

SUPPORTING STATEMENT FOR NEW INFORMATION COLLECTIONS

AGGREGATION UNDER PART 151, POSITION LIMITS FOR FUTURES AND SWAPS

OMB CONTROL NUMBER 3038-0077

Justification

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.

On July 21, 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) went into effect.¹ Title VII of the Dodd-Frank Act amends the Commodity Exchange Act (“CEA” or “Act”)² to establish a comprehensive new regulatory framework for swaps and security-based swaps. In Section 737 of the Dodd-Frank Act, Congress mandated that the Commodity Futures Trading Commission (“CFTC” or “Commission”) establish position limits on futures contracts (and options on futures contracts) and swaps that are economically equivalent to such futures contracts. On November 18, 2011, the Commission finalized in part 151, position limits for 28 core referenced futures contracts as well as aggregate limits for contracts and transactions that are economically equivalent to such core referenced futures contracts (collectively “referenced contracts”). The position limits rule includes standards for the aggregation of accounts under part 151.7. The account aggregation provisions included certain collections of information under the Paperwork Reduction Act (“PRA”), and those collections fall under OMB control number 3038-0077.

In January of 2012, the Commission received a petition requesting relief under section 4a(a)(7) of the (“Commodity Exchange Act” and clarification of certain aggregation requirements in 151.7. In response to that petition, the Commission is proposing to clarify certain aspects of the aggregation standards, and to expand the scope of certain exemptions from aggregation. The proposed expansion, if adopted, would result in additional claims for an exemption from aggregation, and therefore result in an increase the paperwork burden associated with OMB control number 3038-0077. As discussed in the notice of proposed rulemaking (“NPRM” or “proposed rule”), at this time the Commission anticipates that the expansion of aggregation exemptions will result in a lower cost to market participants compared to the existing rules, but should not jeopardize the effectiveness of the part 151 position limits regime.

The increase in the collections of information will result from the Commission proposing to expand an exemption from the ownership prong for aggregation and to expand the exemption for situations where aggregation would result in the sharing of information in violation of federal law to include state and foreign law.

¹ See Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

² 7 U.S.C. 1 *et seq.*

2. Indicate how, by whom, and for what purpose the data would be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

The reporting and record-keeping requirements proposed herein would be used by the Commission generally and by Commission surveillance staff in particular to verify the aggregation of positions across multiple entities, and for general surveillance purposes. This additional data would allow the Commission to understand how market participants are applying exemptions, ensure the proper application of such exemptions, and provide the Commission with information to adjust exemptions in the future. Toward these ends, the proposed amendments to the part 151 rules provide for the following specific reporting and record-keeping requirements:

1. Proposed rule 151.7(b)(1) establishes an exemption for a person to disaggregate the positions of a separately organized entity (“owned entity”). To claim the exemption, a person would need to meet certain criteria and file a notice with the Commission in accordance with regulation 151.7(h). The notice filing would need to demonstrate compliance with certain conditions set forth in regulations 151.7(b)(1)(i)-(vii). Similar to other exemptions from aggregation, the notice filing would be effective upon submission to the Commission, but the Commission may call for additional information as well as reject, modify or otherwise condition such relief. Further, such person is obligated to amend the notice filing in the event of a material change to the filing.
2. The proposed rules also amend regulation 151.7(i), which provides an exemption from aggregation where the sharing of information between persons would cause either person to violate federal law. The proposed amendments clarify that the exemption would apply to a situation where the sharing of information creates a reasonable risk of a violation of federal law or regulations adopted thereunder, and not solely a per se violation. For the same reasons the Commission adopted the exemption for information sharing restrictions for federal law, the Commission expanded the exemption in regulation 151.7(i) to generally extend to the state law and the law of a foreign jurisdiction. The proposed rules also retain the requirement that market participants file a notice demonstrating compliance with the condition and an opinion of counsel that the sharing of information could create a reasonable risk of a violation of state or federal law or the law of a foreign jurisdiction.
3. The Commission is also proposing to amend the definition eligible entity and independent account controller in part 151.1 to specifically provide for regulation 4.13 commodity pools established as limited liability companies.
4. The proposed rules include relief from notice filings for “higher-tier” entities, which, under proposed regulation 151.7(j), may rely on the filings submitted by owned entities

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.

