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*	*	*	*	*	*
	T.V. Joe Ouseppachan, Office 228, Al Aatar Shopping Mall, P.O. Box 115824, Karama, Dubai, U.A.E.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	81 FR [INSERT FR PAGE NUMBER], 3/21/16.
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	TGO General Trading LLC, a.k.a., the following one alias: —Three Green Orbit. 19th Floor Festival Tower, Festival City, P.O. Box 36605, Dubai, U.A.E.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	81 FR [INSERT FR PAGE NUMBER], 3/21/16.
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Dated: March 17, 2016.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2016–06406 Filed 3–18–16; 8:45 am]

BILLING CODE 3510–33–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 32

RIN 3038–AE26

Trade Options

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

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

DATES: *Effective date:* The effective date for this final rule is March 21, 2016.

FOR FURTHER INFORMATION CONTACT: David N. Pepper, Special Counsel, Division of Market Oversight, at (202) 418–5565 or *dpepper@cftc.gov;* or Mark Fajfar, Assistant General Counsel, Office of the General Counsel, at (202) 418–6636 or *mfajfar@cftc.gov,* Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Background

In April 2012, pursuant to section 4c(b) of the Commodity Exchange Act (the ''CEA'' or the ''Act''),[1] the Commission issued a final rule to repeal and replace part 32 of its regulations concerning commodity options.[2] The Commission undertook this effort to address section 721 of the Dodd-Frank Act Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act'' or ''Dodd-Frank''),[3] which, among other things, amended the CEA to define the term ''swap'' to include commodity options.[4] Notably, § 32.2(a) provides the

[1] 7 U.S.C. 6c(b) (providing that no person shall offer to enter into, enter into or confirm the execution of, any transaction involving any commodity regulated under this chapter which is of the character of, or is commonly known to the trade as an ''option'' contrary to any rule, regulation, or order of the Commission prohibiting any such transaction or allowing any such transaction under such terms and conditions as the Commission shall prescribe).

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

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

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

general rule that commodity option transactions must be conducted in compliance with any Commission rule, regulation, or order otherwise applicable to any other swap.[5]

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

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

In adopting § 32.3,[17] the Commission stated that the trade option exemption is generally intended to permit parties to hedge or otherwise enter into commodity option transactions for commercial purposes without being subject to the full Dodd-Frank swaps regime.[18] This limited exemption continued the Commission's longstanding practice of providing commercial participants in trade options with relief from certain requirements that would otherwise apply to commodity options.[19] The Commission further explained that the applicable conditions in § 32.3(b)–(d) were primarily intended to preserve a level of visibility into the market for trade options while still reducing the regulatory compliance burden for trade option participants.[20]

B. Existing Reporting Requirements for Trade Option Counterparties That Are Non-SD/MSPs

Pursuant to § 32.3(b)(1), the determination as to whether a trade option must be reported pursuant to part 45 is based on the status of the parties to the trade option and whether or not they have previously reported swaps to an appropriate swap data repository (''SDR'') pursuant to part 45.[21] If a trade option involves at least one counterparty (whether as buyer or seller) that has (1) become obligated to comply with the reporting requirements of part 45, (2) as a reporting party, (3) during the twelve month period

and which is subject to regulation under the Act and Commission regulations. *See* 17 CFR 1.3(hh).

[5] *See* 17 CFR 32.2.

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

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

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

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

[10] *See* 17 CFR 32.3(a), (b)–(d).

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

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

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

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

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

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

[17] In the year following the Commission's adoption of the trade option exemption, the Commission's Division of Market Oversight (''DMO'') issued a series of no-action letters granting relief from certain conditions in the trade option exemption. *See* CFTC No-Action Letter No. 12–06 (Aug. 14, 2012), *available at http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/12-06.pdf;* CFTC No-Action Letter No. 12–41 (Dec. 5, 2012), *available at http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/12-41.pdf;* CFTC No-Action Letter No. 13–08 (Apr. 5, 2013), *available at http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/13-08.pdf.* CFTC No-Action Letter No. 13–08 (''No-Action Letter 13–08'') provides that DMO would not recommend that the Commission commence an enforcement action against a market participant that is a Non-SD/MSP for failing to comply with the part 45 reporting requirements, as required by § 32.3(b)(1), provided that such Non-SD/MSP meets certain conditions, including reporting such exempt commodity option transactions via Form TO and notifying DMO no later than 30 days after entering into trade options having an aggregate notional value in excess of $1 billion during any calendar year. No-Action Letter 13–08 at 3–4. No-Action Letter 13–08 also grants relief from certain swap recordkeeping requirements in part 45 for a Non-SD/MSP that complies with the recordkeeping requirements set forth in § 45.2, provided that if the counterparty to the trade option at issue is an SD or an MSP, the Non-SD/MSP obtains a legal entity identifier (''LEI'') pursuant to § 45.6. *Id.* at 4–5. DMO will withdraw the no-action relief provided pursuant to No-Action Letter 13–08 upon the effective date of this final rule.

[18] *See* 77 FR at 25326, n.39. The limited trade option exemption in § 32.3 operates as a general exemption from the rules otherwise applicable to swaps, subject to the conditions enumerated in § 32.3. For example, trade options do not factor into the determination of whether a market participant is an SD or MSP; trade options are exempt from the rules on mandatory clearing; and trade options are exempt from the rules related to real-time reporting of swaps transactions. The provisions identified in this list are not intended to constitute an exclusive or exhaustive list of the swaps requirements from which trade options are exempt.

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

[20] *See* 77 FR at 25326–27.

