

# SUPPORTING STATEMENT FOR NEW INFORMATION COLLECTIONS

## PART 150.4 – AGGREGATION OF POSITIONS

OMB CONTROL NUMBER 3038-0013

### 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.<sup>1</sup> Title VII of the Dodd-Frank Act amends the Commodity Exchange Act (“CEA” or “Act”)<sup>2</sup> 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.

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 proposed to clarify certain aspects of the aggregation standards, and to expand the scope of certain exemptions from aggregation. In an Order dated September 28, 2012, the District Court for the District of Columbia vacated part 151 of the Commission’s regulations. The Commission in November 2013 proposed modifications to the aggregation provisions of part 150 of the Commission’s regulations that are substantially similar to the aggregation modifications proposed to part 151, except that the modifications address the policy for aggregation under the Commission’s position limits regime for futures and option contracts on nine agricultural commodities set forth in part 150.<sup>3</sup> On September 29, 2015, the Commission published a revision of the proposal.<sup>4</sup> On December 16, 2016, the Commission published its final rule.<sup>5</sup>

The increase in the collections of information will result from the Commission proposing to expand exemptions from aggregation and to require certain reports from market participants

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

<sup>2</sup> 7 U.S.C. 1 *et seq.*

<sup>3</sup> See Aggregation of Positions; Proposed Rule, 78 FR 68946 (Nov. 15, 2013).

<sup>4</sup> See Aggregation of Positions; Supplemental notice of proposed rulemaking, 80 FR 58365 (Sept. 29, 2015).

<sup>5</sup> See Aggregation of Positions; Final Rule, 81 FR 91454.

seeking to take advantage of such exemptions. The Commission is now supplementing its November 2013 proposal to modify the procedures that market participants would have to follow in order to take advantage of certain exemptions. This modification would slightly decrease the burden on market participants arising from the collections of information.

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 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 amendments to the regulation 150.4 provide for the following specific reporting and record-keeping requirements:

1. Rule 150.4(b)(2) would establish 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 150.4(c). The notice filing would need to demonstrate compliance with certain conditions set forth in regulations 150.4(b)(2)(i). 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 would be obligated to amend the notice filing in the event of a material change to the filing.
2. Rule 150.4(5) would expand the exemption for independent account controllers (the IAC exemption) to include additional eligible participants, thus expanding the number of entities that can file for the exemption. To claim the exemption, a person would need to meet certain criteria and file a notice with the Commission in accordance with regulation 150.4(c). 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 would be obligated to amend the notice filing in the event of a material change to the filing.
3. Regulation 150.4(b)(8) provides an exemption from aggregation where the sharing of information between persons would cause either person to violate federal law. The exemption would apply to a situation where the sharing of information creates a reasonable risk of a violation of federal, state, or foreign law or regulations adopted thereunder. The rules also have a requirement that market participants file a notice demonstrating compliance with the condition, including an internal memorandum of counsel. The memorandum allows Commission staff to review the legal basis for the asserted regulatory impediment to the sharing of information, and is particularly helpful

where the asserted impediment arises from laws and/or regulations that the Commission does not directly administer. Further, Commission staff will have the ability to consult with other federal regulators as to the accuracy of the opinion, and to coordinate the development of rules surrounding information sharing and aggregation across accounts in the future.

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.

The rule 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. Similarly, swap dealers, clearing members, foreign brokers and traders would be subject to the 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 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 regulation are to be in accordance with regulation 150.4(c)(3). This provision provides in relevant part 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 rules do not involve statistical surveys.

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

The 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 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 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 notice of proposed rulemaking was published in the Federal Register, November 15, 2013, 78 FR 68946.

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 are maintained on a continuous and ongoing basis to resolve reporting problems and address concerns. The Commission solicited comments through publication of the proposed rule 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 also, on an ongoing basis, solicited 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 was made in response to those filings.

The Proposal was published November 15, 2013, 78 FR 68946. On September 29, 2015 a Revision of the proposal was published, 80 FR 58365. The Final Rule was published December 16, 2016, 81 FR 91454, which discussed and considered all of the relevant public comments.

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 does not provide respondents with an assurance of confidentiality beyond that provided by applicable law. 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 amendments to part 150.4 would result in additional collections of information related to the aggregation of accounts for Commission set position limits. The existing OMB control number (3038-0013) does not include estimates for aggregation requirements. The Commission believes the rules would result in a paperwork burden of a 6,850 hours resulting in \$1,096,000 in labor costs.<sup>6</sup> These estimates represent the total labor burden across 240 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.

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<sup>6</sup> 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 \$160 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 through April in 2016. 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.

- 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 additional investments in capital, operational, or maintenance costs necessary as a result of the rules. It is important to note that the information collected under the rules is basic transaction information 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.

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 equivalent of approximately 510 annual labor hours would be required in order to process, analyze, and respond to the reports provided for in the proposed part 150. 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 2016, or \$106,840, multiplied by 1.3 to account for overhead and other benefits, the estimated hourly wage for a Commission employee would be approximately \$78. This would amount to a total of approximately \$39,780 per year in total labor costs to the Commission.

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.