

1. Is not a "significant regulatory action" under Executive Order 12866,
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979), and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety, Incorporation by Reference.

#### The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

#### PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

##### § 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

**Boeing:** Docket No. FAA-2008-0978; Directorate Identifier 2008-NM-014-AD.

#### Comments Due Date

- (a) We must receive comments by August 17, 2009.

#### Affected ADs

- (b) None.

#### Applicability

(c) This AD applies to Boeing Model 767-200, -300, and -300F series airplanes, certificated in any category; as identified in Boeing Service Bulletin 767-28A0094, Revision 1, dated April 23, 2009.

**Note 1:** This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance (AMOC) according to paragraph (k) of this AD. The request should include a description of changes to the required inspections that will ensure the continued operational safety of the airplane.

#### Unsafe Condition

(d) This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent the center tank

fuel densitometer from overheating and becoming a potential ignition source inside the center fuel tank, which, in combination with flammable fuel vapors, could result in a center fuel tank explosion and consequent loss of the airplane.

#### Compliance

- (e) Comply with this AD within the compliance times specified, unless already done.

#### Modify the Fuel Quantity Indicating System (FQIS) Densitometer/Replace Hot Short Protector (HSP)

(f) Within 60 months after the effective date of this AD, do the actions specified in paragraphs (f)(1) and (f)(2) of this AD, as applicable, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 767-28A0094, Revision 1, dated April 23, 2009.

(1) For Group 1 airplanes, Group 2 airplanes, Configuration 1, and Group 3 airplanes: Modify the fuel quantity indicating system (FQIS) densitometer.

(2) For Group 4 airplanes: Replace the existing HSP with a new HSP.

#### Credit for Service Information Accomplished Previously

(g) Actions done before the effective date of this AD in accordance with Boeing Alert Service Bulletin 767-28A0094, dated November 20, 2007; are acceptable for compliance with the requirements of paragraph (f) of this AD.

#### Airworthiness Limitations (AWL) Revision

(h) Concurrently with accomplishing the actions required by paragraph (f) of this AD, revise the AWL section of the Instructions for Continued Airworthiness by incorporating AWL No. 28-AWL-22 of the Boeing 767 Maintenance Planning Data (MPD) Document, D622T001-9, Section 9, Revision March 2009.

#### No Alternative Critical Design Configuration Control Limitations (CDCCL)

(i) After the actions specified in paragraph (g) of this AD have been accomplished, no alternative CDCCL for AWL No. 28-AWL-22 may be used; unless the CDCCL is approved as an AMOC in accordance with the procedures specified in paragraph (k) of this AD.

#### Terminating Action for AWL Revision

(j) Incorporating AWL No. 28-AWL-22 into the AWL section of the Instructions for Continued Airworthiness in accordance with paragraph (g)(2) of AD 2008-11-01, amendment 39-15523, terminates the action required by paragraph (h) of this AD.

#### Alternative Methods of Compliance (AMOCs)

(k)(1) The Manager, Seattle ACO, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Georgios Roussos, Aerospace Engineer, Systems and Equipment Branch, ANM-130S, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 917-6482; fax (425) 917-6590. Or, e-mail information to 9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

Issued in Renton, Washington, on June 24, 2009.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E9-15618 Filed 7-1-09; 8:45 am]

**BILLING CODE 4910-13-P**

## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Part 16

**RIN 3038-AC63**

#### Account Ownership and Control Report

**AGENCY:** Commodity Futures Trading Commission ("Commission").

**ACTION:** Advanced notice of proposed rulemaking ("Advanced Notice") and request for public comment.

**SUMMARY:** The Commission has determined to collect certain ownership, control, and related information for all trading accounts active on U.S. futures exchanges. The information collected will enhance market transparency, leverage the Commission's existing surveillance systems, and foster synergies between its market surveillance, trade practice, enforcement, and economic research programs. The Commission will collect relevant data via an account "Ownership and Control Report" ("OCR") submitted periodically by all reporting entities.<sup>1</sup> Tentatively, the OCR will include a trading account number; the names and addresses of the account's owners and controllers; the last four digits of the owners' and controllers' social security or tax ID numbers; the special account number, if one has been assigned; an indication of whether the account is a reportable account pursuant to large trader thresholds set forth under Part 18 of the Commission's regulations; and other relevant information.<sup>2</sup> This Advanced

<sup>1</sup> The Commission anticipates that most reporting entities will be designated contract markets, but they could be any registered entity that provides trade data to the Commission on a regular basis.

