traffic/publications/airspace_amendments/.

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Availability and Summary of Documents Proposed for Incorporation by Reference

This document proposes to amend FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015. FAA Order 7400.9Z is publicly available as listed in the **ADDRESSES** section of this proposed rule. FAA Order 7400.9Z lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by establishing Class E airspace extending upward from 700 feet above the surface at U.S. Coast Guard Station Neah Bay Heliport, Neah Bay, WA. Establishment of a GPS approach has made this action necessary for the safety and management of IFR operations at the heliport. Class E airspace would be established within a 1-mile radius of the U.S. Coast Guard Station Neah Bay Heliport, with a segment extending from the 1-mile radius to 2.5 miles northeast of the heliport.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9Z, dated August 6, 2015, and effective September 15, 2015, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

The FAA has determined this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation; (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

ANM WA E5 U.S. Coast Guard Station Neah Bay Heliport, Neah Bay, WA [New]

U.S. Coast Guard Station Neah Bay Heliport, Neah Bay, WA

(lat. 48°22′14″ N., long. 124°35′53″ W.)

That airspace extending upward from 700 feet above the surface within a 1-mile radius of the U.S. Coast Guard Station Neah Bay Heliport, and within 1 mile each side of the 055° bearing from the heliport extending from the 1-mile radius to 2.5 miles northeast of the heliport.

Issued in Seattle, Washington, on September 21, 2015.

Christopher Ramirez,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2015–24431 Filed 9–28–15; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 150

RIN 3038–AD82

Aggregation of Positions

AGENCY: Commodity Futures Trading Commission.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: On November 15, 2013, the Commodity Futures Trading Commission (''Commission'' or ''CFTC'') published in the **Federal Register** a notice of proposed modifications to part 150 of the Commission's regulations. The modifications addressed the policy for aggregation under the Commission's position limits regime for futures and option contracts on nine agricultural commodities set forth in part 150. The Commission also noted that if the Commission's proposed position limits regime for 28 exempt and agricultural commodity futures and options contracts and the physical commodity swaps that are economically equivalent to such contracts are finalized, the proposed modifications would also apply to the position limits regime for those contracts and swaps. The Commission is now proposing a revision to its proposed modification to the aggregation provisions of part 150, which addresses when aggregation is required on the basis of ownership of a greater than 50 percent interest in another entity.

DATES: Comments must be received on or before November 13, 2015.

ADDRESSES: You may submit comments, identified by RIN 3038–AD82, by any of the following methods:

- *CFTC Web site: http://comments.cftc.gov*. Follow the instructions for submitting comments through the Comments Online process on the Web site.
- *Mail:* Send to Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures

Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

- *Hand Delivery/Courier:* Same as Mail, above.
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow instructions for submitting comments.

Please submit your comments using only one of these methods.

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

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

FOR FURTHER INFORMATION CONTACT:

Stephen Sherrod, Senior Economist, Division of Market Oversight, (202) 418–5452, *ssherrod@cftc.gov*; Riva Spear Adriance, Senior Special Counsel, Division of Market Oversight, (202) 418–5494, *radriance@cftc.gov*; or Mark Fajfar, Assistant General Counsel, Office of General Counsel, (202) 418–6636, *mfajfar@cftc.gov*; Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

A. Introduction

The Commission has long established and enforced speculative position limits for futures and options contracts on various agricultural commodities as authorized by the Commodity Exchange Act (''CEA'').[1] The part 150 position limits regime [2] generally includes three components: (1) The level of the limits, which set a threshold that restricts the number of speculative positions that a person may hold in the spot-month, individual month, and all months combined,[3] (2) exemptions for positions that constitute bona fide hedging transactions and certain other types of transactions,[4] and (3) rules to determine which accounts and positions a person must aggregate for the purpose of determining compliance with the position limit levels.[5]

The Commission's existing aggregation policy under regulation 150.4 generally requires that unless a particular exemption applies, a person must aggregate all positions for which that person controls the trading decisions with all positions for which that person has a 10 percent or greater ownership interest in an account or position, as well as the positions of two or more persons acting pursuant to an express or implied agreement or understanding.[6] The scope of exemptions from aggregation include the ownership interests of limited partners in pooled accounts,[7] discretionary accounts and customer trading programs of futures commission merchants (''FCM''),[8] and eligible entities with independent account controllers that manage customer positions (''IAC'' or ''IAC exemption'').[9] Market participants claiming one of the exemptions from aggregation are subject to a call by the Commission for information demonstrating compliance with the conditions applicable to the claimed exemption.[10]

B. Proposed Modifications to the Policy for Aggregation Under Part 150 of the Commission's Regulations

On November 15, 2013, the Commission proposed to amend regulation 150.4, and certain related regulations, to include rules to determine which accounts and positions a person must aggregate (the ''2013 Aggregation Proposal'').[11] Among other elements, the 2013 Aggregation Proposal included a notice filing procedure, effective upon submission, to permit a person in specified circumstances to disaggregate the positions of a separately organized entity (''owned entity''), if such person has between a 10 percent and 50 percent ownership or equity interest in the owned entity.[12] The notice filing would need to demonstrate compliance with certain conditions set forth in the proposed rule. Under the 2013 Aggregation Proposal, persons with a greater than 50 percent ownership or equity interest in the owned entity would have to apply on a case-by-case basis to the Commission for permission to disaggregate, and await the Commission's decision as to whether certain conditions specified in the proposed rule had been satisfied and therefore disaggregation would be permitted.[13]

The 2013 Aggregation Proposal reflected the Commission's long-standing incremental approach to exemptions from the aggregation requirement for persons owning a financial interest in an entity. In the 2013 Aggregation Proposal, the Commission reaffirmed its belief that ownership of an entity is an appropriate criterion for aggregation of that entity's positions, noting that section 4a(a)(1) of the CEA provides that ''[i]n determining whether any person has exceeded such limits, the positions held and trading done by any persons directly or indirectly controlled by such person shall be included with the positions held and trading done by such person.'' [14] The Commission explained that as early as 1957, the Commission's predecessor (the Commodity Exchange Authority) issued determinations requiring that accounts in which a

---

[1] 7 U.S.C. 1 *et seq.*

[2] *See* 17 CFR part 150. Part 150 of the Commission's regulations establishes federal position limits on certain enumerated agricultural contracts; the listed commodities are referred to as enumerated agricultural commodities. The Commission has proposed to amend its position limits regime so that it would extend to 28 exempt and agricultural commodity futures and options contracts and the physical commodity swaps that are economically equivalent to such contracts. *See* Position Limits for Derivatives, 78 FR 75680 (Dec. 12, 2013).

[3] *See* 17 CFR 150.2.

[4] *See* 17 CFR 150.3.

[5] *See* 17 CFR 150.4.

[6] *See* 17 CFR 150.4(a) and (b).

[7] *See* 17 CFR 150.4(c).

[8] *See* 17 CFR 150.4(d).

[9] *See* 17 CFR 150.3(a)(4).

[10] *See* 17 CFR 150.3(b) and 150.4(e).

[11] *See* Aggregation, Position Limits for Futures and Swaps, 78 FR 68946 (Nov. 15, 2013). The 2013 Aggregation Proposal was substantially similar to aggregation rules that had been adopted in part 151 of the Commission's regulations in 2011, *see* Position Limits for Futures and Swaps, 76 FR 71626 (Nov. 18, 2011) as proposed to be amended in May 2012, *see* Aggregation, Position Limits for Futures and Swaps, 77 FR 31767 (May 30, 2012).

In an Order dated September 28, 2012, the District Court for the District of Columbia vacated part 151 of the Commission's regulations, including those aggregation rules. *See International Swaps and Derivatives Association* v. *United States Commodity Futures Trading Commission,* 887 F. Supp. 2d 259 (D.D.C. 2012). The revised position limit levels in amended section 150.2 were not vacated.

[12] *See* 2013 Aggregation Proposal, 78 FR at 68958–59.

[13] *See id.* at 68959–61.

[14] *See id.* at 68956, citing 7 U.S.C. 6a(a)(1).

person has a financial interest be included in aggregation.[15]

Regarding the threshold level at which an exemption from aggregation on the basis of ownership would be available, the Commission noted in the 2013 Aggregation Proposal that it has generally found that an ownership or equity interest of less than 10 percent in an account or position that is controlled by another person who makes discretionary trading decisions does not present a concern that such ownership interest results in control over trading or can be used indirectly to create a large speculative position through ownership interests in multiple accounts. As such, the Commission has exempted an ownership interest below 10 percent from the aggregation requirement.[16]

The Commission noted that while other of its rulemakings prior to the 2013 Aggregation Proposal generally restricted exemptions from aggregation based on ownership to FCMs, limited partner investors in commodity pools, and independent account controllers managing customer funds for an eligible entity, a broader passive investment exemption has previously been considered but not enacted by the Commission.[17] Further, the Commission reiterated its belief in incremental development of aggregation exemptions over time.[18] Consistent with that incremental approach, in the 2013 Aggregation Proposal the Commission considered the additional information provided and the concerns raised by commenters on the May 2012 aggregation proposal and proposed two new tiers of relief from the ownership criteria of aggregation—relief on the basis of a notice filing, effective upon submission, by persons holding an interest of between 10 percent and 50 percent in an owned entity, and relief on the basis of an application by persons holding an interest of more than 50 percent in an owned entity.[19] Each of these procedures for relief in the 2013 Aggregation Proposal is described briefly below.

1. Disaggregation Relief for Ownership or Equity Interests of 50 Percent or Less

Proposed rule § 150.4(b)(2), as set out in the 2013 Aggregation Proposal, would continue the Commission's longstanding rule that persons with either an ownership or an equity interest in an account or position of less than 10 percent need not aggregate such positions solely on the basis of the ownership criteria, and persons with a 10 percent or greater ownership interest would still generally be required to aggregate the account or positions.[20] However, proposed rule § 150.4(b)(2), as set out in the 2013 Aggregation Proposal, would establish a notice filing procedure, effective upon submission, to permit a person with either an ownership or an equity interest in an owned entity of 50 percent or less to disaggregate the positions of an owned entity in specified circumstances, even if such person has a 10 percent or greater interest in the owned entity.[21] The notice filing would have to demonstrate compliance with certain conditions set forth in proposed rule § 150.4(b)(2). Similar to other exemptions from aggregation, the notice filing would be effective upon submission to the Commission, but the Commission would be able to subsequently call for additional information, and to amend, terminate or otherwise modify the person's aggregation exemption for failure to comply with the provisions of rule § 150.4(b)(2). Further, the person would be obligated to amend the notice filing in the event of a material change to the circumstances described in the filing.

The Commission preliminarily based the 2013 Aggregation Proposal's limit of 50 percent on the ownership interest in another entity on a belief that the limit would be a reasonable, ''bright line'' standard for determining when aggregation of positions is required, even where the ownership interest is passive.[22] The 2013 Aggregation Proposal explained that majority ownership (*i.e.,* over 50 percent) is indicative of control, and this standard would address the Commission's concerns about circumvention of

---

[15] *See* 2013 Aggregation Proposal, 78 FR at 68956, citing Administrative Determination 163 (Aug. 7, 1957) (''[I]n the application of speculative limits, accounts in which the firm has a financial interest must be combined with any trading of the firm itself or any other accounts in which it in fact exercises control.''). The Commission's predecessor, and later the Commission, provided the aggregation standards for purposes of position limits in its regulation 18.01 (within the large trader reporting rules). *See* Supersedure of Certain Regulations, 26 FR 2968 (Apr. 7, 1961).