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

preceding the date on which the trade option is entered into, (4) in connection with any non-trade option swap trading activity, then such trade option must also be reported pursuant to the reporting requirements of part 45. If only one counterparty to a trade option has previously complied with the part 45 reporting provisions, as described above, then that counterparty shall be the part 45 reporting counterparty for the trade option. If both counterparties have previously complied with the part 45 reporting provisions, as described above, then the part 45 rules for determining the reporting counterparty will apply.[22]

To the extent that neither counterparty to a trade option has previously submitted reports to an SDR as a result of its swap trading activities as described above, then such trade option is not required to be reported pursuant to part 45. Instead, § 32.3(b)(2) requires that each counterparty to an otherwise unreported trade option (*i.e.,* a trade option that is not required to be reported to an SDR by either counterparty pursuant to § 32.3(b)(1) and part 45) completes and submits to the Commission an annual Form TO filing providing notice that the counterparty has entered into one or more unreported trade options during the prior calendar year.[23] Form TO requires an unreported trade option counterparty to: (1) Provide its name and contact information; (2) identify the categories of commodities (agricultural, metals, energy, or other) underlying one or more unreported trade options which it entered into during the prior calendar year; and (3) for each commodity category, identify the approximate aggregate value of the underlying physical commodities that it either delivered or received in connection with the exercise of unreported trade options during the prior calendar year. Counterparties to otherwise unreported trade options must submit a Form TO filing by March 1 following the end of any calendar year during which they entered into one or more unreported trade options.[24] In adopting § 32.3, the Commission stated that Form TO was intended to provide the Commission with a level of visibility into the market for unreported trade options that is ''minimally intrusive,'' thereby allowing it to identify market participants from whom it should collect additional information, or whom it should subject to additional reporting obligations in the future.[25]

C. Existing Recordkeeping Requirements for Trade Option Counterparties That Are Non-SD/MSPs

Commission regulation § 32.3(b) provides that in connection with any commodity option transaction that is eligible for the trade option exemption, every counterparty shall comply with the swap data recordkeeping requirements of part 45, as otherwise applicable to any swap transaction.[26] In discussing the trade option exemption conditions, however, the Commission noted in the preamble to the Commodity Options Release that ''[t]hese conditions include a recordkeeping requirement for any trade option activity, *i.e.,* the recordkeeping requirements of 17 CFR 45.2,'' and did not reference or discuss any other provision of part 45 that contains recordkeeping requirements.[27]

Pursuant to Commission regulation § 45.2, records must be maintained by all trade option participants and made available to the Commission as specified therein.[28] Notably, § 45.2 applies different recordkeeping requirements, depending on the nature of the counterparty. For example, if a trade option counterparty is an SD or MSP, it would be subject to the recordkeeping provisions of § 45.2(a). If a counterparty is a Non-SD/MSP, it would be subject to the less stringent recordkeeping requirements of § 45.2(b).[29] Additional recordkeeping requirements in part 45, separate and apart from those specified in § 45.2 and which would apply to all trade option counterparties by operation of § 32.3(b) include:

- Each swap must be identified in all recordkeeping by the use of a unique swap identifier (''USI'');[30]
- Each counterparty to any swap must be identified in all recordkeeping by means of a single LEI;[31] and
- Each swap must be identified in all recordkeeping by means of a unique product identifier (''UPI'') and product classification system.[32]

D. Trade Options Notice of Proposed Rulemaking

On May 7, 2015, the Commission published in the **Federal Register** a notice of proposed rulemaking that included several proposed amendments to the limited exemption for trade options in Commission regulation § 32.3 (''the Proposal'').[33] The Commission proposed modifications to the recordkeeping and reporting requirements in existing § 32.3(b) that are applicable to trade option counterparties that are Non-SD/MSPs. The Commission also proposed a non-substantive amendment to existing § 32.3(c) to eliminate the reference to the now-vacated part 151 position limits requirements. These proposed amendments were generally intended to relax reporting and recordkeeping requirements where two commercial parties enter into trade options with each other in connection with their respective businesses while maintaining regulatory insight into the market for unreported trade options.

The Commission requested comment on all aspects of the Proposal.[34] In response, the Commission received nine comment letters.[35] Some of these

[22] *See* 17 CFR 45.8.

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

[24] In 2014, approximately 330 Non-SD/MSPs submitted Form TO filings to the Commission, approximately 200 of which indicated delivering or receiving less than $10 million worth of physical commodities in connection with exercising unreported trade options in 2013, which was the first year in which § 32.3 and Form TO reporting became effective. In 2015, approximately 349 Non-SD/MSPs submitted Form TO filings to the Commission, approximately 150 of which indicated delivering or receiving less than $10 million worth of physical commodities.

[25] *See* 77 FR at 25327–28.

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

[27] *See* 77 FR at 25327.

[28] 17 CFR 32.3(b), 45.2.

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

[30] 17 CFR 45.5.

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

[32] 17 CFR 45.7.

[33] Trade Options, Notice of Proposed Rulemaking, 80 FR 26200 (May 7, 2015), *available at http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2015-11020a.pdf.*

[34] *See* 80 FR at 26202. Initially, comments on the Proposal were due on or before June 8, 2015. Then, on June 2, 2015, the Commission extended the comment period for the Proposal through June 22, 2015, in light of the Commission's then recently-published interpretation concerning forward contracts with embedded volumetric optionality. *See* Forward Contracts with Embedded Volumetric Optionality, 80 FR 28239 (May 18, 2015).

[35] All comment letters are available through the Commission's Web site at *http://comments.cftc.gov/PublicComments/CommentList.aspx?id=1580.* Comments addressing the Trade Options NPRM were received from the following parties: The American Gas Association (''AGA''); The American Public Gas Association (''APGA''); The American Public Power Association, Edison Electric Institute, Electric Power Supply Association, Large Public Power Council, National Rural Electric Cooperative Association (''Electric Associations''); The Coalition of Physical Energy Companies (''COPE''); Cogen Technologies Linden Venture, L.P. (''Linden''); The Commercial Energy Working Group (''CEWG''); The International Energy Credit Association (''IECA''); The Natural Gas Supply Association (''NGSA''); and

comment letters raised issues concerning the treatment of trade options, and, more generally, commodity options, in relation to the swap definition.[36] However, in the Proposal, the Commission did not address the general treatment of commodity options, including trade options, in relation to the swap definition, nor did the Commission solicit comments on such definitional issues. Rather, as discussed above, the Proposal contained only specific proposed modifications to the recordkeeping and reporting requirements in § 32.3(b) that are applicable to trade option counterparties that are Non-SD/MSPs, as well as a proposed non-substantive amendment to § 32.3(c). Since issues concerning the treatment of commodity options in relation to the swap definition fall outside the scope of the Proposal, the Commission declines to address such definitional issues in this final rule.

