

of the request. If the head of the agency determines that additional information is needed from the complainant, he or she shall have 60 days from the date of receipt of the additional information to make his or her determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

[51 FR 22889, 22896, June 23, 1986, as amended at 51 FR 22889, June 23, 1986; 60 FR 49336, Sept. 25, 1995]

PART 150—LIMITS ON POSITIONS

Sec.

150.1 Definitions.

150.2 Federal speculative position limits.

150.3 Exemptions.

150.4 Aggregation of positions.

150.5 Exchange-set speculative position limits and exemptions therefrom.

150.6 Scope.

150.7 [Reserved]

150.8 Severability.

150.9 Process for recognizing non-enumerated bona fide hedging transactions or positions with respect to Federal speculative position limits.

APPENDIX A TO PART 150—LIST OF ENUMERATED BONA FIDE HEDGES

APPENDIX B TO PART 150—GUIDANCE ON GROSS HEDGING POSITIONS AND POSITIONS HELD DURING THE SPOT PERIOD

APPENDIX C TO PART 150—GUIDANCE REGARDING THE DEFINITION OF REFERENCED CONTRACT

APPENDIX D TO PART 150—COMMODITIES LISTED AS SUBSTANTIALLY THE SAME FOR PURPOSES OF THE TERM "LOCATION BASIS CONTRACT" AS USED IN THE REFERENCED CONTRACT DEFINITION

APPENDIX E TO PART 150—SPECULATIVE POSITION LIMIT LEVELS

APPENDIX F TO PART 150—GUIDANCE ON, AND ACCEPTABLE PRACTICES IN, COMPLIANCE WITH THE REQUIREMENTS FOR EXCHANGE-SET LIMITS AND POSITION ACCOUNTABILITY ON COMMODITY DERIVATIVE CONTRACTS

APPENDIX G TO PART 150—GUIDANCE ON SPREAD TRANSACTION EXEMPTIONS GRANTED FOR CONTRACTS THAT ARE SUBJECT TO FEDERAL SPECULATIVE POSITION LIMITS

AUTHORITY: 7 U.S.C. 1a, 2, 5, 6, 6a, 6c, 6f, 6g, 6t, 12a, and 19, as amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376 (2010).

SOURCE: 52 FR 38923, Oct. 20, 1987, unless otherwise noted.

§ 150.1 Definitions.

As used in this part—

Bona fide hedging transaction or position means a transaction or position in commodity derivative contracts in a physical commodity, where:

(1) Such transaction or position:

(i) Represents a substitute for transactions made or to be made, or positions taken or to be taken, at a later time in a physical marketing channel;

(ii) Is economically appropriate to the reduction of price risks in the conduct and management of a commercial enterprise; and

(iii) Arises from the potential change in the value of—

(A) Assets which a person owns, produces, manufactures, processes, or merchandises or anticipates owning, producing, manufacturing, processing, or merchandising;

(B) Liabilities which a person owes or anticipates incurring; or

(C) Services that a person provides or purchases, or anticipates providing or purchasing; or

(2) Such transaction or position qualifies as a:

(i) *Pass-through swap and pass-through swap offset pair*. Paired positions of a pass-through swap and a pass-through swap offset, where:

(A) The pass-through swap is a swap position entered into by one person for which the swap would qualify as a bona fide hedging transaction or position pursuant to paragraph (1) of this definition (the bona fide hedging swap counterparty) that is opposite another person (the pass-through swap counterparty);

(B) The pass-through swap offset:

(1) Is a futures contract position, option on a futures contract position, or swap position entered into by the pass-through swap counterparty; and

(2) Reduces the pass-through swap counterparty's price risks attendant to the pass-through swap; and

(C) With respect to the pass-through swap offset, the pass-through swap

Commodity Futures Trading Commission

§ 150.1

counterparty receives from the bona fide hedging swap counterparty a written representation that the pass-through swap qualifies as a bona fide hedging transaction or position pursuant to paragraph (1) of this definition, and the pass-through swap counterparty may rely in good faith on such written representation, unless the pass-through swap counterparty has information that would cause a reasonable person to question the accuracy of the representation; or

(ii) *Offset of a bona fide hedger's qualifying swap position.* A futures contract position, option on a futures contract position, or swap position entered into by a bona fide hedging swap counterparty that reduces price risks attendant to a previously-entered-into swap position that qualified as a bona fide hedging transaction or position at the time it was entered into for that counterparty pursuant to paragraph (1) of this definition.

Commodity derivative contract means any futures contract, option on a futures contract, or swap in a commodity (other than a security futures product as defined in section 1a(45) of the Act).

Core referenced futures contract means a futures contract that is listed in §150.2(d).

Economically equivalent swap means, with respect to a particular referenced contract, any swap that has identical material contractual specifications, terms, and conditions to such referenced contract.

(1) Other than as provided in paragraph (2) of this definition, for the purpose of determining whether a swap is an economically equivalent swap with respect to a particular referenced contract, the swap shall not be deemed to lack identical material contractual specifications, terms, and conditions due to different lot size specifications or notional amounts, delivery dates diverging by less than one calendar day, or different post-trade risk management arrangements.

(2) With respect to any natural gas referenced contract, for the purpose of determining whether a swap is an economically equivalent swap to such referenced contract, the swap shall not be deemed to lack identical material contractual specifications, terms, and con-

ditions due to different lot size specifications or notional amounts, delivery dates diverging by less than two calendar days, or different post-trade risk management arrangements.

(3) With respect to any referenced contract or class of referenced contracts, the Commission may make a determination that any swap or class of swaps satisfies, or does not satisfy, this economically equivalent swap definition.

Eligible affiliate means an entity with respect to which another person:

(1) Directly or indirectly holds either:

(i) A majority of the equity securities of such entity, or

(ii) The right to receive upon dissolution of, or the contribution of, a majority of the capital of such entity;

(2) Reports its financial statements on a consolidated basis under Generally Accepted Accounting Principles or International Financial Reporting Standards, and such consolidated financial statements include the financial results of such entity; and

(3) Is required to aggregate the positions of such entity under §150.4 and does not claim an exemption from aggregation for such entity.

Eligible entity means a commodity pool operator; the operator of a trading vehicle which is excluded, or which itself has qualified for exclusion from the definition of the term "pool" or "commodity pool operator," respectively, under §4.5 of this chapter; the limited partner, limited member or shareholder in a commodity pool the operator of which is exempt from registration under §4.13 of this chapter; a commodity trading advisor; a bank or trust company; a savings association; an insurance company; or the separately organized affiliates of any of the above entities:

(1) Which authorizes an independent account controller independently to control all trading decisions with respect to the eligible entity's client positions and accounts that the independent account controller holds directly or indirectly, or on the eligible entity's behalf, but without the eligible entity's day-to-day direction; and

(2) Which maintains:

§ 150.1

17 CFR Ch. I (4-1-21 Edition)

(i) Only such minimum control over the independent account controller as is consistent with its fiduciary responsibilities to the managed positions and accounts, and necessary to fulfill its duty to supervise diligently the trading done on its behalf; or

(ii) If a limited partner, limited member or shareholder of a commodity pool the operator of which is exempt from registration under §4.13 of this chapter, only such limited control as is consistent with its status.

Entity means a “person” as defined in section 1a of the Act.

Excluded commodity means an “excluded commodity” as defined in section 1a of the Act.

Futures-equivalent means:

(1)(i) An option contract, whether an option on a futures contract or an option that is a swap, which has been:

(A) Adjusted by an economically reasonable and analytically supported exposure to price changes of the underlying referenced contract that has been computed for that option contract as of the previous day’s close or the current day’s close or computed contemporaneously during the trading day, and

(B) Converted to an economically equivalent amount of an open position in the underlying referenced contract.

(ii) An entity is allowed one business day to liquidate an amount of the position that is in excess of speculative position limits without being considered in violation of the speculative position limits if such excess position results from:

(A) A position that exceeds speculative position limits as a result of an option contract assignment; or

(B) A position that includes an option contract that exceeds speculative position limits when the applicable option contract is adjusted by an economically reasonable and analytically supported exposure to price changes of the underlying referenced contract as of that business day’s close of trading, as long as the applicable option contract does not exceed such speculative position limits when evaluated using the previous business day’s exposure to the underlying referenced contract. This paragraph (B) shall not apply if such day would be the last trading day of the spot month for the cor-

responding core referenced futures contract.

(2) A futures contract which has been converted to an economically equivalent amount of an open position in a core referenced futures contract; and

(3) A swap which has been converted to an economically equivalent amount of an open position in a core referenced futures contract.

Independent account controller means a person:

(1) Who specifically is authorized by an eligible entity, as defined in this section, independently to control trading decisions on behalf of, but without the day-to-day direction of, the eligible entity;

(2) Over whose trading the eligible entity maintains only such minimum control as is consistent with its fiduciary responsibilities for managed positions and accounts to fulfill its duty to supervise diligently the trading done on its behalf or as is consistent with such other legal rights or obligations which may be incumbent upon the eligible entity to fulfill;

(3) Who trades independently of the eligible entity and of any other independent account controller trading for the eligible entity;

(4) Who has no knowledge of trading decisions by any other independent account controller; and

(5) Who is:

(i) Registered as a futures commission merchant, an introducing broker, a commodity trading advisor, or an associated person of any such registrant, or

(ii) A general partner, managing member or manager of a commodity pool the operator of which is excluded from registration under §4.5(a)(4) of this chapter or §4.13 of this chapter, *provided that* such general partner, managing member or manager complies with the requirements of §150.4(c).

Long position means, on a futures-equivalent basis, a long call option, a short put option, a long underlying futures contract, or a swap position that is equivalent to a long futures contract.

Physical commodity means any agricultural commodity as that term is defined in §1.3 of this chapter or any exempt commodity as that term is defined in section 1a of the Act.

Position accountability means any bylaw, rule, regulation, or resolution that:

(1) Is submitted to the Commission pursuant to part 40 of this chapter in lieu of, or along with, a speculative position limit, and

(2) Requires an entity whose position exceeds the accountability level to consent to:

(i) Provide information about its position to the designated contract market or swap execution facility; and

(ii) Halt increasing further its position or reduce its position in an orderly manner, in each case as requested by the designated contract market or swap execution facility.

Pre-enactment swap means any swap entered into prior to enactment of the Dodd-Frank Act of 2010 (July 21, 2010), the terms of which have not expired as of the date of enactment of that Act.

Pre-existing position means any position in a commodity derivative contract acquired in good faith prior to the effective date of any bylaw, rule, regulation, or resolution that specifies a speculative position limit level or a subsequent change to that level.

Referenced contract means:

(1) A core referenced futures contract listed in §150.2(d) or, on a futures-equivalent basis with respect to a particular core referenced futures contract, a futures contract or an option on a futures contract, including a spread, that is either:

(i) Directly or indirectly linked, including being partially or fully settled on, or priced at a fixed differential to, the price of that particular core referenced futures contract; or

(ii) Directly or indirectly linked, including being partially or fully settled on, or priced at a fixed differential to, the price of the same commodity underlying that particular core referenced futures contract for delivery at the same location or locations as specified in that particular core referenced futures contract; or

(2) On a futures-equivalent basis, an economically equivalent swap.

(3) The definition of referenced contract does not include a location basis contract, a commodity index contract, any guarantee of a swap, a trade option that meets the requirements of §32.3 of this chapter, any outright price reporting agency index contract, or any monthly average pricing contract.

Short position means, on a futures-equivalent basis, a short call option, a long put option, a short underlying futures contract, or a swap position that is equivalent to a short futures contract.

Speculative position limit means the maximum position, either net long or net short, in a commodity derivative contract that may be held or controlled by one person absent an exemption, whether such limits are adopted for:

(1) Combined positions in all commodity derivative contracts in a particular commodity, including the spot month futures contract and all single month futures contracts (the spot month and all single month futures contracts, cumulatively, “all-months-combined”);

(2) Positions in a single month of commodity derivative contracts in a particular commodity other than the spot month futures contract (“single month”); or

(3) Positions in the spot month of commodity derivative contracts in a particular commodity. Such a limit may be established under Federal regulations or rules of a designated contract market or swap execution facility. For referenced contracts other than core referenced futures contracts, single month means the same period as that of the relevant core referenced futures contract.

