2.5 million per year in total labor costs to the Commission. These labor costs have been reduced because of reduced expected filings and increased reliance on existing staff, in light of expected resource constraints.

In addition, the Commission believes that the total annualized capital costs would be approximately \$300,000 per year and total annual operational and maintenance costs would be approximately \$50,000. These estimated expenses are also derived from analogous existing reporting capital and associated processes.

15. 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.

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.

This question does not apply.

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.

This question does not apply.

18. 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.