In its Statement of Policy on Aggregation of Accounts and Adoption of Related Reporting Rules, 44 FR 33839 (June 13, 1979) (''1979 Aggregation Policy''), the Commission discussed regulation 18.01, stating:

Financial Interest in Accounts. Consistent with the underlying rationale of aggregation, existing reporting Rule 18.10(a) a (sic) basically provides that if a trader holds or has a financial interest in more than one account, all accounts are considered as a single account for reporting purposes. Several inquiries have been received regarding whether a nomial (sic) financial interest in an account requires the trader to aggregate. Traditionally, the Commission's predecessor and its staff have expressed the view that except for the financial interest of a limited partner or shareholder (other than the commodity pool operator) in a commodity pool, a financial interest of 10 percent or more requires aggregation. The Commission has determined to codify this interpretation at this time and has amended Rule 18.01 to provide in part that, ''For purposes of this Part, except for the interest of a limited partner or shareholder (other than the commodity pool operator) in a commodity pool, the term 'financial interest' shall mean an interest of 10 percent or more in ownership or equity of an account.''

Thus, a financial interest at or above this level will constitute the trader as an account owner for aggregation purposes.

1979 Aggregation Policy, 44 FR at 33843.

The provisions concerning aggregation for position limits generally remained part of the Commission's large trader reporting regime until 1999 when the Commission incorporated the aggregation provisions into rule 150.4 with the existing position limit provisions in part 150. *See* Revision of Federal Speculative Position Limits, 64 FR 24038 (May 5, 1999) (''1999 Amendments''). The Commission's part 151 rulemaking also incorporated the aggregation provisions in rule 151.7 along with the remaining position limit provisions in part 151. *See* Position Limits for Futures and Swaps, 76 FR 71626 (Nov. 18, 2011).

[16] *See* 2013 Aggregation Proposal, 78 FR at 68958.

[17] *See id.* at 68951, citing Exemptions from Speculative Position Limits for Positions which have a Common Owner but which are Independently Controlled and for Certain Spread Positions; Proposed Rule, 53 FR 13290, 13292 (Apr. 22, 1988).

[18] *See* 2013 Aggregation Proposal, 78 FR at 68951, citing Aggregation, Position Limits for Futures and Swaps, 77 FR 31767, 31773 (May 30, 2012). This incremental approach to account aggregation standards reflects the Commission's historical practice. *See, e.g.,* Exemptions from Speculative Position Limits for Positions Which Have a Common Owner But Which are Independently Controlled and for Certain Spread Positions; Final Rule 53 FR 41563, 41567 (Oct. 24, 1988) (the definition of eligible entity for purposes of the IAC exemption originally only included CPOs, or exempt CPOs or pools, but the Commission indicated a willingness to expand the exemption after a ''reasonable opportunity'' to review the exemption.); Exemption From Speculative Position Limits for Positions Which Have a Common Owner, But Which Are Independently Controlled, 56 FR 14308, 14312 (Apr. 9, 1991) (the Commission expanded eligible entities to include commodity trading advisors, but did not include additional entities requested by commenters until the Commission had the opportunity to assess the current expansion and further evaluate the additional entities); and the 1999 Amendments (the Commission expanded the list of eligible entities to include many of the entities commenters requested in the 1991 rulemaking).

[19] *See* 2013 Aggregation Proposal, 78 FR at 68958–61.

[20] For purposes of aggregation, the Commission continues to believe that contingent ownership rights, such as an equity call option, would not constitute an ownership or equity interest.

[21] Under the 2013 Aggregation Proposal, and in a manner similar to current regulation, if a person qualifies for disaggregation relief, the person would nonetheless have to aggregate those same accounts or positions covered by the relief if they are held in accounts with substantially identical trading strategies. *See* proposed rule § 150.4(a)(2). The exemptions in proposed rule § 150.4 are set forth as alternatives, so that, for example, the applicability of the exemption in paragraph (b)(2) would not affect the applicability of a separate exemption from aggregation (*e.g.,* the independent account controller exemption in paragraph (b)(5)). The revisions proposed here would not change these aspects of the 2013 Aggregation Proposal.

[22] *See* 2013 Aggregation Proposal, 78 FR at 68959.

position limits by coordinated trading or direct or indirect influence between entities. For these reasons, the Commission preliminarily believed that aggregation based upon an ownership or equity interest of greater than 50 percent would be appropriate to address the heightened risk of direct or indirect influence over the owned entity.[23]

Referring to commenters who said that if an owned entity's positions are aggregated with the owner's position, the aggregation should be pro rata to the ownership interest, the Commission stated its belief that a pro rata approach could be administratively burdensome for both owners and the Commission.[24] For example, the Commission explained, the level of ownership interest in a particular owned entity may change over time for a number of reasons, including stock repurchases, stock rights offerings, or mergers and acquisitions, any of which may dilute or concentrate an ownership interest. Thus, it may be burdensome to determine and monitor the appropriate pro rata allocation on a daily basis. Moreover, the Commission also noted that it has historically interpreted the statute to require aggregation of all the relevant positions of owned entities, absent an exemption. This is consistent with the view that a holder of a significant ownership interest in another entity may have the ability to influence all the trading decisions of the entity in which such ownership interest is held.

2. Disaggregation Relief for Ownership or Equity Interests of Greater Than 50 Percent

The 2013 Aggregation Proposal also included a provision for disaggregation relief for ownership or equity interests of greater than 50 percent, which was consistent with the Commission's preliminary view that relief from the aggregation requirement should not be available merely upon a notice filing by a person who has a greater than 50 percent ownership or equity interest in the owned entity. The Commission explained that, in its view, a person with a greater than 50 percent ownership interest in multiple accounts would have the ability to hold and control a significant and potentially unduly large overall position in a particular commodity, which position limits are intended to prevent. Also, as noted above, the Commission believed that in general this ''bright line'' approach would provide administrative certainty.[25]

Nonetheless, the Commission considered points raised by commenters in this regard, and concluded that in some situations disaggregation relief may be appropriate even for a person holding a majority ownership interest, on the conditions that the owned entity is not required to be, and is not, consolidated on the financial statement of the person, the person can demonstrate that the person does not control the trading of the owned entity, based on the criteria in proposed rule § 150.4(b)(2)(i), and both the person and the owned entity have procedures in place that are reasonably effective to prevent coordinated trading.[26]

The Commission acknowledged that to provide such relief in order to address issues raised by commenters would represent a break by the Commission from past practice, but it explained that it has authority to provide such relief pursuant to section 4a(a)(7) of the CEA, which authorizes the Commission to provide relief from the requirements of the position limits regime.[27]

Consequently, the 2013 Aggregation Proposal included a provision (proposed rule § 150.4(b)(3)) that would permit a person with a greater than 50 percent ownership of an owned entity to apply to the Commission for relief from aggregation on a case-by-case basis. The person would be required to demonstrate to the Commission that:

i. The owned entity is not required to be, and is not, consolidated on the financial statement of the person,

ii. the person does not control the trading of the owned entity (based on criteria in rule § 150.4(b)(2)(i)), with the person showing that it and the owned entity have procedures in place that are reasonably effective to prevent coordinated trading in spite of majority ownership,[28]

iii. each representative of the person (if any) on the owned entity's board of directors attests that he or she does not control trading of the owned entity, and

iv. the person certifies that either (a) all of the owned entity's positions qualify as bona fide hedging transactions or (b) the owned entity's positions that do not so qualify do not exceed 20 percent of any position limit currently in effect, and the person agrees in either case that:

- If this certification becomes untrue for the owned entity, the person will aggregate the owned entity for three complete calendar months and if all of the owned entity's positions qualify as bona fide hedging transactions for that entire time the person would have the opportunity to make the certification again and stop aggregating,
- upon any call by the Commission, the owned entity(ies) will make a filing responsive to the call, reflecting the owned entity's positions and transactions only, at any time (such as when the Commission believes the owned entities in the aggregate may exceed a visibility level), and
- the person will provide additional information to the Commission if any owned entity engages in coordinated activity, short of common control (understanding that if there were common control, the positions of the owned entity(ies) would be aggregated).

The Commission clarified that the proposed relief would not be automatic, but rather would be available only if the Commission finds, in its discretion, that the four conditions above are met. The proposed rule would not impose any time limits on the Commission's process for making the determination of whether relief is appropriately granted, and relief would be available only if and when the Commission acts on a particular request for relief.[29]

The Commission also explained that, under the 2013 Aggregation Proposal, it would interpret factors such as the owned entity being a newly acquired standalone business or a joint venture subject to special restrictions on control, or two different owned entities conducting operations at different levels of commerce (such as retail and wholesale), to be favorable to granting relief from the aggregation requirement.[30] The Commission also noted that if a person with greater than 50 percent ownership of an owned entity could not meet the conditions in proposed rule § 150.4(b)(3), the person could apply to the Commission for relief from aggregation under CEA section 4a(a)(7).[31] The Commission noted that CEA section 4a(a)(7) does not impose any time limits on the Commission's process for determining whether relief under that section is appropriate, nor does it prescribe or limit the factors that

[23] *See id.*

[24] *See id.*

[25] *See id.*

[26] *See id.*

[27] *See id.*

[28] The Commission pointed out that since this criterion requires a person to certify that the person does not control trading of its owned entity, the criterion could not be met by a natural person or any entity, such as a partnership, where it is not possible to separate knowledge and control of the person from that of the owned entity.

[29] *See* 2013 Aggregation Proposal, 78 FR at 68960.

[30] *See id.*

[31] *See id.* Section 4a(a)(7) of the CEA provides authority to the Commission to grant relief from the position limits regime.

the Commission may consider to be relevant in determining whether to grant relief.[32]

II. Proposed Rules

A. Proposed Revision To Allow for Relief to Owners of More Than 50 Percent of an Owned Entity Based on Notice Filing

In light of the language in section 4a of the CEA, its legislative history, subsequent regulatory developments, and the Commission's historical practices in this regard, the Commission continues to believe that section 4a requires aggregation on the basis of either ownership or control of an entity. The Commission also believes that aggregation of positions across accounts based upon ownership is a necessary part of the Commission's position limit regime.[33] However, the Commission is also mindful that, as discussed by commenters on the 2013 Aggregation Proposal, aggregation of positions held by owned entities may in some cases be impractical, burdensome, or not in keeping with modern corporate structures. Therefore, the Commission is proposing a limited revision to the 2013 Aggregation Proposal that would permit all owners of 10 percent or more of an owned entity (*i.e.,* the owners of up to and including 100 percent of an owned entity) to disaggregate the positions of the owned entity in the circumstances specified in proposed rule § 150.4(b)(2). All other aspects of the 2013 Aggregation Proposal, including the proposed criteria for disaggregation relief and other aspects not discussed herein, remain the same.

The Commission has the authority to revise its proposed relief under section 4a(a)(7) of the CEA, which authorizes the Commission to provide relief from the requirements of the position limits regime. The reasons for this proposed revision are discussed below.

