section, the meetings will be held at U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585. Individuals will also have the opportunity to participate by webinar. To register for the webinar and receive call-in information, please register at *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx?ruleid=59* .

FOR FURTHER INFORMATION CONTACT: John Cymbalsky, ASRAC Designated Federal Officer, U.S. Department of Energy (DOE), Office of Energy Efficiency and Renewable Energy, 950 L'Enfant Plaza SW., Washington, DC, 20024. Email: *asrac@ee.doe.gov.*

SUPPLEMENTARY INFORMATION:

The meetings will be held:

- May 11, 2015;
- May 12, 2015 (Air-Conditioning, Heating, and Refrigeration Institute, 2111 Wilson Blvd., Suite 500, Arlington, VA 22201);
- May 20, 2015;
- May 21, 2015 (950 L'Enfant Plaza SW., Washington, DC, Room 7140);
- June 1–2, 2015;
- June 9–10, 2015; and
- June 15, 2015 (Webinar only)

Members of the public are welcome to observe the business of the meeting and, if time allows, may make oral statements during the specified period for public comment. To attend the meeting and/or to make oral statements regarding any of the items on the agenda, email *asrac@ee.doe.gov.* In the email, please indicate your name, organization (if appropriate), citizenship, and contact information. Please note that foreign nationals participating in the public meeting are subject to advance security screening procedures which require advance notice prior to attendance at the public meeting. If a foreign national wishes to participate in the public meeting, please inform DOE as soon as possible by contacting Ms. Regina Washington at (202) 586–1214 or by email: *Regina.Washington@ee.doe.gov* so that the necessary procedures can be completed. Anyone attending the meeting will be required to present a government photo identification, such as a passport, driver's license, or government identification. Due to the required security screening upon entry, individuals attending should arrive early to allow for the extra time needed.

Due to the REAL ID Act implemented by the Department of Homeland Security (DHS) recent changes regarding ID requirements for individuals wishing to enter Federal buildings from specific states and U.S. territories. Driver's licenses from the following states or territory will not be accepted for building entry and one of the alternate forms of ID listed below will be required.

DHS has determined that regular driver's licenses (and ID cards) from the following jurisdictions are not acceptable for entry into DOE facilities: Alaska, Louisiana, New York, American Samoa, Maine, Oklahoma, Arizona, Massachusetts, Washington, and Minnesota.

Acceptable alternate forms of Photo-ID include: U.S. Passport or Passport Card; An Enhanced Driver's License or Enhanced ID-Card issued by the states of Minnesota, New York or Washington (Enhanced licenses issued by these states are clearly marked Enhanced or Enhanced Driver's License); A military ID or other Federal government issued Photo-ID card.

Docket: The docket is available for review at *www.regulations.gov,* including **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

Issued in Washington, DC, on May 1, 2015.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2015–11012 Filed 5–6–15; 8:45 am]

BILLING CODE 6450–01–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 32

RIN 3038–AE26

Trade Options

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission (the ''Commission'' or the ''CFTC'') is proposing to amend the trade option exemption in its regulations, as described herein, in the following subject areas: Reporting requirements for trade option counterparties that are not swap dealers or major swap participants; recordkeeping requirements for trade option counterparties that are not swap dealers or major swap participants; and certain non-substantive amendments.

DATES: Comments must be received on or before June 8, 2015.

ADDRESSES: You may submit comments, identified by RIN 3038–AE26, by any one of the following methods:

- *CFTC Web site: http://comments.cftc.gov.* Follow the instructions for submitting comments through the Comments Online process on the Web site.
- *Mail:* Send to Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail, above.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Please submit your comments using only one of these methods.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the CFTC's regulations, 17 CFR 145.9.

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

FOR FURTHER INFORMATION CONTACT: David N. Pepper, Special Counsel, Division of Market Oversight, at (202) 418–5565 or *dpepper@cftc.gov;* or Elise Pallais, Counsel, Office of the General Counsel, at (202) 418–5577 or *epallais@cftc.gov;* Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Introduction

In April 2012, pursuant to section 4c(b) of the Commodity Exchange Act

(the ''CEA'' or the ''Act''),[1] the Commission issued a final rule to repeal and replace part 32 of its regulations concerning commodity options.[2] The Commission undertook this effort to address section 721 of the Dodd-Frank Act Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act'' or ''Dodd-Frank''),[3] which, among other things, amended the CEA to define the term ''swap'' to include commodity options.[4] Notably, § 32.2(a) provides the general rule that commodity option transactions must be conducted in compliance with any Commission rule, regulation, or order otherwise applicable to any other swap.[5]

In response to requests from commenters, the Commission added a limited exception to this general rule for physically delivered commodity options purchased by commercial users of the commodities underlying the options (the ''trade option exemption'').[6] Adopted as an interim final rule, § 32.3 provides that qualifying commodity options are generally exempt from the swap requirements of the CEA and the Commission's regulations, subject to certain specified conditions. To qualify for the trade option exemption, a commodity option transaction must meet the following requirements: (1) The offeror is either an eligible contract participant (''ECP'') [7] or a producer, processor, commercial user of, or merchant handling the commodity that is the subject of the commodity option transaction, or the products or byproducts thereof (a ''commercial party'') that offers or enters into the commodity option transaction solely for purposes related to its business as such; (2) the offeree is, and the offeror reasonably believes the offeree to be, a commercial party that is offered or enters into the transaction solely for purposes related to its business as such; and (3) the option is intended to be physically settled so that, if exercised, the option would result in the sale of an exempt or agricultural commodity [8] for immediate or deferred shipment or delivery.[9]

Commodity option transactions that meet these requirements are generally exempt from the provisions of the Act and any Commission rule, regulation, or order promulgated or issued thereunder, otherwise applicable to any other swap, subject to the conditions enumerated in § 32.3(b)–(d).[10] These conditions include: Recordkeeping and reporting requirements; [11] large trader reporting requirements in part 20; [12] position limits under part 151; [13] certain recordkeeping, reporting, and risk management duties applicable to swap dealers (''SDs'') and major swap participants (''MSPs'') in subparts F and J of part 23; [14] capital and margin requirements for SDs and MSPs under CEA section 4s(e); [15] and any applicable antifraud and anti-manipulation provisions.[16]

In adopting § 32.3, the Commission stated that the trade option exemption is generally intended to permit parties to hedge or otherwise enter into commodity option transactions for commercial purposes without being subject to the full Dodd-Frank swaps regime.[17] This limited exemption continued the Commission's longstanding practice of providing commercial participants in trade options with relief from certain requirements that would otherwise apply to commodity options.[18]

The Commission further explained that the applicable conditions in § 32.3(b)–(d) were primarily intended to preserve a level of visibility into the market for trade options while still reducing the regulatory compliance burden for trade option participants.[19] The Commission invited market participants to comment on the trade option exemption, and provided a list of specific questions for commenters' consideration.[20]

In the year following the Commission's adoption of the trade option exemption, the Commission's Division of Market Oversight (''DMO'') issued a series of no-action letters granting relief from certain conditions

[1] 7 U.S.C. 6c(b) (providing that ''[n]o person shall offer to enter into, enter into or confirm the execution of, any transaction involving any commodity regulated under this chapter which is of the character of, or is commonly known to the trade as an 'option' . . . contrary to any rule, regulation, or order of the Commission prohibiting any such transaction or allowing any such transaction under such terms and conditions as the Commission shall prescribe'').

[2] *See Commodity Options,* 77 FR 25320 (Apr. 27, 2012) (''Commodity Options Release''). The Commission also issued certain conforming amendments to parts 3 and 33 of its regulations. *See id.* The Commission's regulations are set forth in Chapter I of Title 17 of the Code of Federal Regulations.

[3] Public Law 111–203, 124 Stat. 1376 (2010).

[4] *See* 7 U.S.C. 1a(47)(A)(i) (defining ''swap'' to include ''[an] option of any kind that is for the purchase or sale, or based on the value, of 1 or more . . . commodities . . .''); 7 U.S.C. 1a(47)(B)(i) (excluding options on futures from the definition of ''swap''); 7 U.S.C. 1a(36) (defining an ''option'' as ''an agreement, contract, or transaction that is of the character of, or is commonly known to the trade as, an 'option' . . .''). The Commission defines ''commodity option'' or ''commodity option transaction'' as ''any transaction or agreement in interstate commerce which is or is held out to be of the character of, or is commonly known to the trade as, an 'option,' 'privilege,' 'indemnity,' 'bid,' 'offer,' 'call,' 'put,' 'advance guaranty' or 'decline guaranty' and which is subject to regulation under the Act and these regulations.'' *See* 17 CFR 1.3(hh).

