SUPPORTING STATEMENT FOR AMENDED INFORMATION COLLECTIONS

Part 150 – Position Limits for Derivatives

OMB CONTROL NUMBER 3038-0009

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]](#footnote-1) Title VII of the Dodd-Frank Act amends the Commodity Exchange Act (“CEA” or “Act”)[[2]](#footnote-2) to establish a comprehensive new regulatory framework for swaps and security-based swaps. In Section 737 of the Dodd-Frank Act, Congress amended section 4a of the CEA to broaden the Commodity Futures Trading Commission’s (“Commission” or “CFTC”) authority to impose speculative position limits, as appropriate, from futures (and options thereon) and significant price discovery contracts traded on an electronic trading facility,[[3]](#footnote-3) to now include futures (and options thereon) traded on a Designated Contract Market (“DCM”), swaps traded on a DCM or Swap Execution Facility (“SEF”), and swaps not traded on a DCM or SEF that perform or affect a significant price discovery function (“SPDF” or “SPDF swaps”) with respect to a registered entity. In addition to expanding the Commission’s overall authority to impose position limits, Congress specifically directed the Commission in new section 4a(a)(2) and 4a(a)(5) of the Act to establish position limits for physical commodity DCM futures contracts and options thereon (chiefly exempt and agricultural commodities), as well as swaps that are economically equivalent to the physical commodity futures and option contracts. Congress also directed that the Commission establish these position limits within 180 days for exempt commodities, and 270 days for agricultural commodities. The rulemaking establishes federal position limits for certain DCM futures and their economically equivalent swaps (collectively “referenced contracts”), and also requires that DCMs and SEFs that are trading facilities establish position limits for all physical commodity contracts.

Section 4a of the CEA and the proposed rules adopted thereunder are designed to prevent excessive speculation and manipulation in a manner, in the Commission’s discretion, that maximizes the goals of preserving market liquidity for bona fide hedgers while protecting the price discovery process. On July 22, 2010 the Commission published a final rule (“Swaps Large Trader Reporting Rule”) that the Commission deemed necessary for purposes of monitoring and enforcing the position limits established for the current proposed rule. In addition to the reporting and recordkeeping requirements contained in the Swaps Large Trader Reporting Rule, the Commission is imposing to amend parts 15, 17, 19, and 150 to require additional reporting and record-keeping requirements on various market participants in order to establish an effective, efficient and comprehensive position limits regime. The collections of information contained in this rulemaking are necessary for the Commission to, among other things, establish an exemption process for certain positions and improve the Commission’s ability generally to monitor and surveil the markets.

The proposed rulemaking affects two separate collections of information currently approved by OMB. Changes to part 19 affect OMB Control Number 3038-0009 while changes to part 150 affect OMB Control Number 3038-0013. This supporting statement describes the changes to collection 3038-0009; changes to collection 3038-0013 are described in the supporting documentation for that collection.

1. 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 Commission currently uses the information received from collection 3038-0009 to administer its speculative position limit regime, to ensure the validity of exemptions granted from that regime, and to monitor and surveil its markets.

As discussed above, sections 4a(a)(2) and 4a(a)(5) of the Act mandate that the Commission establish concurrently, speculative position limitations, as appropriate, on DCM physical commodity futures contracts (specifically exempt and agricultural contracts) and swaps that are economically equivalent to those futures contracts. Congress directed the Commission to establish these position limits within 180 days for exempt commodities and 270 days for agricultural commodities. The reporting requirements proposed herein would be used by the Commission to establish levels for position limits, verify exceptions to position limits such as bona-fide hedge exemptions, and for general surveillance purposes. This additional data would enhance the ability of the Commission to monitor and surveil the markets. Toward these ends, the proposed amendments to part 19 provide for the following specific reporting and record-keeping requirements:

