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(3) *New York Mercantile Exchange New York Harbor Gasoline Blendstock* (RB) contract; and

(4) *New York Mercantile Exchange Henry Hub Natural Gas* (NG) contract.

§ 151.4 Position limits for Referenced Contracts.

(a) *Spot-month position limits.* In accordance with the procedure in paragraph (d) of this section, and except as provided or as otherwise authorized by § 151.5, no trader may hold or control a position, separately or in combination, net long or net short, in Referenced Contracts in the same commodity when such position is in excess of:

(1) For physical-delivery Referenced Contracts, a spot-month position limit that shall be based on one-quarter of the estimated spot-month deliverable supply as established by the Commission pursuant to paragraphs (d)(1) and (d)(2) of this section; and

(2) For cash-settled Referenced Contracts:

(i) A spot-month position limit that shall be based on one-quarter of the estimated spot-month deliverable supply as established by the Commission pursuant to paragraphs (d)(1) and (d)(2) of this section. *Provided, however,*

(ii) For New York Mercantile Exchange Henry Hub Natural Gas Referenced Contracts:

(A) A spot-month position limit equal to five times the spot-month position limit established by the Commission for the physical-delivery New York Mercantile Exchange Henry Hub Natural Gas Referenced Contract pursuant to paragraph (a)(1); and

(B) An aggregate spot-month position limit for physical-delivery and cash-settled New York Mercantile Exchange Henry Hub Natural Gas Referenced Contracts equal to five times the spot-month position limit established by the Commission for the physical-delivery New York Mercantile Exchange Henry Hub Natural Gas Referenced Contract pursuant to paragraph (a)(1).

(b) *Non-spot-month position limits.* In accordance with the procedure in paragraph (d) of this section, and except as otherwise authorized in § 151.5, no person may hold or control positions, separately or in combination, net long or net short, in the same commodity

when such positions, in all months combined (including the spot month) or in a single month, are in excess of:

(1) *Non-legacy Referenced Contract position limits.* All-months-combined aggregate and single-month position limits, fixed by the Commission based on 10 percent of the first 25,000 contracts of average all-months-combined aggregated open interest with a marginal increase of 2.5 percent thereafter as established by the Commission pursuant to paragraph (d)(3) of this section;

(2) *Aggregate open interest calculations for non-spot-month position limits for non-legacy Referenced Contracts.* (i) For the purpose of fixing the speculative position limits for non-legacy Referenced Contracts in paragraph (b)(1) of this section, the Commission shall determine:

(A) The average all-months-combined aggregate open interest, which shall be equal to the sum, for 12 or 24 months of values obtained under paragraph (B) and (C) of this section for a period of 12 or 24 months prior to the fixing date divided by 12 or 24 respectively as of the last day of each calendar month;

(B) The all-months-combined futures open interest of a Referenced Contract is equal to the sum of the month-end open interest for all of the Referenced Contract's open contract months in futures and option contracts (on a delta adjusted basis) across all designated contract markets; and

(C) The all-months-combined swaps open interest is equal to the sum of all of a Referenced Contract's month-end open swaps positions, considering open positions attributed to both cleared and uncleared swaps, where the uncleared all-months-combined swaps open positions shall be the absolute sum of swap dealers' net uncleared open swaps positions by counterparty and by single Referenced Contract month as reported to the Commission pursuant to part 20 of this chapter, provided that, other than for the purpose of determining initial non-spot-month position limits, open swaps positions attributed to swaps with two swap dealer counterparties shall be counted once for the purpose of determining uncleared all-months-combined swaps open positions, provided further that, upon entry of an order under § 20.9 of

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this chapter determining that operating swap data repositories are processing positional data that will enable the Commission effectively to conduct surveillance in swaps, the Commission shall rely on data from such swap data repositories to compute the all-months-combined swaps open interest;

(ii) Notwithstanding the provisions of this section, for the purpose of determining initial non-spot-month position limits for non-legacy Referenced Contracts, the Commission may estimate uncleared all-months-combined swaps

open positions based on uncleared open swaps positions reported to the Commission pursuant to part 20 of this chapter by clearing organizations or clearing members that are swap dealers; and

(3) *Legacy agricultural Referenced Contract position limits.* All-months-combined aggregate and single-month position limits, fixed by the Commission at the levels provided below as established by the Commission pursuant to paragraph (d)(4) of this section:

Referenced contract	Position limits
(i) Chicago Board of Trade Corn (C) contract	33,000
(ii) Chicago Board of Trade Oats (O) contract	2,000
(iii) Chicago Board of Trade Soybeans (S) contract	15,000
(iv) Chicago Board of Trade Wheat (W) contract	12,000
(v) Chicago Board of Trade Soybean Oil (BO) contract	8,000
(vi) Chicago Board of Trade Soybean Meal (SM) contract	6,500
(vii) Minneapolis Grain Exchange Hard Red Spring Wheat (MW) contract	12,000
(viii) ICE Futures U.S. Cotton No. 2 (CT) contract	5,000
(ix) Kansas City Board of Trade Hard Winter Wheat (KW) contract	12,000

(c) *Netting of positions*—(1) *For Referenced Contracts in the spot month.* (i) For the spot-month position limit in paragraph (a) of this section, a trader’s positions in the physical-delivery Referenced Contract and cash-settled Referenced Contract are calculated separately. A trader cannot net any physical-delivery Referenced Contract with cash-settled Referenced Contracts towards determining the trader’s positions in each of the physical-delivery Referenced Contract and cash-settled Referenced Contracts in paragraph (a) of this section. However, a trader can net positions in cash-settled Referenced Contracts in the same commodity.

(ii) Notwithstanding the netting provision in paragraph (c)(1)(i) of this section, for the aggregate spot-month position limit in New York Mercantile Exchange Henry Hub Natural Gas Referenced Contracts in paragraph (a)(2)(ii) of this section, a trader’s positions shall be combined and the net resulting position in the physical-delivery Referenced Contract and cash-settled Referenced Contracts shall be applied towards determining the trader’s aggregate position.

(2) For the purpose of applying non-spot-month position limits, a trader’s

position in a Referenced Contract shall be combined and the net resulting position shall be applied towards determining the trader’s aggregate single-month and all-months-combined position.

(d) *Establishing and effective dates of position limits*—(1) *Initial spot-month position limits for Referenced Contracts.* (i) Sixty days after the term “swap” is further defined under the Wall Street Transparency and Accountability Act of 2010, the spot-month position limits for Referenced Contracts referred to in appendix A shall apply to all the provisions of this part.

(2) *Subsequent spot-month position limits for Referenced Contracts.* (i) Commencing January 1st of the second calendar year after the term “swap” is further defined under the Wall Street Transparency and Accountability Act of 2010, the Commission shall fix position limits by Commission order that shall supersede the initial limits established under paragraph (d)(1) of this section.

(ii) In fixing spot-month position limits for Referenced Contracts, the Commission shall utilize the estimates of deliverable supply provided by a designated contract market under paragraph (d)(2)(iii) of this section unless

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the Commission determines to rely on its own estimate of deliverable supply.

(iii) Each designated contract market shall submit to the Commission an estimate of deliverable supply for each Core Referenced Futures Contract that is subject to a spot-month position limit and listed or executed pursuant to the rules of the designated contract market according to the following schedule commencing January 1st of the second calendar year after the term “swap” is further defined under the Wall Street Transparency and Accountability Act of 2010:

(A) For metal Core Referenced Futures Contracts listed in §151.2(b), by the 31st of December and biennially thereafter;

(B) For energy Core Referenced Futures Contracts listed in §151.2(c), by the 31st of March and biennially thereafter;

(C) For corn, wheat, oat, rough rice, soybean and soybean products, livestock, milk, cotton, and frozen concentrated orange juice Core Referenced Futures Contracts, by the 31st of July, and annually thereafter;

(D) For coffee, sugar, and cocoa Core Referenced Futures Contracts, by the 30th of September, and annually thereafter.

(iv) For purposes of estimating deliverable supply, a designated contract market may use any guidance adopted in the Acceptable Practices for Compliance with Core Principle 3 found in part 38 of the Commission’s regulations.

(v) The estimate submitted under paragraph (d)(2)(iii) of this section shall be accompanied by a description of the methodology used to derive the estimate along with any statistical data supporting the designated contract market’s estimate of deliverable supply.

(vi) The Commission shall fix and publish pursuant to paragraph (e) of this section, the spot-month limits by Commission order, no later than:

(A) For metal Referenced Contracts listed in §151.2(b), by the 28th of February following the submission of estimates of deliverable supply provided to the Commission under paragraph (d)(2)(iii)(A) of this section and biennially thereafter;

(B) For energy Referenced Contracts listed in §151.2(c), by the 31st of May following the submission of estimates of deliverable supply provided to the Commission under paragraph (d)(2)(iii)(B) of this section and biennially thereafter;

(C) For corn, wheat, oat, rough rice, soybean and soybean products, livestock, milk, cotton, and frozen concentrated orange juice Referenced Contracts, by the 30th of September following the submission of estimates of deliverable supply provided to the Commission under paragraph (d)(2)(iii)(C) of this section and annually thereafter;

(D) For coffee, sugar, and cocoa Referenced Contracts, by the 30th of November following the submission of estimates of deliverable supply provided to the Commission under paragraph (d)(2)(iii)(D) of this section and annually thereafter.