<sup>2</sup> Under the CFTC's Large Trader Record Format, special account numbers contain two elements: (1)

Notice seeks public comment on that tentative content, as well as on other features of the OCR's planned design. Public comments collected in response to this Advanced Notice will be used in developing a proposed rule at a later date.

**DATES:** Comments must be received on or before August 17, 2009.

**ADDRESSES:** Comments should be sent to David Stawick, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Comments may be submitted via e-mail at [secretary@cftc.gov](mailto:secretary@cftc.gov). "Account Ownership and Control Report" must be in the subject field of responses submitted via e-mail, and clearly indicated on written submissions. Comments may also be submitted at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Sebastian Pujol Schott, Special Counsel, 202-418-5641, or Cody J. Alvarez, Attorney Advisor, 202-418-5404, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

###### *A. The Ownership and Control Report Will Enhance Regulatory Oversight in an Electronic Trading Environment*

Since the late 1990s, U.S. designated contract markets ("DCMs") have rapidly evolved from open-outcry trading pits to global electronic platforms. In 1999, electronic trading accounted for only 5% of volume on all U.S. exchanges. By 2008, it was responsible for some 80% of volume.<sup>3</sup> In addition, every new exchange designated since the year 2000 has offered only electronic trading, and many contracts that were once offered in open-outcry are now available only electronically. While open-outcry trading remains important in specific contexts, including options on futures, electronic platforms are now dominant in the United States.

The ascendancy of electronic trading has revolutionized the business of futures, and the Commission has worked diligently to keep pace in every respect. The Commission, and its

Division of Market Oversight ("DMO"), have been especially vigilant in the area of regulatory data and technology. Under all circumstances, Commission staff must have the information necessary to conduct effective oversight, ensure market integrity, and protect customers from fraud and abuse. The Commission has invested heavily to modernize its regulatory systems, and is equally committed to obtaining the raw data necessary for effective surveillance of futures markets.

In many cases, the Commission already receives the information it requires for effective regulation, including large trader reports for market surveillance and exchange trade registers for trade practice surveillance.<sup>4</sup> The OCR will integrate these existing resources, and leverage them in dynamic new ways. It will facilitate innovative trade practice and market surveillance by DMO; bridge the gap between individual transactions reported on exchange trade registers and aggregate positions reported in large trader data; and allow other Commission Offices and Divisions to better utilize regulatory data in support of their own missions.<sup>5</sup> Each of these benefits is discussed more fully in Section III of this Advanced Notice. In addition, as explained immediately below, the OCR will increase market transparency and respond to new regulatory data needs in an era of electronic trading.

For both the Commission and exchange compliance staffs, electronic trading has conferred a host of informational advantages, including more detailed and accurate order histories, trade records, and audit trails. Paradoxically, it has also challenged

<sup>4</sup> "Trade register" is a generic term for a comprehensive, daily record of every trade facilitated by an exchange, whether executed via open-outcry, electronically, or non-competitively. Trade registers contain detailed information with respect to the terms of a trade, the parties involved, and other data points. They also contain trading account numbers, but no information with respect to the owners or controllers of those accounts. In addition, the trading account numbers in exchange trade registers often do not correspond to account numbers reported in other Commission data systems, including its large trader reporting system. The Commission has recently standardized the content and format of all trade registers submitted to it, which are now required to be FIXML Trade Capture Reports. FIXML and the Trade Capture Report are discussed in Section I (B), below.