1. Proposed § 19.01(a)(1) requires persons claiming a conditional spot month limit exemption pursuant to § 150.3(c) to file new Form 504 for special commodities so designated by the Commission under § 19.03. A Form 504 filing shows the composition of the cash position of each commodity underlying a referenced contract that is held or controlled for which the exemption is claimed, including the “as of” date, the quantity of stocks owned of such commodity, the quantity of fixed-price purchase commitments open providing for receipt of such cash commodity, the quantity of fixed-price sale commitments open providing for delivery of such cash commodity, the quantity of unfixed-price purchase commitments open providing for receipt of such cash commodity, and the quantity of unfixed-price sale commitments open providing for delivery of such cash commodity.
2. Proposed § 19.01(a)(2) would require persons claiming a pass-through swap exemption pursuant to § 150.3(a)(1)(i) to file new Form 604 showing various data depending on whether the offset is for non-referenced contract swaps or spot-month swaps including, at a minimum, the underlying commodity or commodity reference price, the applicable clearing identifiers, the notional quantity, the gross long or short position in terms of futures-equivalents in the core referenced futures contracts, and the gross long or short positions in the referenced contract for the offsetting risk position.
3. Proposed § 19.01(a)(3) would expand the number of cash commodities required to be reported on existing Form 204. Additionally, proposed § 19.01(a)(3) requires additional data to be reported on existing Form 204. Form 204 is currently, and would continue to be, used for proving the legitimacy of a bona fide hedge by requiring a person attempting to obtain an exemption for bona fide hedging positions to provide information to the Commission regarding the person’s cash market activities, among other information.
4. Proposed § 19.02 requires additional data to be reporting on existing Form 304, which is used by the Commission to collect and maintain information on cotton markets and to publish its weekly Cotton On-Call Report.
5. 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.

1. 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.

1. 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.

The collection of information does not apply to small businesses as that term is defined under the Regulatory Flexibility Act.

1. 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 carry out the congressional directive to establish position limits under section 4a of the CEA. To properly enforce Commission-set position limits, the Commission would need reports related to exemptions to position limits, notably the bona fide hedging exemption, conditional spot month limit exemption, and pass-through swap exemption, as well as other surveillance reports.

1. 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;

The filing of hedging forms, Form 204 and Form 704, on a monthly basis, as applicable, is necessary to ensure the proper application of this exemption. Given that position limits regime is and would continue to be administered on an intraday basis, the Commission believes that monthly filing reduces the burden on market participants while ensuring that the Commission has sufficient data to properly enforce the limits.

The filing of Form 304, for cotton, will continue as a weekly filing in order to allow the Commission to continue its surveillance of cotton markets as well as its weekly Cotton On-Call Report.

In order to ensure the proposed conditional spot month limit exemption does not negatively impair cash markets, the Commission would require new Form 504 to be submitted for certain commodities on a daily basis during the spot month period. This will allow the Commission to track the application of the exemption as well as its impact on both cash commodity and futures markets for each futures expiration date. The Commission is proposing to require Form 504 reporting initially for only the natural gas commodity, though it may designate additional commodities after it gains more experience administering this exemption.

Finally, for spot-month swap offset exemptions, Form 604 would be required daily during the spot period in order to protect the integrity of the settlement and delivery processes. All other swap offsets under the pass-through swap exemption, outside of the spot month, would be required to be filed on Form 604 on a monthly basis in order to allow the Commission to ensure the proper application of the exemption as well as to enable the Commission’s surveillance programs continue uninterrupted.

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

The Commission generally regulates the trading of commodity derivatives, including futures and swaps, which are used to price a wide range of physical and financial commodity transactions. These transactions are vital to national and international commerce. The exercise of regulatory oversight for the purpose of conducting market surveillance, financial surveillance, and monitoring of trading for abusive conduct, by necessity, requires the collection of transactional and position information on a daily basis.

- requiring respondents to submit more that 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 information collection under OMB control number 3038-0009 does not require such records to be maintained.

- 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 statue 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 would 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.”

1. 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.

The Commission is affirmatively seeking comment from the public on the proposed collection of information. A copy of the notice of the proposed rulemaking has been submitted to the Federal Register for publication and public comment.

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 will be provided when the notice of proposed rulemaking is published the Federal Register. Further, contact with the reporting entities and market participant is maintained on a continuous and ongoing basis to resolve reporting problems and address concerns. Commission staff has met, and will continue to meet, with various entities that could be covered in the proposed rules to discuss the scope of the rulemaking.

