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B-322766

December 5, 2011

The Honorable Debbie Stabenow  
Chairwoman  
The Honorable Pat Roberts  
Ranking Member  
Committee on Agriculture, Nutrition, and Forestry  
United States Senate

The Honorable Frank D. Lucas  
Chairman  
The Honorable Collin C. Peterson  
Ranking Member  
Committee on Agriculture  
House of Representatives

Subject: Commodity Futures Trading Commission: Position Limits for Futures and Swaps

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Commodity Futures Trading Commission (Commission), entitled "Position Limits for Futures and Swaps" (RIN: 3038-AD17). We received the rule on November 16, 2011. It was published in the *Federal Register* as a final rule and interim final rule on November 18, 2011, with a stated effective date of January 17, 2012. 76 Fed. Reg. 71,626.

The final rule establishes a position limits regime for 28 exempt and agricultural commodity futures and options contracts and the physical commodity swaps that are economically equivalent to such contracts. The rule also imposes aggregate position limits across different trading venues to contracts based on the same underlying commodity. In addition to developing position limits for these contracts, the rule implements a new statutory definition of bona fide hedging transactions, revises the standards for aggregation of positions, and establishes position visibility reporting requirements. The rule requires designated contract markets and swap execution facilities that are trading facilities to set position limits for exempt and agricultural commodity contracts and establish acceptable practices for position limits and position accountability rules in other commodities.

Enclosed is our assessment of the Commission's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review of the procedural steps taken indicates that the Commission complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer  
Managing Associate General Counsel

Enclosure

cc: David A. Stawick  
Secretary of the Commission  
Commodity Futures Trading Commission

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE  
ISSUED BY THE  
COMMODITY FUTURES TRADING COMMISSION  
ENTITLED  
"POSITION LIMITS FOR FUTURES AND SWAPS"  
(RIN: 3038-AD17)

(i) Cost-benefit analysis

The Commodity Futures Trading Commission (Commission) analyzed the costs and benefits of this final rule. The Commission evaluated the three portions of this rule in light of (1) protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. In many instances, the Commission determined that it is not feasible to estimate or quantify the costs with reliable precision, primarily because the final rules apply to heretofore unregulated swaps markets and because the Commission does not have the resources or information to determine how market participants may adjust their trading strategies in response to the rules.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

The Commission determined that this final rule will not have a significant economic impact on a substantial number of small entities.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

As an independent regulatory agency, the Commission is not subject to title II of the Act.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

The Commission issued a proposed rule on January 26, 2011. 76 Fed. Reg. 4752. The Commission received 15,116 comments from interested persons, including designated contract markets, trade organizations, banks, investment companies, commercial end-users, academics, and the general public. Of the total comments received, approximately 100 comment letters provided detailed comments and recommendations concerning whether, and how, the Commission should exercise

its authority to set position limits, as well as other specific aspects of the proposal. The majority of the over 15,000 comment letters received were generally supportive of the proposal. Approximately 55 commenters requested that the Commission either significantly alter or withdraw the proposal. The Commission considered the comments received in formulating the final rule.

#### Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The Commission determined that this final rule contains information collection requirements under the Act and has submitted them to the Office of Management and Budget for review. The title for the collection of information is “Part 151—Position Limit Framework for Referenced Contracts.” The Commission estimates that reporting under this rule will affect approximately 90 entities, resulting in a total burden of 225,000 annual labor hours and \$5.9 million in annualized capital, start-up, total operating, and maintenance costs.

#### Statutory authorization for the rule

The Commission promulgated this rule under the authority of sections 1a, 2, 5, 6, 6a, 6b, 6c to 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, and 24, of title 7, United States Code, as amended by title VII of Public Law 111–203.

#### Executive Order No. 12,866 (Regulatory Planning and Review)

As an independent regulatory agency, the Commission is not subject to the review requirements of the order.

#### Executive Order No. 13,132 (Federalism)

As an independent regulatory agency, the Commission is not subject to the review requirements of the order.