[5] *See* 17 CFR 32.2.

[6] *See* 77 FR at 25326–29. *See also* 17 CFR 32.2(b); 32.3. The interim final rule continued the Commission's long history of providing special treatment to ''trade options'' dating back to the Commission's original trade option exemption in 1976. *See Regulation and Fraud in Connection with Commodity and Commodity Option Transactions,* 41 FR 5108 (Nov. 18, 1976).

[7] *See* 7 U.S.C. 1a(18) (defining ''eligible contract participant''); 17 CFR 1.3(m) (further defining ''eligible contract participant'').

[8] *See* 7 U.S.C. 1a(20) (defining ''exempt commodity'' to mean a commodity that is not an agricultural commodity or an ''excluded commodity,'' as defined in 7 U.S.C. 1a(19)); 17 CFR 1.3(zz)(defining ''agricultural commodity''). Examples of exempt commodities include energy commodities and metals.

[9] *See* 17 CFR 32.3(a).

[10] *See* 17 CFR 32.3(a), (b)–(d).

[11] *See* 17 CFR 32.3(b).

[12] *See* 17 CFR 32.3(c)(1). Applying § 32.3(c)(1), reporting entities as defined in part 20—swap dealers and clearing members—must consider their counterparty's trade option positions just as they would consider any other swap position for the purpose of determining whether a particular counterparty has a consolidated account with a reportable position. *See* 17 CFR 20.1. A trade option counterparty would not be responsible for filing large trader reports unless it qualifies as a ''reporting entity,'' as that term is defined in § 20.1.

[13] *See* 17 CFR 32.3(c)(2). *See also Int'l Swaps & Derivatives Ass'n* v. *U.S. Commodity Futures Trading Comm'n,* 887 F. Supp. 2d 259, 270 (D.D.C. 2012), vacating the part 151 rulemaking, *Position Limits for Futures and Swaps,* 76 FR 71626 (Nov. 18, 2011).

[14] *See* 17 CFR 32.3(c)(3)–(4). Note that § 32.3(c)(4) explicitly incorporates §§ 23.201 and 23.204, which require counterparties that are SD/MSPs to comply with part 45 recordkeeping and reporting requirements, respectively, in connection with all their swaps activities (including all their trade option activities). *See* 17 CFR 23.201(c), 23.204(a).

[15] *See* 17 CFR 32.3(c)(5).

[16] *See* 17 CFR 32.3(d). Note that § 32.2 also preserves the continued application of § 32.4, which specifically prohibits fraud in connection with commodity option transactions, to commodity options subject to the trade option exemption. *See* 17 CFR 32.2, 32.4.

[17] *See* 77 FR at 25326, n.39. For example, trade options do not factor into the determination of whether a market participant is an SD or MSP; trade options are exempt from the rules on mandatory clearing; and trade options are exempt from the rules related to real-time reporting of swaps transactions. The provisions identified in this list are not intended to constitute an exclusive or exhaustive list of the swaps requirements from which trade options are exempt.

[18] *See Regulation and Fraud in Connection with Commodity and Commodity Option Transactions,* 41 FR 51808 (Nov. 24, 1976) (adopting an exemption from the general requirement that commodity options be traded on-exchange for commodity option transaction for certain transactions involving commercial parties); *Suspension of the Offer and Sale of Commodity Options,* 43 FR 16153, 16155 (Apr. 17, 1978) (adopting a rule suspending all trading in commodity options other than such exempt trade options); *Trade Options on the Enumerated Agricultural Commodities,* 63 FR 18821 (Apr. 16, 1998) (authorizing the off-exchange trading of trade options in agricultural commodities).

[19] *See* 77 FR at 25326–27.

[20] *See* 77 FR 25329–30. Comments were due on or before June 26, 2012. The comment file is available at *http://comments.cftc.gov/PublicComments/CommentList.aspx?id=1196.*

in the trade option exemption.[21] CFTC No-Action Letter No. 13–08 (''No-Action Letter 13–08''), which remains in effect, provides that DMO will not recommend that the Commission commence an enforcement action against a market participant that is not an SD or an MSP (a ''Non-SD/MSP'') for failing to comply with the part 45 reporting requirements, as required by § 32.3(b)(1), provided that such Non-SD/MSP meets certain conditions, including reporting such exempt commodity option transactions via Form TO [22] and notifying DMO no later than 30 days after entering into trade options having an aggregate notional value in excess of $1 billion during any calendar year (the ''$1 Billion Notice'').[23]

Based on DMO's experience with the trade option exemption following the issuance of No-Action Letter 13–08, and after a review of comments from market participants,[24] the Commission is proposing several amendments to the trade option exemption in § 32.3. Generally, these proposed amendments are intended to facilitate use of trade options by commercial market participants to hedge against commercial and physical risks.

The Commission is proposing modifications to the recordkeeping and reporting requirements in § 32.3(b) that are applicable to trade option counterparties that are Non-SD/MSPs, as well as a non-substantive amendment to § 32.3(c) to eliminate the reference to the now-vacated part 151 position limits requirements. These proposed amendments are generally intended to relax reporting and recordkeeping requirements where two commercial parties enter into trade options with each other in connection with their respective businesses while maintaining regulatory insight into the market for unreported trade options. The Commission requests comment on all aspects of its proposal.

II. Explanation of the Proposed Rules

A. Reporting Requirements for Non-SD/MSPs

Pursuant to § 32.3(b)(1), the determination as to whether a trade option must be reported pursuant to part 45 is based on the status of the parties to the trade option and whether or not they have previously reported swaps to an appropriate swap data repository (''SDR'') pursuant to part 45.[25] If a trade option involves at least one counterparty (whether as buyer or seller) that has (1) become obligated to comply with the reporting requirements of part 45, (2) as a reporting party, (3) during the twelve month period preceding the date on which the trade option is entered into, (4) in connection with any non-trade option swap trading activity, then such trade option must also be reported pursuant to the reporting requirements of part 45. If only one counterparty to a trade option has previously complied with the part 45 reporting provisions, as described above, then that counterparty shall be the part 45 reporting counterparty for the trade option. If both counterparties have previously complied with the part 45 reporting provisions, as described above, then the part 45 rules for determining the reporting counterparty will apply.[26]

To the extent that neither counterparty to a trade option has previously submitted reports to an SDR as a result of its swap trading activities as described above, then such trade option is not required to be reported pursuant to part 45. Instead, § 32.3(b)(2) requires that each counterparty to an otherwise unreported trade option (*i.e.,* a trade option that is not required to be reported to an SDR by either counterparty pursuant to § 32.3(b)(1) and part 45) complete and submit to the Commission an annual Form TO filing providing notice that the counterparty has entered into one or more unreported trade options during the prior calendar year.[27] Form TO requires an unreported trade option counterparty to: (1) Provide its name and contact information; (2) identify the categories of commodities (agricultural, metals, energy, or other) underlying one or more unreported trade options which it entered into during the prior calendar year; and (3) for each commodity category, identify the approximate aggregate value of the underlying physical commodities that it either delivered or received in connection with the exercise of unreported trade options during the prior calendar year. Counterparties to otherwise unreported trade options must submit a Form TO filing by March 1 following the end of any calendar year during which they entered into one or more unreported trade options.[28] In adopting § 32.3, the Commission stated that Form TO was intended to provide the Commission with a level of visibility into the market for unreported trade options that is ''minimally intrusive,'' thereby allowing it to identify market participants from whom it should collect additional information, or whom it should subject to additional reporting obligations in the future.[29]

Commenters have generally expressed the opinion that the reporting requirements in § 32.3(b) are overly burdensome for Non-SD/MSPs. Commenters have argued that these costs have discouraged commercial end users from entering into trade options to meet their commercial and risk management needs, thereby reducing liquidity and raising prices.[30]

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[21] *See* CFTC No-Action Letter No. 12–06 (Aug. 14, 2012), *available at http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/12-06.pdf*; CFTC No-Action Letter No. 12–41 (Dec. 5, 2012), *available at http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/12-41.pdf*; CFTC No-Action Letter No. 13–08 (Apr. 5, 2013), *available at http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/13-08.pdf*.

[22] *See* notes 28–29 and accompanying text, *infra.*

[23] No-Action Letter 13–08, at 3–4. No-Action Letter 13–08 also grants relief from certain swap recordkeeping requirements in part 45 for a Non-SD/MSP that complies with the recordkeeping requirements set forth in § 45.2, provided that if the counterparty to the trade option at issue is an SD or an MSP, the Non-SD/MSP obtains a legal entity identifier (''LEI'') pursuant to § 45.6. *Id.* at 4–5. Should the Commission adopt this proposal without significant revision, the relief provided in No-Action Letter 13–08 would be terminated.