The Commission is committed to utilizing technology in order to reduce reporting burdens for respondents. Accordingly, the Commission has provided for the electronic transmission of the required submissions. The Commission anticipates that nearly 100% of the collection of information would be submitted electronically.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.

This question does not apply.

5. If the collection of information involves small business or other small entities (Item 5 of OMB 83-I), describe the methods used to minimize burden.

Proposed CFTC regulation part 151 would not involve small businesses or other small entities. The Commission has previously determined that exchanges, futures commission merchants and large traders are not “small entities” for the purposes of the RFA.³ Similarly, swap dealers, clearing members, foreign brokers and traders would be subject to the proposed regulations only if carrying or holding large positions.

6. Describe the consequence to the Federal Program or policy activities if the collection were conducted less frequently as well as any technical or legal obstacles to reducing burden.

The Commission would not be able to effectively monitor whether market participants are properly relying upon exemptions from aggregation, and would not be able to determine if modifications to the existing aggregation rules are needed.

7. Explain any special circumstances that require the collection to be conducted in a manner:
 - requiring respondents to report information to the agency more often than quarterly;

Market participants are only required to make a notice file when they wish to rely upon the exemption.

- requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;

The proposed collections of information described herein only relate to market participants that wish to make a notice filing to rely upon an exemption.

- requiring respondents to submit more than an original and two copies of any document;

Respondents are required to submit only a single copy to the Commission.

- requiring respondents to retain records other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;

The record-keeping duties imposed by the proposed regulation are to be in accordance with regulation 151.7(h)(2). This provision provides that “any person claiming an aggregation exemption under this section shall provide to the Commission such information concerning the person’s claim for exemption.

- In connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;

The proposed rules do not involve statistical surveys.

- requiring the use of a statistical data classification that has not been reviewed and approved by OMB;

The proposed rules do not involve statistical data classifications.

- that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or

The proposed rules do not directly involve any specific pledge of confidentiality regarding the collection of data (see answer to question 10).

- requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

The proposed rules do require the submission of data involving confidential information or proprietary trade secrets. The Commission would protect sensitive information according to the Freedom of Information Act and 17 CFR part 145, "Commission Records and Information." In addition, the Commission fully complies with section 8(a) of the Commodity Exchange Act, which strictly prohibits the Commission, unless specifically authorized by the Commodity Exchange Act, from making public "data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers."

8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice required by 5 C.F.R. 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.

A copy of the notice of proposed rulemaking is attached for OMB's review. It has been submitted for publication to the Federal Register.

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping disclosure, or reporting format (if any, and on the data elements to be recorded, disclosed, or reported.

Opportunity for public comment is provided when regulations are proposed or amended. Contact with the reporting entities and market participants is maintained on a continuous and ongoing basis to resolve reporting problems and address concerns. The Commission has solicited comments through publication of proposed rules in the Federal Register. Commission staff has also met with various entities that could be covered in the proposed rules to discuss the scope of the rulemaking. The Commission would also, on an ongoing basis, solicit public comments through the notice required by 5 CFR 1320.8(d). Finally, the Working Groups of Commercial Energy firms submitted a petition for relief from the aggregation requirements in 151.7, and the proposed rulemaking is made in response to those filings.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every three years—even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

No such circumstances are anticipated.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

This question does not apply.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulations, or agency policy.

The Commission would protect sensitive information according to the Freedom of Information Act and 17 CFR part 145, "Commission Records and Information." In addition, the Commission fully complies with section 8(a) of the Commodity Exchange Act, which strictly prohibits the Commission, unless specifically authorized by the Commodity Exchange Act, from making public "data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers."

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

This question does not apply.

12. Provide estimates of the hour burden of the collection of information. The Statement should:

- Indicate the number of respondents, frequency of response, annual hour burden and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than ten) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.
- If the request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB 83-I.
- Provide estimates of annualized cost to respondents for the hours burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 13.

The proposed amendments to part 151 would result in additional collections of information related to the aggregation of accounts for Commission set position limits. The existing OMB control number (3038-0077) estimates a burden of 225,000 hours to comply with aggregation requirements. The Commission believes that the proposed rules, if adopted, would

result in an increase in paperwork burden of an additional 7,400 hours resulting in \$582,000 in labor costs.⁴ These estimates represent the total labor burden across 145 expected respondents.