The following section will address the comments received on specific aspects of the Proposal in connection with explaining each of the amended regulations adopted herein.

II. Discussion of Revised Regulations

A. Revised Reporting Requirements for Trade Option Counterparties That Are Non-SD/MSPs

1. Elimination of Part 45 Reporting Requirements for Trade Option Counterparties That Are Non-SD/MSPs

The Commission proposed to amend § 32.3(b) such that a Non-SD/MSP will under no circumstances be subject to part 45 reporting requirements with respect to its trade option activities.[37] The Commission explained in the Proposal that this proposed amendment was intended to reduce reporting burdens for Non-SD/MSP trade option counterparties, many of whom face technical and logistical impediments that prevent timely compliance with part 45 reporting requirements.[38]

NGSA, IECA, and APGA each supported deletion of part 45 reporting requirements for trade option counterparties that are Non-SD/MSPs.[39] No commenter opposed deletion.

The Commission recognizes that many parties who are not SDs or MSPs and do not engage in significant swap activity apart from trade options do not have the infrastructure in place to support part 45 reporting to an SDR and that instituting such infrastructure would be costly, particularly for small end users. Therefore, the Commission believes that these parties, who apart from their trade option activities would have very limited reporting obligations under part 45, should not be required to comply with part 45 reporting requirements solely on the basis of having had to report a minimal number of historical or inter-affiliate swaps during the same twelve-month period.

Accordingly, for the reasons set forth above and in the Proposal, the Commission is adopting amended regulation § 32.3(b), as proposed, by eliminating part 45 reporting requirements for trade option counterparties that are Non-SD/MSPs.

2. Elimination of the Form TO Notice Filing Requirement

The Commission proposed to amend Commission regulation § 32.3(b) such that a Non-SD/MSP would not be required to report otherwise unreported trade options on Form TO.[40] The Commission further proposed to delete Form TO from appendix A to part 32. The Commission explained in the Proposal that these proposed amendments were intended to reduce reporting burdens for Non-SD/MSP trade option counterparties, many of whom face significant costs in preparing Form TO.[41]

AGA, Electric Associations, CEWG, APGA and NGSA each supported deletion of the Form TO reporting requirement.[42] No commenter opposed deletion of Form TO. AGA commented that the proposed elimination of Form TO could ''reduce a significant compliance cost and obviate the need for small end-users to track and report their trade options activity for a given calendar year.'' [43] Electric Associations commented that ''Form TO imposes substantial costs on end-users for personnel, legal advice and infrastructure,'' and completing Form TO requires an end-user to ''continuously track the commodity trade options it enters into, identify which of the commodity trade options have and have not been reported, and track the commodity trade options exercised. . . .'' [44] CEWG commented that ''elimination of the obligation to file Form TO will allow [Non-SD/MSP trade option counterparties] to (i) reduce the amount of resources dedicated to identifying and tracking their trade options and (ii) reallocate resources for optimal utilization.'' [45] COPE commented that filing the actual Form TO is not burdensome, but rather it is the underlying tracking that is burdensome.[46]

The Commission recognizes that completing Form TO imposes costs and burdens on Non-SD/MSPs who enter into trade options, especially small end users. The Commission notes that Form TO data, which is submitted annually, consists of approximated aggregate values of otherwise unreported trade options exercised within three broad ranges, and within four ''commodity categories.'' [47] The Commission believes that, in view of the relatively limited surveillance and regulatory oversight benefits to be derived by the Commission from Form TO data, which is approximated, aggregated and undifferentiated, completion and submission of Form TO should no longer be required.

Accordingly, for the reasons set forth above, the Commission is amending regulation § 32.3(b), as proposed, by deleting the Form TO reporting requirement in connection with otherwise unreported trade options. Additionally, as proposed, the Commission is deleting appendix A to part 32, which contains Form TO.

3. The Proposed $1 Billion Notice and Alternative Notice Provisions Have Not Been Adopted

The Commission proposed to further amend § 32.3(b) by adding a new requirement that Non-SD/MSP trade

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Southern Company Services Inc. on behalf of and as agent for Alabama Power Co., Georgia Power Co., Gulf Power Co., Mississippi Power Co., and Southern Power Co. (''Southern'').

[36] *See, e.g.,* IECA at 8–13; Linden at 2–8; Electric Associations at 6–10; AGA at 2–5; and Southern at 6–8.

[37] *See* 80 FR at 26203. Note that trade option counterparties that are SD/MSPs would continue to comply with the swap data reporting requirements of part 45, including where the counterparty is a Non-SD/MSP, as they would in connection with any other swap transaction. *See* 17 CFR 32.3(c)(4) [renumbered 32.3(c)(3)], 23.201 and 23.204.

[38] *Id.*

[39] *See* NGSA at 1 (''The elimination of Part 45 reporting . . . for [Non-SD/MSP] counterparties to trade options will eliminate costs that stem from those reporting efforts, and this is a welcome change in reporting requirements.''); *see also* IECA at 2; APGA at 2.

[40] *See* 80 FR at 26203.

[41] *Id.*

[42] *See, e.g.,* AGA at 2, 8; Electric Associations at 1, 5; CEWG at 2; APGA at 2; NGSA at 1.

[43] AGA at 8.

[44] *See* Electric Associations at 5.

[45] CEWG at 2.

[46] *See* COPE at 2.