(3) *Non-spot-month position limits for non-legacy Referenced Contract.* (i) Initial non-spot-month limits for non-legacy Referenced Contracts shall be fixed and published within one month after the Commission has obtained or estimated 12 months of values pursuant to paragraphs (b)(2)(i)(B), (b)(2)(i)(C), and (b)(2)(ii) of this section, and shall be fixed and made effective as provided in paragraph (b)(2) and (e) of this section.

(ii) Subsequent non-spot-month limits for non-legacy Referenced Contracts shall be fixed and published within one month after two years following the fixing and publication of initial non-spot-month position limits and shall be based on the higher of 12 months average all-months-combined aggregate open interest, or 24 months average all-months-combined aggregate open interest, as provided for in paragraphs (b)(2) and (e) of this section.

(iii) Initial non-spot-month limits for non-legacy Referenced Contracts shall be made effective by Commission order.

(4) *Non-spot-month legacy limits for legacy agricultural Referenced Contracts.* The non-spot-month position limits for legacy agricultural Referenced Contracts shall be effective sixty days after the term “swap” is further defined under the Wall Street Transparency and Accountability Act of 2010,

and shall apply to all the provisions of this part.

(e) *Publication.* The Commission shall publish position limits on the Commission's Web site at <http://www.cftc.gov> prior to making such limits effective, other than those limits specified under paragraph (b)(3) of this section and appendix A to this part.

(1) Spot-month position limits shall be effective:

(i) For metal Referenced Contracts listed in §151.2(b), on the 1st of May after the Commission has fixed and published such limits under paragraph (d)(2)(vi)(A) of this section;

(ii) For energy Referenced Contracts listed in §151.2(c), on the 1st of August after the Commission has fixed and published such limits under paragraph (d)(2)(vi)(B) of this section;

(iii) For corn, wheat, oat, rough rice, soybean and soybean products, livestock, milk, cotton, and frozen concentrated orange juice Referenced Contracts, on the 1st of December after the Commission has fixed and published such limits under paragraph (d)(2)(vi)(C) of this section; and

(iv) For coffee, sugar, and cocoa Referenced Contracts, on the 1st of February after the Commission has fixed and published such limits under paragraph (d)(2)(vi)(D) of this section.

(2) The Commission shall publish month-end all-months-combined futures open interest and all-months-combined swaps open interest figures within one month, as practicable, after such data is submitted to the Commission.

(3) Non-spot-month position limits established under paragraph (b)(2) of this section shall be effective on the 1st calendar day of the third calendar month immediately following publication on the Commission's Web site under paragraph (d)(3) of this section.

(f) *Rounding.* In determining or calculating all levels and limits under this section, a resulting number shall be rounded up to the nearest hundred contracts.

§ 151.5 Bona fide hedging and other exemptions for Referenced Contracts.

(a) *Bona fide hedging transactions or positions.* (1) Any person that complies

with the requirements of this section may exceed the position limits set forth in §151.4 to the extent that a transaction or position in a Referenced Contract:

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

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

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

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

(B) Liabilities that a person owns or anticipates incurring; or

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

(iv) Reduces risks attendant to a position resulting from a swap that—

(A) Was executed opposite a counterparty for which the transaction would qualify as a bona fide hedging transaction pursuant to paragraph (a)(1)(i) through (iii) of this section; or

(B) Meets the requirements of paragraphs (a)(1)(i) through (iii) of this section.

(v) Notwithstanding the foregoing, no transactions or positions shall be classified as bona fide hedging for purposes of §151.4 unless such transactions or positions are established and liquidated in an orderly manner in accordance with sound commercial practices and the provisions of paragraph (a)(2) of this section regarding enumerated hedging transactions and positions or paragraphs (a)(3) or (4) of this section regarding pass-through swaps of this section have been satisfied.

(2) *Enumerated hedging transactions and positions.* Bona fide hedging transactions and positions for the purposes of this paragraph mean any of the following specific transactions and positions:

(i) Sales of Referenced Contracts that do not exceed in quantity:

(A) Ownership or fixed-price purchase of the contract's underlying cash commodity by the same person; and