Spot month means:

(1) For physical-delivery core referenced futures contracts, the period of time beginning at the earlier of:

(i) The close of business on the trading day preceding the first day on which delivery notices can be issued by the clearing organization of a contract market or

(ii) The close of business on the trading day preceding the third-to-last trading day and ending when the contract expires, except as follows:

§ 150.2

17 CFR Ch. I (4–1–21 Edition)

(A) For the *ICE Futures U.S. Sugar No. 11* (SB) core referenced futures contract, the spot month means the period of time beginning at the opening of trading on the second business day following the expiration of the regular option contract traded on the expiring futures contract and ending when the contract expires;

(B) For the *ICE Futures U.S. Sugar No. 16* (SF) core referenced futures contract, the spot month means the period of time beginning on the third-to-last trading day of the contract month and ending when the contract expires; and

(C) For the *Chicago Mercantile Exchange Live Cattle* (LC) core referenced futures contract, the spot month means the period of time beginning at the close of trading on the first business day following the first Friday of the contract month and ending when the contract expires; and

(2) For referenced contracts other than core referenced futures contracts, the spot month means the same period as that of the relevant core referenced futures contract.

Spread transaction means an intra-market spread, inter-market spread, intra-commodity spread, or inter-commodity spread, including a calendar spread, quality differential spread, processing spread, product or by-product differential spread, or futures-option spread.

Swap means “swap” as that term is defined in section 1a of the Act and as further defined in §1.3 of this chapter.

Swap dealer means “swap dealer” as that term is defined in section 1a of the Act and as further defined in §1.3 of this chapter.

Transition period swap means a swap entered into during the period commencing on the day of the enactment of the Dodd-Frank Act of 2010 (July 21, 2010), and ending 60 days after the publication in the FEDERAL REGISTER of final amendments to this part implementing section 737 of the Dodd-Frank Act of 2010, the terms of which have not expired as of 60 days after the publication date.

[86 FR 3463, Jan. 14, 2021]

§ 150.2 Federal speculative position limits.

(a) *Spot month speculative position limits.* For physical-delivery referenced contracts and, separately, for cash-settled referenced contracts, no person may hold or control positions in the spot month, net long or net short, in excess of the levels specified by the Commission.

(b) *Single month and all-months-combined speculative position limits.* For any referenced contract, no person may hold or control positions in a single month or in all-months-combined (including the spot month), net long or net short, in excess of the levels specified by the Commission.

(c) *Relevant contract month.* For purposes of this part, for referenced contracts other than core referenced futures contracts, the spot month and any single month shall be the same as those of the relevant core referenced futures contract.

(d) *Core referenced futures contracts.* Federal speculative position limits apply to referenced contracts based on the following core referenced futures contracts:

Core Referenced Futures Contracts

<i>Commodity Type</i>	<i>Designated Contract Market</i>	<i>Core Referenced Futures Contract¹</i>
<i>Legacy Agricultural</i>		
	Chicago Board of Trade	
		Corn (C)
		Oats (O)
		Soybeans (S)
		Soybean Meal (SM)
		Soybean Oil (SO)
		Wheat (W)
		Hard Winter Wheat (KW)
		ICE Futures U.S.
		Cotton No. 2 (CT)
	Minneapolis Grain Exchange	
		Hard Red Spring Wheat (MWE)
<i>Other Agricultural</i>		
	Chicago Board of Trade	

<i>Commodity Type</i>	<i>Designated Contract Market</i>	<i>Core Referenced Futures Contract¹</i>
		Rough Rice (RR)
	Chicago Mercantile Exchange	
		Live Cattle (LC)
	ICE Futures U.S.	
		Cocoa (CC)
		Coffee C (KC)
		FCOJ-A (OJ)
		U.S. Sugar No. 11 (SB)
		U.S. Sugar No. 16 (SF)
<i>Energy</i>		
	New York Mercantile Exchange	
		Light Sweet Crude Oil (CL)
		NY Harbor ULSD (HO)
		RBOB Gasoline (RB)
		Henry Hub Natural Gas (NG)
<i>Metals</i>		
	Commodity Exchange, Inc.	
		Gold (GC)
		Silver (SI)
		Copper (HG)
	New York Mercantile Exchange	
		Palladium (PA)
		Platinum (PL)

¹ The core referenced futures contract includes any successor contracts.

(e) *Establishment of speculative position limit levels.* The levels of Federal speculative position limits are fixed by the Commission at the levels listed in appendix E to this part.

(f) *Designated contract market estimates of deliverable supply.* Each designated

contract market listing a core referenced futures contract shall supply to the Commission an estimated spot month deliverable supply upon request by the Commission, and may supply such estimates to the Commission at any other time. Each estimate shall be

accompanied by a description of the methodology used to derive the estimate and any statistical data supporting the estimate, and shall be submitted using the format and procedures approved in writing by the Commission. A designated contract market should use the guidance regarding deliverable supply in appendix C to part 38 of this chapter.

(g) *Pre-existing positions*—(1) *Pre-existing positions in a spot month*. A spot month speculative position limit established under this section shall apply to pre-existing positions, other than pre-enactment swaps and transition period swaps.

(2) *Pre-existing positions in a non-spot month*. A single month or all-months-combined speculative position limit established under this section shall apply to pre-existing positions, other than pre-enactment swaps and transition period swaps.

(h) *Positions on foreign boards of trade*. The speculative position limits established under this section shall apply to a person's combined positions in referenced contracts, including positions executed on, or pursuant to the rules of, a foreign board of trade, pursuant to section 4a(a)(6) of the Act, *provided that*:

(1) Such referenced contracts settle against any price (including the daily or final settlement price) of one or more contracts listed for trading on a designated contract market or swap execution facility that is a trading facility; and

(2) The foreign board of trade makes available such referenced contracts to its members or other participants located in the United States through direct access to its electronic trading and order matching system.

(i) *Anti-evasion provision*. For the purposes of applying the speculative position limits in this section, if used to willfully circumvent or evade speculative position limits:

(1) A commodity index contract, monthly average pricing contract, outright price reporting agency index contract, and/or a location basis contract shall be considered to be a referenced contract;

(2) A bona fide hedging transaction or position recognition or spread exemption shall no longer apply; and

(3) A swap shall be considered to be an economically equivalent swap.

(j) *Delegation of authority to the Director of the Division of Market Oversight*.

(1) The Commission hereby delegates, until it orders otherwise, to the Director of the Division of Market Oversight or such other employee or employees as the Director may designate from time to time, the authority in paragraph (f) of this section to request estimated spot month deliverable supply from a designated contract market and to provide the format and procedures for submitting such estimates.

(2) The Director of the Division of Market Oversight may submit to the Commission for its consideration any matter which has been delegated in this section.

(3) Nothing in this section prohibits the Commission, at its election, from exercising the authority delegated in this section.

(k) *Eligible affiliates and aggregation*. For purposes of this part, if an eligible affiliate meets the conditions for any exemption from aggregation under §150.4, the eligible affiliate may choose to utilize that exemption, or it may opt to be aggregated with its affiliated entities.

[86 FR 3465, Jan. 14, 2021]

§ 150.3 Exemptions.

(a) *Positions which may exceed limits*. A person may exceed the speculative position limits set forth in §150.2 to the extent that all applicable requirements in this part are met, *provided that* such person's transactions or positions each satisfy one of the following:

(1) *Bona fide hedging transactions or positions*. Positions that comply with the bona fide hedging transaction or position definition in §150.1, and are:

(i) Enumerated in appendix A to this part; or

(ii) Approved as non-enumerated bona fide hedging transactions or positions in accordance with paragraph (b)(4) of this section or §150.9.

(2) *Spread transactions*. Transactions that:

(i) Meet the spread transaction definition in §150.1; or

§ 150.3

17 CFR Ch. I (4-1-21 Edition)

(ii) Do not meet the spread transaction definition in §150.1, but have been approved by the Commission pursuant to paragraph (b)(4) of this section.

(3) *Financial distress positions.* Positions of a person, or a related person or persons, under financial distress circumstances, when exempted by the Commission from any of the requirements of this part in response to a specific request made pursuant to §140.99(a)(1) of this chapter, where financial distress circumstances include, but are not limited to, situations involving the potential default or bankruptcy of a customer of the requesting person or persons, an affiliate of the requesting person or persons, or a potential acquisition target of the requesting person or persons.

(4) *Conditional spot month limit exemption positions in natural gas.* Spot month positions in natural gas cash-settled referenced contracts that exceed the spot month speculative position limit set forth in §150.2, *provided that:*

(i) Such positions do not exceed the futures-equivalent of 10,000 NYMEX Henry Hub Natural Gas core referenced futures contracts per designated contract market that lists a cash-settled referenced contract in natural gas;

(ii) Such positions do not exceed the futures-equivalent of 10,000 NYMEX Henry Hub Natural Gas core referenced futures contracts in economically equivalent swaps in natural gas; and

(iii) The person holding or controlling such positions does not hold or control positions in spot month physical-delivery referenced contracts in natural gas.

(5) *Pre-enactment and transition period swaps exemption.* The speculative position limits set forth in §150.2 shall not apply to positions acquired in good faith in any pre-enactment swap or any transition period swap, *provided however* that a person may net such positions with post-effective date commodity derivative contracts for the purpose of complying with any non-spot month speculative position limit.

(b) *Application for relief.* Any person with a position in a referenced contract seeking recognition of such position as a bona fide hedging transaction or position in accordance with paragraph

(a)(1)(ii) of this section, or seeking an exemption for a spread position in accordance with paragraphs (a)(2)(ii) of this section, in each case for purposes of Federal speculative position limits set forth in §150.2, may apply to the Commission in accordance with this section.

(1) *Required information.* The application shall include the following information:

(i) With respect to an application for recognition of a bona fide hedging transaction or position:

(A) A description of the position in the commodity derivative contract for which the application is submitted, including but not necessarily limited to, the name of the underlying commodity and the derivative position size;

(B) An explanation of the hedging strategy, including a statement that the position complies with the requirements of section 4a(c)(2) of the Act and the definition of bona fide hedging transaction or position in §150.1, and information to demonstrate why the position satisfies such requirements and definition;

(C) A statement concerning the maximum size of all gross positions in commodity derivative contracts for which the application is submitted;

(D) A description of the applicant's activity in the cash markets and swaps markets for the commodity underlying the position for which the application is submitted, including, but not necessarily limited to, information regarding the offsetting cash positions; and

(E) Any other information that may help the Commission determine whether the position satisfies the requirements of section 4a(c)(2) of the Act and the definition of bona fide hedging transaction or position in §150.1.

(ii) With respect to an application for a spread exemption:

(A) A description of the spread position for which the application is submitted;

(B) A statement concerning the maximum size of all gross positions in commodity derivative contracts for which the application is submitted; and

(C) Any other information that may help the Commission determine whether the position is consistent with section 4a(a)(3)(B) of the Act.

(2) *Additional information.* If the Commission determines that it requires additional information in order to determine whether to recognize a position as a bona fide hedging transaction or position or to grant a spread exemption, the Commission shall:

(i) Notify the applicant of any supplemental information required; and

(ii) Provide the applicant with ten business days in which to provide the Commission with any supplemental information.

(3) *Timing of application.* (i) Except as provided in paragraph (b)(3)(ii) of this section, a person seeking relief in accordance with this section must apply to the Commission and receive a notice of approval of such application prior to the date that the position for which the application was submitted would be in excess of the applicable Federal speculative position limit set forth in §150.2;

(ii) Due to demonstrated sudden or unforeseen increases in its bona fide hedging needs, a person may apply for recognition of a bona fide hedging transaction or position within five business days after the person established the position that exceeded the applicable Federal speculative position limit.

(A) Any application filed pursuant to paragraph (b)(3)(ii) of this section must include an explanation of the circumstances warranting the sudden or unforeseen increases in bona fide hedging needs.

(B) If an application filed pursuant to paragraph (b)(3)(ii) of this section is denied, the person must bring its position within the Federal speculative position limits within a commercially reasonable time, as determined by the Commission in consultation with the applicant and the applicable designated contract market or swap execution facility.

(C) If an application filed pursuant to paragraph (b)(3)(ii) of this section is denied, the Commission will not pursue an enforcement action for a position limits violation for the person holding the position during the period of the Commission's review nor once the Commission has issued its determination so long as the application was submitted in good faith and the person

brings its position within the Federal speculative position limits within a commercially reasonable time in accordance with paragraph (b)(3)(ii)(B) of this section.

