

significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), which imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA, does not apply to this rule. The proposed rules do not appear to contain information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 17 CFR Part 36

Commodity futures, Commodity Futures Trading Commission.

In consideration of the foregoing, and pursuant to the authority in the Commodity Exchange Act and, in particular, sections 2(h)(3)–(5) of the Act, the Commission hereby proposes to amend Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 36—EXEMPT MARKETS

1. The authority citation for part 36 continues to read as follows:

Authority: 7 U.S.C. 2, 6, 6c, and 8a.

2. Section 36.3 is proposed to be amended by revising paragraphs (b)(1)(i) and (ii), by adding new paragraphs (b)(1)(iii) and (iv), by redesignating paragraphs (b)(2) and (b)(3) as paragraphs (b)(3) and (b)(4), by adding a new paragraph (b)(2), by adding a heading to paragraph (c)(1), by revising paragraph (c)(2), and by adding a heading to paragraph (c)(3) to read as follows:

§ 36.3 Exempt commercial markets.

* * * * *

(b) * * *
(1) * * *

(i) Provide the Commission with access to the facility's trading protocols, either electronically or in hard copy form;

(ii) Identify to the Commission those transactions conducted on the facility with respect to which it intends to rely on the exemption in section 2(h)(3) of the Act and, with respect to such transactions, either:

(A) Submit to the Commission, in a form and manner acceptable to the Commission, a report for each business day, showing for each transaction executed on the facility in reliance on the exemption set forth in section 2(h)(3) of the Act the following information: The commodity, the location, the maturity date, whether it is a financially settled or physically

delivered instrument, the date of execution, the time of execution, the price, the quantity, and such other information as the Commission may determine, and for an option instrument the type of option (call or put) and the strike price. Each such report shall be electronically transmitted weekly, within such time period as is acceptable to the Commission after the end of the week to which the data applies; or

(B) Provide the Commission, in a form and manner acceptable to the Commission, with electronic access to those transactions conducted on the facility in reliance on the exemption in section 2(h)(3) of the Act, which access would allow the Commission to compile the information described in paragraph (b)(1)(ii)(A) of this section and create a permanent record thereof;

(iii) Maintain a record of allegations or complaints received by the trading facility concerning instances of suspected fraud or manipulation in trading activity conducted in reliance on the exemption set forth in section 2(h)(3) of the Act. The record shall contain the name of the complainant, if provided, the date of the complaint, the market instrument, the substance of the allegations, and the name of the person at the trading facility who received the complaint; and

(iv) Provide to the Commission, either electronically or in hard copy form, a copy of the record of each substantive complaint received pursuant to paragraph (b)(1)(iii) of this section no later than three business days after the complaint is received.

(2) The Commission hereby delegates, until the Commission orders otherwise, the authority to determine the form and manner of submitting reports, the time within which such reports shall be filed, and the form and manner of providing electronic access, under paragraph (b)(1) of this section, to the Director of the Division of Market Oversight and such members of the Commission's staff as the Director may designate. The Director may submit to the Commission for its consideration any matter that has been delegated by this paragraph. Nothing in this paragraph prohibits the Commission, at its election, from exercising the authority delegated in this paragraph.

* * * * *

(c) * * *

(1) *Prohibited representation.* * * *

(2) *Market data dissemination.* (i) *Criteria for price discovery determination.* An electronic trading facility operating in reliance on the exemption in section 2(h)(3) of the Act performs a significant price discovery

function for transactions in the cash market for a commodity underlying any agreement, contract, or transaction executed or traded on the electronic trading facility when:

(A) Cash market bids, offers or transactions are directly based on, or quoted at a differential to, the prices generated on the market on a more than occasional basis; or

(B) The market's prices are routinely disseminated in a widely distributed industry publication and are consulted by the industry on a more than occasional basis for pricing cash market transactions.

(ii) *Notification.* An electronic trading facility operating in reliance on section 2(h)(3) of the Act shall notify the Commission when it has reason to believe that:

(A) Cash market bids, offers or transactions are directly based on, or quoted at a differential to, the prices generated on the market on a more than occasional basis;

(B) The market's prices are routinely disseminated in a widely distributed industry publication; or

(C) The market holds itself out to the public as performing a price discovery function for the cash market for the commodity.

(iii) *Price discovery determination.* Following receipt of a notice under paragraph (c)(2)(ii) of this section, or on its own initiative, the Commission may notify an electronic trading facility operating in reliance on section 2(h)(3) of the Act that the trading facility appears to meet the criteria for performing a significant price discovery function under paragraph (c)(2)(i)(A) or (B) of this section. Before making a final price discovery determination under this paragraph, the Commission shall provide the electronic trading facility with an opportunity for a hearing through the submission of written data, views and arguments. Any such written data, views and arguments shall be filed with the Secretary of the Commission in the form and manner and within the time specified by the Commission. After consideration of all relevant matters, the Commission shall issue an order containing its determination whether the electronic trading facility performs a significant price discovery function under the criteria of paragraph (c)(2)(i)(A) or (B) of this section.

(iv) *Price dissemination.* An electronic trading facility that the Commission has determined performs a significant price discovery function under paragraph (c)(2)(iii) of this paragraph shall disseminate publicly and on a daily basis all of the following