[47] Form TO requires Non-SD/MSP trade option counterparties to report the approximate size of unreported trade options exercised in the prior calendar year within three dollar-value ranges: Less than $10 million, between $10 million and $100 million, and over $100 million. Form TO also requires Non-SD/MSP trade option counterparties to indicate the ''commodity category'' in which they entered into one or more unreported trade options: Agricultural, metals, energy or ''other.'' *See* appendix A to part 32 of the Commission's regulations.

option counterparties provide notice by email to DMO within 30 days after entering into trade options, whether reported or unreported, that have an aggregate notional value in excess of $1 billion in any calendar year (the ''$1 Billion Notice'').[48] The Commission further proposed that, as an alternative to filing the $1 Billion Notice, a Non-SD/MSP could provide notice by email to DMO that it reasonably expects to enter into trade options, whether reported or unreported, having an aggregate notional value in excess of $1 billion during any calendar year (the ''Alternative Notice'').[49] Collectively, the $1 Billion Notice and the Alternative Notice were referred to in the proposal as the ''Notice Requirement.'' [50] The Commission explained in the Proposal that in light of the other proposed amendments that would generally remove reporting requirements for Non-SD/MSP counterparties to trade options, the proposed Notice Requirement would provide the Commission insight into the size of the market for unreported trade options and the identities of the most significant market participants, and would help guide the Commission's efforts to collect additional information through its authority to obtain copies of books or records should market circumstances dictate.[51]

Electric Associations, COPE and Southern each recommended against adoption of the proposed Notice Requirement.[52] Electric Associations commented that it would be burdensome for Non-SD/MSPs to track and value trade options ''in a manner different than their ordinary tracking, measuring and recordkeeping for other cash commodity transactions (intended to be physically settled),'' and that such burden would be greater for smaller entities, which would need to track and value their trade options throughout the year, than it would be for large Non-SD/MSP counterparties, which could merely send the proposed Alternative Notice email to the Commission in January of each year.[53] Southern commented that elimination of the Form TO reporting requirement would not be as meaningful if the Commission adopts the proposed $1 Billion Notice, because a Non-SD/MSP would nevertheless be required ''to classify, value and track their trade options'' all towards compliance with the Notice Requirement.[54]

AGA generally supported the Notice Requirement reporting framework, but commented that it is especially difficult to value many common types of trade options, such as long-term trade options and trade options with open-ended price or quantity terms, towards compliance with the proposed $1 Billion Notice.[55]

The Commission recognizes that the relief provided by eliminating Form TO and part 45 reporting for trade option counterparties that are Non-SD/MSPs would be more meaningful if Non-SD/MSP trade option counterparties are not required to classify, value and track their trade options for the exclusive purpose of complying with the proposed Notice Requirement. The Commission also recognizes that commenters have expressed that trade options, especially trade options that have a long duration or open price or quantity terms, may be difficult to value. Thus, the burdens on Non-SD/MSP trade option counterparties to classify, value and track their trade options towards compliance with the proposed Notice Requirement could be significant, and it is not evident that there are any steps these counterparties could take to more accurately classify, value and track their trade options, given the uncertainties inherent in this type of contract. Therefore, in view of the relatively limited use of such data (which would be submitted in aggregate form and not categorized by commodity or by instrumentation) for surveillance and regulatory oversight purposes, the Commission does not believe that the proposed Notice Requirement is necessary.

Accordingly, for the reasons set forth above, the Commission has chosen not to adopt as part of this final rule the proposed Notice Requirement, *i.e.,* the proposed $1 Billion Notice and Alternative Notice requirements.

B. Revised Recordkeeping Requirements for Trade Option Counterparties That Are Non-SD/MSPs

The Commission proposed to amend § 32.3(b) to clarify that trade option counterparties that are Non-SD/MSPs need not identify their trade options in all recordkeeping by means of either a USI or UPI, as required by §§ 45.5 and 45.7.[56] Rather, with respect to part 45 recordkeeping requirements, the Commission proposed to clarify that trade option counterparties that are Non-SD/MSPs need only comply with the applicable recordkeeping provisions in § 45.2,[57] along with the following proposed qualification: The Non-SD/MSP trade option counterparty must obtain an LEI pursuant to § 45.6 and provide such LEI to its counterparty if that counterparty is an SD/MSP. This proposed amendment would allow a trade option counterparty that is an SD/MSP to comply with applicable part 45 swap data recordkeeping and reporting obligations by properly identifying its Non-SD/MSP trade option counterparty by that counterparty's LEI.[58]

Electric Associations, COPE, IECA and Southern each recommended further reduction of trade option recordkeeping requirements for Non-SD/MSPs.[59] Electric Associations commented that various types of end-users currently maintain records of trade options in ''different systems, in different formats and for different retention periods than transactions referencing the same commodities that are intended to be financially settled, causing such records to not be retrievable in the same manner or format, or as quickly, as financially settled transactions.'' [60] COPE commented that compliance with part 45 recordkeeping requirements in connection with trade options is burdensome for end-users, who must ''identify and segregate trade options from other physical contracts, maintain the material required by CFTC regulations, and be prepared to provide requested data to the CFTC within five

[48] *See* 80 FR at 26203–04. As discussed above, the no-action relief provided by No-Action Letter 13–08 to Non-SD/MSP trade option counterparties from part 45 reporting requirements is also conditioned on the Non-SD/MSP providing DMO with a $1 Billion Notice. *See* note 17 and accompanying text, *supra.* In 2013, 2014 and 2015, DMO received $1 Billion Notices from nine, sixteen and fifteen Non-SD/MSPs, respectively. Most of these $1 Billion Notices were filed on behalf of large, well known energy companies.

[49] *See* 80 FR at 26203–04. The Commission proposed that Non-SD/MSPs who provide the Alternative Notice would not be required to demonstrate that they actually entered into trade options with an aggregate notional value of $1 billion or more in the applicable calendar year.

[50] 80 FR at 26203.

[51] *See* 80 FR at 26203–04.