(4) *Commission determination.* After a review of any application submitted under paragraph (b) of this section and any supplemental information provided by the applicant, the Commission will determine, with respect to the transaction or position for which the application is submitted, whether to recognize all or a specified portion of such transaction or position as a bona fide hedging transaction or position or whether to exempt all or a specified portion of such spread transaction, as applicable. The Commission shall notify the applicant of its determination, and an applicant may exceed Federal speculative position limits set forth in §150.2, or in the case of applications filed pursuant to paragraph (b)(3)(ii) of this section, the applicant may rely upon the Commission's determination, upon receiving a notice of approval.

(5) *Renewal of application.* With respect to any application approved by the Commission pursuant to this section, a person shall renew such application if there are any material changes to the information provided in the original application pursuant to paragraph (b)(1) of this section or upon request by the Commission.

(6) *Commission revocation or modification.* If the Commission determines, at any time, that a recognized bona fide hedging transaction or position is no longer consistent with section 4a(c)(2) of the Act or the definition of bona fide hedging transaction or position in §150.1, or that a spread exemption is no longer consistent with section 4a(a)(3)(B) of the Act, the Commission shall:

(i) Notify the person holding such position;

(ii) Provide an opportunity for the applicant to respond to such notification; and

(iii) Issue a determination to revoke or modify the bona fide hedge recognition or spread exemption for purposes of Federal speculative position limits and, as applicable, require the person to reduce the derivative position within a commercially reasonable time, as

determined by the Commission in consultation with the applicant and the applicable designated contract market or swap execution facility, or otherwise come into compliance. This notification shall briefly specify the nature of the issues raised and the specific provisions of the Act or the Commission's regulations with which the position or application is, or appears to be, inconsistent.

(c) *Previously-granted risk management exemptions.* To the extent that exemptions previously granted under §1.47 of this chapter or by a designated contract market or a swap execution facility are for the risk management of positions in financial instruments, including but not limited to index funds, such exemptions shall no longer apply as of January 1, 2023.

(d) *Recordkeeping.* (1) Persons who avail themselves of exemptions under this section shall keep and maintain complete books and records concerning all details of each of their exemptions, including relevant information about related cash, forward, futures contracts, option on futures contracts, and swap positions and transactions (including anticipated requirements, production, merchandising activities, royalties, contracts for services, cash commodity products and by-products, cross-commodity hedges, and records of bona fide hedging swap counterparties) as applicable, and shall make such books and records available to the Commission upon request under paragraph (e) of this section.

(2) Any person that relies on a written representation received from another person that a swap qualifies as a pass-through swap under paragraph (2) of the definition of bona fide hedging transaction or position in §150.1 shall keep and make available to the Commission upon request the relevant books and records of such written representation, including any books and records that the person intends to use to demonstrate that the pass-through swap is a bona fide hedging transaction or position, for a period of at least two years following the expiration of the swap.

(3) All books and records required to be kept pursuant to this section shall

be kept in accordance with the requirements of §1.31 of this chapter.

(e) *Call for information.* Upon call by the Commission, the Director of the Division of Enforcement, or the Director's delegate, any person claiming an exemption from speculative position limits under this section shall provide to the Commission such information as specified in the call relating to: the positions owned or controlled by that person; trading done pursuant to the claimed exemption; the commodity derivative contracts or cash-market positions which support the claimed exemption; and the relevant business relationships supporting a claimed exemption.

(f) *Aggregation of accounts.* Entities required to aggregate accounts or positions under §150.4 shall be considered the same person for the purpose of determining whether they are eligible for an exemption under paragraphs (a)(1) through (4) of this section with respect to such aggregated account or position.

(g) *Delegation of authority to the Director of the Division of Market Oversight.* (1) The Commission hereby delegates, until it orders otherwise, to the Director of the Division of Market Oversight, or such other employee or employees as the Director may designate from time to time:

(i) The authority in paragraph (a)(3) of this section to provide exemptions in circumstances of financial distress;

(ii) The authority in paragraph (b)(2) of this section to request additional information with respect to a request for a bona fide hedging transaction or position recognition or spread exemption;

(iii) The authority in paragraph (b)(3)(ii)(B) of this section to, if applicable, determine a commercially reasonable amount of time required for a person to bring its position within the Federal speculative position limits;

(iv) The authority in paragraph (b)(4) of this section to determine whether to recognize a position as a bona fide hedging transaction or position or to grant a spread exemption; and

(v) The authority in paragraph (b)(2) or (5) of this section to request that a person submit updated materials or renew their request with the Commission.

(2) The Director of the Division of Market Oversight may submit to the Commission for its consideration any matter which has been delegated in this section.

(3) Nothing in this section prohibits the Commission, at its election, from exercising the authority delegated in this section.

[86 FR 3468, Jan. 14, 2021]

§ 150.4 Aggregation of positions.

(a) *Positions to be aggregated*—(1) *Trading control or 10 percent or greater ownership or equity interest.* For the purpose of applying the position limits set forth in §150.2, unless an exemption set forth in paragraph (b) of this section applies, all positions in accounts for which any person, by power of attorney or otherwise, directly or indirectly controls trading or holds a 10 percent or greater ownership or equity interest must be aggregated with the positions held and trading done by such person. For the purpose of determining the positions in accounts for which any person controls trading or holds a 10 percent or greater ownership or equity interest, positions or ownership or equity interests held by, and trading done or controlled by, two or more persons acting pursuant to an expressed or implied agreement or understanding shall be treated the same as if the positions or ownership or equity interests were held by, or the trading were done or controlled by, a single person.

(2) *Substantially identical trading.* Notwithstanding the provisions of paragraph (b) of this section, for the purpose of applying the position limits set forth in §150.2, any person that, by power of attorney or otherwise, holds or controls the trading of positions in more than one account or pool with substantially identical trading strategies, must aggregate all such positions (determined pro rata) with all other positions held and trading done by such person and the positions in accounts which the person must aggregate pursuant to paragraph (a)(1) of this section.

(b) *Exemptions from aggregation.* For the purpose of applying the position limits set forth in §150.2, and notwithstanding the provisions of paragraph (a)(1) of this section, but subject to the

provisions of paragraph (a)(2) of this section, the aggregation requirements of this section shall not apply in the circumstances set forth in this paragraph (b).

(1) *Exemption for ownership by limited partners, shareholders or other pool participants.* Any person that is a limited partner, limited member, shareholder or other similar type of pool participant holding positions in which the person by power of attorney or otherwise directly or indirectly has a 10 percent or greater ownership or equity interest in a pooled account or positions need not aggregate the accounts or positions of the pool with any other accounts or positions such person is required to aggregate, except that such person must aggregate the pooled account or positions with all other accounts or positions owned or controlled by such person if such person:

(i) Is the commodity pool operator of the pooled account;

(ii) Is a principal or affiliate of the operator of the pooled account, unless:

(A) The pool operator has, and enforces, written procedures to preclude the person from having knowledge of, gaining access to, or receiving data about the trading or positions of the pool;

(B) The person does not have direct, day-to-day supervisory authority or control over the pool's trading decisions;

(C) The person, if a principal of the operator of the pooled account, maintains only such minimum control over the commodity pool operator as is consistent with its responsibilities as a principal and necessary to fulfill its duty to supervise the trading activities of the commodity pool; and

(D) The pool operator has complied with the requirements of paragraph (c) of this section on behalf of the person or class of persons; or

(iii) Has, by power of attorney or otherwise directly or indirectly, a 25 percent or greater ownership or equity interest in a commodity pool, the operator of which is exempt from registration under §4.13 of this chapter.

(2) *Exemption for certain ownership of greater than 10 percent in an owned entity.* Any person with an ownership or equity interest in an owned entity of 10

§ 150.4

17 CFR Ch. I (4-1-21 Edition)

percent or greater (other than an interest in a pooled account subject to paragraph (b)(1) of this section), need not aggregate the accounts or positions of the owned entity with any other accounts or positions such person is required to aggregate, provided that:

(i) Such person, including any entity that such person must aggregate, and the owned entity (to the extent that such person is aware or should be aware of the activities and practices of the aggregated entity or the owned entity):

(A) Do not have knowledge of the trading decisions of the other;

(B) Trade pursuant to separately developed and independent trading systems;

(C) Have and enforce written procedures to preclude each from having knowledge of, gaining access to, or receiving data about, trades of the other. Such procedures must include security arrangements, including separate physical locations, which would maintain the independence of their activities;

(D) Do not share employees that control the trading decisions of either; and

(E) Do not have risk management systems that permit the sharing of its trades or its trading strategy with employees that control the trading decisions of the other; and

(ii) Such person complies with the requirements of paragraph (c) of this section.

(3) *Exemption for accounts held by futures commission merchants.* A futures commission merchant or any affiliate of a futures commission merchant need not aggregate positions it holds in a discretionary account, or in an account which is part of, or participates in, or receives trading advice from a customer trading program of a futures commission merchant or any of the officers, partners, or employees of such futures commission merchant or of its affiliates, if:

(i) A person other than the futures commission merchant or the affiliate directs trading in such an account;

(ii) The futures commission merchant or the affiliate maintains only such minimum control over the trading in such an account as is necessary to fulfill its duty to supervise diligently trading in the account;

(iii) Each trading decision of the discretionary account or the customer trading program is determined independently of all trading decisions in other accounts which the futures commission merchant or the affiliate holds, has a financial interest of 10 percent or more in, or controls; and

(iv) The futures commission merchant or the affiliate has complied with the requirements of paragraph (c) of this section.

(4) *Exemption for accounts carried by an independent account controller.* An eligible entity need not aggregate its positions with the eligible entity's client positions or accounts carried by an authorized independent account controller, as defined in §150.1(e), except for the spot month in physical-delivery commodity contracts, provided that the eligible entity has complied with the requirements of paragraph (c) of this section, and that the overall positions held or controlled by such independent account controller may not exceed the limits specified in §150.2.

(i) *Additional requirements for exemption of affiliated entities.* If the independent account controller is affiliated with the eligible entity or another independent account controller, each of the affiliated entities must:

(A) Have, and enforce, written procedures to preclude the affiliated entities from having knowledge of, gaining access to, or receiving data about, trades of the other. Such procedures must include security arrangements, including separate physical locations, which would maintain the independence of their activities; provided, however, that such procedures may provide for the disclosure of information which is reasonably necessary for an eligible entity to maintain the level of control consistent with its fiduciary responsibilities to the managed positions and accounts and necessary to fulfill its duty to supervise diligently the trading done on its behalf;

(B) Trade such accounts pursuant to separately developed and independent trading systems;

(C) Market such trading systems separately; and

(D) Solicit funds for such trading by separate disclosure documents that meet the standards of §4.24 or §4.34 of

this chapter, as applicable, where such disclosure documents are required under part 4 of this chapter.

(i) [Reserved]

(5) *Exemption for underwriting.* A person need not aggregate the positions or accounts of an owned entity if the ownership or equity interest is based on the ownership of securities constituting the whole or a part of an unsold allotment to or subscription by such person as a participant in the distribution of such securities by the issuer or by or through an underwriter.

(6) *Exemption for broker-dealer activity.* A broker-dealer registered with the Securities and Exchange Commission, or similarly registered with a foreign regulatory authority, need not aggregate the positions or accounts of an owned entity if the ownership or equity interest is based on the ownership of securities acquired in the normal course of business as a dealer, *provided that* such person does not have actual knowledge of the trading decisions of the owned entity.

(7) *Exemption for information sharing restriction.* A person need not aggregate the positions or accounts of an owned entity if the sharing of information associated with such aggregation (such as, only by way of example, information reflecting the transactions and positions of a such person and the owned entity) creates a reasonable risk that either person could violate state or federal law or the law of a foreign jurisdiction, or regulations adopted thereunder, *provided that* such person does not have actual knowledge of information associated with such aggregation, and *provided further that* such person has filed a prior notice pursuant to paragraph (c) of this section and included with such notice a written memorandum of law explaining in detail the basis for the conclusion that the sharing of information creates a reasonable risk that either person could violate state or federal law or the law of a foreign jurisdiction, or regulations adopted thereunder. However, the exemption in this paragraph shall not apply where the law or regulation serves as a means to evade the aggregation of accounts or positions. All documents submitted pursuant to this paragraph shall be in English, or if not, ac-

companied by an official English translation.