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.

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

This question does not apply.

1. 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.”

1. 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.

1. 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 19 would result in collections of information related to position limits. The Commission estimates that the total labor burden associated with complying with the proposed rules would be approximately 30,080 hours or $16.5 million across approximately 400 entities.[[4]](#footnote-4) Specifically, the proposed rules would result in the following reporting and record-keeping labor burdens:

1. Proposed § 19.01(a)(1) adds an additional burden cost to information collection 3038-0009 for persons claiming a conditional spot month limit exemption pursuant to § 150.3(c), by requiring the filing of Form 504 for special commodities so designated by the Commission under § 19.03. A Form 504 filing shows the composition of the cash position of each commodity underlying a referenced contract that is held or controlled for which the exemption is claimed, including the “as of” date, the quantity of stocks owned of such commodity, the quantity of fixed-price purchase commitments open providing for receipt of such cash commodity, the quantity of fixed-price sale commitments open providing for delivery of such cash commodity, the quantity of unfixed-price purchase commitments open providing for receipt of such cash commodity, and the quantity of unfixed-price sale commitments open providing for delivery of such cash commodity. The Commission estimates that approximately 40 traders will claim a conditional spot month limit 12 times per year, and each corresponding submission will take 15 labor hours to complete and file. Therefore, the Commission estimates that the Form 504 reporting requirement will result in approximately 7,200 total annual labor hours for an additional industry-wide labor cost of $864,000.
2. Proposed § 19.01(a)(2) adds an additional burden cost to information collection 3038-0009 by requiring persons claiming a pass-through swap exemption pursuant to § 150.3(a)(1)(i) to file Form 604 showing various data depending on whether the offset is for non-referenced contract swaps or spot-month swaps including, at a minimum, the underlying commodity or commodity reference price, the applicable clearing identifiers, the notional quantity, the gross long or short position in terms of futures-equivalents in the core referenced futures contracts, and the gross long or short positions in the referenced contract for the offsetting risk position. The Commission estimates that approximately 200 traders will claim a pass-through swap exemption an average of ten times per year each. At approximately 30 labor hours to complete each corresponding submission for a total burden to traders of 60,000 annual labor hours, compliance with the Form 604 filing requirements industry-wide will impose an additional $7,200,000 in labor costs.
3. Proposed § 19.01(a)(3) increases existing burden costs previously approved under information collection 3038-0009 by expanding the number of cash commodities that existing Form 204 covers. Additionally, proposed § 19.01(a)(3) requires additional data to be reported on Form 204. The form would be required to be filed when a trader accumulates a net long or short commodity derivative position in a core referenced futures contract that exceeds a federal limit, and would be used to inform the Commission of the trader’s cash positions underlying those commodity derivative contracts for purposes of claiming bona fide hedging exemptions. The Commission estimates that approximately 400 traders will be required to file Form 204 12 times per year each. At an estimated two labor hours to complete and file each Form 204 report for a total annual burden to industry of 9,600 labor hours, the Form 204 reporting requirement will cost industry $1,200,000 in labor costs.
4. Proposed § 19.02 requires additional data to be reported on existing Form 304 (call cotton). The Commission also estimates that approximately 400 traders will be required to make a Form 304 submission for call cotton 52 times per year each. At one hour to complete each submission (representing a net increase of a half hour from the previous estimate) for a total annual burden to industry of 20,800 labor hours, the Form 304 reporting requirement will impose upon industry $2,500,000 in labor costs.

1. Proposed § 19.01(a)(4) adds an additional burden cost to information collection 3038-0009 by requiring traders claiming anticipatory exemptions to file Form 704 for the initial statement pursuant to § 150.7(d), the supplemental statement pursuant to § 150.7(e), and the annual update pursuant to § 150.7(f), as well as Form 204 monthly reporting the remaining unsold, unfilled and other anticipated activity for the Specified Period in Form 704, Section A. The Commission estimates that approximately 200 traders will claim anticipatory exemptions every year an average of 10 times each. At an estimated 20 labor hours to complete and file Form 704 for a total annual burden to traders of 40,000 labor hours, the anticipatory exemption filing requirement will cost industry an additional $4,800,000 in labor costs.

