



# Commodity Futures Trading Commission

## Office of Public Affairs

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## Proposed Regulations on Position Limits for Derivatives

The Commodity Futures Trading Commission announced the approval for publication in the Federal Register of proposed regulations concerning limits on speculative positions in 28 selected physical commodity futures and swaps. The proposed regulations would implement section 737 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).

### Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)

On July 21, 2010, President Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection

Act. Among other things, the Commission interprets the Dodd-Frank Act to:

- Require the Commission to limit the amount of positions, other than bona fide hedging positions, that may be held by any person with respect to physical commodity futures and option contracts in exempt and agricultural commodities traded on or subject to the rules of a designated contract market (DCM), as appropriate.
- Require the Commission to establish position limits, including aggregate position limits, for swaps that are economically equivalent to DCM contracts in exempt and agricultural commodities (collectively, “economically equivalent swaps”). Such limits must be imposed simultaneously with limits on DCM contracts.

### District Court Vacated Prior Rulemaking

On October 18, 2011, the Commission passed final rules on position limits for futures and swaps. See, 76 Fed. Reg. 71626, October 28, 2011. On September 28, 2012, the district court issued an order that generally vacated those final rules and remanded the matter to the Commission. See, **International Swaps and Derivatives Association v. United States Commodity Futures Trading Commission**, 887 F. Supp. 2d 259 (D.D.C. 2012). The Commission is now re-proposing position limits for futures and swaps.

### 2013 Proposed Regulations on Position Limits

The Commission’s proposed regulations call for:

- Commission administered limits on speculative positions in 28 core physical commodity contracts and their “economically equivalent” futures, options, and swaps (collectively “referenced contracts”).
- Establishment of speculative limits on referenced contracts effective sixty days after publication of a final rule:

- *Spot-month position limits.* Proposed initial levels will be based on the spot-month position limit levels currently in place at DCMs. Alternatively, initial levels may be based on estimates of deliverable supply submitted by a DCM, if verified by the Commission. Subsequent levels would be adjusted no less frequently than every two years. These subsequent levels will be based on the Commission's determination of deliverable supply (developed in consultation with DCMs).
  - *Non-spot-month position limits (i.e., limits applied to positions in all contract months combined or in a single contract month).* Proposed initial levels will be set based on open interest in futures and swaps that are significant price discovery contracts. Subsequent levels will be adjusted no less frequently than every two years based on referenced contract open interest for a calendar year.
- Spot-month position limit levels set generally at 25% of estimated deliverable supply. These spot-month limits will be applied separately for physical-delivery referenced contracts and cash-settled referenced contracts in the same commodity.
  - An exemption to the cash-settled spot-month limit available to a trader with a position up to five-times the level of the cash-settled limit, provided that trader does not hold any position in the physical-delivery spot-month contract in the same commodity.
  - Non-spot-month position limits (i.e., limits applied to positions in all contract months combined or in a single contract month) set using the 10/2.5 percent formula: 10 percent of the contract's first 25,000 of open interest and 2.5 percent thereafter.
  - Open interest used in determining subsequent non-spot-month position limits will be the sum of futures open interest, cleared swaps open interest, and uncleared swaps open interest.
  - Exemptions for bona fide hedging positions in physical commodities based on the Dodd-Frank Act's new requirements for such positions. Proposed new exemptions include unfilled anticipated requirements for resale by a utility, royalties, and service contracts.
  - Exemptions for positions that are established in good faith prior to the effective date of the initial limits established by the regulations.
  - Requirements and acceptable practices for DCMs and swap execution facilities that are trading facilities for setting position limits for the 28 referenced contracts, as well as position limits or accountability rules in all other listed contracts, including excluded commodities.
  - Amendments to the Commission's current account aggregation standards, substantially similar to the aggregation modifications proposed to vacated Part 151. See 77 Fed. Reg. 31767 (May 30, 2012). The amendments would permit additional exemptions from aggregation where:
    - Sharing of information would violate or create reasonable risk of violating Federal, state or foreign jurisdiction law or regulation.
    - Ownership interest is no greater than 50 percent in an entity whose trading is independently controlled.

- Ownership interest is greater than 50 percent in a non-consolidated entity whose trading is independently controlled and an applicant certifies that such entity's positions either qualify as bona fide hedging positions or do not exceed 20 percent of any position limit.
- Ownership results from broker-dealer activities in the normal course of business as a dealer.