In Attachment A the Commission has provided the key assumptions and calculations used to derive labor burden estimates.

13. Provide an estimate of the total annual cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14).

- The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life) and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major costs factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software, monitoring, sampling, drilling and testing equipment, and record storage facilities.
- If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate, agencies may consult with a sample of respondents (fewer than ten), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.
- Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.

⁴ The Commission staff's estimates concerning the wage rates are based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association ("SIFMA"). The \$74.36 per hour is derived from figures from a weighted average of salaries and bonuses across different professions from the SIFMA Report on Management & Professional Earnings in the Securities Industry 2010, modified to account for an 1800-hour work-year and multiplied by 1.3 to account for overhead and other benefits. The wage rate is a weighted national average of salary and bonuses for professionals with the following titles (and their relative weight); "programmer (senior)" (60% weight), "compliance advisor (intermediate)" (20%), "systems analyst" (10%), and "assistant/associate general counsel" (10%).

In its previous information collection related to the aggregation provisions, the Commission provided detailed information regarding the capital and start up and annual total operating and maintenance costs for entities to comply with aggregation policies. The proposed rules expand the scope of exemptions from aggregation and thus will allow additional entities to make notice filing with the Commission to claim the exemption. The requirements for submitting the filings are the same as for the previously implemented filings, and so the Commission does not anticipate that additional investment in capital, operational, or maintenance costs beyond those already incurred to fulfill requirements under the previous collection will be necessary as a result of the proposed rules.

The Commission has submitted Attachment B, which illustrates that there is no anticipated change in cost.

14. Provide estimates of the annualized costs to the Federal Government. Also provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing and support staff), and any other expense that would not have been incurred without this collection of information. Agencies may also aggregate cost estimates from Items 12, 13, and 14 in a single table.

The Commission estimates that the changes to the aggregation provisions in § 151.7 will result in the review of 235 additional notices, to be reviewed by industry economists and attorneys in the Division of Market Oversight. The Commission anticipates that the review of the additional notices will incur approximately 352.5 labor hours. Using the average CT-13 pay grade for Commission employees in Washington, D.C. for 2010, or \$106,840, multiplied by 1.3 to account for overhead and other benefits, each employee would cost the Commission approximately \$138,982. Assuming a work year of approximately 1,800 hours, or an hourly wage rate of \$77.16, the Commission anticipates additional labor costs of approximately \$27,200 per year.

The Commission does not anticipate any other increased costs, as it has already accounted for increased capital, operational, and maintenance costs to receive and store notices filed under § 151.7 as a result of the prior collection.

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB 83-I.

This question does not apply.

16. For collection of information whose results are planned to be published for statistical use, outline plans for tabulation, statistical analysis, and publication. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

This question does not apply.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

This question does not apply.

18. Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submissions," of OMB 83-I.

There are no exceptions to the certification statement. The Commission is able to certify compliance with the provisions of 5 CFR 1320.9.

Attachment A

13. Annual Reporting and Recordkeeping Hour Burden

AGGREGATION UNDER PART 151, POSITION LIMITS FOR FUTURES AND SWAPS

OMB Collection File 3038-0077

Number of Respondents:	145
Estimated Total Annual Responses	235
Estimated Average Hours Per Response:	31
% of Responses Collected Electronically:	100%
Estimated Total Annual Labor Costs:	\$581,720
Frequency of Reporting:	As needed, approximately once per year

	Total Number of Respondent s (13(a))	Estimated Number of Hours Per Response	Total Annual Responses (13(b))	Total Annual Hours Requested (13(c))	Difference (13(e))	Total Annual Labor Costs
Disaggregation applications	145	31	235	7,400	225,000	\$581,720

Attachment B

14. Annual Reporting and Recordkeeping Cost Burden

AGGREGATION UNDER PART 151, POSITION LIMITS FOR FUTURES AND SWAPS

OMB Collection File 3038-077

Number of Respondents: 145

Estimated Total Annualized Annualized Capital and Start-up Costs: \$0

Estimated Total Annual Operating and Maintenance Costs: \$0

Type of Respondent	Total Number of Respondents	Total Annualized Capital/Start-up Costs (14(a))	Total Annual Operating & Maintenance Costs (14(b))
Disaggregation applications	145	0	0