[24] In addition to seeking comment following adoption of the trade option exemption itself, *see supra* note 21, the Commission has sought comment relating to the trade option exemption in connection with other related Commission actions. *See e.g., Further Definition of ''Swap,'' Security-Based Swap,'' and ''Security-Based Swap Agreement''; Mixed Swaps; Security-Based Swap Agreement Recordkeeping,* 77 FR 48207 (Aug. 13, 2012); *Agency Information Collection Activities: Proposed Collection, Comment Request: Form TO, Annual Notice Filing for Counterparties to Unreported Trade Options,* 77 FR 74647 (Dec. 17, 2012); *Agency Information Collection Activities under OMB Review,* 78 FR 11856 (Feb. 20, 2013); *Forward Contracts With Embedded Volumetric Optionality,* 79 FR 69073 (Nov. 20, 2014). CFTC staff also invited comment in connection with an April 2014 public roundtable regarding issues concerning end users and the Dodd-Frank Act. The Commission has reviewed these comment letters and taken into account any significant issues raised therein in issuing this proposal. The related comment files are available at *http://comments.cftc.gov/PublicComments/ReleasesWithComments.aspx.*

[25] *See* 17 CFR 32.3(b)(1).

[26] *See* 17 CFR 45.8. As discussed above, No-Action Letter 13–08 provides non-time-limited, conditional no-action relief for Non-SD/MSP counterparties to trade options from part 45 reporting requirements. *See supra* note 22 and accompanying text.

[27] Form TO is set out in appendix A to part 32 of the Commission's regulations.

[28] In 2014, approximately 330 Non-SD/MSPs submitted Form TO filings to the Commission, approximately 200 of which indicated delivering or receiving less than $10 million worth of physical commodities in connection with exercising unreported trade options in 2013.

[29] *See* 77 FR at 25327–28.

[30] *See* American Gas Association (''AGA'') (Dec. 22, 2013) at 3, 16–17 (observing that ''widespread concern'' regarding the regulatory risk posed by Form TO has led some counterparties to avoid entering into trade options, leading to a rise in the cost of contracting); American Public Power Association, National Rural Electric Cooperative Association, Edison Electric Institute, Electric Power Supply Association (''APPA/NRECA/EEI/EPSA'') (Feb. 15, 2013) at 7–8 (stating that

With respect to the part 45 reporting requirements, commenters have noted that Non-SD/MSPs may be required to comply with part 45 solely on the basis of the ''unusual circumstance'' of having had to report a single historical or inter-affiliate swap during the same twelve-month period.[31] Commenters have further noted that Non-SD/MSPs may not have the infrastructure in place to support part 45 reporting to an SDR and that instituting such infrastructure would impose a costly burden, particularly for small end users.[32]

With respect to Form TO reporting, commenters have argued that it is costly and burdensome for Non-SD/MSPs, particularly for small end users, to track, calculate and assemble the requisite data. Commenters have explained that the systems and processes used by many Non-SD/MSPs to create, store, and track their trade options are separate and distinct from their financial systems and are typically not designed to track the kind of information required by Form TO.[33] Recent comments offer specific monetary estimates that suggest the costs involved with preparing the Form TO filing may be significant.[34]

§ 32.3(b)'s application of the part 45 reporting requirement ''imposes a regulatory burden on the non-SD/MSP and may discourage parties from entering into any ''swaps'' for which it is a reporting party, and from entering into nonfinancial commodity option hedging transactions with parties that are not SD/MSPs.'').

[31] *See* International Energy Credit Association (''IECA'') (Feb. 15, 2013) at 3; AGA (June 26, 2012) at 8; APPA/NRECA/EEI/EPSA (June 26, 2012) at 7–8; Coalition of Physical Energy Companies (''COPE'') (June 25, 2012) at 9; Commercial Energy Working Group (''CEWG'') (Jun 26, 2012) at 4.

[32] *See, e.g.,* APPA/NRECA/EEI/EPSA (Feb. 15, 2013) at 2 (stating that only SDs and MSPs should be required to report trade options under part 45 out of concern that part 45 would impose an ''increased regulatory burden, particularly for small entities''); IECA (Feb. 15, 2013) at 2–3 (stating that, for Non-SD/MSPs, the burden of reporting trade options under part 45 would be ''extremely onerous, if not a practical impossibility''); AGA (June 26, 2012) at 9 (recommending that the part 45 reporting requirements not apply to Non-SD/MSPs with respect to their trade option transactions).

[33] *See, e.g.,* CEWG (Feb. 6, 2013) at 1 (''Unlike systems designed to capture and report data for financial transactions, physical systems are primarily designed to manage logistics related to deliveries and inventory quantities at trade locations. Some physical systems of record do not contain market price information, execution venues, or other option characteristics, such as premiums and strike prices, which make reporting under Part 45 additionally challenging.''). *See also* Coalition for Derivative End Users (''Coalition'') (Dec. 22, 2014) at 10; Commercial Energy Working Group and Commodity Markets Council (''CEWG/CMC'') (Dec. 22, 2014) at 5; ICEA (Dec. 22, 2012) at 9; American Public Power Association, National Rural Electric Cooperative Association, Large Public Power Council (''APPA/NRECA/LPPC'') (Apr. 17, 2014) at 4; AGA (June 26, 2012) at 7.

[34] *See* American Public Power Association, National Rural Electric Cooperative Association, Edison Electric Institute, Electric Power Supply Association, Large Public Power Council (''APPA/NRECA/EEI/EPSA/LPPC'') (Dec. 22, 2014) at 9 (stating that one of its members spent more than $100,000 in information technology costs to implement a mechanism to track exercises of nonfinancial commodity options); IECA (Dec. 22, 2014) at 8 (estimating, based on its survey of market participants, that completing Form TO and complying with No-Action Letter 13–08 requires 80 minutes per contract); Southern Company Services, Inc., acting on behalf of and as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Southern Power Company (''Southern'') at 8–9 (estimating that, for Southern, two full-time employees require 30 minutes to two hours per contract to complete Form TO, at an average cost of $200 per contract and a total annual cost of about $12,000); Transcript of Staff End-User Roundtable (James Allison, ConocoPhillips) at 161 (estimating the marginal cost of Form TO is ''on the order of'' one full-time employee and possibly higher for smaller entities with less in the way of compliance systems and procedures), transcript available at *http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/transcript040314.pdf.*

1. Proposed Action: Eliminate Part 45 Reporting for Non-SD/MSPs

As discussed above, Commission regulation § 32.3(b)(1) requires that a Non-SD/MSP counterparty to a trade option that has become obligated to report a non-trade option swap within the past calendar year must comply with part 45 reporting requirements. The Commission proposes to amend § 32.3(b) such that a Non-SD/MSP will under no circumstances be subject to part 45 reporting requirements with respect to its trade option activities.[35] This amendment is intended to reduce burdens for Non-SD/MSP trade option counterparties, many of whom, as commenters explained, face technical and logistical impediments that prevent timely compliance with part 45 reporting requirements.

2. Proposed Action: Eliminate the Form TO Notice Filing Requirement

The Commission proposes to amend Commission regulation § 32.3(b) such that a Non-SD/MSP would not be required to report otherwise unreported trade options on Form TO. The Commission further proposes to delete Form TO from appendix A to part 32. These amendments are intended to reduce reporting burdens for Non-SD/MSP trade option counterparties, which, commenters have explained, may face significant costs in preparing Form TO.

The Commission preliminarily believes that there are surveillance benefits from Form TO data but recognizes that completing Form TO imposes costs and burdens on Non-SD/MSPs, especially small end users. Moreover, Non-SD/MSPs would, under the proposal, remain subject, via § 32.3(b), to the recordkeeping requirements in § 45.2, which require market participants to maintain full and complete records and to open their records to inspection upon the Commission's request.[36] Consequently, the Commission would remain able to collect additional information concerning unreported trade options as necessary to fulfill its regulatory mission.[37]

[35] Note that trade option counterparties that are SD/MSPs would continue to comply with the swap data reporting requirements of part 45, including where the counterparty is a Non-SD/MSP, as they would in connection with any other swap. *See* 17 CFR 32.3(b)(4).