B. Commenters' Views

Commenters on the 2013 Aggregation Proposal generally praised the proposed relief for owners of between 10 percent and 50 percent of an owned entity, but asserted that the proposed application procedures for owners of a more than 50 percent equity or ownership interest were unnecessary and inappropriate.[34]

A few commenters opposed providing aggregation relief for owners of more than 10 percent of an owned entity. Better Markets, Inc. (''Better Markets''), an organization that advocates for financial reform, commented that allowing disaggregation of majority-owned subsidiaries would ignore the clear language of CEA section 4a(a)(1) and ''would allow traders to easily circumvent Position Limits by creating multiple subsidiaries and dividing its positions among them.'' [35] Better Markets said the Commission must therefore not allow any disaggregation relief for owners holding a more than 10 percent interest in an owned entity.[36] Occupy the SEC, another organization that advocates for financial reform, said that the provision for relief for owners of more than 50 percent of an owned entity should be removed because ''there can be no plausible justification for exempting largely interconnected firms from the position limits regime,'' and in any case the proposed relief for greater than 50 percent owners would be of little use because it ''adds a veritable gauntlet of conditions [in proposed rule 150.4(b)(3)] that few companies will be able to pass.'' [37]

The Futures Industry Association (''FIA''), a trade association, commented that the Commission should permit majority-owned affiliates to be disaggregated regardless of whether the entities are required to consolidate financial statements.[38] The FIA opined that conditioning disaggregation of majority-owned affiliates on the lack of a requirement for consolidated financial statements would be arbitrary, because the accounting principles ''are wholly unrelated to the question of actual control of day-to-day trading decisions and positions.'' [39] The FIA requested that the Commission amend the proposal to allow a person to rebut the presumption of control of a majority-owned affiliate solely by demonstrating that the person does not control the trading and positions of the owned entity through, among other things, effective procedures that prevent coordinated trading.[40] The FIA recommended that the Commission remove the condition for each representative of the board of directors to certify that he or she does not control the trading decisions of the owned entity.[41]

Other commenters said that the Commission should provide the same disaggregation relief for owners of more than 50 percent of an owned entity as is proposed to be provided for owners of 50 percent or less. For example, the Asset Management Group of the Securities Industry and Financial Markets Association said that the Commission should extend ''the owned entity exemption at proposed [rule] 150.4(b)(2) to include all third party ownership interests (greater than 50 [percent]) that do not involve actual common trading control.'' [42] The Center for Capital Markets Competitiveness of the U.S. Chamber of Commerce said that the requirement in proposed rule § 150.4(b)(3) to submit an application to the Commission and await its approval would be unworkable in practice and not provide any apparent regulatory benefit.[43]

---

[32] *See id.* The 2013 Aggregation Proposal also included amended rule § 150.1(e)(5) and proposed rule § 150.4(b)(5) that would allow managers of employee benefit plans (*i.e.,* persons that manage a commodity pool, the operator of which is excluded from registration as a commodity pool operator under rule § 4.5(a)(4)) to be treated as an IAC, on the condition that an IAC notice filing is made as required under rule § 150.4(c). *See id.* at 68961. The aspects of the 2013 Aggregation Proposal related to proposed rule §§ 150.1(e)(5) and 150.4(b)(5) are not affected by the revisions discussed herein.

[33] *See* 1999 Amendments, 64 FR at 24044 (''[T]he Commission . . . interprets the 'held or controlled' criteria as applying separately to ownership of positions or to control of trading decisions.''). *See also,* Exemptions from Speculative Position Limits for Positions which have a Common Owner but which are Independently Controlled and for Certain Spread Positions; Proposed Rule, 53 FR 13290, 13292, (Apr. 22, 1988). In response to two separate petitions, the Commission proposed the independent account controller exemption from speculative position limits, but declined to remove the ownership standard from its aggregation policy.

[34] The comments on the 2013 Aggregation Proposal are available on the Commission's Web site at *http://comments.cftc.gov/PublicComments/CommentList.aspx?id=1427.* Commenters also addressed other aspects of the 2013 Aggregation Proposal, but since those other aspects remain the same under this revision to the proposal, it is unnecessary to address those comments at this time.

[35] Better Markets, Inc. on February 10, 2014 (''CL–Better Markets'') at 2–3.

[36] CL–Better Markets at 3.

[37] Occupy the SEC on August 7, 2014 at 5–6. Occupy the SEC did not comment on the provision for disaggregation relief for owners holding between a 10 percent and a 50 percent interest in an owned entity.

Another commenter, Chris Barnard, said that he initially took a negative view of providing relief for owners of more than 50 percent of an owned entity, but concluded such relief was acceptable because of the strength of the conditions in proposed rule § 150.4(b)(3). Chris Barnard on January 16, 2014 at 1–2.

[38] Futures Industry Association on February 6, 2014 (''CL–FIA'') at 4, 8 and 10–11.

[39] CL–FIA at 10.

[40] CL–FIA at 10. The FIA commented that because the exemption for majority-owned entities would be effective only after a Commission determination, the Commission would have discretion on a case-by-case basis to review facts and circumstances. CL–FIA at 10.

[41] CL–FIA at 10–11.

[42] The Asset Management Group of the Securities Industry and Financial Markets Association on February 10, 2014 at 6. The Coalition of Physical Energy Companies, on February 10, 2014 at 3–8, also said that the ''Greater Than 50 Percent'' category should be eliminated and such situations treated in accordance with proposed rule § 150.4(b)(2).

[43] Center for Capital Markets Competitiveness of the U.S. Chamber of Commerce on February 10, 2014 at 9. ICE Futures U.S., Inc., a designated contract market (''DCM''), agreed that the requirements in proposed rule § 150.4(b)(3) would

Continued

The Commodity Markets Council recommended that the Commission not require aggregation based solely on ownership of legal entities, but instead extend the IAC exemption to all separately organized companies, whether or not they are affiliated.[44] The Natural Gas Supply Association (''NGSA'') recommended that the Commission leave the current rules on aggregation in place unchanged, because ''[u]nder the status quo, the Commission may bring enforcement action against an investor if it directs or otherwise controls the trading of an owned entity whose positions it claims it does not control.''[45]

MidAmerican Energy Holdings Company (''MidAmerican''), an energy services company which is controlled by Berkshire Hathaway, Inc. (''Berkshire''), commented that, absent aggregation relief for majority-owned affiliates that are consolidated for accounting purposes, the proposed position limits would impose ''serious regulatory costs and consequences'' to establish an extensive compliance monitoring and coordination program across independently managed, disparate businesses, and would be contrary to policies, procedures, systems, and controls established to provide functional and legal separation for individual operating businesses.[46] MidAmerican explained that Berkshire and its industrial operating businesses are generally managed on a decentralized basis, with no centralized or integrated business functions and minimal involvement by Berkshire's corporate headquarters in day-to-day business activities of MidAmerican or Berkshire's other operating businesses.[47] MidAmerican recommended that the Commission provide for disaggregation upon a notice filing by a group of majority-owned entities that meet the four criteria in the proposal or, if the group does not meet all four criteria in the proposal, provide for the group to rely on the submission of an application for relief until the Commission has acted on the application.[48]

CME Group (''CME''), a holding company for a number of DCMs, stated that the Commission did not identify any basis or justification for the various features of the proposed aggregation regime.[49] CME contended that features of the 2013 Aggregation Proposal (regarding the owned entity aggregation rules, the IAC exemption, and the ''substantially identical trading strategies'' rule) are not in accordance with law, arbitrary and capricious, an unexplained departure from the Commission's administrative precedent, and not more permissive than existing aggregation standards.[50] The Commodity Markets Council and the NGSA were also of the opinion that the 2013 Aggregation Proposal was not supported by the Commission's administrative precedent.[51] CME and NGSA asserted that section 4a(a)(1) of the CEA provides no basis for requiring aggregation of positions held by another person in the absence of control of such other person.[52] CME also stated that rule § 150.4(b) generally exempts a commodity pool's participants with an ownership interest of 10 percent or greater from aggregating the positions held by the pool.[53] Finally, CME and NGSA contended that two of the Commission's enforcement cases indicate that the Commission has viewed aggregation as being required only where there is common trading control.[54]

---

be unworkable, and suggested that the Commission should ''[a]t a minimum,'' revise the rule to reflect an objective process for action within a specified time. ICE Futures U.S., Inc. on February 10, 2014 at 3.

Similar comments were made by the American Gas Association on February 10, 2014 at 5–11, the Commercial Energy Working Group on February 10, 2014 at 2–8, the Managed Funds Association on February 10, 2014 at 9–15, and the Private Equity Growth Capital Council on February 10, 2014 (''CL–PEGCC'') at 3–8.

[44] Commodity Markets Council on February 10, 2014 (''CL–CMC'') at 16–17. In a separate comment letter, the Commodity Markets Council recommended that affiliated companies not be required to aggregate their positions when (1) the companies are authorized to control trading decisions on their own, (2) the owner maintains only such minimum control as is consistent with its fiduciary responsibilities to supervise diligently the trading of the owned entity (or other applicable responsibilities), (3) the companies actually trade independently, and (4) the companies have no knowledge of each other's trading decisions. Commodity Markets Council on July 25, 2014 (''CL–CMC II'') at 5–6.

[45] Natural Gas Supply Association on February 10, 2014 (''CL–NGSA'') at 39–43.

[46] MidAmerican Energy Holdings Company on February 7, 2014 (''CL-MidAmerican'') at 1–2.

[47] CL-MidAmerican at 2.

[48] CL-MidAmerican at 3. MidAmerican recommended an application for relief by majority-owned affiliates not meeting all four criteria would need to rebut the assumption of control over majority-owned subsidiaries and meet two conditions: (1) The requirements applicable to entities with 50 percent or less common ownership; and (2) The requirement that representatives of board members of an entity covered by the relief request attest to the absence of trading control. MidAmerican recommended that the Commission consider the following factors that may rebut the assumption of control over majority-owned subsidiaries: (1) Separate trading accounts and broker relationships for each entity; (2) periodic certification from an officer of the requesting entity that the policies and procedures designed to prevent trading-level control or coordination remain in place and are effective; (3) lack of common guarantor and/or provision of independent credit support; (4) lack of cross-default or cross-acceleration provisions in trading contracts; (5) maintenance of separate identifiable assets; (6) maintenance of separate lines of business (*i.e.,* the business of one entity is not dependent upon the other); and (7) any other structural, legal, or regulatory barriers limiting control and interdependencies among affiliated entities. CL-MidAmerican at 4–5.

[49] CME Group on February 10, 2014 (''CL–CME'') at 9.

[50] CL–CME at 2, 6, and 10–11. CME opined that under the Commission's precedent, a 10 percent or more ownership or equity interest in an *account* is an indicia of trading control, but this precedent does not support a requirement for aggregation based on a 10 percent or more ownership or equity interest in an *entity.* CL–CME at 11. CME reasoned that the Commission's use of the term ''account'' has never referred to an owned entity that itself has accounts, that the 1979 Aggregation Policy suggests the Commission contemplated a definition of ''account'' that means no more than a personally owned futures trading account, and that the 1999 Amendments to the aggregation rules were focused on directly owned accounts. CL–CME at 11–12.

[51] The Commodity Markets Council said that under the Commission's precedents ''[l]egal affiliation [between companies] has been an indicium but not necessarily sufficient for position aggregation.'' CL–CMC at 16.

NGSA said that the Commission has never specifically required aggregation solely on the basis of ownership of another legal person. CL–NGSA at 42. To support its view, NGSA said that the 1979 Aggregation Policy and the 1999 Amendments apply to only trading accounts that are directly or personally held or controlled by an individual or legal entity, the Commission's large trader rules require aggregation of multiple accounts held by a particular person, not the accounts of a person and its owned entities, and regulation § 18.04(b) distinguishes between owners of the ''reporting trader'' and the owners of the ''accounts of the reporting trader.'' *Id.* at 42–43.

[52] CL–CME at 5–6; CL–NGSA at 41. CME commented that the Commission failed to consider the statutorily required factors, because CME asserts it is false that prior rules required aggregation of owned entity positions at a 10 percent ownership level. CL–CME at 8.

NGSA contended that ''CEA section 4a(a)(1) only allows the Commission to require the aggregation of positions on ownership alone when those positions are directly owned by a person. The positions of another person are only to be aggregated when the person has direct or indirect control over the trading of another person.'' CL–NGSA at 41.

[53] CL–CME at 13. CME noted that 63 FR 38525 at 38532 n. 27 (July 17, 1998) (proposal to amend regulation 150.3 to include the separately incorporated affiliates of a CPO, CTA or FCM as eligible entities for the exemption relief of regulation 150.3) states: ''Affiliated companies are generally understood to include one company that owns, or is owned by, another or companies that share a common owner.'' CL–CME at 13 n. 52. CME also asserted that the term ''principals'' under regulation § 3.1(a)(2)(ii) include entities that have a direct ownership interest that is 10 percent or greater in a lower tier entity, such as the parent of a wholly-owned subsidiary. From these two provisions, CME concluded that the corporate parent of a wholly-owned CPO would be affiliated with, and a principal of, its wholly-owned subsidiary.