[52] *See* Electric Associations at 4–6; Cope at 3; Southern at 2–3.

[53] *See* Electric Associations at 5–6.

[54] *See* Southern at 2–3.

[55] *See* AGA at 5–8.

[56] *See* 80 FR at 26204; *see* also notes 30–32 and accompanying text, *supra.*

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

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

[59] *See* Electric Associations at 10–11; COPE at 2–3; IECA at 2–5; Southern at 4–5.

[60] Electric Associations at 11.

days.'' [61] COPE recommended allowing physical end-users to keep records of trade options ''in a manner no less stringent than that used for their physical commercial agreements, with an obligation to provide copies to the CFTC in a commercially reasonable time upon request.'' [62] Southern recommended that the Commission provide further relief by permitting Non-SD/MSPs to ''maintain the documents that they would otherwise already maintain in their ordinary course of business.'' [63] Southern further commented that the recordkeeping requirements under § 45.2(b) are ''very broad and vague,'' and that carrying forward these requirements will result in a ''tremendous burden'' on Non-SD/MSPs, who ''will need to undergo a significant effort to ensure 'full, complete, and systematic records, together will all pertinent data and memoranda' are maintained for every trade option.'' [64] The Commission did not receive any comments specifically addressing the requirement that a Non-SD/MSP trade option counterparty would need to obtain an LEI pursuant to § 45.6 and provide such LEI to its counterparty if that counterparty is an SD/MSP.

The Commission recognizes that requiring Non-SD/MSPs to comply with the swap data recordkeeping requirements of part 45 in connection with their trade options may result in burdens and costs for such participants, especially for small end users. The Commission believes that it would be appropriate to alleviate such burdens and costs for these market participants, without compromising the Commission's ability to properly oversee trade option activities. In particular, the Commission expects that Non-SD/MSPs maintain records concerning their trade option activities in the ordinary course of business. Furthermore, the Commission will remain able to collect information concerning trade option activities as necessary. For example, where a Non-SD/MSP enters into a trade option opposite an SD/MSP, the SD/MSP counterparty must continue to comply with all applicable swaps-related recordkeeping and reporting requirements of part 45 with respect to that transaction.[65] In order to facilitate such reporting and recordkeeping by trade option counterparties that are SD/MSPs, the Commission will adopt, as proposed, the requirement that a Non-SD/MSP trade option counterparty must obtain an LEI pursuant to § 45.6 and provide such LEI to its counterparty if that counterparty is an SD/MSP. As stated above, this requirement allows an SD/MSP to properly identify its Non-SD/MSP trade option counterparty by that counterparty's LEI in all swap data recordkeeping and reporting relating to that transaction.[66] As a result, the Commission will be able to gain insight into any trade option entered into by a Non-SD/MSP opposite a counterparty that is an SD/MSP. Additionally, under § 32.3(c)(2)[renumbered § 32.3(c)(1)], Non-SD/MSPs that are clearing members shall continue to comply with part 20 reporting and recordkeeping requirements in connection with their trade option activities.[67]

Accordingly, the Commission is amending regulation § 32.3(b) by deleting the requirement that a Non-SD/MSP must comply with the recordkeeping requirements of part 45 (as otherwise applicable to any swap) in connection with its trade option activities, subject to the exception that a Non-SD/MSP trade option counterparty must obtain an LEI pursuant to § 45.6 and provide such LEI to its counterparty if that counterparty is an SD/MSP.

C. Applicability of Position Limits to Trade Options

Existing Commission regulation § 32.3(c)(2) subjects trade options to part 151 position limits, to the same extent that part 151 would apply in connection with any other swap.[68] However, as stated above, part 151 has been vacated.[69] Furthermore, trade options are not subject to position limits under the Commission's current part 150 position limit regime.[70]

In the Proposal, the Commission proposed to amend existing § 32.3(c) by deleting § 32.3(c)(2), including the reference to vacated part 151, because position limits do not currently apply to trade options. The Commission explained in the Proposal that this would not be a substantive change.[71] Accordingly, for the reasons stated above, the Commission is deleting the cross-reference to vacated part 151 position limits from § 32.3(c), as proposed.

Several commenters requested assurance from the Commission that federal speculative position limits will not apply to trade options in the future as a result of the pending position limits rulemaking, which remains in the proposed rulemaking stage.[72] The Commission believes that federal speculative position limits should not apply to trade options. To that end, the Commission intends to address this matter in the context of the proposed rulemaking on position limits, if such rule is adopted.

III. Related Matters

A. Cost Benefit Analysis

1. Background

As discussed above, the Commission is adopting amendments to the trade option exemption in § 32.3 that: (1) Eliminate the part 45 reporting requirement for trade option counterparties that are Non-SD/MSPs; (2) eliminate the Form TO filing requirement; (3) eliminate the part 45 recordkeeping requirements for trade option counterparties that are Non-SD/MSPs, with the exception being that a Non-SD/MSP trade option counterparty must obtain an LEI pursuant to § 45.6 and provide such LEI to its counterparty if that counterparty is an SD/MSP; and (4) eliminate reference to the now-vacated part 151 position limits. In issuing this final rule, the Commission

[61] COPE at 2–3.

[62] *Id.* at 3.

[63] Southern at 4.

[64] *Id.*

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

[66] *See* 17 CFR 32.3(c).

[67] 17 CFR 32.3(c)(1); 17 CFR part 20. A clearing member, as defined in § 20.1, means any person who is a member of, or enjoys the privilege of, clearing trades in its own name through a clearing organization. Section 20.6(d) requires that all books and records required to be kept under § 20.6 shall be furnished upon request to the Commission along with any pertinent information concerning such positions, transactions, or activities. The recordkeeping duties imposed by § 20.6 are in accordance with the requirements of Regulation 1.31. *See* 17 CFR 20.6(a)–(b).

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

[69] *See* note 13 and accompanying text, *supra.*

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

[71] 80 FR at 26204–05.