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

1. Provide an estimate of the total annual cost burden to respondents or record-keepers 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.

There are no applicable capital, start up, maintenance, or purchase of service cost component.

It is important to note that the information collected under the reporting rules are basic transaction records that any market participant would create as a matter of sound business practices in the normal course of business operations and in response to requirements imposed by non-governmental financial self-regulatory bodies. Because these records would be generated in any event, independently of any regulatory requirements, we estimate that the reporting rules impose no additional material costs on affected entities.

1. 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 equivalent of approximately 30,080 annual labor hours, approximately 16.7 employees, would be required in order to process, analyze, and respond to the relevant reports provided for in the proposed amendments to part 19. The staff needed would include attorneys, industry economists, and information technology staff, including computer programmers. These estimates are based on estimated labor costs associated with processing analogous reporting for existing federal position limits for certain agricultural futures contracts. At an average CT-13 pay grade for Commission employees in Washington, D.C. for 2010, or $106,840, multiplied by 1.625 to account for overhead and benefits, each employee would cost the Commission approximately $173,615. This would amount to approximately $2.9 million per year in total labor costs to the Commission.

The Commission does not anticipate the need for additional capital or operational items to fulfill its mandate to impose position limits.

1. 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.

1. 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.

1. 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.

1. 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

**Part 150 – Position Limits for Derivatives**

OMB Collection Number 3038-0009

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| Number of Respondents: | | | | Depends based on type of reporting or recordkeeping requirement (see below) | | | |
| Estimated Total Annual Responses | | | | 30,080 | | | |
| Estimated Average Hours Per Response: | | | | 5 | | | |
| % of Responses Collected Electronically: | | | | 100% | | | |
| Estimated Total Annual Labor Costs: | | | | $16.5 million | | | |
| Frequency of Reporting: | | | | Depends based on type of reporting or recordkeeping requirement (see below) | | | |
|  | **Total Number of Respondents (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** |
| 19.01(a)(1) | 40 | 15 | 480 | | 7200 |  | $864,000 |
| 19.01(a)(2) | 200 | 30 | 2000 | | 60000 |  | $7,200,000 |
| 19.01(a)(2) | 200 | 20 | 2000 | | 40000 |  | $4,800,000 |
| 19.01(a)(3)-304 | 400 | 1 | 20800 | | 20800 | 29050 | $2,496,000 |
| 19.01(a)(3)-204 | 400 | 2 | 4800 | | 9600 | $1,152,000 |

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

   [↑](#footnote-ref-1)
2. 7 U.S.C. 1 *et seq.* [↑](#footnote-ref-2)
3. Title XIII of the Food, Conservation and Energy Act of 2008, Pub. L. No. 110-246, 122 Stat. 1624 (June 18, 2008). [↑](#footnote-ref-3)
4. The Commission’s estimates concerning wage rates are based on 2011 salary information for the securities industry compiled by the Securities Industry and Financial Markets Association (“SIFMA”). The Commission is using a figure of $120 per hour, which is derived from a weighted average of salaries across different professions from the SIFMA Report on Management & Professional Earnings in the Securities Industry 2011, modified to account for an 1800-hour work-year, adjusted to account for the average rate of inflation in 2012. This figure was then multiplied by 1.33 to account for benefits and further by 1.5 to account for overhead and administrative expenses. The Commission anticipates that compliance with the provisions would require the work of an information technology professional; a compliance manager; an accounting professional; and an associate general counsel. Thus, the wage rate is a weighted national average of salary for professionals with the following titles (and their relative weight); “programmer (average of senior and non-senior)” (15% weight), “senior accountant” (15%) “compliance manager” (30%), and “assistant/associate general counsel” (40%). All monetary estimates have been rounded to the nearest hundred dollars. The sum of the parts may not equal the total amount due to rounding. [↑](#footnote-ref-4)