[54] *See* CL–CME at 14–15, citing In the Matter of Vitol Inc. et al., Docket No. 10–17 (Sept. 14, 2010), available at *http://www.cftc.gov/ucm/groups/public/@lrenforcementactions/documents/legalpleading/enfvitolorder09142010.pdf* (''In the Matter of Vitol'') and In the Matter of Citigroup Inc. et al., Docket No. 12–34 (Sept. 21, 2012), available at *http://www.cftc.gov/ucm/groups/public/@lrenforcementactions/documents/legalpleading/*

C. Revised Proposed Rule

In view of the points raised by commenters on the 2013 Aggregation Proposal and upon further review of the matter, the Commission is proposing to revise the proposal to delete proposed rule §§ 150.4(b)(3) and 150.4(c)(2), and to change proposed rule § 150.4(b)(2) so that it would apply to all persons with an ownership or equity interest in an owned entity of 10 percent or greater (*i.e.,* an interest of up to and including 100%) in the same manner as proposed rule § 150.4(b)(2) would apply, before this revision, to owners of an interest of between 10 percent and 50 percent. The Commission is also proposing conforming changes in proposed rule § 150.4(b)(7), to delete a cap of 50 percent on the ownership or equity interest for broker-dealers to disaggregate, and in proposed rule § 150.4(e)(1)(i), to delete a delegation of authority referencing proposed rule § 150.4(b)(3).[55] The entirety of the Commission's aggregation-related proposed amendments to part 150, as set out in the 2013 Aggregation Proposal as revised herein, is set forth at the end of this notice.

The Commission finds merit in the comments of the FIA that ownership of a greater than 50 percent interest in an entity (and the related consolidation of financial statements) may not mean that the owner actually controls day-to-day trading decisions of the owned entity. The Commission believes that, on balance, the overall purpose of the position limits regime (to diminish the burden of excessive speculation which may cause unwarranted changes in commodity prices) would be better served by focusing the aggregation requirement on situations where the owner is, in view of the circumstances, actually able to control the trading of the owned entity.[56] The Commission reasons that the ability to cause unwarranted changes in the price of a commodity derivatives contract would result from the owner's control of the owned entity's trading activity.

The Commission has considered the views of Better Markets and other commenters who warned that inappropriate relief from the aggregation requirements could allow circumvention of position limits through the use of multiple subsidiaries. However, the Commission believes that the criteria in proposed rule § 150.4(b)(2)(i), which must be satisfied in order to disaggregate, will appropriately indicate whether an owner has control of or knowledge of the trading activity of the owned entity. The disaggregation criteria require that the two entities not have knowledge of each other's trading and, moreover, have and enforce written procedures to preclude such knowledge.[57] And, in fact, as noted in the 2013 Aggregation Proposal, the Commission has applied, and expects to continue to apply, certain of the same conditions in connection with the IAC exemption to ensure independence of trading between an eligible entity and an affiliated independent account controller. If the disaggregation criteria are satisfied, therefore, the Commission preliminarily believes that disaggregation may be permitted even if the owner has a greater than 50 percent ownership or equity interest in the owned entity. Even in the case of majority ownership, if the disaggregation criteria are satisfied, the ability of an owner and the owned entity to act together to engage in excessive speculation or to cause unwarranted price changes should not differ significantly from that of two separate individuals.

The Commission points out that finalization of proposed rule § 150.4(b)(2), which would allow persons with ownership or equity interests in an owned entity of up to and including 100 percent to disaggregate the positions of the owned entity if certain conditions were satisfied, would not mean that there would be no aggregation on the basis of ownership. Rather, aggregation would still be the ''default requirement'' for the owner of a 10 percent or greater interest in an owned entity, unless the conditions of proposed rule § 150.4(b)(2) are satisfied.[58]

Furthermore, satisfaction of the criteria of proposed rule § 150.4(b)(2) would not mean that an owner and owned entity would be entirely immune from aggregation in all circumstances. For example, aggregation is and would continue to be required under both current regulation § 150.4(a) and proposed rule § 150.4(a)(1) if two or more persons act pursuant to an express or implied agreement; and this aggregation requirement would apply whether the two or more persons are an owner and owned entity(ies) that meet the conditions in proposed rule § 150.4(b)(2), or are unaffiliated individuals. The Commission intends to continue to enforce the requirement of aggregation when two persons are acting together pursuant to an express or implied agreement regardless of whether the two persons are unaffiliated or if one person has an ownership interest in the other.

In determining whether the criteria in proposed rule § 150.4(b)(2) are an appropriate test for owners of more than 50 percent of an owned entity, the Commission notes the comments of MidAmerican regarding the relevant variances in corporate structures. MidAmerican stated that there are instances where one entity has a 100 percent ownership interest in another entity, yet does not control day-to-day business activities of the owned entity. Also, in this situation the owned entity would not have knowledge of the activities of other entities owned by the same owner, nor would it raise the heightened concerns, triggered when one entity both owns and controls trading of another entity, that the owner would necessarily act in a coordinated manner with other owned entities.

The Commission also appreciates that a requirement to aggregate the positions of majority-owned subsidiaries could

enfcitigroupcgmlorder092112.pdf (''In the Matter of Citigroup'').

NGSA contended that In the Matter of Vitol was based on facts that would be relevant only if common trading control was necessary for aggregating the positions of affiliated companies. *See* CL–NGSA at 43. NGSA did not discuss In the Matter of Citicorp.

[55] The Commission also proposes to delete a cross-reference to proposed rule § 150.4(b)(3)(vii) in proposed rule § 150.4(c)(1).

[56] The Commission notes in this regard that there may be significant burdens in meeting the requirements of proposed rule § 150.4(b)(3) even where there is no control the trading of the owned entity, as was suggested by the Center for Capital Markets Competitiveness of the U.S. Chamber of Commerce, the Asset Management Group of the Securities Industry and Financial Markets Association and the other commenters. *See supra* nn. 42 and 43.

[57] *See* 2013 Aggregation Proposal, 78 FR at 68961, referring to regulation § 150.3(a)(4) (proposed to be replaced by proposed rule § 150.4(b)(5)). Such conditions have been useful in ensuring that trading is not coordinated through the development of similar trading systems, and that procedures are in place to prevent the sharing of trading decisions between entities.

[58] The Commission noted in the 2013 Aggregation Proposal that if there were no aggregation on the basis of ownership, it would have to apply a control test in all cases, which would pose significant administrative challenges to individually assess control across all market participants. *See* 2013 Aggregation Proposal, 78 FR at 68956. Further, the Commission considered that if the statute required aggregation only if the existence of control were proven, market participants may be able to use an ownership interest to directly or indirectly influence the account or position and thereby circumvent the aggregation requirement. *See id.* On further review and after considering the comments of the FIA and others, the Commission believes that the disaggregation criteria in proposed rule § 150.4(b)(2)(i) provide an effective, easily implemented means of applying a ''control test'' to determine if disaggregation should be allowed, without creating a loophole through which market participants could circumvent the aggregation requirement.

require corporate groups to establish procedures to monitor and coordinate trading activities across disparate owned entities, which could have unpredictable consequences. The Commission recognizes that these consequences could include not only the cost of establishing these procedures, but also the impairment of corporate structures which were established to insure that the various owned entities engage in business independently. This independence may serve important purposes which could be lost if the aggregation requirement were imposed too widely.

Further, the Commission notes that for those corporate groups that establish policies and controls to separate different operating businesses, the disaggregation criteria in proposed rule § 150.4(b)(2)(i) should be relatively familiar and easy to satisfy. That is, the disaggregation criteria and their application to corporate groups like MidAmerican's group are in line with prudent corporate practices that are maintained for longstanding, well-accepted reasons. The Commission does not intend that the aggregation requirement interfere with these structures.[59]

MidAmerican and the Commodity Markets Council proposed various alternative criteria which could be used to determine whether the positions of an owner and owned entity could be disaggregated.[60] However, after considering these suggestions, the Commission does not believe that the suggested criteria are significantly different from the criteria in proposed rule § 150.4(b)(2)(i) in the 2013 Aggregation Proposal. Also, some of the suggested criteria appear to be suitable for particular situations, but not necessarily all corporate groups.[61] Overall, the Commission believes that the criteria in proposed rule § 150.4(b)(2)(i) are appropriate and suitable for determining when disaggregation is permissible due to a lack of control and shared knowledge of trading activities. [62]

In response to the assertions of CME and NGSA, the Commission reiterates its belief, as stated in the 2013 Aggregation Proposal, that ownership of an entity is an appropriate criterion for aggregation of that entity's positions, due in part to the direction in section 4a(a)(1) of the CEA that all positions held by a person should be aggregated.

The Commission has explained that this interpretation is supported by Congressional direction and Commission precedent from as early as 1957 and continued through 1999.[63] For example, in 1968, Congress amended the aggregation standard in CEA section 4a to include positions ''held by'' one trader for another,[64] supporting the view that an owner should aggregate the positions held by an owned entity (because the owned entity is holding the positions for the owner). During the Commission's 1986 reauthorization, points similar to those raised now by CME and NGSA were considered and rejected. At that time, witnesses at Congressional hearings suggested that ''aggregation of positions based on ownership without actual control unnecessarily restricts a trader's use of the futures and options markets,'' but the Congressional committee did not recommend any changes to the statute based on these suggestions.[65]

In 1988, the Commission reviewed petitions by the Managed Futures Trade Association and the Chicago Board of Trade which argued against aggregation based only on ownership.[66] In response to the petition, however, the Commission stated that:

> Both ownership and control have long been included as the appropriate aggregation criteria in the Act and Commission regulations. Generally, inclusion of both criteria has resulted in a bright-line test for aggregating positions. And as noted above, although the factual circumstances surrounding the control of accounts and positions may vary, ownership generally is clear.
>
> . . . In the absence of an ownership criterion in the aggregation standard, each potential speculative position limit violation would have to be analyzed with regard to the individual circumstances surrounding the degree of trading control of the positions in question. This would greatly increase uncertainty.[67]

Contrary to CME's and NGSA's contentions, the aggregation

[59] In the 2013 Aggregation Proposal, the Commission noted that if the aggregation rules adopted by the Commission would be a precedent for aggregation rules enforced by designated contract markets and swap execution facilities, it would be even more important that the aggregation rules set out, to the extent feasible, ''bright line'' rules that are capable of easy application by a wide variety of market participants while not being susceptible to circumvention. *See* 2013 Aggregation Proposal, 78 FR at 68596, n. 103. The Commission believes that by implementing an approach to aggregation that is in keeping with longstanding corporate practices, the proposed revisions promote the goal of setting out ''bright line'' rules that are relatively easy to apply while not being susceptible to circumvention.

[60] *See, e.g.,* CL-MidAmerican at 4–5, CL–CMC II at 5–6.

[61] For example, MidAmerican recommended factors such as whether the owner and the owned entity have separate trading accounts, separate assets, separate lines of business, independent credit support and other specific indications of separation. *See* CL-MidAmerican at 4–5. In the Commission's view, criteria such as these are specific manifestations of the general principles stated in proposed rule § 150.4(b)(2)(i) that the owner and the owned entity not have knowledge of the trading decisions of the other and trade pursuant to separately developed and independent trading systems. Similarly, whether the two entities do or do not have separate assets or separate lines of business would not necessarily indicate whether they are engaged in coordinated trading.

[62] As stated in the 2013 Aggregation Proposal, the Commission proposes that the criteria in proposed rule § 150.4(b)(2)(i) would be interpreted and applied in accordance with the Commission's past practices. *See, e.g.,* 1979 Aggregation Policy, 44 FR 33839 (providing indicia of independence); CFTC Interpretive Letter No. 92–15 (CCH ¶ 25,381) (ministerial capacity overseeing execution of trades not necessarily inconsistent with indicia of independence); 1999 Amendments, 64 FR at 24044 (intent in issuing final aggregation rule ''merely to codify the 1979 Aggregation Policy, including the continued efficacy of the [1992] interpretative letter'').

[63] *See* 2013 Aggregation Proposal, 78 FR at 68956.