3. Proposed Action: New $1 Billion Notice Provision for Non-SD/MSPs

The Commission proposes to amend § 32.3(b) by adding a requirement that Non-SD/MSP trade option counterparties must provide notice by email to DMO within 30 days after entering into trade options, whether reported or unreported, that have an aggregate notional value in excess of $1 billion in any calendar year (the ''1 Billion Notice'').[38] In the alternative, a Non-SD/MSP may provide notice by email to DMO that it reasonably expects to enter into trade options, whether reported or unreported, having an aggregate notional value in excess of $1 billion during any calendar year (the ''Alternative Notice'').[39]

For purposes of the proposed Notice Requirement, the aggregate notional value of trade options entered into, or expected to be entered into, should be calculated by multiplying (1) the maximum volume of the commodities that could be bought or sold pursuant to the trade options entered into by (2) the strike or exercise price per unit of the commodity. If the strike or exercise price is not a fixed number in the trade option agreement and, instead, is to be determined pursuant to a reference price source that is not determinable at the time the trade option is entered into,

[36] *See* 17 CFR 45.2(b), 45.2(h). As discussed *infra* at notes 53–55 and accompanying text, the Commission proposes to maintain recordkeeping requirements in § 32.3(b)–(c) for trade option participants, subject to certain clarifying amendments.

[37] *See* 17 CFR 1.31(a)(2), 45.2(h).

[38] As discussed above, the no-action relief provided by No-Action Letter 13–08 to Non-SD/MSP trade option counterparties from part 45 reporting requirements is also conditioned on the Non-SD/MSP providing DMO with a $1 Billion Notice. *See supra* note 24 and accompanying text. In 2013 and 2014, DMO received $1 Billion Notices from nine and sixteen Non-SD/MSPs, respectively. Most of these $1 Billion Notices were filed on behalf of large energy companies.

[39] Non-SD/MSPs who provide the Alternative Notice would not be required to demonstrate that they actually entered into trade options with an aggregate notional value of $1 billion or more in the applicable calendar year. Collectively, the $1 Billion Notice and the Alternative Notice are referred to as the ''Notice Requirement.''

then the foregoing calculation should be based on a current market price of the reference commodity at the time the option is entered into. For example, if the trade option involves crude oil that is deliverable on, or similar to, crude oil that is deliverable on the New York Mercantile Exchange (''NYMEX''), then the price of the nearby NYMEX crude oil futures contract may be used as the market price of the commodity at the time the trade option is entered into.[40]

In light of the other proposed amendments that would generally remove reporting requirements for Non-SD/MSP counterparties to trade options, the proposed Notice Requirement would provide the Commission insight into the size of the market for unreported trade options and the identities of the most significant market participants. Additionally, the proposed Notice Requirement would help guide the Commission's efforts to collect additional information through its authority to obtain copies of books or records required to be kept pursuant to the CEA and the Commission's regulations should market circumstances dictate.[41]

B. Recordkeeping requirements for Non-SD/MSPs

Commission regulation § 32.3(b) provides that in connection with any commodity option transaction that is eligible for the trade option exemption, every counterparty shall comply with the swap data recordkeeping requirements of part 45, as otherwise applicable to any swap transaction.[42] In discussing the trade option exemption conditions, however, the Commission noted in the preamble to the Commodity Options Release that ''[t]hese conditions include a recordkeeping requirement for any trade option activity, *i.e.,* the recordkeeping requirements of 17 CFR 45.2,'' and did not reference or discuss any other provision of part 45 that contains recordkeeping requirements.[43]

Pursuant to Commission regulation § 45.2, records must be maintained by all trade option participants and made available to the Commission as specified therein.[44] However, § 45.2 applies different recordkeeping requirements, depending on the nature of the counterparty. For example, if a trade option counterparty is an SD/MSP, it would be subject to the recordkeeping provisions of § 45.2(a). If a counterparty is a Non-SD/MSP, it would be subject to the less stringent recordkeeping requirements of § 45.2(b).[45] In adopting § 32.3(b), the Commission stated that the recordkeeping condition was intended to ensure that trade option participants are able to provide pertinent information regarding their trade options activity to the Commission, if requested.[46]

Additional recordkeeping requirements in part 45, separate and apart from those specified in § 45.2 and which would apply to all trade option counterparties by operation of § 32.3(b) include:[47]

- each swap must be identified in all recordkeeping by the use of a unique swap identifier (''USI'');[48]
- each counterparty to any swap must be identified in all recordkeeping by means of a single LEI;[49] and
- each swap must be identified in all recordkeeping by means of a unique product identifier (''UPI'') and product classification system.[50]

1. Proposed Action: Modify the Recordkeeping Requirements for Non-SD/MSPs

The Commission proposes to amend § 32.3(b) to clarify that trade option counterparties that are Non-SD/MSPs need not identify their trade options in all recordkeeping by means of either a USI or UPI, as required by §§ 45.5 and 45.7.[51] Rather, with respect to part 45 recordkeeping requirements, trade option counterparties that are Non-SD/MSPs must only comply with the applicable recordkeeping provisions in § 45.2,[52] with the following qualification: The Non-SD/MSP trade option counterparty must obtain an LEI pursuant to § 45.6 and provide such LEI to its counterparty if that counterparty is an SD/MSP.[53]

These amendments are intended to reduce recordkeeping burdens for Non-SD/MSP trade option counterparties, while allowing a trade option counterparty that is an SD/MSP to comply with applicable part 45 reporting obligations by properly identifying its Non-SD/MSP trade option counterparty by that counterparty's LEI in all recordkeeping as well as all swap data reporting, just as the SD/MSP would for any other swap.[54]

C. Non-substantive amendment to Commission regulation § 32.3(c)

Commission regulation § 32.3(c)(2) subjects trade options to part 151 position limits, to the same extent that part 151 would apply in connection with any other swap.[55] However, as stated above, part 151 has been vacated.[56] Furthermore, trade options are not subject to position limits under the Commission's current part 150 position limit regime.[57]

Therefore, since position limits do not currently apply to trade options, the Commission proposes to amend § 32.3(c) by deleting § 32.3(c)(2), including the reference to vacated part 151. This would not be a substantive change. Although commenters have requested assurance that position limits will not apply to trade options in the future,[58] the Commission preliminarily believes that any future application of

[40] The forgoing guidance with regard to how to calculate the notional value of trade options is similar to that provided in No-Action Letter 13–08 but has been revised to clarify that the focus of the $1 Billion Notice is the value of the trade option at time of contract initiation, not at exercise.

[41] *See supra* note 38 and accompanying text.

[42] *See* 17 CFR 32.3(b).

[43] *See* 77 FR at 25327.

[44] 17 CFR 32.3(b); 45.2(h).

[45] In the case of Non-SD/MSPs, the primary recordkeeping requirements are set out in § 45.2(b), which essentially requires keeping basic business records—*i.e.,* ''full, complete and systematic records, together with all pertinent data and memoranda, with respect to each swap in which they are a counterparty.'' Non-SD/MSPs are also subject to the other general recordkeeping requirements of § 45.2, such as the requirement that records must be maintained for 5 years and must be retrievable within 5 days. *See* 17 CFR 45.2(b).

[46] *See* 77 FR at 25327.

[47] As discussed above, No-Action Letter 13–08 provides no-action relief from certain swap recordkeeping requirements in part 45 for a Non-SD/MSP that complies with the recordkeeping requirements set forth in § 45.2, provided that if the counterparty to the trade option at issue is an SD or an MSP, the Non-SD/MSP obtains an LEI pursuant to § 45.6 and also provides DMO with a $1 Billion Notice. *See supra* note 24 and accompanying text.

[48] 17 CFR 45.5.

[49] Each counterparty to any swap subject to the Commission's jurisdiction must be identified in all recordkeeping and all swap data reporting pursuant to part 45 by means of a single LEI as specified in § 45.6. *See* 17 CFR 45.6.

[50] 17 CFR 45.7.

[51] *See supra* notes 49 and 49 and accompanying text.

[52] Trade option counterparties that are SD/MSPs would continue to comply with the swap data recordkeeping requirements of part 45, as they would in connection with any other swap. *See* 17 CFR 32.3(b)(4).

[53] For the avoidance of doubt, Non-SD/MSPs would not otherwise be required to comply with § 45.6.

[54] An SD/MSP that otherwise would report the trade option at issue pursuant to § 32.3(b)(1) is required to identify its counterparty to the trade option by that counterparty's LEI in all recordkeeping as well as all swap data reporting. *See, e.g.,* 17 CFR 23.201, 23.204, and 45.6. *See supra* note 36 and 17 CFR 45.6.

[55] *See* 17 CFR 32.3(c)(2).

[56] *See supra* note 13 and accompanying text.

[57] Under current § 150.2, position limits apply to agricultural futures in nine listed commodities and options on those futures. Since trade options are not options on futures, § 150.2 position limits do not currently apply to such transactions. *See* 17 CFR 150.2.