(8) *Exemption for affiliated entities.* After a person has filed a notice under paragraph (c) of this section, another person need not file a separate notice identifying any position or account identified in such notice filing, *provided that*:

(i) Such other person has an ownership or equity interest of 10 percent or greater in the person that filed the notice, or the person that filed the notice has an ownership or equity interest of 10 percent or greater in such other person, or an ownership or equity interest of 10 percent or greater is held in such other person by a third person who holds an ownership or equity interest of 10 percent or greater in the person that has filed the notice (in any such case, the ownership or equity interest may be held directly or indirectly);

(ii) Such other person complies with the conditions applicable to the exemption specified in such notice filing, other than the filing requirements; and

(iii) Such other person does not otherwise control trading of any account or position identified in such notice filing.

(iv) Upon call by the Commission, any person relying on the exemption in this paragraph (b)(8) shall provide to the Commission such information concerning the person's claim for exemption. Upon notice and opportunity for the affected person to respond, the Commission may amend, suspend, terminate, or otherwise modify a person's aggregation exemption for failure to comply with the provisions of this section.

(c) *Notice filing for exemption.* (1) Persons seeking an aggregation exemption under paragraph (b)(1)(ii), (b)(2), (b)(3), (b)(4), or (b)(7) of this section shall file a notice with the Commission, which shall be effective upon submission of the notice (or earlier, as provided in paragraph (c)(2) of this section), and shall include:

(i) A description of the relevant circumstances that warrant disaggregation; and

(ii) A statement of a senior officer of the entity certifying that the conditions set forth in the applicable aggregation exemption provision have been met.

(2) If a person newly acquires an ownership or equity interest in an owned entity of 10 percent or greater and is eligible for the aggregation exemption under paragraph (b)(2) of this section, the person may elect that a notice filed under this paragraph (c) shall be effective as of the date of such acquisition if such notice is filed no later than 60 days after such acquisition.

(3) Upon call by the Commission, any person claiming an aggregation exemption under this section shall provide such information demonstrating that the person meets the requirements of the exemption, as is requested by the Commission. Upon notice and opportunity for the affected person to respond, the Commission may amend, suspend, terminate, or otherwise modify a person's aggregation exemption for failure to comply with the provisions of this section.

(4) In the event of a material change to the information provided in any notice filed under this paragraph (c), an updated or amended notice shall promptly be filed detailing the material change.

(5) Any notice filed under this paragraph (c) shall be submitted in the form and manner provided for in paragraph (d) of this section.

(6) If a person is eligible for an aggregation exemption under paragraph (b)(1)(ii), (b)(2), (b)(3), (b)(4), or (b)(7) of this section, a failure to timely file a notice under this paragraph (c) shall not constitute a violation of paragraph (a)(1) of this section or any position limit set forth in § 150.2 if such notice is filed no later than five business days after the person is aware, or should be aware, that such notice has not been timely filed.

(d) *Form and manner of reporting and submitting information or filings.* Unless otherwise instructed by the Commission or its designees, any person submitting reports under this section shall submit the corresponding required filings and any other information required under this part to the Commission using the format, coding struc-

ture, and electronic data transmission procedures approved in writing by the Commission. Unless otherwise provided in this section, the notice shall be effective upon filing. When the reporting entity discovers errors or omissions to past reports, the entity shall so notify the Commission and file corrected information in a form and manner and at a time as may be instructed by the Commission or its designee.

(e) *Delegation of authority.* (1) The Commission hereby delegates, until it orders otherwise, to the Director of the Division of Enforcement, or such other employee or employees as the Director may designate from time to time, the authority:

(i) In paragraph (b)(8)(iv) of this section to call for additional information from a person claiming the exemption in paragraph (b)(8) of this section.

(ii) In paragraph (c)(3) of this section to call for additional information from a person claiming an aggregation exemption under this section.

(2) The Commission hereby delegates, until it orders otherwise, to the Director of the Office of Data and Technology, with the concurrence of the Director of the Division of Enforcement, or such other employee or employees as the Directors each may designate from time to time, the authority in paragraph (d) of this section to provide instructions or determine the format, coding structure, and electronic data transmission procedures for submitting data records and any other information required under this part.

(3) The Directors of the Division of Enforcement and the Office of Data and Technology may submit to the Commission for its consideration any matter which has been delegated in this section.

(4) Nothing in this section prohibits the Commission, at its election, from exercising the authority delegated in this section.

[81 FR 91490, Dec. 16, 2016, as amended at 82 FR 28770, June 26, 2017]

§ 150.5 Exchange-set speculative position limits and exemptions therefrom.

(a) *Requirements for exchange-set limits on commodity derivative contracts subject to Federal speculative position limits set*

forth in §150.2—(1) *Exchange-set limits.* For any commodity derivative contract that is subject to a Federal speculative position limit under §150.2, a designated contract market or swap execution facility that is a trading facility shall set a speculative position limit no higher than the level specified in §150.2.

(2) *Exemptions to exchange-set limits.* A designated contract market or swap execution facility that is a trading facility may grant exemptions from any speculative position limits it sets under paragraph (a)(1) of this section in accordance with the following:

(i) *Exemption levels.* An exemption that conforms to an exemption the Commission identified in:

(A) Sections 150.3(a)(1)(i), (a)(2)(i), (a)(4) and (a)(5) may be granted at a level that exceeds the level of the applicable Federal limit in §150.2;

(B) Sections 150.3(a)(1)(ii) and (a)(2)(ii) may be granted at a level that exceeds the level of the applicable Federal limit in §150.2, *provided* the exemption is first approved in accordance with §150.3(b) or 150.9, as applicable;

(C) Section 150.3(a)(3) may be granted at a level that exceeds the level of the applicable Federal limit in §150.2, *provided that*, a division of the Commission has first approved such exemption pursuant to a request submitted under §140.99(a)(1) of this chapter; and

(D) An exemption of the type that does not conform to any of the exemptions identified in §150.3(a) must be granted at a level that does not exceed the applicable Federal limit in §150.2 and that complies with paragraph (a)(2)(ii)(G) of this section, unless the Commission has first approved such exemption pursuant to §150.3(b) or pursuant to a request submitted under §140.99(a)(1).

(ii) *Application for exemption from exchange-set limits.* With respect to a designated contract market or swap execution facility that is a trading facility that elects to grant exemptions under paragraph (a)(2)(i) of this section:

(A) Except as provided in paragraph (a)(2)(ii)(B) of this section, the designated contract market or swap execution facility shall require an entity to file an application requesting such exemption in advance of the date that

such position would be in excess of the limits then in effect. Such application shall include any information needed to enable the designated contract market or swap execution facility and the Commission to determine whether the facts and circumstances demonstrate that the designated contract market or swap execution facility may grant an exemption. Any application for a bona fide hedging transaction or position shall include a description of the applicant's activity in the cash markets and swaps markets for the commodity underlying the position for which the application is submitted, including, but not limited to, information regarding the offsetting cash positions.

(B) The designated contract market or swap execution facility may adopt rules that allow a person, due to demonstrated sudden or unforeseen increases in its bona fide hedging needs, to file an application to request a recognition of a bona fide hedging transaction or position within five business days after the person established the position that exceeded the applicable exchange-set speculative position limit.

(C) The designated contract market or swap execution facility must require that any application filed pursuant to paragraph (a)(2)(ii)(B) of this section include an explanation of the circumstances warranting the sudden or unforeseen increases in bona fide hedging needs.

(D) If an application filed pursuant to paragraph (a)(2)(ii)(B) of this section is denied, the applicant must bring its position within the designated contract market or swap execution facility's speculative position limits within a commercially reasonable time as determined by the designated contract market or swap execution facility.

(E) The Commission will not pursue an enforcement action for a position limits violation for the person holding the position during the period of the designated contract market or swap execution facility's review nor once the designated contract market or swap execution facility has issued its determination, so long as the application was submitted in good faith and the applicant brings its position within the designated contract market or swap

§ 150.5

17 CFR Ch. I (4-1-21 Edition)

execution facility's speculative position limits within a commercially reasonable time as determined by the designated contract market or swap execution facility.

(F) The designated contract market or swap execution facility shall require, for any such exemption granted, that the entity re-apply for the exemption at least annually;

(G) The designated contract market or swap execution facility:

(1) May, in accordance with the designated contract market or swap execution facility's rules, deny any such application, or limit, condition, or revoke any such exemption, at any time after providing notice to the applicant, and

(2) Shall consider whether the requested exemption would result in positions that would not be in accord with sound commercial practices in the relevant commodity derivative market and/or that would exceed an amount that may be established and liquidated in an orderly fashion in that market; and

(H) Notwithstanding paragraph (a)(2)(ii)(G) of this section, the designated contract market or swap execution facility may grant exemptions, subject to terms, conditions, or limitations, that require a person to exit any referenced contract positions in excess of position limits during the lesser of the last five days of trading or the time period for the spot month in such physical-delivery contract, or to otherwise limit the size of such position during that time period. Designated contract markets and swap execution facilities may refer to paragraph (b) of appendix B or appendix G to part 150, for guidance regarding the foregoing, as applicable.

(3) *Exchange-set limits on pre-existing positions*—(i) *Pre-existing positions in a spot month.* A designated contract market or swap execution facility that is a trading facility shall require compliance with spot month exchange-set speculative position limits for pre-existing positions in commodity derivative contracts other than pre-enactment swaps and transition period swaps.

(ii) *Pre-existing positions in a non-spot month.* A single month or all-months-

combined speculative position limit established under paragraph (a)(1) of this section shall apply to any pre-existing positions in commodity derivative contracts, other than pre-enactment swaps and transition period swaps.

(4) *Monthly reports detailing the disposition of each exemption application.* (i) For commodity derivative contracts subject to Federal speculative position limits, the designated contract market or swap execution facility shall submit to the Commission a report each month showing the disposition of any exemption application, including the recognition of any position as a bona fide hedging transaction or position, the exemption of any spread transaction or other position, the renewal, revocation, or modification of a previously granted recognition or exemption, and the rejection of any application, as well as the following details for each application:

(A) The date of disposition;

(B) The effective date of the disposition;

(C) The expiration date of any recognition or exemption;

(D) Any unique identifier(s) the designated contract market or swap execution facility may assign to track the application, or the specific type of recognition or exemption;

(E) If the application is for an enumerated bona fide hedging transaction or position, the name of the enumerated bona fide hedging transaction or position listed in appendix A to this part;

(F) If the application is for a spread transaction listed in the spread transaction definition in §150.1, the name of the spread transaction as it is listed in §150.1;

(G) The identity of the applicant;

(H) The listed commodity derivative contract or position(s) to which the application pertains;

(I) The underlying cash commodity;

(J) The maximum size of the commodity derivative position that is recognized by the designated contract market or swap execution facility as a bona fide hedging transaction or position, specified by contract month and by the type of limit as spot month, single month, or all-months-combined, as applicable;

(K) Any size limitations or conditions established for a spread exemption or other exemption; and

(L) For a bona fide hedging transaction or position, a concise summary of the applicant's activity in the cash markets and swaps markets for the commodity underlying the commodity derivative position for which the application was submitted.

(ii) The designated contract market or swap execution facility shall submit to the Commission the information required by paragraph (a)(4)(i) of this section:

(A) As specified by the Commission on the Forms and Submissions page at www.cftc.gov; and

(B) Using the format, coding structure, and electronic data transmission procedures approved in writing by the Commission.

(b) *Requirements for exchange-set limits on commodity derivative contracts in a physical commodity that are not subject to the limits set forth in §150.2—(1) Exchange-set spot-month limits.* For any physical commodity derivative contract that is not subject to a Federal speculative position limit under §150.2, a designated contract market or swap execution facility that is a trading facility shall set a speculative position limit as follows:

(i) *Spot month speculative position limit levels.* For any commodity derivative contract subject to paragraph (b) of this section, a designated contract market or swap execution facility that is a trading facility shall establish speculative position limits for the spot month no greater than 25 percent of the estimated spot month deliverable supply, calculated separately for each month to be listed.

(ii) *Additional sources for compliance.* Alternatively, a designated contract market or swap execution facility that is a trading facility may submit rules to the Commission establishing spot month speculative position limits other than as provided in paragraph (b)(1)(i) of this section, provided that each limit is set at a level that is necessary and appropriate to reduce the potential threat of market manipulation or price distortion of the contract's or the underlying commodity's price or index.