[64] *See* Pub. L. 90–258, Sec. 2, 82 Stat. 26 (1968). The Senate Report accompanying the 1968 amendment stated that ''all of the changes made by this section incorporate longstanding administrative interpretations reflected in orders of the [Commodity Exchange] Commission.'' S. Rep. No. 947, 90th Cong. 2d Sess. (1968) at page 5.

[65] *See* H.R. Rep. No. 624, 99th Cong., 2d Sess. (1986) at page 43. The Report noted that:

> During the subcommittee hearings on reauthorization, several witnesses expressed dissatisfaction with the manner in which certain market positions are aggregated for purposes of determining compliance with speculative limits fixed under Section 4a of the Act. The witnesses suggested that, in some instances, aggregation of positions based on ownership without actual control unnecessarily restricts a trader's use of the futures and options markets. In this connection, concern was expressed about the application of speculative limits to the market positions of certain commodity pools and pension funds using multiple trading managers who trade independently of each other. The Committee does not take a position on the merits of the claims of the witnesses.

Id.

[66] The Managed Futures Trade Association petition requested that the Commission amend the aggregation standard for exchange-set speculative position limits in regulation § 1.61(g) (now regulation § 150.5(g)), by adding a proviso to exclude the separate accounts of a commodity pool where trading in those accounts is directed by unaffiliated CTAs acting independently. *See* Exemption From Speculative Position Limits for Positions Which Have a Common Owner but Which Are Independently Controlled; Proposed Rule, 53 FR 13290, 13291–92 (Apr. 22, 1988). The petition argued the ownership standard, as applied to ''multiple-advisor commodity pools, is unfair and unrealistic'' because while the commodity pool may own the positions in the separate accounts, the CPO does not control trading of those positions (the unaffiliated CTA does) and therefore the pool's ownership of the positions will not result in unwarranted price fluctuations. *See id.* at 13292.

The petition from the Chicago Board of Trade (which is now a part of CME) sought to revise the aggregation standard so as not to require aggregation based solely on ownership without control. *See id.*

[67] *See id.* In response to the petitions, however, the Commission proposed the IAC exemption, which provides ''an additional exemption from speculative position limits for positions of commodity pools which are traded in separate accounts by unaffiliated account controllers acting independently.'' *Id.*

requirement in CEA section 4a is not phrased in terms of whether the owner holds an interest in a trading account. In fact, the word ''account'' does not even appear in the statute.[68] CME and NGSA incorrectly contend that the Commission has limited its interpretation of the term ''account'' to include only a personally owned futures trading account; the Commission has not. In 1986, for example, the Commission considered a comment that the use of the term ''account'' means a direct interest in a specific futures trading account, and rejected this view, writing that the Commission ''has generally interpreted and applied these rules more broadly'' and that ''[t]o conduct effective market surveillance and enforce speculative limits, the Commission must know the relationship in terms of financial interest *or* control between traders as well as that between a trader and trading accounts.'' [69] CME and NGSA also misread the 1999 Amendments, which specifically stated that ''the Commission. . . interprets the 'held or controlled' criteria as applying separately to ownership of positions or to control of trading decisions .'' [70] CME misconstrues the 1999 amendments' reference to the Commission's large-trader reporting system as being related to the aggregation rules for the position limits regime.[71] But the 1999 amendments are consistent, because they included an explanation of situations in which reporting could be required based on both control and ownership.[72] And, CME's citation to exemptions for aggregation for certain commodity pools [73] simply prove too much—the reason these exemptions are in place is because aggregation *would* be required due to ownership or control of the commodity pools if the exemptions were not available.

Last, CME and NGSA misread the Commission's enforcement history, which in fact does not contradict the Commission's traditional view of aggregation of owned entity positions as being required on the basis of either control or ownership. The first case cited by CME and NGSA did not enforce the Commission's aggregation standard, but rather section 9(a)(4) of the CEA, which makes it unlawful for any person willfully to conceal any material fact to a board of trade acting in furtherance of its official duties under the Act.[74] In this case, respondent companies willfully failed to disclose to a DCM the true nature of the relationship and the limited nature of the barriers to trading information flow between two companies.[75] Nowhere does the case speak to whether aggregation standards may be applied based on either or both of ownership or control.

In describing the second case it cites, CME seems to have made assumptions that never appear in the Commission's decision. The only facts actually cited as relevant in this case were that a company and its two wholly-owned subsidiaries acted as counterparties in over-the-counter swaps contracts, engaged in futures trading, and held aggregate net-long positions in excess of the Commission's all-months position limits.[76] Nowhere did the Commission find, as erroneously described by CME, that the companies off-set the ''same risk acquired from similarly situated counterparties.'' [77] Nor did the Commission find, as CME incorrectly asserts, that the subsidiaries traded as agents for the corporate parent.[78]

The Commission solicits comment on all aspects of the revision to its proposed modification of rule 150.4 described herein. Commenters are invited to address whether proposed rule § 150.4(b)(2), as revised, appropriately furthers the overall purposes of the position limits regime while not creating opportunities for circumvention of the aggregation requirement.

III. Related Matters

A. Considerations of Costs and Benefits

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

On November 15, 2013, the Commission proposed certain modifications to its policy for aggregation under the part 150 position limits regime (*i.e.,* the 2013 Aggregation Proposal).[79] The 2013 Aggregation Proposal provided the public with an opportunity to comment on the Commission's cost-and-benefit considerations of the proposed amendments, including identification and assessment of any costs and benefits not discussed therein. In particular, the Commission requested that commenters provide data or any other information that they believe supports their positions with respect to the Commission's considerations of costs and benefits.

In this release, the Commission proposes to revise the 2013 Aggregation Proposal so that any person who owns 10 percent or more of another entity would be permitted to disaggregate the positions of the entity under a unified set of conditions and procedures. All other aspects of the 2013 Aggregation Proposal, including the proposed criteria for disaggregation relief, remain the same.

In the following, the Commission provides a general background for the 2013 proposed amendments and the

[68] As noted above, section 4a(a)(1) of the CEA provides that ''In determining whether any person has exceeded such limits, the positions held and trading done by any persons directly or indirectly controlled by such person shall be included with the positions held and trading done by such person.'' 7 U.S.C. 6a(a)(1).

[69] *See* Reports Filed by Contract Markets, Futures Commission Merchants, Clearing Members, Foreign Brokers and Large Traders; Final Rule, 51 FR 4712, 4716 (Feb. 7, 1986) (referring to the use of the term ''account'' in regulation 18.04, which required reports relating to persons whose accounts are controlled by the reporting trader and persons who have a financial interest of 10 percent or more in the account of the trader) (emphasis added).

[70] *See* 1999 Amendments, 64 FR at 24043 and fn. 26 (referring to rule 18.01 requirement of aggregation for reporting purposes when a trader ''holds, has a financial interest in or controls positions in more than one account'').

[71] *See* CL–CME at 12, citing the 1999 Amendments, 64 FR at 24043.

[72] The Commission stated that its ''routine large trader reporting system is set up so that it does not double count positions which may be controlled by one and traded for the beneficial ownership of another. In such circumstances, although the routine reporting system will aggregate the positions reported by FCMs using only the control criterion, the staff may determine that certain accounts or positions should also be aggregated using the ownership criterion or may by special call receive reports directly from a trader.'' 1999 Amendments, 64 FR at 24043 and fn. 26.

[73] *See* CL–CME at 13, citing rule § 150.4(b) and (c).

[74] *See* In the Matter of Vitol at 2.

[75] *See id.*

[76] *See* In the Matter of Citigroup at 2–3. The Commission's order specifically stated that ''The positions of Citigroup's wholly-owned subsidiaries, including CGML, in December 2009 are subject to aggregation pursuant to Commission Regulation § 150.4(a)–(b).'' *See id.* at 2, n. 2.

[77] *See* CL–CME at 15.

[78] *See id.* Rather, the Commission's order found the parent company liable for the violations of its wholly-owned subsidiaries under section 2(a)(1)(B) of the CEA because the actions of the wholly-owned subsidiaries occurred within the scope of their employment, office, or agency with respect to the parent company. *See* In the Matter of Citigroup at 4, citing CEA section 2(a)(1)(B) and regulation 1.2.

[79] *See* 2013 Aggregation Proposal, 78 FR at 68958–59.

current 2015 proposed revisions and discusses commenters' responses to the 2013 Aggregation Proposal that are relevant to its considerations of costs and benefits. The Commission further considers the expected costs and benefits of the 2015 proposed revisions in light of the five factors outlined in section 15(a).

Using the existing regulation 150.4 as the baseline for comparison,[80] the Commission considers in this section the incremental costs and benefits that arise from the proposed 2015 revisions.[81] That is, if the proposed 2015 revisions are not adopted, the aggregation standards that would apply would be those described in the Commission's existing regulation 150.4. The 2013 Aggregation Proposal set forth the costs and benefits of the Commission's proposed amendments of existing regulation 150.4. All aspects of the 2013 Aggregation Proposal's considerations of costs and benefits remain the same other than those related specifically to the instant proposal to allow persons owning 10 percent or more of another entity to disaggregate the positions of the entity under a unified set of conditions and procedures. Thus, while the existing regulation 150.4 serves as the baseline for this consideration of costs and benefits, we also discuss as appropriate for clarity the differences from the 2013 Aggregation Proposal.

1. Background

As discussed in the preamble, the Commission's historical approach to position limits in current part 150 generally consists of three components: (1) The level of each limit, which sets a threshold that restricts the number of speculative positions that a person may hold in the spot-month, in any individual month, and in all months combined; (2) an exemption for positions that constitute bona fide hedging transactions and certain other types of transactions; and (3) standards to determine which accounts and positions a person must aggregate for the purpose of determining compliance with the position limit levels.

The third component of the Commission's position limits regime—aggregation—is set out in regulation 150.4.[82] Regulation 150.4 requires that unless a particular exemption applies, a person must aggregate all positions for which that person: (1) Controls the trading decisions, or (2) has at least a 10 percent ownership or equity interest in an account or position; and in doing so the person must treat positions that are held by two or more persons pursuant to an express or implied agreement or understanding as if they were held by a single person.[83]

The 2013 Aggregation Proposal set forth conditions and procedures to grant a person permission to disaggregate the positions of a separately organized entity (''owned entity''). The permission or exemption is dependent on the person's level of ownership or equity interest in the owned entity. In the 2013 Aggregation Proposal, the ownership or equity-interest levels were divided into two categories: (1) A person with an interest of between 10 percent and 50 percent would be permitted to disaggregate the positions, upon filing a notice demonstrating compliance with certain requirements specified in the proposed amendments; (2) a person with a greater than 50 percent interest would have to apply on a case-by-case basis to the Commission for permission, and await the Commission's decision as to whether certain prerequisites enumerated in the 2013 Aggregation Proposal had been met.[84]

2. Comments on the 2013 Aggregation Proposal

In response to the 2013 Aggregation Proposal, several commenters raised concerns about the costs and benefits associated with the proposed changes to regulation 150.4. CME declared that the Commission failed to consider adequately the costs and benefits of ''every aspect'' of the 2013 Aggregation Proposal.[85] Yet, for the most part, commenters did not identify specific monetary costs or provide any quantitative information to support their arguments. Instead, they made the general statements that requiring owners without actual control to aggregate positions would weaken the ability of largely passive investors to provide capital investment and generate returns for their beneficiaries,[86] and that it would run contrary to certain established corporate structures to provide functional and legal separation for individual operating businesses.[87]

NGSA and PEGCC expressed concern over attendant compliance costs for persons with greater than 50 percent interest in an owned entity.[88] NGSA and MidAmerican asserted that the proposal would require new position-trading surveillance and compliance systems for owned entities, and involve more intraday coordination.[89] NGSA identified another general cost: constraints on risk management programs when an owned entity's commodity trading is restricted to 20 percent of positions.[90] PEGCC characterized the exemption-application process as unworkable because of the unlimited waiting period for Commission review and approval.[91] As a result, the Commission's approach would create uncertainty for applicants and burden Commission staff resources.[92] Furthermore, during the waiting period, applicants would have to expend costs to develop interim compliance programs.[93]

Commenters also suggested alternatives to the exemption processes proffered in the 2013 Aggregation Proposal. Several commenters advised the Commission to accept a notice filing.[94] PEGCC also recommended that the Commission modify the certifications requirement for the proposed greater than 50 percent ownership exemption. Instead of producing certifications from the owner entity and board members, PEGCC proposed that the Commission require a certification from the owner entity only.[95] They also recommended that the Commission eliminate the grace period for seeking re-certification after the person loses its greater than 50 percent ownership exemption for failing to meet a condition.[96] PEGCC remarked that the Commission had failed to provide any rationale for the grace period, and stated that the person should be able to apply for re-certification once it loses its status.[97]

3. The Current Proposal

The Commission is proposing to revise the 2013 Aggregation Proposal to delete proposed rule § 150.4(b)(3) and § 150.4(c)(2), and to change proposed rule § 150.4(b)(2), so that the latter provision would apply to all persons with an ownership or equity interest in an owned entity of 10 percent or greater. More precisely, under these proposed revisions, a person with at least a 10

[80] 17 CFR 150.4.