[58] *See, e.g.,* Coalition (Dec. 22, 2014) at 11; AGA (Apr. 17, 2014) at 4; IECA (Apr. 17. 2014) at 28; Intercontinental Exchange, Inc. (April 17, 2014) at 5; CEWG (Feb. 6, 2013) at 3; COPE (June 26, 2012) at 6.

position limits would be best addressed in the context of the pending position limits rulemaking, which remains in the proposed rulemaking stage.[59]

III. Related Matters

A. Cost Benefit Analysis

1. Background

As discussed above, the Commission is proposing amendments to the trade option exemption in § 32.3 that would: (1) Eliminate the part 45 reporting requirement for Non-SD/MSPs; (2) eliminate the Form TO filing requirement; (3) require those Non-SD/MSPs that have the most significant volume in trade options to provide DMO with either (i) the $1 Billion Notice or (ii) the Alternate Notice; and (4) clarify that Non-SD/MSPs are required to comply with the swap data recordkeeping requirements of § 45.2 only, as opposed to all part 45 recordkeeping requirements; (5) require Non-SD/MSPs that enter into exempt trade options with SD/MSPs to obtain an LEI pursuant to § 45.6 and provide it to their SD/MSP counterparties; (6) eliminate reference to the now-vacated part 151 position limits.[60] In issuing this proposal, the Commission has reviewed all relevant comment letters and taken into account significant issues raised therein.[61]

The Commission believes that the baseline for this cost and benefit consideration is existing § 32.3. Although No-Action Letter 13–08, as discussed above, currently offers no-action relief that is substantially similar to the relief that the proposed amendments would grant certain market participants and end users, as a no-action letter, it only represents the position of the issuing Division or Office and cannot bind the Commission or other Commission staff.[62] Consequently, the Commission believes that No-Action Letter 13–08 should not set or affect the baseline against which the Commission considers the costs and benefits of the proposal.

2. Costs

The Commission believes that the proposal would, overall, reduce the regulatory burdens and associated costs imposed by the conditions for relief in § 32.3(b). Although the Commission understands that some Non-SD/MSPs may experience costs associated with tracking the aggregate notional value of their trade option transactions for purposes of the $1 Billion Notice,[63] Non-SD/MSPs that reasonably expect to enter into trade options in excess of $1 billion could opt to avoid those tracking costs by instead submitting the Alternative Notice. The Commission also believes that many Non-SD/MSPs may avoid any costs associated with the $1 Billion Notice because they would fall significantly below the $1 billion threshold and thus would not need to track and calculate their aggregate trade option activity.[64] Furthermore, the Commission believes that the proposal would otherwise significantly reduce the regulatory burdens imposed by § 32.3(b), particularly through the elimination of part 45 reporting requirements for trade option counterparties that are Non-SD/MSPs and the Form TO filing requirement, each of which commenters have described as burdensome.[65] The Commission preliminarily believes that the proposal would not impose any additional costs on any other market participants, the markets themselves, or the general public. The Commission invites comment regarding the nature and extent of these and any other costs that could result from adoption of the proposal and, to the extent they can be quantified, monetary and other estimates thereof.

3. Benefits

The Commission believes that the proposal would provide relief for Non-SD/MSPs entering into trade options by eliminating the part 45 and Form TO reporting obligations. The Commission believes that the proposed Notice Requirement would also support the regulatory goals of ensuring market integrity and protecting the public by allowing the Commission insight into the size of the market for unreported trade options and the ability to identify significant market participants, who the Commission may wish to contact if concerns about the market for trade options arise. The Commission invites comment regarding the nature and extent of these and any other benefits that could result from adoption of the proposal—including benefits to other market participants, the market itself or the general public—and, to the extent they can be quantified, monetary and other estimates thereof.

4. Section 15(a) Factors

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA or issuing certain orders.[66] Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the section 15(a) factors.

a. Protection of Market Participants and the Public

The Commission recognizes that there may be trade-offs between reducing regulatory burdens and ensuring that the Commission has sufficient information to fulfill its regulatory mission. The proposed amendments to § 32.3 are intended to reduce some of the regulatory burdens on end users while still maintaining insight into the market for trade options to protect the public.

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[59] On December 12, 2013, the Commission published in the **Federal Register** a notice of proposed rulemaking to establish speculative position limits for 28 exempt and agricultural commodity futures and options contracts and the physical commodity swaps that are economically equivalent to such contracts, including trade options. *See Position Limits for Derivatives, Proposed Rules,* 78 FR 75680 (Dec. 12, 2013) (''Position Limits Proposal''). Therein, the Commission proposed replacing the cross-reference to vacated part 151 in § 32.3(c)(2) with a cross-reference to amended part 150 position limits. *See* 78 FR at 75711. As an alternative in the Position Limits Proposal, the Commission proposed to exclude trade options from speculative position limits and proposed an exemption for commodity derivative contracts that offset the risk of trade options. Also note that under the Position Limits Proposal, trade options based on commodities or delivery points other than those underlying the core referenced futures contracts specified in the Position Limits Proposal would not be subject to speculative position limits. The Commission recently extended the comment period for the Position Limits Proposal until March 28, 2015. *See* 80 FR 10022 (Feb. 25, 2015).

[60] As stated above, Non-SD/MSPs would not otherwise be required to comply with § 45.6.

[61] *See supra* note 24. *See also* note 59 (stating that the Commission has determined to address the application of position limits to trade options in the pending position limits rulemaking).

[62] *See* 17 CFR 140.99(a)(2). *See also* No-Action Letter 13–08 at 5.

[63] *See* Coalition for Derivatives End-Users (Dec. 22, 2014) at 10; American Public Power Association, Edison Electric Institute, Electric Power Supply Association, Large Public Power Council, National Rural Electric Cooperative Association (Dec. 22, 2014) at 9.

[64] As stated in note 38, *supra,* of the 330 Non-SD/MSPs who submitted Form TO filings in 2014, only sixteen also submitted a $1 Billion Notice to DMO.

[65] *See supra* note 34 (citing recent comment letters offering costs estimates for compliance with the Form TO reporting requirement).

[66] 7 U.S.C. 19(a).

b. Efficiency, Competitiveness, and Financial Integrity of Markets

The Commission believes that the proposed amendments to § 32.3 could increase efficiency for participants in the market for trade options by reducing the reporting burdens on Non-SD/MSPs, allowing them to reallocate those resources to other more efficient purposes. The Commission also believes that the proposed Notice Requirement would promote market integrity by providing the Commission with information to use in its market oversight role, thereby fulfilling the purposes of the CEA.[67] The Commission preliminarily believes that the proposed amendments to § 32.3 will not have any competitiveness impact.

c. Price Discovery

The Commission preliminarily believes that the proposed amendments to § 32.3 would likely not have a significant impact on price discovery. Given that trade options are not subject to the real-time reporting requirements applicable to other swaps, meaning that current prices of consummated trade options are likely not available to many market participants, the Commission preliminarily believes any effect on price discovery would be negligible.

d. Sound Risk Management Practices

The Commission preliminarily believes that the proposed amendments would not have a meaningful effect on the risk management practices of the affected market participants and end users. Although the proposal is intended, in part, to reduce some of the regulatory burdens on certain market participants and end users, affected Non-SD/MSPs would still be required to maintain complete and accurate records in a manner that is readily available for production to regulators.

e. Other Public Interest Considerations

The Commission has not identified any other public interest considerations for this rulemaking.

5. Request for Comment

The Commission invites comment on all aspects of its preliminary consideration of the costs and benefits associated with the proposal and the five factors the Commission is required to consider under CEA section 15(a). In addressing these areas and any other aspect of the Commissions preliminary cost-benefit considerations, the Commission encourages commenters to submit any data or other information they may have quantifying and/or qualifying the costs and benefits of the proposal.

B. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (the ''RFA'')[68] requires that Federal agencies consider whether the rules they propose will have a significant economic impact on a substantial number of ''small entities''[69] and, if so, the agencies must provide a regulatory flexibility analysis reflecting the impact. Whenever an agency publishes a general notice of proposed rulemaking for any rule, pursuant to the notice-and-comment provisions of the Administrative Procedure Act,[70] a regulatory flexibility analysis or certification typically is required.[71]

As discussed above, the proposed amendments would affect the recordkeeping and reporting requirements for Non-SD/MSP counterparties relying on the trade option exemption in § 32.3. Pursuant to the eligibility requirements in § 32.3(a), such a Non-SD/MSP may be an ECP and/or a commercial party (*i.e.,* a producer, processor, or commercial user of, or a merchant handling the exempt or agricultural commodity that is the subject of the commodity option transaction, or the products or by-products thereof) offering or entering into the trade option solely for purposes related to its business as such. Although the Commission has previously determined that ECPs are not small entities for RFA purposes,[72] the Commission is not in a position to determine whether non-ECP commercial parties affected by the amendments would include a substantial number of small entities on which the rule would have a significant economic impact because § 32.3 does not subject such entities to a minimum net worth requirement, allowing commercial entities of any economic status to enter into exempt trade options. Therefore, pursuant to 5 U.S.C. 603, the Commission offers for public comment this initial regulatory flexibility analysis addressing the impact of the proposal on small entities:

1. A description of the reasons why action by the agency is being considered.

The Commission is proposing to modify the trade option exemption in § 32.3 in response to comments from Non-SD/MSPs that the regulatory burdens currently imposed by § 32.3 are unnecessarily burdensome.