(2) *Exchange-set limits or accountability outside of the spot month—(i) Non-spot month speculative position limit or accountability levels.* For any commodity derivative contract subject to paragraph (b) of this section, a designated contract market or swap execution facility that is a trading facility shall adopt either speculative position limits or position accountability outside of the spot month at a level that is necessary and appropriate to reduce the potential threat of market manipulation or price distortion of the contract's or the underlying commodity's price or index.

(ii) *Additional sources for compliance.* A designated contract market or swap execution facility that is a trading facility may refer to the non-exclusive acceptable practices in paragraph (b) of appendix F of this part to demonstrate to the Commission compliance with the requirements of paragraph (b)(2)(i) of this section.

(3) *Look-alike contracts.* For any newly listed commodity derivative contract subject to paragraph (b) of this section that is substantially the same as an existing contract listed on a designated contract market or swap execution facility that is a trading facility, the designated contract market or swap execution facility that is a trading facility listing such newly listed contract shall adopt spot month, individual month, and all-months-combined speculative position limits comparable to those of the existing contract. Alternatively, if such designated contract market or swap execution facility seeks to adopt speculative position limits that are not comparable to those of the existing contract, such designated contract market or swap execution facility shall demonstrate to the Commission how the levels comply with paragraphs (b)(1) and/or (b)(2) of this section.

(4) *Exemptions to exchange-set limits.* A designated contract market or swap execution facility that is a trading facility may grant exemptions from any speculative position limits it sets under paragraph (b)(1) or (2) of this section in accordance with the following:

§ 150.6

17 CFR Ch. I (4–1–21 Edition)

(i) An entity seeking an exemption shall be required to apply to the designated contract market or swap execution facility for any such exemption from its speculative position limit rules; and

(ii) A designated contract market or swap execution facility that is a trading facility may deny any such application, or limit, condition, or revoke any such exemption, at any time after providing notice to the applicant. Such designated contract market or swap execution facility shall consider whether the requested exemption would result in positions that would not be in accord with sound commercial practices in the relevant commodity derivative market and/or would exceed an amount that may be established and liquidated in an orderly fashion in that market.

(c) *Requirements for security futures products.* For security futures products, speculative position limits and position accountability requirements are specified in § 41.25 of this chapter.

(d) *Rules on aggregation.* For commodity derivative contracts in a physical commodity, a designated contract market or swap execution facility that is a trading facility shall have aggregation rules that conform to § 150.4.

(e) *Requirements for submissions to the Commission.* In order for a designated contract market or swap execution facility that is a trading facility to adopt speculative position limits and/or position accountability pursuant to paragraph (a) or (b) of this section and/or to elect to offer exemptions from any such levels pursuant to such paragraphs, the designated contract market or swap execution facility shall submit to the Commission pursuant to part 40 of this chapter rules establishing such levels and/or exemptions. To the extent that a designated contract market or swap execution facility adopts speculative position limit levels, such part 40 submission shall also include the methodology by which such levels are calculated. The designated contract market or swap execution facility shall review such speculative position limit levels regularly for compliance with this section and update such speculative position limit levels as needed.

(f) *Delegation of authority to the Director of the Division of Market Oversight—*

(1) *Commission delegations.* The Commission hereby delegates, until it orders otherwise, to the Director of the Division of Market Oversight, or such other employee or employees as the Director may designate from time to time, the authority in paragraph (a)(4)(ii) of this section to provide instructions regarding the submission to the Commission of information required to be reported, pursuant to paragraph (a)(4)(i) of this section, by a designated contract market or swap execution facility, to specify the manner for submitting such information on the Forms and Submissions page at www.cftc.gov, and to determine the format, coding structure, and electronic data transmission procedures for submitting such information.

(2) *Commission consideration of delegated matter.* The Director of the Division of Market Oversight may submit to the Commission for its consideration any matter which has been delegated in this section.

(3) *Commission authority.* Nothing in this section prohibits the Commission, at its election, from exercising the authority delegated in this section.

[86 FR 3470, Jan. 14, 2021]

§ 150.6 Scope.

This part shall only be construed as having an effect on speculative position limits set by the Commission or by a designated contract market or swap execution facility, including any associated recordkeeping and reporting regulations in this chapter. Nothing in this part shall be construed to relieve any designated contract market, swap execution facility, or its governing board from responsibility under section 5(d)(4) of the Act to prevent manipulation and corners. Further, nothing in this part shall be construed to affect any other provisions of the Act or Commission regulations, including, but not limited to, those relating to actual or attempted manipulation, corners, squeezes, fraudulent or deceptive conduct, or to prohibited transactions.

[86 FR 3472, Jan. 14, 2021]

§ 150.7 [Reserved]

§ 150.8 Severability.

If any provision of this part, or the application thereof to any person or circumstances, is held invalid, such invalidity shall not affect the validity of other provisions or the application of such provision to other persons or circumstances that can be given effect without the invalid provision or application.

[86 FR 3472, Jan. 14, 2021]

§ 150.9 Process for recognizing non-enumerated bona fide hedging transactions or positions with respect to Federal speculative position limits.

For purposes of Federal speculative position limits, a person with a position in a referenced contract seeking recognition of such position as a non-enumerated bona fide hedging transaction or position, in accordance with § 150.3(a)(1)(ii), shall apply to the Commission, pursuant to § 150.3(b), or apply to a designated contract market or swap execution facility in accordance with this section. If such person submits an application to a designated contract market or swap execution facility in accordance with this section, and the designated contract market or swap execution facility, with respect to its own speculative position limits established pursuant to § 150.5(a), recognizes the person's position as a non-enumerated bona fide hedging transaction or position, then the person may also exceed the applicable Federal speculative position limit for such position in accordance with paragraph (e) of this section. The designated contract market or swap execution facility may approve such applications only if the designated contract market or swap execution facility complies with the conditions set forth in paragraphs (a) through (e) of this section.

(a) *Approval of rules.* The designated contract market or swap execution facility must maintain rules that establish application processes and conditions for recognizing bona fide hedging transactions or positions consistent with the requirements of this section, and must seek approval of such rules

from the Commission pursuant to § 40.5 of this chapter.

(b) *Prerequisites for a designated contract market or swap execution facility to recognize a bona fide hedging transaction or position in accordance with this section.* (1) The designated contract market or swap execution facility lists the applicable referenced contract for trading;

(2) The position meets the definition of bona fide hedging transaction or position in section 4a(c)(2) of the Act and the definition of bona fide hedging transaction or position in § 150.1; and

(3) The designated contract market or swap execution facility does not recognize as a bona fide hedging transaction or position any position involving a commodity index contract and one or more referenced contracts, including exemptions known as risk management exemptions.

(c) *Application process.* The designated contract market or swap execution facility's application process meets the following conditions:

(1) *Required application information.* The designated contract market or swap execution facility requires the applicant to provide, and can obtain from the applicant, all information needed to enable the designated contract market or swap execution facility and the Commission to determine whether the facts and circumstances demonstrate that the designated contract market or swap execution facility may recognize a position as a bona fide hedging transaction or position, including the following:

(i) A description of the position in the commodity derivative contract for which the application is submitted, including but not limited to, the name of the underlying commodity and the derivative position size;

(ii) An explanation of the hedging strategy, including a statement that the position complies with the requirements of section 4a(c)(2) of the Act and the definition of bona fide hedging transaction or position in § 150.1, and information to demonstrate why the position satisfies such requirements and definition;

(iii) A statement concerning the maximum size of all gross positions in

commodity derivative contracts for which the application is submitted;

(iv) A description of the applicant's activity in the cash markets and the swaps markets for the commodity underlying the position for which the application is submitted, including, but not limited to, information regarding the offsetting cash positions; and

(v) Any other information the designated contract market or swap execution facility requires, in its discretion, to determine that the position complies with paragraph (b)(2) of this section, as applicable.

(2) *Timing of application.* (i) Except as provided in paragraph (c)(2)(ii) of this section, the designated contract market or swap execution facility requires the applicant to submit an application and receive a notice of approval of such application from the designated contract market or swap execution facility prior to the date that the position for which such application was submitted would be in excess of the applicable Federal speculative position limits.

(ii) A designated contract market or swap execution facility may adopt rules that allow a person, due to demonstrated sudden or unforeseen increases in its bona fide hedging needs, to file an application with the designated contract market or swap execution facility to request a recognition of a bona fide hedging transaction or position within five business days after the person established the position that exceeded the applicable Federal speculative position limit.

(A) The designated contract market or swap execution facility must require that any application filed pursuant to paragraph (c)(2)(ii) of this section include an explanation of the circumstances warranting the sudden or unforeseen increases in bona fide hedging needs.

(B) If an application filed pursuant to paragraph (c)(2)(ii) of this section is denied by the designated contract market, swap execution facility, or Commission, the applicant must bring its position within the applicable Federal speculative position limits within a commercially reasonable time as determined by the Commission in consultation with the applicant and the appli-

cable designated contract market or swap execution facility.

(C) The Commission will not pursue an enforcement action for a position limits violation for the person holding the position during the period of the designated contract market, swap execution facility, or Commission's review nor once a determination has been issued, so long as the application was submitted in good faith and the person complies with paragraph (c)(2)(ii)(B) of this section.

(3) *Renewal of applications.* The designated contract market or swap execution facility requires each applicant to reapply with the designated contract market or swap execution facility to maintain such recognition at least on an annual basis by updating the initial application, and to receive a notice of extension of the original approval from the designated contract market or swap execution facility to continue relying on such recognition for purposes of Federal speculative position limits. If the facts and circumstances underlying a renewal application are materially different than the initial application, the designated contract market or swap execution facility is required to treat such application as a new request submitted through the §150.9 process and subject to the Commission's 10/2-day review process in paragraph (e) of this section.

(4) *Exchange revocation authority.* The designated contract market or swap execution facility retains its authority to limit, condition, or revoke, at any time after providing notice to the applicant, any bona fide hedging transaction or position recognition for purposes of the designated contract market or swap execution facility's speculative position limits established under §150.5(a), for any reason as determined in the discretion of the designated contract market or swap execution facility, including if the designated contract market or swap execution facility determines that the position no longer meets the conditions set forth in paragraph (b) of this section, as applicable.

(d) *Recordkeeping.* (1) The designated contract market or swap execution facility keeps full, complete, and systematic records, which include all pertinent data and memoranda, of all activities relating to the processing of such applications and the disposition thereof. Such records include:

(i) Records of the designated contract market's or swap execution facility's recognition of any derivative position as a bona fide hedging transaction or position, revocation or modification of any such recognition, or the rejection of an application;

(ii) All information and documents submitted by an applicant in connection with its application, including documentation and information that is submitted after the disposition of the application, and any withdrawal, supplementation, or update of any application;

(iii) Records of oral and written communications between the designated contract market or swap execution facility and the applicant in connection with such application; and

(iv) All information and documents in connection with the designated contract market or swap execution facility's analysis of, and action(s) taken with respect to, such application.

(2) All books and records required to be kept pursuant to this section shall be kept in accordance with the requirements of §1.31 of this chapter.

(e) *Process for a person to exceed Federal speculative position limits on a referenced contract—(1) Notification to the Commission.* The designated contract market or swap execution facility must submit to the Commission a notification of each initial determination to recognize a bona fide hedging transaction or position in accordance with this section, concurrently with the notice of such determination the designated contract market or swap execution facility provides to the applicant.

(2) *Notification requirements.* The notification in paragraph (e)(1) of this section shall include, at a minimum, the following information:

(i) Name of the applicant;

(ii) Brief description of the bona fide hedging transaction or position being recognized;

(iii) Name of the contract(s) relevant to the recognition;

(iv) The maximum size of the position that may exceed Federal speculative position limits;

(v) The effective date and expiration date of the recognition;

(vi) An indication regarding whether the position may be maintained during the last five days of trading during the spot month, or the time period for the spot month; and

(vii) A copy of the application and any supporting materials.

(3) *Exceeding Federal speculative position limits on referenced contracts.* A person may exceed Federal speculative position limits on a referenced contract after the designated contract market or swap execution facility issues the notification required pursuant to paragraph (e)(1) of this section, unless the Commission notifies the designated contract market or swap execution facility and the applicant otherwise, pursuant to paragraph (e)(5) or (6) of this section, before the ten business day period expires.

(4) *Exceeding Federal speculative position limits on referenced contracts due to sudden or unforeseen circumstances.* If a person files an application for a recognition of a bona fide hedging transaction or position in accordance with paragraph (c)(2)(i) of this section, then such person may rely on the designated contract market or swap execution facility's determination to grant such recognition for purposes of Federal speculative position limits two business days after the designated contract market or swap execution facility issues the notification required pursuant to paragraph (e)(1) of this section, unless the Commission notifies the designated contract market or swap execution facility and the applicant otherwise, pursuant to paragraph (e)(5) or (6) of this section, before the two business day period expires.