[81] As expressed throughout this preamble, all aspects of the amendments as proposed in the 2013 Aggregation Proposal, except as explicitly modified by the revisions discussed in this 2015 release, remain the same.

[82] 17 CFR 150.4.

[83] 17 CFR 150.4(b), (c), and (d).

[84] Note that no aggregation would be required if the ownership or equity interest is below 10 percent.

[85] CL–CME at 6. *See also* CL–MidAmerican at 1.

[86] CL–SIFMA at 1.

[87] CL–MidAmerican at 2.

[88] CL–NGSA at 39; CL–PEGCC.

[89] CL–NGSA at 39; CL-MidAmerican at 2.

[90] CL–NGSA at 40.

[91] CL–PEGCC at 4, 5.

[92] CL–PEGCC at 4.

[93] *Id.*

[94] *See, e.g.,* CL–PEGCC at 6.

[95] CL–PEGCC at 7.

[96] *Id.*

[97] *Id.*

percent interest would not be required to aggregate an owned entity's positons, if such person files a notice attesting to no trading control and implementation of firewalls to prevent access to relevant information, among other conditions. The Commission is also proposing conforming changes in other sections of proposed rule 150.4.[98]

As discussed in Section III.A.2, commenters raised concerns and suggested several alternatives for the exemptive category covering owners with a greater-than-50-percent interest. The Commission recognizes that the proposed amendments for this category in the 2013 Aggregation Proposal may impose burdens on certain market participants. It has embraced some of the commenters' suggestions and revised the requirements for those market participants seeking relief from the aggregation obligations accordingly. The Commission welcomes comment on all aspects regarding the cost-and-benefit considerations of the 2015 proposed revisions. Commenters are encouraged to suggest additional alternatives that may result in a superior cost-and-benefit profile, and provide support for their position both qualitatively and quantitatively.

4. Costs and Benefits

As noted in the preamble, the Commission's general policy on aggregation is derived from CEA section 4a(a)(1), which directs the Commission to aggregate positions based on separate considerations of ownership, control, or persons acting pursuant to an express or implied agreement. The Commission's historical approach to its statutory aggregation obligation has thus included both ownership and control factors designed to prevent evasion of prescribed position limits. The Commission continues to believe that these factors together constitute an appropriate criterion for aggregation of that entity's positions.

The Commission believes that the revisions proposed herein would maintain the Commission's historical approach to aggregation while adding thoughtful exemptions to relieve market participants from unnecessary burdens due to aggregation. Moreover, the proposed exemptions would only apply under legitimate conditions. As a result, the Commission's aggregation policy is more focused on targeting market participants that pose an actual risk of engaging in the activities which the position limits regime is intended to prevent.

a. Benefits

The primary purpose of requiring positions of owned entities to be aggregated is to prevent evasion of prescribed position limits through coordinated trading. The Commission recognizes, however, that an overly restrictive or prescriptive aggregation policy may result in unnecessary burdens or unintended consequences. Such unintended consequences may take the form of reduced liquidity because imposing aggregation requirements on owned entities that are not susceptible to coordinated trading would unnecessarily restrict their ability to trade commodity derivatives contracts. Moreover, as argued by some commenters, requiring passive investors to aggregate the positions of entities they own may potentially diminish capital investments in their businesses,[99] or interfere with existing decentralized business structures.[100] By providing exemptive relief to market participants under legitimate circumstances—for instance, the demonstration of no control over trading—potential negative effects on derivatives markets would be reduced.

The proposed 2015 revisions would also benefit market participants by mitigating their compliance burdens associated with the aggregation requirements as well as the position limits requirements more generally. Under the proposed exemptions, eligible market participants would not have to establish and maintain the infrastructure necessary to aggregate positions across owned entities. Further, an eligible entity with legitimate hedging needs and whose aggregated positions are above the position limits thresholds in the absence of any exemption would have the option of applying for an aggregation exemption instead of applying for a bona fide hedging exemption.

Finally, under the proposed 2015 revisions, the same set of exemption standards and procedures would apply to a person with any level of ownership or equity interest in the owned entity being considered—as long as the level is high enough to trigger the aggregation requirements (*i.e.,* at least 10 percent). This unified exemptive framework facilitates legal clarity and consistency. It also further mitigates the burdens facing market participants. Consider, for example, a parent-holding company that has different levels of ownership or equity interest in its various subsidiaries. Under the proposed unified framework, such parent-holding company would not need to establish and maintain multiple sets of systems for the purpose of obtaining aggregation exemptions for each of these subsidiaries.

The Commission requests comment on its considerations of the benefits of the proposed 2015 revisions. Commenters are specifically encouraged to include both quantitative and qualitative assessments of these benefits, as well as data or other information to support such assessments.

b. Costs

To a large extent, market participants may already have incurred many of the compliance costs associated with existing regulation 150.4. The Commission and DCMs generally have required aggregation of positions starting at a 10 percent interest threshold under the current regulatory requirements of part 150 as well as the acceptable practices found in the prior version of part 38. The Commission therefore believes that market participants active on DCMs have already developed systems for aggregating positions across owned entities.[101]

The Commission anticipates there are two main types of direct costs associated with the 2015 proposed revisions. First, there would be initial costs incurred by entities as they develop and maintain systems to determine whether they may be eligible for the proposed exemptions. Second, there would be costs related to subsequent filings required by the exemptions. In addition, some entities may also sustain direct costs for modifying existing operational protocols—such as firewalls and reporting schemes—to be eligible to claim an exemption. It is difficult to quantify these direct costs because such costs are heavily dependent on the individual characteristics of each entity's current systems, its corporate structure, and its use of commodity derivatives, among other attributes.

Should the Commission's other proposed amendments to the position

[98] See earlier sections of this preamble for a discussion on all proposed revisions to regulation 150.4.

[99] SIFMA Letter at p. 1.

[100] MidAmerican Letter at p. 2.

[101] The 10 percent threshold has been in place for the nine agricultural contracts with federal limits for decades, and for other contracts where limits were imposed by DCMs and enforced by the Commission. *See supra,* note 15 (citing to the 1979 Aggregation Policy, 44 FR at 33843, where the Commission codified its view that, except in certain limited circumstances, a financial interest in an account at or above 10 percent ''will constitute the trader as an account owner for aggregation purposes'').

limits regime in part 150 be adopted as proposed,[102] the aggregation requirements would cover a greater set of commodity derivative contracts. Part 150 applies currently to futures and options contracts referencing nine commodities as stated in regulation 150.2. The other 2013 proposed amendments would expand the list, and would apply on a federal level to commodity derivative contracts, including swaps, based on an additional 19 commodities. This expansion would likely create additional compliance costs for futures market participants because they would have to broaden current procedures for aggregating futures positions to include swaps positions, as well as for swaps market participants, who would be required to develop and maintain systems to comply with the aggregation rules. Further, exchanges would be required to conform their aggregation policies to the Commission's aggregation policy. However, the revisions proposed herein provide exemptive relief from these requirements.

In accordance with the Paperwork Reduction Act, the Commission has quantified the filing costs required to claim the proposed exemptions discussed in Section III.C below. The Commission estimates that 240 entities will submit exemption claims for a total of 340 responses per year. The 240 entities will incur a total burden of 6,850 labor hours at a cost of approximately $822,000 annually to claim exemptive relief under regulation 150.4, as proposed herein.[103]

The Commission requests comment on its consideration of the costs imposed by the proposed 2015 revisions. Commenters are specifically encouraged to submit both qualitative and quantitative estimates of the potential costs, as well as data or other information to support such estimates.

5. Section 15(a) Considerations

a. Protection of Market Participants and the Public

As pointed out above, the proposed aggregation exemptions would be granted to an entity only upon demonstrating lack of trading control as well as the implementation of information firewalls. These conditions help to ensure that the effectiveness of the Commission's aggregation policy is not jeopardized, thereby protecting the public.

b. Efficiency, Competition, and Financial Integrity of Markets

An important rationale for providing aggregation exemptions is to avoid overly restricting commodity derivatives trading of owned entities not susceptible to coordinated trading. As discussed above, such trading restrictions may potentially result in reduced liquidity in commodity derivatives markets, diminished investment by largely passive investors, or distortions of existing decentralized business structures. Thus, the proposed exemptions help promote efficiency and competition, and protect market integrity by helping to prevent these undesirable consequences.

c. Price Discovery

By avoiding overly restricting commodity derivatives trading of those entities that are not susceptible to coordinated trading, the proposed exemptions may help improve liquidity by encouraging more market participation. This might improve the price discovery function or it might have only a negligible effect on the price discovery function of relevant derivative markets.

d. Risk Management

The imposition of position limits helps to restrict market participants from amassing positions that are of sufficient size potentially to cause sudden or unreasonable fluctuations or unwarranted changes in the price of a commodity derivatives contract, or to be used to manipulate the market price. The proposed exemptions would allow an owner to disaggregate the positions of an owned entity in circumstances where the Commission has determined that the positions are less of a risk of disrupting market operation through coordinated trading. The Commission believes that the proposed exemptions would not materially inhibit the use of commodity derivatives for hedging, as bona fide hedging exemptions are available to any entity regardless of aggregation of positions and exemptions from aggregation.

e. Other Public Interest Considerations

As pointed out above, the proposed aggregation exemptions would mitigate market participants' compliance burdens with the aggregation requirements and the position limits requirements more generally. The Commission has not identified any other public interest considerations related to the costs and benefits of the proposed exemptive relief. The Commission requests comment on any potential public interest considerations, as well as data or other information to support such considerations.

6. Section 15(b) Considerations

Section 15(b) of the CEA requires the Commission to consider the public interest to be protected by the antitrust laws and to endeavor to take the least anticompetitive means of achieving the objectives, policies and purposes of the CEA, before promulgating a regulation under the CEA or issuing certain orders. The Commission preliminarily believes that the proposed exemptive relief will be consistent with the public interest protected by the antitrust laws. The proposal would broaden the availability of one category of relief from the aggregation requirement to more owners and owned entities, retaining conditions intended to address the Commission's concerns about circumvention of position limits by coordinated trading or direct or indirect influence between entities. The Commission requests comment on any considerations related to the public interest to be protected by the antitrust laws and potential anticompetitive effects of the proposal, as well as data or other information to support such considerations.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA") requires that agencies consider whether the rules they propose will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis respecting the impact.[104] A regulatory flexibility analysis or certification typically is required for "any rule for which the agency publishes a general notice of proposed rulemaking pursuant to" the notice-and-comment provisions of the Administrative Procedure Act, 5 U.S.C. 553(b).[105] The requirements related to the proposed amendments fall mainly on registered entities, exchanges, FCMs, swap dealers, clearing members, foreign brokers, and large traders. The Commission has previously determined that registered DCMs, FCMs, swap dealers, major swap participants, eligible contract participants, SEFs, clearing members, foreign brokers and large traders are not small entities for purposes of the RFA.[106] While the

[102] *See* Position Limits for Derivatives, 78 FR 75680 (December 12, 2013).