[72] *See, e.g.,* AGA at 8–9; Electric Associations at 14–15; CEWG at 2–3; APGA at 2; NGSA at 2; IECA at 6–7; Southern at 5–6. On December 12, 2013, the Commission published in the **Federal Register** a notice of proposed rulemaking to establish speculative position limits for 28 exempt and agricultural commodity futures and options contracts and the physical commodity swaps that are economically equivalent to such contracts, including trade options. *See* Position Limits for Derivatives, Proposed Rules, 78 FR 75680 (Dec. 12, 2013) (''Position Limits Proposal''). Therein, the Commission proposed replacing the cross-reference to vacated part 151 in § 32.3(c)(2) with a cross-reference to amended part 150 position limits. *See* 78 FR at 75711. As an alternative in the Position Limits Proposal, the Commission proposed to exclude trade options from speculative position limits and proposed an exemption for commodity derivative contracts that offset the risk of trade options.

has reviewed all relevant comment letters and taken into account significant issues raised therein.[73]

The Commission believes that the baseline for this cost and benefit consideration is existing § 32.3. Although No-Action Letter 13–08, as discussed above, has offered no-action relief that is similar to certain aspects of the relief provided by this final rule, as a no-action letter, it only represents the position of the issuing Division or Office and cannot bind the Commission or other Commission staff.[74] Consequently, the Commission believes that No-Action Letter 13–08 should not set or affect the baseline against which the Commission considers the costs and benefits of this final rule.

In the Proposal, the Commission invited comment on all aspects of its consideration of the costs and benefits associated with the Proposal, and the five factors the Commission is required to consider under CEA section 15(a). The Commission did not receive any comments from the public in this regard.

2. Costs

The Commission has considered whether elimination of part 45 reporting and recordkeeping requirements for trade option counterparties that are Non-SD/MSPs and the Form TO filing requirement could potentially reduce the amount of information available to the Commission to fulfill its regulatory mission, which could be a cost to the markets or the general public. However, the Commission shall remain able to collect sufficient information concerning trade option activities to fulfill its regulatory mission.[75]

The Commission expects that Non-SD/MSPs will continue to maintain records concerning their trade option activities in the ordinary course of business. Additionally, where a Non-SD/MSP enters into a trade option opposite an SD/MSP, the SD/MSP counterparty must continue to comply with all applicable swaps-related recordkeeping and reporting requirements of part 45 with respect to that transaction. In order to facilitate such reporting and recordkeeping by trade option counterparties that are SD/MSPs, the Commission has adopted a requirement in amended § 32.3(b) that a Non-SD/MSP trade option counterparty must obtain an LEI pursuant to § 45.6 and provide such LEI to its counterparty if that counterparty is an SD/MSP. As stated above, this requirement allows an SD/MSP to properly identify its Non-SD/MSP trade option counterparty by that counterparty's LEI in all swap data recordkeeping and reporting.[76] Thus, the Commission may continue to gain insight into any trade option entered into by a Non-SD/MSP opposite a counterparty that is an SD/MSP. Furthermore, under § 32.3(c)(1), Non-SD/MSPs that are clearing members shall continue to comply with part 20 reporting and recordkeeping requirements in connection with their trade option activities. Therefore, the Commission believes that this final rule will not impose any additional costs on the markets themselves, or on the general public.

3. Benefits

The Commission believes that this final rule has the benefit of reducing the regulatory burdens imposed by § 32.3(b), particularly through the elimination of part 45 reporting and recordkeeping requirements for trade option counterparties that are Non-SD/MSPs and the Form TO filing requirement, each of which commenters have described as burdensome.[77]

4. Section 15(a) Factors

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA or issuing certain orders.[78] Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the section 15(a) factors.

a. Protection of Market Participants and the Public

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

b. Efficiency, Competitiveness, and Financial Integrity of Markets

The Commission believes that the amendments to § 32.3 will reduce reporting and recordkeeping burdens on Non-SD/MSPs in the market for trade options, and will allow them to reallocate resources dedicated to trade options reporting to other more efficient purposes. Despite the deletion of swaps-related recordkeeping requirements in connection with trade options between two Non-SD/MSP counterparties, the Commission shall remain able to collect information concerning trade options as necessary to use in its market oversight role, thereby fulfilling the purposes of the CEA.[79]

The Commission believes that the amendments to § 32.3 will not have any competitiveness impact because the amendments apply to all Non-SD/MSP trade option counterparties in the same way. Although the obligations of SD/MSPs under the amended rule differ from those of Non-SD/MSPs, the Commission does not believe that these differences relate to any factors of competition between the two types of trade option counterparties.

c. Price Discovery

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

d. Sound Risk Management Practices

The Commission believes that this final rule will not have a meaningful adverse effect on the risk management practices of the affected market participants and end users. Although the final rule is intended to reduce some of the regulatory burdens on certain market participants and end users, the Commission expects that where two Non-SD/MSPs enter into a trade option with one another, each participant will continue to maintain records concerning that contract, and its exercise, in its ordinary course of business. Furthermore, the Commission shall

[73] *See* note 35 and accompanying text, *supra.*

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

[75] *See* notes 65–67 and accompanying text.

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

[77] *See* notes 39, 42–46, and 59–64, and accompanying text, *supra.*

[78] 7 U.S.C. 19(a).

[79] *See, e.g.,* 7 U.S.C. 5 (stating that it is a purpose of the CEA to deter disruptions to market integrity). *See also* notes 65–67 and accompanying text.

remain able to collect information concerning trade options as necessary to fulfill its regulatory mission.

e. Other Public Interest Considerations

The Commission has not identified any other public interest considerations for this final rule. As noted above, these amendments to § 32.3 will reduce some regulatory burdens while maintaining the Commission's access to information to fulfill its regulatory mission.

B. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (''RFA'') requires that agencies consider whether the rules they issue will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis respecting the impact.[80] The final rule, in amending § 32.3, will affect the recordkeeping and reporting requirements for Non-SD/MSP counterparties relying on the trade option exemption in § 32.3. Pursuant to the eligibility requirements in § 32.3(a), such a Non-SD/MSP may be an ECP and/or a commercial party (*i.e.,* a producer, processor, or commercial user of, or a merchant handling the exempt or agricultural commodity that is the subject of the commodity option transaction, or the products or by-products thereof) offering or entering into the trade option solely for purposes related to its business as such. Although the Commission has previously determined that ECPs are not small entities for RFA purposes,[81] the Commission is not in a position to determine whether non-ECP commercial parties affected by the amendments would include a substantial number of small entities on which the rule would have a significant economic impact because § 32.3 does not subject such entities to a minimum net worth requirement, allowing commercial entities of any economic status to enter into exempt trade options. Therefore, pursuant to 5 U.S.C. 604, the Commission offers this regulatory flexibility analysis addressing the impact of the proposal on small entities:

(1) A Statement of the Need for, and Objectives of, the Rule.

The Commission is taking this regulatory action to modify the trade option exemption in § 32.3 in response to comments from Non-SD/MSPs that the regulatory burdens currently imposed by § 32.3 are unnecessarily burdensome. The objective for issuing this rule is to reduce the recordkeeping and reporting obligations for trade option counterparties that are Non-SD/MSPs. As stated above, the legal basis for the rule is the Commission's plenary options authority in CEA section 4c(b).

(2) Summary of the significant issues raised by public comment on the Commission's initial analysis, the Commission's assessment of such issues, and a statement of any changes made as a result of such comments.

The Commission did not receive any comment on the initial regulatory flexibility analysis.

(3) A description of, and an estimate of, the number of small entities to which the rule will apply or an explanation of why no such estimate is available.

The small entities to which the rule may apply are those commercial parties that would not qualify as ECPs and/or that fall within the definition of a ''small entity'' under the RFA, including size standards established by the Small Business Administration.[82] Although more than 300 Non-SD/MSPs have reported their use of trade options to the Commission annually through Form TO, the limited information provided by Form TO is not sufficient for the Commission to determine whether and how many of those Non-SD/MSPs qualify as small entities under the RFA.

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

The rule will relieve trade option counterparties that are Non-SD/MSPs, which may include small entities, from certain recordkeeping and reporting requirements that would otherwise apply to them in connection with their trade option activities, such as part 45 reporting and recordkeeping requirements, and Form TO reporting requirements.

(5) A description of any significant alternatives to the rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the rule on small entities.

A potential alternative to relieving Non-SD/MSPs, which may include small entities, from certain recordkeeping and reporting requirements would be to either (1) not amend the current rule, which would maintain certain recordkeeping and reporting requirements that Non-SD/MSPs have represented are onerous, or (2) create a rule with more specific reporting and recordkeeping parameters for specific entities. The Commission believes that this final rule will have a positive economic impact on Non-SD/MSPs that are small entities because it would generally relax reporting and recordkeeping requirements across all trade option counterparties that are Non-SD/MSPs.

Therefore, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The purposes of the Paperwork Reduction Act of 1995 (''PRA'') are, among other things, to minimize the paperwork burden to the private sector, ensure that any collection of information by a government agency is put to the greatest possible uses, and minimize duplicative information collections across the government.[83] The PRA applies to all information, ''regardless of form or format,'' whenever the government is ''obtaining, causing to be obtained [or] soliciting'' information, and includes required disclosure to third parties or the public, of facts or opinions, when the information collection calls for answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons.[84] The PRA requirements have been determined to include not only mandatory but also voluntary information collections, and include both written and oral communications.[85] Under the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number from the Office of Management and Budget (''OMB'').

The Commission believes that this final rule will not impose any new information collection requirements that require approval of OMB under the PRA. As a general matter, the final rule relaxes reporting and recordkeeping

[80] *See* 5 U.S.C. 601 *et seq.*

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

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

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

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

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

requirements for Non-SD/MSPs entering into trade options in connection with their respective businesses, including the withdrawal and removal of Form TO. Additionally, the Commission has chosen not to adopt as part of this final rule the proposed Notice Requirement, *i.e.,* the proposed $1 Billion Notice and Alternative Notice requirements. Since this final rule does not impose any new information collection requirements, the final rule therefore does not result in the creation of any new information collection subject to OMB review or approval under the PRA. Furthermore, the Commission believes that this final rule will not cause a material net reduction in the current part 45 PRA burden estimates (OMB control number 3038–0096) to the extent that such reduced recordkeeping and reporting burdens for trade option counterparties that are Non-SD/MSPs will be insubstantial when compared to the overall part 45 PRA burden estimate as it relates to Non-SD/MSPs.

Accordingly, since there is no longer a need for Form TO, and since there will not be any other reporting or recordkeeping requirement falling under OMB Control Number 3038–0106, the Commission will file a request with OMB to discontinue OMB Control Number 3038–0106 (Form TO, Annual Notice Filing for Counterparties to Unreported Trade Options).

List of Subjects in 17 CFR Part 32

Commodity futures, Consumer protection, Fraud, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Commodity Futures Trading Commission amends 17 CFR part 32 as follows:

PART 32—REGULATION OF COMMODITY OPTION TRANSACTIONS

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

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

■ 2. Revise § 32.3 to read as follows:

§ 32.3 Trade options.

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

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

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

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

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

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

(b) In connection with any commodity option transaction entered into pursuant to paragraph (a) of this section, every counterparty that is not a swap dealer or major swap participant shall obtain a legal entity identifier pursuant to § 45.6 of this chapter if the counterparty to the transaction involved is a swap dealer or major swap participant, and provide such legal entity identifier to the swap dealer or major swap participant counterparty.

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

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

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

(3) Sections 23.200, 23.201, 23.203, and 23.204 of subpart F of part 23 (Reporting and Recordkeeping Requirements for Swap Dealers and Major Swap Participants) of this chapter; and

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

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

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

Appendix A to 17 CFR part 32 [Removed]

■ 3. Remove appendix A to 17 CFR part 32.