(5) *Commission stay of pending applications and requests for additional information.* The Commission may stay an application that requires additional time to analyze, and/or may request additional information to determine whether the position for which the application is submitted meets the conditions

set forth in paragraph (b) of this section. The Commission shall notify the applicable designated contract market or swap execution facility and the applicant of a Commission determination to stay the application and/or request any supplemental information, and shall provide an opportunity for the applicant to respond. The Commission will have an additional 45 days from the date of the stay notification to conduct the review and issue a determination with respect to the application. If the Commission stays an application and the applicant has not yet exceeded Federal speculative position limits, then the applicant may not exceed Federal speculative position limits unless the Commission approves the application. If the Commission stays an application and the applicant has already exceeded Federal speculative position limits, then the applicant may continue to maintain the position unless the Commission notifies the designated contract market or swap execution facility and the applicant otherwise, pursuant to paragraph (e)(6) of this section.

(6) *Commission determination for pending applications.* If, during the Commission's ten or two business day review period in paragraphs (e)(3) and (4) of this section, the Commission determines that a position for which the application is submitted does not meet the conditions set forth in paragraph (b) of this section, the Commission shall:

(i) Notify the designated contract market or swap execution facility and the applicant within ten or two business days, as applicable, after the designated contract market or swap execution facility issues the notification required pursuant to paragraph (e)(1) of this section;

(ii) Provide an opportunity for the applicant to respond to such notification;

(iii) Issue a determination to deny the application, or limit or condition the application approval for purposes of Federal speculative position limits and, as applicable, require the person to reduce the derivatives position within a commercially reasonable time, as determined by the Commission in consultation with the applicant and the

applicable designated contract market or swap execution facility, or otherwise come into compliance; and

(iv) The Commission will not pursue an enforcement action for a position limits violation for the person holding the position during the period of the Commission's review nor once the Commission has issued its determination, so long as the application was submitted in good faith and the person complies with any requirement to reduce the position pursuant to paragraph (e)(6)(iii) of this section, as applicable.

(f) *Commission revocation of applications previously approved.* (1) If a designated contract market or a swap execution facility limits, conditions, or revokes any recognition of a bona fide hedging transaction or position for purposes of the respective designated contract market's or swap execution facility's speculative position limits established under §150.5(a), then such recognition will also be deemed limited, conditioned, or revoked for purposes of Federal speculative position limits.

(2) If the Commission determines, at any time, that a position that has been recognized as a bona fide hedging transaction or position for purposes of Federal speculative position limits is no longer consistent with section 4a(c)(2) of the Act or the definition of bona fide hedging transaction or position in §150.1, the following applies:

(i) The Commission shall notify the person holding the position and the relevant designated contract market or swap execution facility. After providing such person and such designated contract market or swap execution facility an opportunity to respond, the Commission may, in its discretion, limit, condition, or revoke its determination for purposes of Federal speculative position limits and require the person to reduce the derivatives position within a commercially reasonable time as determined by the Commission in consultation with such person and such designated contract market or swap execution facility, or otherwise come into compliance;

(ii) The Commission shall include in its notification a brief explanation of the nature of the issues raised and the

specific provisions of the Act or the Commission's regulations with which the position or application is, or appears to be, inconsistent; and

(iii) The Commission will not pursue an enforcement action for a position limits violation for the person holding the position during the period of the Commission's review, nor once the Commission has issued its determination, provided the person submitted the application in good faith and reduces the position within a commercially reasonable time, as determined by the Commission in consultation with such person and the relevant designated contract market or swap execution facility, or otherwise comes into compliance.

(g) *Delegation of authority to the Director of the Division of Market Oversight—*

(1) *Commission delegations.* The Commission hereby delegates, until it orders otherwise, to the Director of the Division of Market Oversight, or such other employee or employees as the Director may designate from time to time, the authority to request additional information, pursuant to paragraph (e)(5) of this section, from the applicable designated contract market or swap execution facility and applicant.

(2) *Commission consideration of delegated matter.* The Director of the Division of Market Oversight may submit to the Commission for its consideration any matter which has been delegated in this section.

(3) *Commission authority.* Nothing in this section prohibits the Commission, at its election, from exercising the authority delegated in this section.

[86 FR 3472, Jan. 14, 2021]

APPENDIX A TO PART 150—LIST OF ENUMERATED BONA FIDE HEDGES

Pursuant to §150.3(a)(1)(i), positions that comply with the bona fide hedging transaction or position definition in §150.1 and that are enumerated in this appendix A may exceed Federal speculative position limits to the extent that all applicable requirements in this part are met. A person holding such positions enumerated in this appendix A may exceed Federal speculative position limits for such positions without requesting prior approval under §150.3 or §150.9. A person holding such positions that are not enumerated in this appendix A must request and obtain approval pursuant to §150.3 or §150.9

prior to exceeding the applicable Federal speculative position limits—unless such positions qualify for the retroactive approval process, and the person seeks retroactive approval in accordance with §150.3 or §150.9.

The enumerated bona fide hedges do not state the exclusive means for establishing compliance with the bona fide hedging transaction or position definition in §150.1 or with the requirements of §150.3(a)(1).

(a) *Enumerated hedges—*(1) *Hedges of inventory and cash commodity fixed-price purchase contracts.* Short positions in commodity derivative contracts that do not exceed in quantity the sum of the person's ownership of inventory and fixed-price purchase contracts in the commodity derivative contracts' underlying cash commodity.

(2) *Hedges of cash commodity fixed-price sales contracts.* Long positions in commodity derivative contracts that do not exceed in quantity the sum of the person's fixed-price sales contracts in the commodity derivative contracts' underlying cash commodity and the quantity equivalent of fixed-price sales contracts of the cash products and by-products of such commodity.

(3) *Hedges of offsetting unfixed-price cash commodity sales and purchases.* Both short and long positions in commodity derivative contracts that do not exceed in quantity the amount of the commodity derivative contracts' underlying cash commodity that has been both bought and sold by the same person at unfixed prices:

(i) Basis different delivery months in the same commodity derivative contract; or

(ii) Basis different commodity derivative contracts in the same commodity, regardless of whether the commodity derivative contracts are in the same calendar month.

(4) *Hedges of unsold anticipated production.* Short positions in commodity derivative contracts that do not exceed in quantity the person's unsold anticipated production of the commodity derivative contracts' underlying cash commodity.

(5) *Hedges of unfilled anticipated requirements.* Long positions in commodity derivative contracts that do not exceed in quantity the person's unfilled anticipated requirements for the commodity derivative contracts' underlying cash commodity, for processing, manufacturing, or use by that person, or for resale by a utility as it pertains to the utility's obligations to meet the unfilled anticipated demand of its customers for the customer's use.

(6) *Hedges of anticipated merchandising.* Long or short positions in commodity derivative contracts that offset the anticipated change in value of the underlying commodity that a person anticipates purchasing or selling, *provided that:*

(i) The positions in the commodity derivative contracts do not exceed in quantity twelve months' of current or anticipated

purchase or sale requirements of the same cash commodity that is anticipated to be purchased or sold; and

(ii) The person is a merchant handling the underlying commodity that is subject to the anticipatory merchandising hedge, and that such merchant is entering into the position solely for purposes related to its merchandising business and has a demonstrated history of buying and selling the underlying commodity for its merchandising business.

(7) *Hedges by agents.* Long or short positions in commodity derivative contracts by an agent who does not own or has not contracted to sell or purchase the commodity derivative contracts' underlying cash commodity at a fixed price, *provided that* the agent is responsible for merchandising the cash positions that are being offset in commodity derivative contracts and the agent has a contractual arrangement with the person who owns the commodity or holds the cash-market commitment being offset.

(8) *Hedges of anticipated mineral royalties.* Short positions in a person's commodity derivative contracts offset by the anticipated change in value of mineral royalty rights that are owned by that person, *provided that* the royalty rights arise out of the production of the commodity underlying the commodity derivative contracts.

(9) *Hedges of anticipated services.* Short or long positions in a person's commodity derivative contracts offset by the anticipated change in value of receipts or payments due or expected to be due under an executed contract for services held by that person, *provided that* the contract for services arises out of the production, manufacturing, processing, use, or transportation of the commodity underlying the commodity derivative contracts.

(10) *Offsets of commodity trade options.* Long or short positions in commodity derivative contracts that do not exceed in quantity, on a futures-equivalent basis, a position in a commodity trade option that meets the requirements of §32.3 of this chapter. Such commodity trade option transaction, if it meets the requirements of §32.3 of this chapter, may be deemed, for purposes of complying with this paragraph (a)(10) of this appendix A, as either a cash commodity purchase or sales contract as set forth in paragraph (a)(1) or (2) of this appendix A, as applicable.

(11) *Cross-commodity hedges.* Positions in commodity derivative contracts described in paragraph (2) of the bona fide hedging transaction or position definition in §150.1 or in paragraphs (a)(1) through (10) of this appendix A may also be used to offset the risks arising from a commodity other than the cash commodity underlying the commodity derivative contracts, *provided that* the fluctuations in value of the cash commodity underlying the commodity derivative con-

tracts, shall be substantially related to the fluctuations in value of the actual or anticipated cash commodity position or a pass-through swap.

(b) [Reserved]

[86 FR 3475, Jan. 14, 2021]

APPENDIX B TO PART 150—GUIDANCE ON GROSS HEDGING POSITIONS AND POSITIONS HELD DURING THE SPOT PERIOD

(a) *Guidance on gross hedging positions.* (1) A person's gross hedging positions may be deemed in compliance with the bona fide hedging transaction or position definition in §150.1, whether enumerated or non-enumerated, *provided that* all applicable regulatory requirements are met, including that the position is economically appropriate to the reduction of risks in the conduct and management of a commercial enterprise and otherwise satisfies the bona fide hedging definition in §150.1, and *provided further that*:

(i) The manner in which the person measures risk is consistent and follows historical practice for that person;

(ii) The person is not measuring risk on a gross basis to evade the speculative position limits in §150.2 or the aggregation rules in §150.4; and

(iii) The person is able to demonstrate compliance with paragraphs (a)(1)(i) and (ii) of this appendix, including by providing justifications for measuring risk on a gross basis, upon the request of the Commission and/or of a designated contract market, including by providing information regarding the entities with which the person aggregates positions.

(b) *Guidance regarding positions held during the spot period.* The regulations governing exchange-set speculative position limits and exemptions therefrom under §150.5(a)(2)(ii)(D) provide that designated contract markets and swap execution facilities ("exchanges") may impose restrictions on bona fide hedging transaction or position exemptions to require the person to exit any such positions in excess of limits during the lesser of the last five days of trading or the time period for the spot month in such physical-delivery contract, or otherwise limit the size of such position. This guidance is intended to provide factors the Commission believes exchanges should consider when determining whether to impose a five-day rule or similar restriction but is not intended to be used as a mandatory checklist. The exchanges may consider whether:

(1) The position complies with the bona fide hedging transaction or position definition in §150.1, whether enumerated or non-enumerated;

(2) There is an economically appropriate need to maintain such position in excess of

Federal speculative position limits during the spot period for such contract, and such need relates to the purchase or sale of a cash commodity; and

(3) The person wishing to exceed Federal position limits during the spot period:

(i) Intends to make or take delivery during that time period;

(ii) Has the ability to take delivery for any long position at levels that are economically appropriate (*i.e.*, the delivery comports with the person's demonstrated need for the commodity and the contract is the most economical source for that commodity);

(iii) Has the ability to deliver against any short position (*i.e.*, has inventory on hand in a deliverable location and in a condition in which the commodity can be used upon delivery and that delivery against futures contracts is economically appropriate, as it is the best sales option for that inventory).