[103] See Section III.C of this release for a more detailed summary of the Commission's PRA burden estimates.

[104] 44 U.S.C. 601 *et seq.*

[105] 5 U.S.C. 601(2), 603–05.

[106] *See* Policy Statement and Establishment of Definitions of "Small Entities" for Purposes of the Regulatory Flexibility Act, 47 FR 18618, 18619, Apr. 30, 1982 (DCMs, FCMs, and large traders) ("RFA Small Entities Definitions"); Opting Out of Segregation, 66 FR 20740, 20743, Apr. 25, 2001 (eligible contract participants); Position Limits for Futures and Swaps; Final Rule and Interim Final Rule, 76 FR 71626, 71680, Nov. 18, 2011 (clearing

requirements under the proposed rulemaking may impact non-financial end users, the Commission notes that position limits levels apply only to large traders. Accordingly, the Chairman, on behalf of the Commission, hereby certifies, on behalf of the Commission, pursuant to 5 U.S.C. 605(b), that the actions proposed to be taken herein would not have a significant economic impact on a substantial number of small entities. The Chairman made the same certification in the 2013 Aggregation Proposal,[107] and the Commission did not receive any comments on the RFA.

C. Paperwork Reduction Act

1. Overview

The Paperwork Reduction Act (''PRA''), 44 U.S.C. 3501 *et seq.,* imposes certain requirements on Federal agencies in connection with their conducting or sponsoring any collection of information as defined by the PRA. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number issued by the Office of Management and Budget (''OMB''). Certain provisions of the proposed rules would result in amendments to previously-approved collection of information requirements within the meaning of the PRA. Therefore, the Commission is submitting to OMB for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11 the information collection requirements proposed in this rulemaking proposal as an amendment to the previously-approved collection associated with OMB control number 3038–0013.

If adopted, responses to this collection of information would be mandatory. The Commission will protect proprietary information according to the Freedom of Information Act and 17 CFR part 145, titled ''Commission Records and Information.'' In addition, the Commission emphasizes that section 8(a)(1) of the Act strictly prohibits the Commission, unless specifically authorized by the Act, from making public ''data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers.'' The Commission also is required to protect certain information contained in a government system of records pursuant to the Privacy Act of 1974.

On November 15, 2013, the Commission published in the **Federal Register** a notice of proposed modifications to part 150 of the Commission's regulations (*i.e.,* the 2013 Aggregation Proposal). The modifications addressed the policy for aggregation under the Commission's position limits regime for futures and option contracts on nine agricultural commodities set forth in part 150, and noted that the modifications would also apply to the position limits regimes for 28 exempt and agricultural commodity futures and options contracts and the physical commodity swaps that are economically equivalent to such contracts, if such regimes are finalized. The Commission is now proposing a revision to its 2013 Aggregation Proposal.

Specifically, the Commission is now proposing that all persons holding a greater than 10 percent ownership or equity interest in another entity could avail themselves of an exemption in proposed rule § 150.4(b)(2) to disaggregate the positions of the owned entity. To claim the exemption, a person would need to meet certain criteria and file a notice with the Commission in accordance with proposed rule § 150.4(c). The notice filing would need to demonstrate compliance with certain conditions set forth in proposed rule § 150.4(b)(2)(i)(A) through (E). Similar to other exemptions from aggregation, the notice filing would be effective upon submission to the Commission, but the Commission may call for additional information as well as reject, modify or otherwise condition such relief. Further, such person is obligated to amend the notice filing in the event of a material change to the filing. The Commission now proposes to delete rule § 150.4(b)(3) from its proposal. This rule would have established a similar but separate owned-entity exemption with more intensive qualifications for exemption.

2. Methodology and Assumptions

It is not possible at this time to precisely determine the number of respondents affected by the proposed revision to the 2013 Aggregation Proposal. The proposed revision relates to exemptions that a market participant may elect to take advantage of, meaning that without intimate knowledge of the day-to-day business decisions of all its market participants, the Commission could not know which participants, or how many, may elect to obtain such an exemption. Further, the Commission is unsure of how many participants not currently in the market may be required to or may elect to incur the estimated burdens in the future.

These limitations notwithstanding, the Commission has made best-effort estimations regarding the likely number of affected entities for the purposes of calculating burdens under the PRA. The Commission used its proprietary data, collected from market participants, to estimate the number of respondents for each of the proposed obligations subject to the PRA by estimating the number of respondents who may be close to a position limit and thus may file for relief from aggregation requirements.

The Commission's estimates concerning wage rates are based on 2011 salary information for the securities industry compiled by the Securities Industry and Financial Markets Association (''SIFMA''). The Commission is using a figure of $120 per hour, which is derived from a weighted average of salaries across different professions from the SIFMA Report on Management & Professional Earnings in the Securities Industry 2011, modified to account for an 1800-hour work-year, adjusted to account for the average rate of inflation in 2012. This figure was then multiplied by 1.33 to account for benefits[108] and further by 1.5 to account for overhead and administrative expenses.[109] The Commission anticipates that compliance with the provisions would require the work of an information technology professional; a compliance manager; an accounting professional; and an associate general counsel. Thus, the wage rate is a weighted national average of salary for professionals with the following titles (and their relative weight); ''programmer (average of senior and non-senior)'' (15% weight), ''senior accountant'' (15%) ''compliance manager'' (30%), and ''assistant/associate general counsel'' (40%). All

members); Core Principles and Other Requirements for Swap Execution Facilities, 78 FR 33476, 33548, June 4, 2013 (SEFs); A New Regulatory Framework for Clearing Organizations, 66 FR 45604, 45609, Aug. 29, 2001 (DCOs); Registration of Swap Dealers and Major Swap Participants, 77 FR 2613, Jan. 19, 2012, (swap dealers and major swap participants); and Special Calls, 72 FR 50209, Aug. 31, 2007 (foreign brokers).

107 *See* 78 FR 68973.

108 The Bureau of Labor Statistics reports that an average of 32.8% of all compensation in the financial services industry is related to benefits. This figure may be obtained on the Bureau of Labor Statistics Web site, at *http://www.bls.gov/news.release/ecec.t06.htm.* The Commission rounded this number to 33% to use in its calculations.

109 Other estimates of this figure have varied dramatically depending on the categorization of the expense and the type of industry classification used (*see, e.g.,* BizStats at *http://www.bizstats.com/corporation-industry-financials/finance-insurance-52/securities-commodity-contracts-other-financial-investments-523/commodity-contracts-dealing-and-brokerage-523135/show* and Damodaran Online at *http://pages.stern.nyu.edu/~adamodar/pc/datasets/uValuedata.xls.* The Commission has chosen to use a figure of 50% for overhead and administrative expenses to attempt to conservatively estimate the average for the industry.

monetary estimates have been rounded to the nearest hundred dollars.

The Commission welcomes comment on its assumptions and estimates.

3. Collections of Information

Proposed rule § 150.4(b)(2) would require qualified persons to file a notice in order to claim exemptive relief from aggregation. Further, proposed rule § 150.4(b)(2)(ii) states that the notice is to be filed in accordance with proposed rule § 150.4(c), which requires a description of the relevant circumstances that warrant disaggregation and a statement that certifies that the conditions set forth in the exemptive provision have been met. Previously proposed rule § 150.4(b)(3) (which the Commission is now deleting from the proposal) would have specified that qualified persons may request an exemption from aggregation in accordance with proposed rule § 150.4(c). Such a request would be required to include a description of the relevant circumstances that warrant disaggregation and a statement certifying the conditions have been met. Persons claiming these exemptions would be required to submit to the Commission, as requested, such information as relates to the claim for exemption. An updated or amended notice must be filed with the Commission upon any material change.

In the 2013 Aggregation Proposal, the Commission estimated that 100 entities will each file two notices annually under proposed rule § 150.4(b)(2), at an average of 20 hours per filing. Thus, the Commission approximates a total per entity burden of 40 labor hours annually. At an estimated labor cost of $120, the Commission estimates a cost of approximately $4,800 per entity for filings under proposed rule § 150.4(b)(2).

The Commission also estimated that 25 entities would each file one notice annually under proposed rule § 150.4(b)(3), at an average of 30 hours per filing. Thus, the Commission approximates a total per entity burden of 30 labor hours annually. At an estimated labor cost of $120, the Commission estimates a cost of approximately $3,600 per entity for filings under proposed rule § 150.4(b)(3).

For this proposed revision to the 2013 Aggregation Proposal, the Commission estimates that the 25 entities that would have filed one notice annually under proposed rule § 150.4(b)(3) will instead file those notices under proposed rule § 150.4(b)(2). The burden for each such filing would be reduced by 10 hours (*i.e.,* 30 hours minus 20 hours) and $1,200 (*i.e.,* 10 hours times $120 per hour).

Thus, while the Commission estimates that the effect of this proposed revision will not change the number of entities making filings or the number of responses in order to claim exemptive relief under proposed rule 150.4 (so the estimate in the 2013 Aggregation Proposal that 240 entities will submit a total of 340 responses per year will remain the same),[110] the total burden will be reduced to 6,850 labor hours (from 7,100 labor hours) at a cost of approximately $822,000 (instead of $852,000) annually.

4. Information Collection Comments

The Commission invites the public and other federal agencies to comment on any aspect of the reporting and recordkeeping burdens discussed above. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments in order to: (1) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) evaluate the accuracy of the Commission's estimate of the burden of the proposed collections of information; (3) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Comments may be submitted directly to the Office of Information and Regulatory Affairs, by fax at (202) 395–6566 or by email at *OIRA-submissions@omb.eop.gov*. Please provide the Commission with a copy of comments submitted so that all comments can be summarized and addressed in the final regulation preamble. Refer to the **ADDRESSES** section of this document for comment submission instructions to the Commission. A copy of the supporting statements for the collection of information discussed above may be obtained by visiting *RegInfo.gov*. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is most assured of being fully considered if received by OMB (and the Commission) within 30 days after the publication of this notice of proposed rulemaking.

Finally, it should be noted that the following proposed amendments to part 150 may require conforming technical changes if the Commission also adopts any proposed amendments to its regulations regarding position limits.[111]

List of Subjects in 17 CFR Part 150

Bona fide hedging, Position limits, Referenced contracts.

For the reasons discussed in the preamble, the Commodity Futures Trading Commission proposes to amend 17 CFR part 150 as follows:

PART 150—LIMITS ON POSITIONS

■ 1. The authority citation for part 150 is revised to read as follows:

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

■ 2. Revise paragraphs (d) and (e)(2) and (5) of § 150.1 to read as follows:

§ 150.1 Definitions.

* * * * *

(d) *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:

(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

[110] In the 2013 Aggregation Proposal, the Commission estimated that 75 entities would each file one notice annually under proposed rule § 150.4(b)(5) at an average of 10 labor hours and cost of approximately $1,200 per filing, and that 40 entities would each file one notice annually under proposed rule § 150.4(b)(8) at an average of 40 labor hours and cost of approximately $4,800 per filing. These estimates remain unchanged.

[111] *See* Position Limits for Derivatives, 78 FR 75680 (December 12, 2013).

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.

(e) * * *

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

* * * * *

(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).

* * * * *

§ 150.3 [Amended]

■ 3. Amend § 150.3 as follows:

■ a. Remove the semicolon and the word ''or'' at the end of paragraph (a)(3);

■ b. Add a period at the end of paragraph (a)(3); and

■ c. Remove paragraph (a)(4).

■ 4. Revise § 150.4 to read as follows:

§ 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.

(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.

(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 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:

(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 document routing and other procedures or 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 trades or trading strategy; and

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

(3) [Reserved]

(4) *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.