Issued in Washington, DC, on March 16, 2016, by the Commission.

Christopher J. Kirkpatrick,

Secretary of the Commission.

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

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

Today, the CFTC has taken another important step to address the concerns of commercial end-users who rely on the

derivatives markets to hedge risk—and who, we should always remember, did not cause the financial crisis. Trade options are a type of commodity option primarily used in the agricultural, energy and manufacturing sectors. Today, the Commission has finalized some amendments to its rules that recognize trade options are different from the swaps that are the focus of the Dodd-Frank reforms. These changes will reduce the burdens on these commercial businesses and allow them to better address commercial risk.

The action we have taken today will eliminate any potential obligation of commercial participants, who are not swap dealers (SD) or major swap participants (MSP), to report trade options to a swap data repository. We also have eliminated the requirement that these entities must report their trade option activities on ''Form TO,'' and we have eliminated Form TO altogether. Further, we have ended the swap-related recordkeeping requirements for these end-users in connection with their trade option activities, although when transacting in trade options with SDs or MSPs, they will need to obtain a legal entity identifier. These changes will reduce burdens and costs for trade option counterparties that are not SDs or MSPs and, in particular, for smaller end-users.

We also have decided not to impose a requirement in the proposed rule that a commercial participant would need to provide notice to the Commission of its trade options activities if such activities have a value of more than $1 billion in any calendar year. This followed careful consideration of the benefits of such information to the Commission, as compared with the difficulties commercial end-users would face in valuating, tracking, and classifying their trade options.

I'm pleased that today we have addressed some reasonable concerns of commercial end-users who are the critical users of the derivatives markets. This is just one of the many actions we have taken in this regard. We will continue to evaluate our rules with an eye towards the concerns of these businesses. I thank my fellow Commissioners for supporting today's action.

Appendix 3—Concurring Statement of Commissioner Sharon Y. Bowen

Our ruling today provides additional clarity for trade options, but I encourage market participants to look at it closely.

Trade options have been caught in a difficult legal bind. Congress sought to ensure that people could not evade our swaps regulations. It did so by both having a very broad definition of a swap, while also limiting this Commission's authority to exempt swaps by regulation.

Fortunately, however, Congress preserved the Commission's authority to exempt trade options, which is the authority we are once again using today. Importantly, this exemption provides additional legal certainty that our interpretations cannot. But we cannot overrule the Commodity Exchange Act with regulations and interpretations; we will always be bound by that statute. Therefore, I want to caution anyone tempted to rely on an interpretation to avoid CFTC jurisdiction when it comes to options.

I fully recognize the difficulty in distinguishing between different types of physical contracts. If a particular contract or an element of a contract serves an economic purpose similar to an option, I believe the best course of action is to exercise caution and not assume your contract is outside of our jurisdiction based on an interpretation. While it may seem fine for a person using these contracts to hope that the interpretation is not called into question, I believe it would be wise, as a backstop, to make sure it also falls within the trade option exemption.

[FR Doc. 2016–06260 Filed 3–18–16; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 14

[Docket No. FDA–2016–N–0001]

Patient Engagement Advisory Committee

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the standing advisory committees' regulations to add the Patient Engagement Advisory Committee.

DATES: This rule is effective March 21, 2016.

FOR FURTHER INFORMATION CONTACT: Letise Williams, Office of Center Director, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, email: *Letise.Williams@fda.hhs.gov,* 301–796–8398.

SUPPLEMENTARY INFORMATION: The Patient Engagement Advisory Committee (the Committee) was established on October 6, 2015 (80 FR 57007, September 21, 2015).

The Committee will provide advice to the Commissioner of Food and Drugs (the Commissioner), or designee, on complex issues relating to medical devices, regulation of devices, and their use by patients.

The Committee will be composed of a core of nine voting members including the Chair. Members and the Chair are selected by the Commissioner or designee from among authorities who are knowledgeable in areas such as clinical research, primary care patient experience, and healthcare needs of patient groups in the United States, or who are experienced in the work of patient and health professional organizations, methodologies for eliciting patient preferences, and strategies for communicating benefits, risks, and clinical outcomes to patients and research subjects. Members will be invited to serve for overlapping terms of up to 4 years. Almost all non-Federal members of this committee serve as Special Government Employees. The core of voting members may include one technically qualified member, selected by the Commissioner or designee, who is identified with consumer interests and is recommended by either a consortium of consumer-oriented organizations or other interested persons.

The function of the Committee is to provide advice to the Commissioner on complex issues relating to medical devices, the regulation of devices, and their use by patients. Agency guidance and policies, clinical trial or registry design, patient preference study design, benefit-risk determinations, device labeling, unmet clinical needs, available alternatives, patient reported outcomes, and device-related quality of life or health status issues are among the topics that may be considered by the Committee. The Committee provides relevant skills and perspectives in order to improve communication of benefits, risks, and clinical outcomes, and increase integration of patient perspectives into the regulatory process for medical devices. It performs its duties by identifying new approaches, promoting innovation, recognizing unforeseen risks or barriers, and identifying unintended consequences that could result from FDA policy.

The Committee name and function were established with the Committee charter on October 6, 2015. Therefore, the Agency is amending 21 CFR 14.100 to add the Committee name and function to its current list as set forth in the regulatory text of this document.

Under 5 U.S.C. 553(b)(3)(B) and (d) and 21 CFR 10.40(d) and (e), the Agency finds good cause to dispense with notice and public comment procedures and to proceed to an immediate effective date on this rule. Notice and public comment and a delayed effective date are unnecessary and are not in the public interest as this final rule is merely codifying the addition of the name and function of the Patient Engagement Advisory Committee to reflect the committee charter.

Therefore, the Agency is amending 21 CFR 14.100 to add paragraph (d)(5) as set forth in the regulatory text of this document.