[86 FR 3475, Jan. 14, 2021]

APPENDIX C TO PART 150—GUIDANCE REGARDING THE DEFINITION OF REFERENCED CONTRACT

This appendix C provides guidance regarding the "referenced contract" definition in §150.1, which provides in paragraph (3) of the definition of referenced contract that the term referenced contract does not include a location basis contract, a commodity index contract, a swap guarantee, a trade option that meets the requirements of §32.3 of this chapter, a monthly average pricing contract, or an outright price reporting agency index contract. The term "referenced contract" is used throughout part 150 of the Commission's regulations to refer to contracts that are subject to Federal position limits. A position in a contract that is not a referenced contract is not subject to Federal position limits, and, as a consequence, cannot be netted with positions in referenced contracts for purposes of Federal position limits. This guidance is intended to clarify the types of contracts that would qualify as a location basis contract, commodity index contract, monthly average pricing contract, or outright price reporting agency index contract.

Compliance with this guidance does not diminish or replace, in any event, the obligations and requirements of any person to comply with the regulations provided under this part, or any other part of the Commission's regulations. The guidance is for illustrative purposes only and does not state the exclusive means for a contract to qualify, or not qualify, as a referenced contract as defined in §150.1, or to comply with any other provision in this part.

(a) *Guidance.* (1) As provided in paragraph (3) of the "referenced contract" definition in §150.1, the following types of contracts are not deemed referenced contracts, meaning

such contracts are not subject to Federal position limits and cannot be netted with positions in referenced contracts for purposes of Federal position limits: location basis contracts; commodity index contracts; swap guarantees; trade options that meet the requirements of §32.3 of this chapter; monthly average pricing contracts; and outright price reporting agency index contracts.

(2) *Location basis contract.* For purposes of the referenced contract definition in §150.1, a location basis contract means a commodity derivative contract that is cash-settled based on the difference in:

(i) The price, directly or indirectly, of:

(A) A particular core referenced futures contract; or

(B) A commodity deliverable on a particular core referenced futures contract, whether at par, a fixed discount to par, or a premium to par; and

(ii) The price, at a different delivery location or pricing point than that of the same particular core referenced futures contract, directly or indirectly, of:

(A) A commodity deliverable on the same particular core referenced futures contract, whether at par, a fixed discount to par, or a premium to par; or

(B) A commodity that is listed in appendix D to this part as substantially the same as a commodity underlying the same core referenced futures contract.

(3) *Commodity index contract.* For purposes of the referenced contract definition in §150.1, a commodity index contract means an agreement, contract, or transaction that is based on an index comprised of prices of commodities that are not the same or substantially the same, and that is not a location basis contract, a calendar spread contract, or an intercommodity spread contract as such terms are defined in this guidance, where:

(i) A calendar spread contract means a cash-settled agreement, contract, or transaction that represents the difference between the settlement price in one or a series of contract months of an agreement, contract, or transaction and the settlement price of another contract month or another series of contract months' settlement prices for the same agreement, contract, or transaction; and

(ii) An intercommodity spread contract means a cash-settled agreement, contract, or transaction that represents the difference between the settlement price of a referenced contract and the settlement price of another contract, agreement, or transaction that is based on a different commodity.

(4) *Monthly average pricing contract* means a contract that satisfies one of the following:

(i) The contract's price is calculated based on the equally-weighted arithmetic average

Pt. 150, App. D

17 CFR Ch. I (4–1–21 Edition)

of the daily prices of the underlying referenced contract for the entire corresponding calendar month or trade month, as applicable; or

(i) In determining the price of such contract, the component daily prices, in the aggregate, during the spot month of the underlying referenced contract comprise no more than 40 percent of such contract's weighting.

(5) *Outright price reporting agency index contract* means any outright commodity derivative contract whose settlement price is based solely on an index published by a price reporting agency that surveys cash-market transaction prices, *provided, however*, that this term does not include any commodity derivative contract that settles at a basis, or differential, between a referenced contract and a price reporting agency index.

(b) [Reserved]

[86 FR 3475, Jan. 14, 2021]

APPENDIX D TO PART 150—COMMODITIES LISTED AS SUBSTANTIALLY THE SAME FOR PURPOSES OF THE TERM “LOCATION BASIS CONTRACT” AS USED IN THE REFERENCED CONTRACT DEFINITION

The following table lists each relevant core referenced futures contract and associated commodities that are treated as substantially the same as a commodity underlying a core referenced futures contract for purposes of the term “location basis contract” as such term is used in the referenced contract definition under §150.1, and as such term is discussed in appendix C to this part.

Commodity Futures Trading Commission

Pt. 150, App. D

LOCATION BASIS CONTRACT LIST OF SUBSTANTIALLY THE SAME COMMODITIES

Core Referenced Futures Contract	Commodities Considered Substantially the Same (regardless of location)	Source(s) for Specification of Quality
NYMEX Light Sweet Crude Oil futures contract (CL)	1. Light Louisiana Sweet (LLS) Crude Oil	1a) NYMEX Argus LLS vs. WTI (Argus) Trade Month futures contract (E5)
		1b) NYMEX LLS (Argus) vs. WTI Financial futures contract (WJ)
		1c) ICE Futures Europe Crude Diff—Argus LLS vs WTI 1 st Line Swap futures contract (ARK)
		1d) ICE Futures Europe Crude Diff—Argus LLS vs WTI Trade Month Swap futures contract (ARL)
NYMEX New York Harbor ULSD Heating Oil futures contract (HO)	1. Chicago ULSD	1a) NYMEX Chicago ULSD (Platts) vs. NY Harbor ULSD Heating Oil futures contract (5C)
	2. Gulf Coast ULSD	2a) NYMEX Group Three ULSD (Platts) vs. NY Harbor ULSD Heating Oil futures contract (A6)
		2b) NYMEX Gulf Coast ULSD (Argus) Up-Down futures contract (US)
		2c) NYMEX Gulf Coast ULSD (Platts) Up-Down Spread futures contract (LT)
		2d) ICE Futures Europe Diesel Diff- Gulf Coast vs Heating Oil 1 st Line Swap futures contract (GOH)
		2e) CME Clearing Europe Gulf Coast ULSD(Platts) vs. New York Heating Oil (NYMEX) Spread Calendar swap (ELT)
		2f) CME Clearing Europe New York Heating Oil (NYMEX) vs.

Core Referenced Futures Contract	Commodities Considered Substantially the Same (regardless of location)	Source(s) for Specification of Quality
		European Gasoil (IC) Spread Calendar swap (EHA)
	3. California Air Resources Board Spec ULSD (CARB no. 2 oil)	3a) NYMEX Los Angeles CARB Diesel (OPIS) vs. NY Harbor ULSD Heating Oil futures contract (KL)
	4. Gas Oil Deliverable in Antwerp, Rotterdam, or Amsterdam Area	4a) ICE Futures Europe Gasoil futures contract (G)
		4b) ICE Futures Europe Heating Oil Arb—Heating Oil 1 st Line vs Gasoil 1 st Line Swap futures contract (HOT)
		4c) ICE Futures Europe Heating Oil Arb—Heating Oil 1 st Line vs Low Sulphur Gasoil 1 st Line Swap futures contract (ULL)
		4d) NYMEX NY Harbor ULSD Heating Oil vs. Gasoil futures contract (HA)
NYMEX RBOB Gasoline futures contract (RB)	1. Chicago Unleaded 87 gasoline	1a) NYMEX Chicago Unleaded Gasoline (Platts) vs. RBOB Gasoline futures contract (3C)
		1b) NYMEX Group Three Unleaded Gasoline (Platts) vs. RBOB Gasoline futures contract (A8)
	2. Gulf Coast Conventional Blendstock for Oxygenated Blending (CBOB) 87	2a) NYMEX Gulf Coast CBOB Gasoline A1 (Platts) vs. RBOB Gasoline futures contract (CBA)
		2b) NYMEX Gulf Coast Unl 87 (Argus) Up-Down futures contract (UZ)
	3. Gulf Coast CBOB 87 (Summer Assessment)	3a) NYMEX Gulf Coast CBOB Gasoline A2 (Platts) vs. RBOB Gasoline futures contract (CRB)
	4. Gulf Coast Unleaded 87 (Summer Assessment)	4a) NYMEX Gulf Coast 87 Gasoline M2 (Platts) vs. RBOB Gasoline futures contract (RVG)
	5. Gulf Coast Unleaded 87	5a) NYMEX Gulf Coast Unl 87 Gasoline M1 (Platts) vs. RBOB Gasoline futures contract (RV)

Core Referenced Futures Contract	Commodities Considered Substantially the Same (regardless of location)	Source(s) for Specification of Quality
		5b) CME Clearing Europe Gulf Coast Unleaded 87 Gasoline M1 (Platts) vs. New York RBOB Gasoline (NYMEX) Spread Calendar swap (ERV)
	6. Los Angeles California Reformulated Blendstock for Oxygenate Blending (CARBOB) Regular	6a) NYMEX Los Angeles CARBOB Gasoline (OPIS) vs. RBOB Gasoline futures contract (JL)
	7. Los Angeles California Reformulated Blendstock for Oxygenate Blending (CARBOB) Premium	7a) NYMEX Los Angeles CARBOB Gasoline (OPIS) vs. RBOB Gasoline futures contract (JL)
	8. Euro-BOB OXY NWE Barges	8a) NYMEX RBOB Gasoline vs. Euro-bob Oxy NWE Barges (Argus) (1000mt) futures contract (EXR)
		8b) CME Clearing Europe New York RBOB Gasoline (NYMEX) vs. European Gasoline Euro-bob Oxy Barges NWE (Argus) (1000mt) Spread Calendar swap (EEXR)
	9. Euro-BOB OXY FOB Rotterdam	9a) ICE Futures Europe Gasoline Diff—RBOB Gasoline 1 st Line vs. Argus Euro-BOB OXY FOB Rotterdam Barge Swap futures contract (ROE)

[86 FR 3475, Jan. 14, 2021]

APPENDIX E TO PART 150—SPECULATIVE POSITION LIMIT LEVELS

Contract	Spot Month	Single Month and All-Months-Combined
Legacy Agricultural		
Chicago Board of Trade Corn (C)	1,200	57,800
Chicago Board of Trade Oats (O)	600	2,000
Chicago Board of Trade Soybeans (S)	1,200	27,300
Chicago Board of Trade Soybean Meal (SM)	1,500	16,900
Chicago Board of Trade Soybean Oil (SO)	1,100	17,400
Chicago Board of Trade Wheat (W)	1,200	19,300
Chicago Board of Trade KC HRW Wheat (KW)	1,200	12,000
Minneapolis Grain Exchange Hard Red Spring Wheat (MWE)	1,200	12,000
ICE Futures U.S. Cotton No. 2 (CT)	900	5,950 (single month) 11,900 (all-months-combined)
Other Agricultural		
Chicago Board of Trade Rough Rice (RR)	800	Not Applicable
Chicago Mercantile Exchange Live Cattle (LC)	600/300/200 ¹	Not Applicable
ICE Futures U.S. Cocoa (CC)	4,900	Not Applicable
ICE Futures U.S. Coffee C (KC)	1,700	Not Applicable
ICE Futures U.S. FCOJ-A (OJ)	2,200	Not Applicable
ICE Futures U.S. Sugar No. 11 (SB)	25,800	Not Applicable

¹Step-down spot month limits apply to positions net long or net short as follows: 600 contracts at the close of trading on the first

business day following the first Friday of the contract month; 300 contracts at the close of trading on the business day prior to the last five trading days of the contract month; and 200 contracts at the close of trading on the

Contract	Spot Month	Single Month and All-Months-Combined
ICE Futures U.S. Sugar No. 16 (SF)	6,400	Not Applicable
Energy		
New York Mercantile Exchange Henry Hub Natural Gas (NG)	2,000 ²	Not Applicable
New York Mercantile Exchange Light Sweet Crude Oil (CL)	6,000/5,000/4,000 ³	Not Applicable
New York Mercantile Exchange NY Harbor ULSD (HO)	2,000	Not Applicable
New York Mercantile Exchange RBOB Gasoline (RB)	2,000	Not Applicable
Metal		
Commodity Exchange, Inc. Copper (HG)	1,000	Not Applicable
Commodity Exchange, Inc. Gold (GC)	6,000	Not Applicable
Commodity Exchange, Inc. Silver (SI)	3,000	Not Applicable
New York Mercantile Exchange Palladium (PA)	50	Not Applicable
New York Mercantile Exchange Platinum (PL)	500	Not Applicable

[86 FR 3475, Jan. 14, 2021]

business day prior to the last two trading days of the contract month.