<sup>5</sup> Efficient integration of large trader and trade register data will be one of the most important regulatory benefits deriving from the OCR. At present, the Commission can sometimes link the two data sets on a case-by-case basis, but the process is extremely labor-intensive, requires assistance from exchange clearing members and others, and does not lend itself to more routine, automated surveillance and follow-up investigation. See Section III (C), below.

regulatory programs through the growing dispersion and anonymity of market participants. The Commission once monitored trading on regulated exchanges via on-site surveillance of open-outcry pits. Today, that surveillance is primarily electronic and data-driven. Indeed, as exchange trading has shifted to electronic platforms, trade data has become the device by which the Commission "sees" its regulated markets.<sup>6</sup> Together with trade registers and large trader reports, the OCR will allow the Commission to see more clearly and completely by identifying otherwise anonymous market participants and revealing links between apparently unrelated trading accounts whose aggregate behavior is of regulatory consequence.

The detail and depth of the regulatory data available to the Commission is substantial, but insufficient to substitute for the unique information once imparted by a physical presence on exchanges' trading floors. Member brokers and locals, once clustered in compact rings and readily identifiable to Commission staff, have given way to large, widely dispersed pools of opaque persons trading on electronic platforms. While case-by-case manual inquiry is possible, the Commission has no way to identify traders and trading accounts quickly and independently. To the contrary, what is now visible to the Commission—trade data—instead reflects unknown individuals directing trades on behalf of unnamed accounts. The result is a growing lack of transparency from which even exchange compliance departments sometimes suffer.<sup>7</sup> The OCR project seeks to redress this imbalance of information, and to realign the Commission's data resources with its modern regulatory needs. Moreover, OCR data will also enhance exchanges' internal regulatory efforts.

###### *B. The Commission's Surveillance Systems and the Trade Capture Report*

The Commission's surveillance programs include daily collection of trade data from all U.S. DCMs or their

<sup>6</sup> The Commission notes that it continues to conduct on-site surveillance of exchange's remaining trading floors.

<sup>7</sup> While accounts and persons executing trades are uniquely designated in the trade data, those designations do not reveal the actual identities of traders or of account owners or controllers, nor do they reveal relationships between trading accounts. Gathering such information requires a time consuming manual effort by Commission staff with the aid of exchanges, exchange clearing members, and others. Exchange compliance departments must engage in their own time consuming efforts when they require information with respect to trading account owners, controllers, and relationships for self-regulatory purposes.

A reporting firm ID and (2) a unique account number assigned by the reporting firm. Special accounts numbers are discussed more fully in Section III(C), below.

<sup>3</sup> Derived from volume data for what is today CBOT, CME, NYMEX, and ICE Futures U.S. These exchanges collectively account for 99% of the futures and on futures trading volume on regulated exchanges in the U.S.

regulatory service providers.<sup>8</sup> The data collected is central to the Commission's trade practice surveillance program, and of growing importance to market surveillance and other regulatory efforts, as explained below. Presently, market and trade practice surveillance utilize distinct platforms—the Integrated Surveillance System (“ISS”) for market surveillance and the Trade Surveillance System (“TSS”) for trade practice surveillance. Broadly speaking, ISS facilitates the storage, analysis, and mining of large trader data while TSS does the same for trade data. The systems include a range of tools for automated surveillance, pattern detection, *ad hoc* examination of raw data, and investigation. One valuable benefit of the OCR is that it will effectively integrate these two primary systems by linking individual transactions reported on exchange trade registers (TSS) with aggregate positions reported in large trader data (ISS). TSS and ISS are described more fully in Section III, below.

While ISS is a long-standing system, TSS and the data streams that support it are newer. The Commission has invested significant resources to develop TSS, adopting a comprehensive new platform better suited for monitoring electronic trading than TSS's predecessor. One important component of TSS is the Trade Capture Report, a new data standard governing the trade registers submitted daily to the Commission by all DCMs. The Trade Capture Report was developed through a collaborative effort between the Commission, DCMs, and others, under the auspices of the Joint Compliance Committee.<sup>9</sup> Design of the Trade Capture Report was formally completed in August of 2008.