2. A succinct statement of the objectives of, and legal basis for, the proposal.

The objective of the proposal is to reduce the recordkeeping and reporting obligations for Non-SD/MSPs while still providing the Commission insight into the size of the market for unreported trade options and the identities of the most significant participants in the market. As stated above, the legal basis for the proposed rule is the Commission's plenary options authority in CEA section 4c(b).

3. A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply.

The small entities to which the proposed amendments may apply are those commercial parties that would not qualify as ECPs and/or that fall within the definition of a ''small entity'' under the RFA, including size standards established by the Small Business Administration.[73] Although more than 300 Non-SD/MSPs have reported their use of trade options to the Commission through Form TO, the limited information provided by Form TO is not sufficient for the Commission to determine whether and how many of those Non-SD/MSPs qualify as small entities under the RFA.

4. A description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

The proposed amendments would relieve Non-SD/MSPs, which may include small entities, from certain recordkeeping and reporting requirements that would otherwise apply to them. While the proposal would impose a new requirement on certain Non-SD/MSPs to provide DMO by email with either the $1 Billion Notice or the Alternative Notice

[67] *See, e.g.,* CEA section 3(b), 7 U.S.C. 5 (stating that it is a purpose of the CEA to deter disruptions to market integrity).

[68] 5 U.S.C. 601 *et seq.*

[69] *See* 5 U.S.C. 601(6) (defining ''small entity'' to include a ''small business,'' ''small organization,'' and ''small governmental jurisdiction,'' as those terms are defined in the RFA and by reference to the Small Business Act, 15 U.S.C. 632 *et seq.*).

[70] 5 U.S.C. 553. The Administrative Procedure Act is found at 5 U.S.C. 551 *et seq.*

[71] *See* 5 U.S.C. 601(2), 603–605.

[72] *See Opting Out of Segregation,* 66 FR 20740, 20743 (Apr. 25, 2001).

[73] *See id. See also* 5 U.S.C. 601(3) (defining ''small business'' to have the same meaning as the term ''small business concern'' in the Small Business Act); 15 U.S.C. 632(a)(1) (defining ''small business concern'' to include an agricultural enterprise with annual receipts not in excess of $750,000); 13 CFR 121.201 (establishing size standards for small business concerns).

annually, the Commission does not believe that this requirement would impact many small entities, if any at all. Given the significant volume of trade options required to trigger the proposed Notice Requirement, the Commission expects that it would apply to only a small number of entities and that such entities would likely not be small entities.[74] The Commission's view is supported by DMO's experience with the $1 Billion Notice provision in No-Action Letter 13–08: As indicated above, DMO received a $1 Billion Notice from only sixteen of the more than 300 Non-SD/MSPs that filed a Form TO in 2014, and all such entities are generally well-known in their respective industries.[75]

Filing the $1 Billion Notice would require affected Non-SD/MSPs to track and aggregate the notional values of their trade options. The Commission expects that this general information should be readily compiled and aggregated using a spreadsheet or other existing software and would not require any professional skills beyond those typically held by any commercial party. Furthermore, Non-SD/MSPs that reasonably expect to enter into trade options with an aggregate notional value in excess of $1 billion during the calendar year may, in line with the Alternative Notice, simply send an email to DMO to that effect, thereby avoiding having to track the notional values of their trade options.

5. An identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the rule.

The Commission is unaware of any Federal rules that could duplicate, overlap, or conflict with the proposal.

6. A description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. These may include, for example, (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.

A potential alternative to relieving Non-SD/MSPs, which may include small entities, from certain recordkeeping and reporting requirements would be to either (1) not amend the current rule, which would maintain recordkeeping and reporting requirements that Non-SD/MSPs have represented are onerous, or (2) create a rule with more specific reporting parameters for specific entities. While the proposal would impose the new annual Notice Requirement on certain Non-SD/MSPs, overall, the Commission believes that the proposed amendments would have a positive economic impact on Non-SD/MSPs that are small entities because they would generally relax reporting requirements across all trade option counterparties that are Non-SD/MSPs. Although the proposal could expressly limit application of the Notice Requirement to entities that do not meet the RFA definition of a small entity, the Commission does not believe that is necessary because, as stated above, the Commission does not expect many small entities to be affected by that requirement, if any at all. Furthermore, even if a small entity were to enter into trade options with an aggregate notional value in excess of $1 billion during a calendar year, the Commission believes that such information would nevertheless be important to the Commission's insight into the market for otherwise unreported trade options and may cause the Commission to adjust the threshold for notice reporting above $1 billion.

C. Paperwork Reduction Act

The purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* (''PRA'') are, among other things, to minimize the paperwork burden to the private sector, ensure that any collection of information by a government agency is put to the greatest possible uses, and minimize duplicative information collections across the government.[76] The PRA applies to all information, ''regardless of form or format,'' whenever the government is ''obtaining, causing to be obtained [or] soliciting'' information, and includes required ''disclosure to third parties or the public, of facts or opinions,'' when the information collection calls for ''answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons.'' [77] The PRA requirements have been determined to include not only mandatory but also voluntary information collections, and include both written and oral communications.[78] Under the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number from the Office of Management and Budget (''OMB''). The Commission seeks to amend the OMB control number 3038–0106—Form TO, Annual Notice Filing for Counterparties to Unreported Trade Option. Therefore the Commission is submitting this proposal to OMB for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11.

With the exception of the proposed Notice Requirement, the Commission believes that these proposed rules will not impose any new information collection requirements that require approval of OMB under the PRA. As a general matter, the proposed rules would relax reporting and recordkeeping requirements for Non-SD/MSPs entering into trade options with each other in connection with their respective businesses, including the withdrawal and removal of Form TO. As such, the proposed rules will not result in the creation of any new information collection subject to OMB review or approval under the PRA, except for the annual Notice Requirement. Therefore, these proposed rules do not, by themselves, impose any new information collection requirements other than those that already exist in connection with trade options pursuant to part 32 of the Commission's regulations, except for the proposed Notice Requirement.

As noted above, the Commission proposes to add the Notice Requirement for trade option counterparties that are Non-SD/MSPs, which requirement is considered to be a collection of information within the meaning of the PRA. Accordingly, the Commission is amending OMB control number 3038–0106 and submitting to OMB an information collection request for review and approval. If approved, this new collection of information will be mandatory.

The Commission anticipates that affected Non-SD/MSPs may incur certain costs in complying with the proposed $1 Billion Notice, including those related to calculating the aggregate notional value of trade options entered into, and to drafting the notice email and submitting it to DMO. There are no additional capital costs associated with this collection because all respondents are already required to create and store detailed records of their trade option transactions pursuant to § 32.3(b). The

[74] *See* 15 U.S.C. 632(a) (defining a ''small business concern'' generally to include an enterprise that is ''not dominant in its field of operation'').

[75] See *supra* note 37 and accompanying text.

[76] *See* 44 U.S.C. 3501.

[77] *See* 44 U.S.C. 3502.

[78] *See* 5 CFR 1320.3(c)(1).

Commission estimates that twenty respondents will file a total of one response each annually, and the estimated average number of hours per response would be two. Therefore, the Commission estimates the total burden hours associated with OMB control number 3038–0106 to be 40 hours.

The Commission notes that the proposed amendments would relieve trade option counterparties that are Non-SD/MSPs from certain recordkeeping and reporting requirements under part 45. The Commission believes that these proposed amendments would not cause a material net reduction in the current part 45 PRA burden estimates (OMB control number 3038–0096) to the extent that such reduced recordkeeping and reporting burdens for trade option counterparties that are Non-SD/MSPs would be insubstantial when compared to the overall part 45 PRA burden estimate as it relates to Non-SD/MSPs.

The Commission specifically invites public comment on the accuracy of its estimate that no additional information collection requirements or changes to existing collection requirements, other than the proposed Notice Requirement, would result from the proposal.