²For persons that are not availing themselves of the §150.3(a)(4) conditional spot month limit exemption in natural gas, the 2,000 contract spot month speculative position limit level applies to: (1) the physically-settled NYMEX Henry Hub Natural Gas (NG) core referenced futures contract and any other physically-settled contract that qualifies as a referenced contract to NYMEX Henry Hub Natural Gas (NG) under the definition of "referenced contract" under §150.1, in the aggregate across all exchanges listing a physically-settled NYMEX Henry Hub Nat-

ural Gas (NG) referenced contract and the OTC swaps market, net long or net short; and (2) the cash-settled NYMEX Henry Hub Natural Gas (NG) referenced contracts, net long or net short, on a per-exchange basis for each exchange that lists one or more cash-settled NYMEX Henry Hub Natural Gas (NG) referenced contract(s) rather than aggregated across such exchanges. Further, an additional 2,000 contract limit, net long or net short, applies across all cash-settled economically equivalent NYMEX Henry Hub Natural Gas (NG) OTC swaps.

³Step-down spot month limits apply to positions net long or net short as follows: 6,000

Continued

APPENDIX F TO PART 150—GUIDANCE ON, AND ACCEPTABLE PRACTICES IN, COMPLIANCE WITH THE REQUIREMENTS FOR EXCHANGE-SET LIMITS AND POSITION ACCOUNTABILITY ON COMMODITY DERIVATIVE CONTRACTS

The following are guidance and acceptable practices for compliance with §150.5. Compliance with the acceptable practices and guidance does not diminish or replace, in any event, the obligations and requirements of the person to comply with the other regulations provided under this part. The acceptable practices and guidance are for illustrative purposes only and do not state the exclusive means for establishing compliance with §150.5.

(a) *Acceptable practices for compliance with §150.5(b)(2)(i) regarding exchange-set limits or accountability outside of the spot month.* A designated contract market or swap execution facility that is a trading facility may satisfy §150.5(b)(2)(i) by complying with either of the following acceptable practices:

(1) *Non-spot month speculative position limits.* For any commodity derivative contract subject to §150.5(b), a designated contract market or swap execution facility that is a trading facility sets individual single month or all-months-combined levels no greater than any one of the following:

(i) The average of historical position sizes held by speculative traders in the contract as a percentage of the average combined futures and delta-adjusted option month-end open interest for that contract for the most recent calendar year;

(ii) The level of the spot month limit for the contract;

(iii) 5,000 contracts (scaled-down proportionally to the notional quantity per contract relative to the typical cash-market transaction if the notional quantity per contract is larger than the typical cash-market transaction, and scaled up proportionally to the notional quantity per contract relative to the typical cash-market transaction if the notional quantity per contract is smaller than the typical cash-market transaction); or

(iv) 10 percent of the average combined futures and delta-adjusted option month-end open interest in the contract for the most recent calendar year up to 50,000 contracts, with a marginal increase of 2.5 percent of open interest thereafter.

contracts at the close of trading three business days prior to the last trading day of the contract; 5,000 contracts at the close of trading two business days prior to the last trading day of the contract; and 4,000 contracts at the close of trading one business day prior to the last trading day of the contract.

(2) *Non-spot month position accountability.* For any commodity derivative contract subject to §150.5(b), a designated contract market or swap execution facility that is a trading facility adopts position accountability, as defined in §150.1.

(b) [Reserved]

[86 FR 3475, Jan. 14, 2021]

APPENDIX G TO PART 150—GUIDANCE ON SPREAD TRANSACTION EXEMPTIONS GRANTED FOR CONTRACTS THAT ARE SUBJECT TO FEDERAL SPECULATIVE POSITION LIMITS

Positions that comply with §150.3(a)(2)(i) or (ii) may exceed Federal speculative position limits, provided that the entity separately requests a spread transaction exemption from the relevant exchange's position limits established pursuant to proposed §150.5(a). The following provides guidance to exchanges and market participants on the use of spread transaction exemptions granted pursuant to §150.5(a). Exchanges and market participants may also consider this guidance for purposes of spread transaction exemptions granted pursuant to §150.5(b). The following guidance includes recommendations for exchanges and market participants to consider when granting or relying on spread transaction exemptions for positions that include referenced contracts that are subject to Federal speculative position limits.

(a) *General guidance on spread transaction exemptions for referenced contracts.* (1) When granting spread transaction exemptions pursuant to §150.5(a), an exchange should:

(i) Collect sufficient information from the market participant to be able to:

(A) Understand the spread strategy, consistent with §150.5(a)(2)(ii)(A); and

(B) Verify that there is a material economic relationship between the legs of the spread transaction, consistent with the requirement in §150.5(a)(2)(ii)(G) to grant exemptions in accordance with sound commercial practices;

(ii) Consider whether granting the spread transaction exemption would, to the maximum extent practicable:

(A) Ensure sufficient market liquidity for bona fide hedgers; and

(B) Not unduly reduce the effectiveness of Federal speculative position limits to:

(1) Diminish, eliminate, or prevent excessive speculation;

(2) Deter and prevent market manipulations, squeezes, and corners; and

(3) Ensure that the price discovery function of the underlying market is not disrupted;

(iii) Consider implementing safeguards to ensure that when granting spread transaction exemptions, especially during the

spot period, the exchange is able to comply with all statutory and regulatory obligations, including the requirements of:

(A) DCM Core Principle 2 and SEF Core Principle 2, as applicable, to, among other things, prohibit abusive trading practices on its markets by members and market participants, and prohibit any other manipulative or disruptive trading practices prohibited by the Act or Commission regulations;

(B) DCM Core Principle 4 and SEF Core Principle 4, as applicable, to prevent manipulation, price distortion, and disruptions of the delivery or cash-settlement process through market surveillance, compliance, and enforcement practices and procedures;

(C) DCM Core Principle 5 and SEF Core Principle 6, as applicable, to implement exchange-set position limits in a manner that reduces the potential threat of market manipulation or congestion; and

(D) DCM Core Principle 12, as applicable, to protect markets and market participants from abusive practices committed by any party, including abusive practices committed by a party acting as an agent for a participant; and to promote fair and equitable trading on the contract market;

(iv) Ensure that any spread exemption transaction does not impede convergence or facilitate the formation of artificial prices; and

(v) Provide a cap or limit on the maximum size of all gross positions permitted under the spread transaction exemption.

(2) The Commission reminds market participants that when utilizing a spread transaction exemption, compliance with Federal speculative position limits or an exemption thereto does not confer any type of safe harbor or good faith defense to a claim that the participant has engaged in an attempted or perfected manipulation or willfully circumvented or evaded speculative position limits, consistent with the Commission's anti-evasion provision in § 150.2(i).

(b) *Guidance on transactions permitted under the spread transaction definition.* (1) The Commission understands that market participants are generally familiar with the meaning of intra-market spreads, inter-market spreads, intra-commodity spreads, and inter-commodity spreads, as those terms are used in the spread transaction definition in § 150.1. However, for the avoidance of confusion, the Commission provides the following descriptions of such spread strategies to assist exchanges in their analysis of whether a spread position complies with the spread transaction definition. The Commission generally understands that the following spread strategies are typically defined as follows:

(i) *Intra-market spread* means a long (short) position in one or more commodity derivative contracts in a particular commodity, or its products or by-products, and a short (long) position in one or more commodity de-

rivative contracts in the same, or similar, commodity, or its products or by-products, on the same designated contract market or swap execution facility.

(ii) *Inter-market spread* means a long (short) position in one or more commodity derivative contracts in a particular commodity, or its products or by-products, at a particular designated contract market or swap execution facility and a short (long) position in one or more commodity derivative contracts in that same, or similar, commodity, or its products or by-products, away from that particular designated contract market or swap execution facility.

(iii) *Intra-commodity spread* means a long (short) position in one or more commodity derivatives contracts in a particular commodity, or its product or by-products, and a short (long) position in one or more commodity derivative contracts in the same, or similar, commodity, or its products or by-products.

(iv) *Inter-commodity spread* means a long (short) position in one or more commodity derivatives contracts in a particular commodity, or its product or by-products, and a short (long) position in one or more commodity derivative contracts in a different commodity or its products or by-products.

(2) The following is a non-exhaustive list of spread strategies that comply with the spread transaction definition in § 150.1:

(i) An inter-market spread transaction in which the legs of the transaction are futures contracts in the same, or similar commodity, or its products or its by-products, and same calendar month or expiration;

(ii) A spread transaction in which one leg is a referenced contract, as defined in § 150.1, and the other leg is a commodity derivative contract, as defined in § 150.1, that is not a referenced contract (including over-the-counter commodity derivative contracts);

(iii) A spread transaction between a physically-settled contract and a cash-settled contract;

(iv) A spread transaction between two cash-settled contracts; and

(v) Spread transactions that are "legged in," that is, carried out in two steps, or alternatively are "combination trades," that is, all components of the spread are executed simultaneously or contemporaneously.

(3) A spread transaction exemption cannot be used to exceed the conditional spot month limit exemption, in § 150.3(a)(4), for positions in natural gas.

(4) The spread transaction definition does not include a single cash-settled agreement, contract or transaction that, by its terms and conditions:

(i) Simply represents the difference (or basis) between the settlement price of a referenced contract and the settlement price of another contract, agreement, or transaction (whether or not a referenced contract), and

(ii) Does not comprise separate long and short positions.

(5) The spread transaction definition does not include a spread position involving a commodity index contract and one or more referenced contracts.

(c) *Guidance on cash-and-carry exemptions.* The spread transaction definition in §150.1 would permit transactions commonly known as “cash-and-carry” trades whereby a market participant enters a long futures position in the spot month and an equivalent short futures position in the following month, in order to guarantee a return that, at minimum, covers the costs of its carrying charges, such as the cost of financing, insuring, and storing the physical inventory until the next expiration (including insurance, storage fees, and financing costs, as well as other costs such as aging discounts that are specific to individual commodities). With this exemption, the market participant is able to take physical delivery of the product in the nearby month and may redeliver the same product in a deferred month. When determining whether to grant, and when monitoring, cash-and-carry spread transaction exemptions, the exchange should consider:

(1) Implementing safeguards to require a market participant relying on such an exemption to reduce its position below the speculative Federal position limit within a timely manner once market prices no longer permit entry into a full carry transaction;

(2) Implementing safeguards that require market participants to liquidate all long positions in the nearby contract month before the price of the nearby contract month rises to a premium to the second (2nd) contract month; and

(3) Requiring market participants that seek to rely on such exemption to:

(i) Provide information about their expected cost of carrying the physical commodity, and the quantity of stocks currently owned in exchange-licensed warehouses or tank facilities; and

(ii) Agree that before the price of the nearby contract month rises to a premium to the second (2nd) contract month, the market participant will liquidate all long positions in the nearby contract month.

[86 FR 3475, Jan. 14, 2021]

PART 151 [RESERVED]

PART 155—TRADING STANDARDS

Sec.

155.1 Definitions.

155.2 Trading standards for floor brokers.

155.3 Trading standards for futures commission merchants.

155.4 Trading standards for introducing brokers.

155.5-155.6 [Reserved]

155.10 Exemptions.

AUTHORITY: 7 U.S.C. 6b, 6c, 6g, 6j and 12a, unless otherwise noted.

§ 155.1 Definitions.

For purposes of this part, the term *affiliated person* of a futures commission merchant or of an introducing broker means any general partner, officer, director, owner of more than ten percent of the equity interest, associated person or employee of the futures commission merchant or of the introducing broker, and any relative or spouse of any of the foregoing persons, or any relative of such spouse, who shares the same home as any of the foregoing persons.

(Approved by the Office of Management and Budget under control numbers 3038-0007 and 3038-0022)

[46 FR 63036, Dec. 30, 1981, and 48 FR 35304, Aug. 3, 1983]

§ 155.2 Trading standards for floor brokers.

Each contract market shall adopt rules which shall, at a minimum, with respect to each member of the contract market acting as a floor broker:

(a) Prohibit such member from purchasing any commodity for future delivery, purchasing any call option, or selling any put option, for his own account or for any account in which he has an interest, while holding an order of another person for the (1) purchase of any future, (2) purchase of any call option, or (3) sale of any put option, in the same commodity which is executable at the market price or at the price at which such purchase or sale can be made for the member's own account or any account in which he has an interest.

(b) Prohibit such member from selling any commodity for future delivery, selling any call option, or purchasing any put option, for his own account or for any account in which he has an interest, while holding an order of another person for the (1) sale of any future, (2) sale of any call option, or (3) purchase of any put option, in the same commodity which is executable at the market price or at the price at which such sale or purchase can be made for