Briefly stated, the Trade Capture Report is an electronic file that employs the Financial Information eXchange Markup Language (“FIXML”) to uniformly tag or designate trade information provided to the Commission. Exchanges transmit their Trade Capture Reports daily via Secure File Transfer Protocol (“SFTP”). All information received is processed overnight by TSS and available to

Commission staff early the following morning.<sup>10</sup> Trade Capture Reports contain trade and related order data for every matched trade facilitated by an exchange, whether executed via open-outcry, electronically, or non-competitively.<sup>11</sup> Among the data included in the Trade Capture Report are trade date, product, contract month, trade time, price, quantity, trade type (*e.g.*, open outcry outright future, electronic outright option, give-up, spread, block, *etc.*), executing broker, clearing member, opposite broker and clearing member, customer type indicator, trading account numbers, and numerous other data points. Additional information is also required for options on futures, including put/call indicators and strike price, as well as for give-ups, spreads, and other special trade types. Noticeably absent from Trade Capture Report data, however, is any account ownership or control information.

The Trade Capture Report is central to the OCR project. As noted above, the Trade Capture Report provides the trading account numbers for both sides of a reported trade; the OCR, in turn, will provide biographical data for those account numbers. The elements of an OCR are set forth below.

## II. Ownership and Control Report Outline

The OCR will serve as an ownership, control, and relationship directory for every trading account number reported to the Commission through exchanges' Trade Capture Reports. The data points contemplated for the OCR have been specifically selected to achieve four Commission objectives. These include: (1) Identifying with certainty all accounts that are under common ownership or control at a single exchange; (2) identifying with certainty all accounts that are under common ownership or control at multiple exchanges; (3) identifying all trading accounts whose owners or controllers are also included in the Commission's large trader reporting program (including Forms 40 and 102); and (4) identifying the entities to which the Commission should have recourse if additional information is required, including the trading account's executing firm and clearing firm, and the name(s) of the firm(s) providing

OCR information for the trading account.

### A. Specific Data Points Required by the Ownership and Control Report

To ensure that the objectives outlined above are achieved, the Commission believes the OCR should include the following information:

- The trading account number, as reported in the Trade Capture Report (see TCR tags 448 and 452, Party Role 24);
- Name and address of the trading account's owner(s);
- Date on which the trading account was assigned to its current owner(s);
- Name and address of the trading account's controller(s);
- Date on which the trading account was assigned to its current controller(s);
- The account controller or controllers' Commodity Trading Advisor number(s), if applicable;
- Special account number, if one has been assigned;
- Indication of whether the trading account is a reportable account;
- Indication of whether the trading account is a firm omnibus account, and if so, the name of the firm;
- Name of the executing firm for the trading account, and its unique identifier as reported in the TCR (see TCR tags 448 and 452, Party Role 1);
- Name of the clearing firm for the trading account, and its unique identifier as reported in the TCR (see TCR tags 448 and 452, Party Role 4);
- The last four digits of the Social Security number or taxpayer identification number of the trading account's owner(s) and controller(s);
- Name of the firm(s) providing OCR information for the trading account;
- Name of the exchange or other entity submitting the OCR to the Commission;
- OCR transmission date.

### B. Form, Manner, and Frequency of the Ownership and Control Report

The Commission anticipates that exchanges (and possibly other registered entities) will submit their OCRs weekly, in FIXML via SFTP. Each exchange's first OCR submission will constitute a “master file” containing the required data for all trading account numbers present in the Trade Capture Report during the previous 30 days. The master file will establish a baseline directory. Each subsequent OCR should be a weekly “change file” reporting only additions, deletions, or amendments to the master file; if the reported change includes changes to an account's owners or controllers, the precise date of such

<sup>8</sup> At present, there are 14 DCMs with listed contracts.

<sup>9</sup> The Joint Compliance Committee (“JCC”) is an information sharing organization whose members include compliance officials from all U.S. DCMs. Commission staff representing DMO's Market Compliance Section also participates in JCC meetings. In May of 2007, at the Commission's request, the JCC created the Trade Surveillance Data Subcommittee (“TSDS”) to improve the manner in which trade data was submitted to the Commission. The TSDS determined to pursue the Trade Capture Report.