(5) *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 document routing and other procedures or 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.

(ii) [Reserved]

(6) *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.

(7) *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.

(8) *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, accompanied by an official English translation.

(9) *Exemption for higher-tier entities.* If an owned entity has filed a notice under paragraph (c) of this section, any person with an ownership or equity interest of 10 percent or greater in the owned entity need not file a separate notice identifying the same positions and accounts previously identified in the notice filing of the owned entity, provided that:

(i) Such person complies with the conditions applicable to the exemption specified in the owned entity's notice filing, other than the filing requirements; and

(ii) Such person does not otherwise control trading of the accounts or positions identified in the owned entity's notice.

(iii) Upon call by the Commission, any person relying on the exemption paragraph (b)(9) of this section 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)(4), (b)(5), or (b)(8) of this section shall file a notice with the Commission, which shall be effective upon submission of the notice, 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) [Reserved]

(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 paragraph (c) of this section, an updated or amended notice shall promptly be filed detailing the material change.

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

(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 structure, 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 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:

(i) [Reserved]

(ii) In paragraph (b)(9)(iii) of this section to call for additional information from a person claiming the exemption in paragraph (b)(9)(i) of this section.

(iii) In paragraph (d) of this section for providing instructions or determining the format, coding structure, and electronic data transmission procedures for submitting data records and any other information required under this part.

(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.

Issued in Washington, DC, on September 23, 2015, by the Commission.

Christopher J. Kirkpatrick,

Secretary of the Commission.

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

Appendices to Aggregation of Positions Supplemental Notice of Proposed Rulemaking—Commission Voting Summary, Chairman's Statement, and Commissioner's Statement

Appendix 1—Commission Voting Summary

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

Appendix 2—Statement of Chairman Timothy G. Massad

As part of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Congress mandated that the CFTC adopt limits to address the risk of excessive speculation in physical commodity derivative contracts. In 2013, the Commission proposed these rules on ''position limits.'' These proposed rules included guidelines to determine which accounts and positions a person with an ownership interest must aggregate to determine compliance. In addition, the Commission separately proposed an exemption process from this ''aggregation'' requirement.

Today, we are proposing a simplification of that exemption process. Instead of requiring a participant that has a 50 percent or more interest in an entity to apply for and obtain prior approval from the Commission, our proposal would rely on a notice filing. If that participant files a notice attesting to the Commission that it has no control over the trading of that entity, and that firewalls are in place to prevent access to information, then it need not wait for the CFTC's review and approval. This notice filing process is similar to what the Commission uses in many other areas.

This should create a more practical, efficient rule. It is important to note that the proposed change does not alter the standard of when aggregation is required. Moreover, the Commission retains its authority to call for additional information and modify or terminate an exemption for failure to comply with the standard.

Today's proposed modification is part of our ongoing consideration of the substantial public input the Commission received on its 2013 position limits proposal. As we continue to consider that input and work on a final rule, I want to underscore that the Commission appreciates the importance and complexity of these issues, and we intend to take the time necessary to get it right. We hope to have more to say about issues related to position limits in the coming months.

Appendix 3—Statement of Commissioner J. Christopher Giancarlo

I support these proposed changes to the aggregation rules because I believe they make the position limits regime more workable. However, this is just the first of many steps needed to make the CFTC's approach to position limits less harmful to the risk management activities of American farmers, energy producers, manufacturers, risk-hedgers and trading institutions that do business around the globe. We must avoid at all costs adopting flawed government regulations that prevent our markets from operating effectively at a time of plunging commodity prices.[1] That means not displacing the everyday commercial judgement of farmers and businesses with a small set of allowable hedging options pre-selected by a Washington Commission with limited experience in commercial risk management.

As I recently stated,[2] the CFTC must change the proposed requirement that a market participant aggregate trading positions across subsidiaries over which it has no control or in which it may only be invested on a short-term basis. The proposal from 2013 essentially requires a market participant to apply for permission from the CFTC before it can disaggregate a position if the participant owns more than fifty percent of an entity, even if it has zero control or influence over that entity. This approach does not reflect the realities of modern commerce in which global trading firms may often have many unconnected subsidiaries that neither communicate nor share trading strategies or market position information.

I commend the CFTC staff for taking into account public comments and putting forward a revised rule proposal that better recognizes the varied corporate structures of contemporary market participants. I am hopeful that today's proposal will serve as the basis for a workable solution to the flawed approach to aggregation in the previous proposal.

In addition, today's proposal would relieve the Commission of the obligation to conduct a detailed, individualized inquiry into the relationships of the owned entities of a majority-owner applicant that seeks to disaggregate its trading positions across a global corporate enterprise. I agree with commenters that characterized the 2013 process as unworkable and a burden on already-limited Commission resources.

Furthermore, this proposed reform appears considerably more attentive to liquidity concerns than the 2013 proposal. By permitting majority owners that lack trading control to file a disaggregation notice with immediate effect rather than navigating a case-by-case Commission approval process, the 2015 framework significantly reduces barriers to disaggregation, thereby possibly increasing market participation.

One area discussed at length in the current proposal is the issue of control of a corporate entity. Specifically, I invite public comment on whether there should be a removal of the presumption of control of an entity for all minority ownership interests. This would allow the exclusion now available to minority owners with a stake below ten percent, while retaining the presumption for interests exceeding fifty percent.

In addition, I am concerned that, by requiring an owner to aggregate an owned entity's positions when its affiliates have risk-management systems that permit the sharing of trades or trading strategy, the proposed rule may stymie critical risk-mitigation efforts. Owners and their affiliates may need to share information regarding trades or trading strategy to verify compliance with applicable credit limits as well as restrictions and collateral requirements for inter-affiliate transactions, among other risk-management and compliance-related objectives.[3]

Accordingly, I invite public comment on whether the Commission should consider modifying the current proposal to clarify that owners and their affiliates may share such trading information as is necessary for effective risk safeguards without forfeiting

[1] *See* Ira Iosebashvili and Tatyana Shumsky, Investors Flee Commodities, The Wall Street Journal, Jul. 20, 2015, *available at http://www.wsj.com/articles/investors-flee-commodities-1437434367; See also* Veronica Brown and Pratima Desai, Speculators Show Global Commodities Rout Still Has Legs, Reuters, Jul. 27, 2015, *available at http://www.reuters.com/article/2015/07/27/us-markets-commodities-rout-idUSKCN0Q11TJ20150727.*

[2] *See* Keynote Address by Commissioner J. Christopher Giancarlo, 7th Annual Capital Link Global Commodities, Energy & Shipping Forum, Sept. 16, 2015, *available at http://www.cftc.gov/PressRoom/SpeechesTestimony/opagiancarlo-8.*

[3] Letter from Walt Lukken, President and Chief Executive Officer, Futures Industry Association, to Melissa Jurgens, Secretary, CFTC (Feb. 6, 2014), at 8–9, *available at https://secure.fia.org/downloads/Aggregation_Comment_Letter_020614.pdf.*

eligibility for disaggregation. If the Commission remains concerned that this accommodation will facilitate coordinated trading, it might require affiliates sharing trading data to restrict dissemination of the information to those responsible for compliance and risk-management efforts, maintaining internal firewalls to conceal the information from employees who develop or execute trading strategies.

I also welcome public comment on whether the Commission should consider modifying the proposed rule to clarify that an owner filing a notice of trading independence in order to claim an exemption from aggregation under this rule need only make subsequent filings in the event of a material change in the owner's degree of control over its subsidiary's positions. The text of the proposed rule does not appear to require periodic filings following the initial notice of trading independence, but the Commission's calculation of the proposal's costs seems to assume that such filings will be made on an annual basis.

I encourage the public to comment on my above concerns and propose potential solutions if appropriate.

[FR Doc. 2015–24596 Filed 9–28–15; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM15–23–000]

Collection of Connected Entity Data From Regional Transmission Organizations and Independent System Operators

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) proposes to amend its regulations to require each regional transmission organization (RTO) and independent system operator (ISO) to electronically deliver to the Commission, on an ongoing basis, data required from its market participants that would; first identify the market participants by means of a common alpha-numeric identifier; and secondly list their ''Connected Entities,'' which includes entities that have certain ownership, employment, debt, or contractual relationships to the market participants, as specified in this NOPR; and finally describe in brief the nature of the relationship of each Connected Entity. Such information will assist screening and investigative efforts to detect market manipulation, an enforcement priority of the Commission. The initiative would also assist market monitors for the RTOs and ISOs in their individual and joint investigations of potential cross-market manipulation. Unless the RTOs and ISOs request continuation of existing affiliate disclosure requirements based on a particularized need, the Commission expects that this new disclosure obligation will supplant all existing affiliate disclosures requirements contained in the RTOs and ISOs tariffs. The proposed definitional uniformity of the term ''Connected Entity'' across all of the RTOs and ISOs may help ease compliance burdens on market participants that are active in more than one RTO or ISO, and that are now required to submit affiliate information that may be unique to each of the organized markets in which they participate.

DATES: Comments on the proposed rule are due November 30, 2015.

ADDRESSES: Comments, identified by docket number, may be filed in the following ways:

- Electronic Filing through *http://www.ferc.gov.* Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.
- Mail/Hand Delivery: Those unable to file electronically may mail or hand-deliver comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Comment Procedures Section of this document.

FOR FURTHER INFORMATION CONTACT:

David Pierce (Technical Information), Office of Enforcement, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–6454, *david.pierce@ferc.gov.*

Kathryn Kuhlen (Legal Information), Office of Enforcement, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–6855, *kathryn.kuhlen@ferc.gov*

SUPPLEMENTARY INFORMATION:

1. In this Notice of Proposed Rulemaking (NOPR), the Federal Energy Regulatory Commission (Commission) proposes, pursuant to sections 222, 301(b), 307(a) and 309 of the Federal Power Act (FPA),[1] to amend its regulations to require each regional transmission organization (RTO) and independent system operator (ISO) to electronically deliver to the Commission, on an ongoing basis, data required from its market participants that would: (i) Identify the market participants by means of a common alpha-numeric identifier; (ii) list their ''Connected Entities,'' which includes entities that have certain ownership, employment, debt, or contractual relationships to the market participants, as specified in this NOPR; and (iii) describe in brief the nature of the relationship of each Connected Entity. The uniform identification of market participants, together with the listing of entities that comprise a network of common interests, would enhance the Commission's efforts to detect and deter market manipulation, a central objective of the Commission as identified in its FY 2014–2018 Strategic Plan.[2] Unless the RTOs and ISOs request continuation of existing affiliate disclosure requirements based on a particularized need, the Commission expects that this new disclosure obligation will supplant all existing affiliate disclosures requirements contained in the RTOs and ISOs tariffs.

2. In the Strategic Plan, the Commission cited monitoring and surveillance activities as a key function in meeting the objective of detecting and deterring market manipulation.[3] In recent years the Commission has greatly enhanced its capabilities in this regard, having developed automated screens of market activities and set up analytical procedures to detect potential market manipulation. Understanding the ownership, employment, debt, and contractual relationships of market participants would provide context for such data, and help determine whether there appears to be a legitimate business rationale for seemingly anomalous trading patterns, or whether there may be market manipulation, fraud, or abuse. This in turn will further the Commission's goal of detecting and deterring possible market manipulation. As we explain below, the existing affiliate disclosure requirements do not appropriately enable the Commission to identify and monitor these business relationships.

I. Background

3. Beginning in the late 1960s, the electric industry gradually transformed itself from one populated by mostly self-sufficient vertically integrated utilities compensated by cost-based rates, to

[1] 16 U.S.C. 824v, 825(b), 825f(a), 825(h).

[2] *Federal Energy Regulatory Commission Strategic Plan FY 2014–2018,* Objective 1.2 (Mar. 2014), *available at http://www.ferc.gov/about/strat-docs/FY-2014-FY-2018-strat-plan.pdf.*

[3] *Id.*