

SUPPORTING STATEMENT FOR AMENDED INFORMATION COLLECTIONS

Part 150 – Position Limits for Derivatives

OMB CONTROL NUMBER 3038-NEW [0013]

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 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 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

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.*

³ Title XIII of the Food, Conservation and Energy Act of 2008, Pub. L. No. 110-246, 122 Stat. 1624 (June 18, 2008).

reporting and recordkeeping requirements contained in the Swaps Large Trader Reporting Rule, the Commission is imposing 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 the size of an applicable speculative position limit, 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 3038-0013; changes to collection 3038-0009 are described in the supporting documentation for that collection.

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.

On December 12, 2013, the Commission published in the Federal Register a notice of proposed modifications to parts 1, 15, 17, 19, 32, 37, 38, 140, and 150 of the Commission's regulations (as defined above, the "December 2013 position limits proposal"). The modifications addressed, among other things, 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. The Commission is now proposing revisions to the December 2013 position limits proposal.

Specifically, the Commission is now proposing that the position limits set forth in § 150.2 may be exceeded to the extent that a commodity derivative position is recognized, as an NEBFH, exempt spread position, or enumerated anticipatory bona fide hedge, by a derivatives contract market or swap execution facility. A designated contract market or swap execution facility that elects to process applications pursuant to the proposed rules must file new rules or rule amendments with the Commission pursuant to Part 40. Such new rules or rule amendments must comply with certain conditions set forth in proposed §§ 150.9(a), 150.10(a), and/or 150.11(a), as applicable. Further, such rules must state that in order to apply for an exemption with a particular designated contract market or swap execution facility, a person would need to meet certain criteria and file an application with the relevant derivatives contract market or swap execution facility in accordance with proposed §§ 150.9(a), 150.10(a), or 150.11(a), as applicable.

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.

CFTC regulation part 150 would not have a significant economic impact on a substantial number of small businesses. The remaining collections of information do not apply to small businesses as that term is defined under the Regulatory Flexibility Act.

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 carry out the congressional directive to establish position limits under section 4a of the CEA. To ensure the validity of exemptions granted by exchanges for contracts not subject to federal, Commission-set limits, the Commission requires traders to submit an application to the exchange for any exemptions. Expanded recordkeeping obligations aid in the Commission's ability to properly enforce position limits by ensuring that supporting documentation is available upon request to Commission staff.

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;

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 monthly or daily basis.

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

The proposed rules do not require such a response.

- 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;

Proposed §§ 150.9(b), 150.10(b), and 150.11(b), would require electing designated contract markets and swap execution facilities to keep full, complete, and systematic records, which include all pertinent data and memoranda, of all activities relating to the processing and disposition of applications for recognition of NEBFHs, exempt spread positions, and enumerated anticipatory bona fide hedges.

The marginal burden of this requirement is mitigated through overlapping recordkeeping requirements for designated contract markets. Thus, the Commission does not believe the required recordkeeping burden would be overly cumbersome.

- 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 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."

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.

The Commission is affirmatively seeking comment from the public on the proposed collection of information. The notice of proposed rulemaking was published June 13, 2016, 81 FR 38458.

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 being provided with the publication of the notice of proposed rulemaking in 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.

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 supplemental amendments to part 150 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 18,216 hours or

\$2,222,400 across approximately 278 entities.⁴ Please see Attachment A for the key assumptions and calculations used to derive labor burden estimates.

13. 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.

The Commission has not identified any capital and start-up costs or operation and maintenance costs associated with the proposed rules.

⁴ The Commission's estimates concerning wage rates are based on 2013 salary information for the securities industry compiled by the Securities Industry and Financial Markets Association ("SIFMA"). The Commission is using a figure of \$122 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 2013, modified to account for an 1800-hour work-year, adjusted to account for the average rate of inflation in 2013. 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.

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.

While most of the proposed regulations affecting this collection do not require direct Commission oversight, the Commission will be responsible for overseeing the entities directly involved in implementing the proposed rules. Because of this review role, the Commission estimates that the equivalent of approximately 1,620 annual labor hours, approximately 0.9 full time employee equivalents, would be required in order to process and respond to the relevant reports provided for in the proposed rules. 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 \$156,300 per year in total labor costs to the Commission.

The Commission does not anticipate the need for additional capital or operational burdens as a result of the proposed rules.

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
Part 150 – Exemptions from Speculative Limits
OMB Collection Number 3038-0013

Number of Respondents:	278
Estimated Total Annual Responses	4,276
Estimated Average Hours Per Response:	4.26
% of Responses Collected Electronically:	100%
Estimated Total Annual Labor Costs:	\$2,222,400
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))	Total Annual Labor Costs
§ 150.9(a) Rule Filing	6	5	6	30	\$3,660
§ 150.10(a) Rule Filing	6	5	6	30	\$3,660
§ 150.11(a) Rule Filing	6	5	6	30	\$3,660
§ 150.9(a) Review	6	5	1,110	5,550	\$671,000
§ 150.10(a) Review	6	5	300	1,500	\$183,000
§ 150.11(a) Review	6	5	300	1,500	\$183,000
§ 150.9(a) Summaries	6	5	180	900	\$109,800
§ 150.10(a) Summaries	6	5	60	300	\$36,600
§ 150.9(a) Recordkeeping	6	30	6	180	\$21,960
§ 150.10(a) Recordkeeping	6	30	6	180	\$21,960
§ 150.11(a) Recordkeeping	6	30	6	180	\$21,960
§ 150.9(a) Weekly Report	6	3	312	936	\$114,192
§ 150.10(a) Weekly Report	6	3	312	936	\$114,192
§ 150.11(a) Weekly Report	6	3	312	936	\$114,192
§ 150.9(a) Monthly Report	6	2	72	144	\$17,568
§ 150.10(a) Monthly Report	6	2	72	144	\$17,568
§ 150.9(a)(3) Application & Notice	222	4	1,110	4,440	\$541,680
§ 150.10(a)(3) Application & Notice	25	3	50	150	\$18,300
§ 150.11(a)(2) Application & Notice	25	3	50	150	\$18,300