List of Subjects in 17 CFR Part 32

Commodity futures, consumer protection, fraud, reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Commodity Futures Trading Commission proposes to amend 17 CFR part 32 as set forth below:

PART 32—REGULATION OF COMMODITY OPTION TRANSACTIONS

■ 1. The authority citation for part 32 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 6c, and 12a, unless otherwise noted.

■ 2. Revise § 32.3 to read as follows:

§ 32.3 Trade options.

(a) Subject to paragraphs (b), (c), and (d) of this section, the provisions of the Act, including any Commission rule, regulation, or order thereunder, otherwise applicable to any other swap shall not apply to, and any person or group of persons may offer to enter into, enter into, confirm the execution of, maintain a position in, or otherwise conduct activity related to, any transaction in interstate commerce that is a commodity option transaction, provided that:

(1) Such commodity option transaction must be offered by a person that has a reasonable basis to believe that the transaction is offered to an offeree as described in paragraph (a)(2) of this section. In addition, the offeror must be either:

(i) An eligible contract participant, as defined in section 1a(18) of the Act, as further jointly defined or interpreted by the Commission and the Securities and Exchange Commission or expanded by the Commission pursuant to section 1a(18)(C) of the Act; or

(ii) A producer, processor, or commercial user of, or a merchant handling the commodity that is the subject of the commodity option transaction, or the products or by-products thereof, and such offeror is offering or entering into the commodity option transaction solely for purposes related to its business as such;

(2) The offeree must be a producer, processor, or commercial user of, or a merchant handling the commodity that is the subject of the commodity option transaction, or the products or by-products thereof, and such offeree is offered or entering into the commodity option transaction solely for purposes related to its business as such; and

(3) The commodity option must be intended to be physically settled, so that, if exercised, the option would result in the sale of an exempt or agricultural commodity for immediate or deferred shipment or delivery.

(b) In connection with any commodity option transaction entered into pursuant to paragraph (a) of this section, every counterparty that is not a swap dealer or major swap participant shall:

(1) Comply with the swap data recordkeeping requirements of § 45.2 of this chapter, as otherwise applicable to any swap transaction;

(2) Obtain a legal entity identifier pursuant to § 45.6 of this chapter if the counterparty to the transaction involved is a swap dealer or major swap participant, and provide such legal entity identifier to the swap dealer or major swap participant counterparty; and

(3) Notify the Division of Market Oversight through an email to *TOreportingrelief@cftc.gov:*

(i) No later than 30 days after entering into trade options, whether reported or unreported, having an aggregate notional value in excess of $1 billion during any calendar year, or

(ii) Provide notice that the Non-SD/MSP reasonably expects to enter into trade options, whether reported or unreported, having an aggregate notional value in excess of $1 billion during any calendar year.

(c) In connection with any commodity option transaction entered into pursuant to paragraph (a) of this section, the following provisions shall apply to every trade option counterparty to the same extent that such provisions would apply to such person in connection with any other swap:

(1) Part 20 of this chapter (Swaps Large Trader Reporting);

(2) Subpart J of part 23 of this chapter (Duties of Swap Dealers and Major Swap Participants);

(3) Sections 23.200, 23.201, 23.203, and 23.204 of this chapter (Reporting and Recordkeeping Requirements for Swap Dealers and Major Swap Participants); and

(4) Section 4s(e) of the Act (Capital and Margin Requirements for Swap Dealers and Major Swap Participants).

(d) In addition, any person or group of persons offering to enter into, entering into, confirming the execution of, maintaining a position in, or otherwise conducting activity related to a commodity option transaction in interstate commerce pursuant to paragraph (a) of this section shall remain subject to part 180 of this chapter (Prohibition Against Manipulation) and § 23.410 of this chapter (Prohibition on Fraud, Manipulation, and other Abusive Practices) and the antifraud, anti-manipulation, and enforcement provisions of sections 2, 4b, 4c, 4o, 4s(h)(1)(A), 4s(h)(4)(A), 6, 6c, 6d, 9, and 13 of the Act.

(e) The Commission may, by order, upon written request or upon its own motion, exempt any person, either unconditionally or on a temporary or other conditional basis, from any provisions of this part, and the provisions of the Act, including any Commission rule, regulation, or order thereunder, otherwise applicable to any other swap, other than § 32.4 of this chapter, part 180 of this chapter (Prohibition Against Manipulation), and § 23.410 of this chapter (Prohibition on Fraud, Manipulation, and other Abusive Practices), and the antifraud, anti-manipulation, and enforcement provisions of sections 2, 4b, 4c, 4o, 4s(h)(1)(A), 4s(h)(4)(A), 6, 6c, 6d, 9, and 13 of the Act, if it finds, in its discretion, that it would not be contrary to the public interest to grant such exemption.

Issued in Washington, DC, on May 4, 2015, by the Commission.

Christopher J. Kirkpatrick,

Secretary of the Commission.

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

Appendices to Trade Options—Commission Voting Summary, Chairman's Statement, and Commissioners' Statements

Appendix 1—Commission Voting Summary

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

Appendix 2—Statement of Chairman Timothy G. Massad

I am pleased to support the staff's recommendation to issue a proposed rulemaking to revise the rules regarding trade options, which are a subset of commodity options. Specifically, the Commission is proposing to reduce reporting and recordkeeping requirements for end-users that transact in trade options in connection with their businesses, including by eliminating the requirement to file form TO. These products are commonly used by commercial participants, so this action should help those participants continue to do so cost-effectively.

We will continue to look at ways that we can make sure commercial end-users can use these markets effectively and to make sure that the new regulatory framework for swaps does not impose unintended consequences or burdens for them. An important part of this effort has been, and shall continue to be, fine-tuning our rules so that commercial companies can continue to conduct their daily operations efficiently.

This proposed rulemaking would relax reporting and recordkeeping requirements where two commercial parties enter into trade options with each other in connection with their respective businesses. These proposed amendments are generally intended to reduce burdens for end-users, many of whom, as commenters explained, face logistical impediments and significant costs in connection with reporting their trade options.

This proposed rulemaking reduces and clarifies requirements for end-users that use trade options in connection with their businesses, and the proposed amendments would allow the Commission to maintain regulatory insight into the market for otherwise unreported trade options. End-users would remain subject to the recordkeeping requirements in § 45.2, which require market participants to maintain full and complete records and to open their records to inspection upon the Commission's request. Additionally, the proposed $1 billion notice requirement would provide the Commission insight into the size of the market for unreported trade options and the identities of the most significant market participants.

I look forward to receiving public comment on this proposed rulemaking.

Appendix 3—Concurring Statement of Commissioner Sharon Y. Bowen

Today, we are approving a proposed rule that would implement changes to the Commission's Trade Option exemption to reduce the burden on commercial entities seeking to hedge risks associated with their physical businesses. I support these changes. However, based upon comments the Commission has received and meetings that I have had with members of the public, I believe the Commission should consider additional clarifications to better ensure legal certainty for the manufacturing, energy and agricultural industries' ability to address their commercial risks.

In the manufacturing, agriculture and energy sectors, a wide variety of physically-delivered instruments are used to secure companies' commercial needs for a physical commodity. These instruments, although they call for physical delivery, often contain some element of optionality that can lead to questions about their appropriate regulatory treatment. These contracts, particularly in the energy sector, are all commonly referred to as physical contracts, and they, according to what I have been told, often receive similar treatment from both a business operations and an accounting standpoint within the entities that use them.

Further, these physical contracts are often handled and accounted for separately from other derivatives, such as futures contracts or cash-settled swaps, according to market participants. Treating some portion of these physical contracts as swaps simply because they may contain some characteristics of commodity options can lead to significant costs and difficulties. For instance, companies may have to reconfigure their business systems to parse transactions where there was, before Dodd Frank, no need to undertake such a reconfiguration.

Many commenters and people I have met have expressed particular concerns regarding how instruments having elements of both forward contracts and some volumetric optionality should be regulated. In a separate release, the Commission plans to finalize guidance on how forward contracts with embedded volumetric optionality relate to the forward contract exclusion from the swap definition. While that release will help address the circumstances under which volumetric optionality embedded in a forward contract do not cause the forward contract to be a ''swap'', my understanding is that additional relief may still be helpful to commercial market participants seeking to hedge their physical needs with instruments that contain a forward contract with volumetric optionality.

Market participants have also expressed concerns about the appropriate treatment of ''peaking supply contracts'' which are often used by companies to manage the risks attendant to their need for physical commodities that may be used to generate electricity, run an operating plant, or manufacture or supply other goods and services.

For both types of instruments, I think, the Commission could benefit from getting comments on potential avenues for addressing concerns that have been raised about their appropriate treatment.

Instruments Containing a Forward Contract With Volumetric Variability

As noted in the proposal, the trade option exemption is intended to permit parties to hedge or otherwise enter into commodity option transactions for commercial purposes without being subject to the general Dodd-Frank swaps regime. The exemption continues the long Commission policy of exempting them from requirements of the Commodity Exchange Act that would otherwise apply to commodity options. It provides an exemption for contracts meeting the requirements of the trade option exemption from regulation as swaps to the extent they would otherwise be subject to regulation by virtue of being a ''commodity option''.

Both forward contracts and trade options play an important role in managing the physical commodity risks attendant to commercial operations. According to industry participants, there can be difficulty in separating out, for regulatory purposes, the ''option'' component of an instrument containing both a forward contract and an element that might be considered a commodity option. My understanding is that these overall instruments are typically used to address a commercial entity's physical requirements for a particular commodity as part of its ongoing commercial operation and that the commodity option component is often used to manage uncertainty in the commercial supply and demand factors that affect a commercial entities' need for a particular physical commodity. Additionally, these instruments are often highly customized and the various components not always easy to separate and classify, according to industry participants.

Given these concerns, I think it would be helpful to get comment upon whether the Commission should consider a new § 32.3(f) as part of the trade option exemption being proposed today. Such an exemption would exempt qualifying trade options from the swap reporting and recordkeeping requirements that would otherwise apply to them as trade options so long as they: (1) Are not severable nor separately marketable from the forward contract component of overall instrument, (2) are related to and entered into concurrently with the forward contract component of overall instrument, and (3) for which the physical commodity underlying the trade option component is the same as that underlying the forward contract component of the overall instrument.

The text of such additional exemption would read as follows:

''*§ 32.3(f) Instruments Containing a Forward Contract with Volumetric Variability.* In the case of an instrument containing a forward contract with volumetric variability that meets the definition of a trade option (as defined by paragraph (a)), the component of such instrument that is a trade option shall be subject to only the requirements of paragraph (d) provided:

(1) The volumetric variability is not severable nor separately marketable from the forward contract component,

(2) the volumetric variability is related to and entered into concurrently with the forward contract component, and

(3) the physical commodity underlying the volumetric variability is the same as that underlying the forward contract component.''

Supply Contracts for a Specified Portion of an Entity's Physical Need for a Commodity (e.g., peaking supply contracts)

As noted above, concerns have also been raised about the appropriate treatment of peaking supply contracts which are often used by companies to manage the risks attendant to their need for physical commodities that may be used to generate electricity, run an operating plant, or manufacture or supply other goods and services.

Market participants have raised concerns about whether or not these contracts could be considered commodity options. In instances where these contracts represent a reservation of a portion of supplier's capacity to provide a particular commodity and not a transaction for the commodity itself, it seems possible these contracts may not be commodity options. One test that has been proposed to determine whether or not such contracts are commodity options is whether:

1. The subject of the agreement, contract or transaction is a binding, sole-source, obligation of a supplier of a physical commodity to stand ready to meet a specified portion of a commercial consumer's physical need for a commodity through providing for the physical delivery of that commodity to the specified commercial consumer or its designee in connection with the physical obligation,

2. The payment provided by the commercial consumer to the commercial supplier for such agreement, contract or transaction is in the nature of a reservation charge to provide the service of standing ready to meet the physical needs of the commercial consumer,

3. Payment for any commodity delivered under such agreement, contract or transaction is at the market price for that commodity at the time of delivery (*i.e.,* the agreement, contract, or transaction is not used to hedge price risk), and

4. The agreement, contract or transaction is necessary to meet the commercial consumer's projected physical needs or is required by regulation.

I think the Commission would benefit from receiving comments on this proposed test and peaking supply contracts more generally as it appears to be one of the significant outstanding issues regarding instruments that may or may not be trade options.

Together, these two additional items may help address outstanding concerns that have been expressed by commercial market participants, and I think the Commission would benefit by getting comment upon them.

Appendix 4—Statement of Commissioner J. Christopher Giancarlo

I support the Commission's proposed amendments to the interim final trade options rule. These are common sense reforms that will alleviate certain recordkeeping and reporting burdens that § 32.3 currently imposes on end-users that use trade options to manage commercial risk. The deletion of the reference in § 32.3(c)(2) to part 151 position limits is also appropriate in light of the fact that part 151 was vacated by the court in *Int'l Swaps & Derivatives Ass'n* v. *U.S. Commodity Futures Trading Comm'n,* 887 F. Supp. 2d 259 (D.D.C. 2012).

I strongly disagree, however, with the Commission's statement that it preliminarily believes that any future application of position limits would be best addressed in the context of the pending position limits rulemaking. Simply put, position limits for trade options are not ''necessary to diminish, eliminate, or prevent'' excessive speculation. Section 4a(a)(1) of the Commodity Exchange Act (CEA). The final trade options rule should make clear that trade options are exempt from position limits.

As the Commission recognized in promulgating the interim final rule establishing the trade options exemption, ''position limits apply only to speculative positions. . . . Trade options, which are commonly used as hedging instruments or in connection with some commercial function, would normally qualify as hedges, exempt from the speculative position limit rules.'' *Commodity Options,* 77 FR 25320, 25328 n.50 (Apr. 27, 2012).

By definition, the offeree to a trade option ''must be a producer, commercial user of, or a merchant handling the commodity that is the subject of the commodity option transaction, or the products or by-products thereof,'' and must restrict the use of trade options ''solely for purposes related to its business as such.'' § 32.3(a)(2). Moreover, the ''option must be intended to be physically settled, so that, if exercised, [it] would result in the sale of an exempt or agricultural commodity for immediate or deferred shipment or delivery.'' § 32.3(a)(3). Given these parameters, the risk that trade options could be used to engage in speculation, much less excessive speculation, is so remote as to be virtually non-existent.

Applying a position limits regime to trade options and requiring commercial end-users to seek bona fide hedge treatment for those transactions, which was floated as a possibility in the pending proposed position limits rule, would not be an acceptable outcome. *See Position Limits for Derivatives,* 78 FR 75680, 75711 (Dec. 12, 2013). As commenters to the proposed position limits rule have pointed out, there is no regulatory benefit to imposing position limits on instruments that inherently are not speculative in nature, and doing so ''will distort commodity markets and impede economically efficient behavior'' by discouraging the use of trade options. Natural Gas Supply Association Comment Letter dated Aug. 4, 2014 at 13. A comment letter filed by the Edison Electric Institute and the Electric Power Supply Association (Joint Associations) cites persuasive examples of how application of the proposed position limits rule would eliminate the ability of market participants to enter into multi-month and multi-year trade options. *See* Joint Associations Comment Letter dated Feb. 7, 2014 at 6–7; *see also* American Gas Association Comment Letter dated Feb. 10, 2014 at 5 (the lack of a contractual upper limit in the way that natural gas options are structured make position limit reporting impossible).

The Commission has the authority in section 4a(a)(7) of the CEA to exempt ''any person or class of persons, any swap or class of swaps, any contract of sale of a commodity for future delivery or class of such contracts, any option or class of options, or any transaction or class of transactions from any requirement it may establish . . . with respect to position limits.''

As long as the specter of position limits hangs over trade options, market participants that have used these instruments for decades as a cost effective means of ensuring a reliable supply of a physical commodity and to hedge commercial risk will be reluctant to use them. As I have said before, commercial end-users, including commercial end-users of everyday trade options, were not the cause of the financial crisis and the federal government should stop treating them like they were.

I urge my fellow Commissioners to eliminate this regulatory uncertainty sooner, rather than later, by exercising our section 4a(a)(7) authority in connection with this trade options rulemaking. I encourage further public comment on the issue.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–HQ–OAR–2015–0071; FRL–9926–97–OAR]

RIN 2060–AS57

Prevention of Significant Deterioration Permitting for Greenhouse Gases: Providing Option for Rescission of EPA-Issued Tailoring Rule Step 2 Prevention of Significant Deterioration Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to amend the federal Prevention of Significant Deterioration (PSD) program regulations to allow for rescission of certain PSD permits issued by the EPA and delegated reviewing authorities under Step 2 of the Prevention of Significant Deterioration and Title V Greenhouse Gas (GHG) Tailoring Rule (Tailoring Rule). We are proposing to take this action in order to provide a mechanism for the EPA and delegated reviewing authorities to rescind PSD permits that are no longer required in light of the United States (U.S.) Supreme Court's decision in *Utility Air Regulatory Group (UARG)* v. *EPA* and the amended appeals court judgment in *Coalition for Responsible Regulation (Coalition)* v. *EPA,* vacating that rule. These decisions determined that Step 2 of the Tailoring