<sup>10</sup> As noted above, the Commission already receives trade registers from all DCMs, and has developed a new trade register format called the Trade Capture Report. DCMs are currently transitioning to the Trade Capture Report, a process which the Commission expects to be completed by the end of 2009.

<sup>11</sup> *E.g.*, block trades.

change should also be reported. The Commission understands that exchanges may not possess all of the information contemplated for the OCR, and that they may have to collect it from outside sources.

### III. Additional Benefits Derived From the Ownership and Control Report

The OCR will facilitate important regulatory objectives in the areas of market transparency; trade practice and market surveillance; and enhanced enforcement and research programs. Many of the OCR's systemic benefits have already been outlined above. It will allow the Commission to see its regulated markets more clearly and completely than before, and help it adjust to new regulatory data needs given that electronic platforms have become the dominant venue for regulated futures trading in the United States. It will also enhance the Commission's surveillance capabilities—for example, by allowing staff to aggregate trading accounts under common ownership or control; facilitating links between reporting firms' large trader reports and exchanges' trade registers; and improving the Commission's detection and deterrence capabilities with respect to specific trading practices and market abuses.<sup>12</sup> Similarly, the OCR will introduce new efficiencies in surveillance and enforcement programs by automating what are currently slow, labor-intensive practices. The OCR will also allow the Commission to compensate for the loss of exchange trading floors and the information imparted by daily physical surveillance of a small, concentrated, and well-known universe of exchange members. Furthermore, it will allow the Commission to maximize the benefits of more detailed and accurate electronic trading records, and to better oversee trading by widely dispersed individuals and accounts whose identities and relationships otherwise cannot be ascertained quickly and efficiently by Commission staff.

In addition to broad, Commission-wide benefits, the OCR will facilitate specific programs administered by the Commission's Division of Enforcement ("DOE"), Office of the Chief Economist ("OCE"), and DMO. Specific examples from each Office and Division are provided below.

#### A. The Division of Enforcement

DOE investigates and prosecutes alleged violations of the Commodity Exchange Act ("Act") and Commission regulations. It can act against any number of persons and entities suspected of such violations, including individuals and firms registered with the Commission, those who are engaged in commodity futures and option trading on designated domestic exchanges, and those who improperly market futures and options contracts. DOE proceedings typically begin with careful investigations based on leads developed internally or information referred by other Commission divisions, industry self-regulatory associations; state, federal, and international authorities; and members of the public. At the conclusion of any investigation, DOE may recommend that the Commission initiate administrative proceedings or take action in Federal court. When DOE obtains evidence that criminal violations of the Act have occurred, it may refer the matter to the Department of Justice for prosecution.

The OCR will be of immediate help to DOE's investigatory work, especially work that relies on aggregating related trading accounts. DOE investigations in the areas of intra-day manipulation and trade practice rely on exchange trade registers/Trade Capture Reports. At present, however, the inherent absence of ownership and control information in Trade Capture Report data presents an obstacle when DOE is investigating potential price manipulations or trade practice abuses, such as front-running. As noted previously, the Trade Capture Report does not identify account owners or controllers, nor does it aggregate accounts under common ownership or control. Thus, any DOE investigations that are dependent on such information face special obstacles. DOE staff must first identify the universe of accounts traded in a relevant period, then request and await information from outside the Commission to identify the entity associated with the account number, and finally aggregate all identified entities that relate to a common owner. Only then can staff assess a particular owner's trading activity. This time-consuming process must be re-created every time DOE initiates an intra-day trading manipulation investigation. The Commission believes the information contained in the OCR will significantly reduce the time and resources expended in determining the identities and relationships between account holders, and thus facilitate DOE investigative activity across markets and exchanges.

#### B. The Office of the Chief Economist

OCE conducts research on major policy issues facing the Commission and assesses the economic impact of regulatory changes on the futures markets. It also participates in the development of Commission rulemakings, provides expert advice to other Commission offices and divisions, and conducts special studies and evaluations as required. An important objective of OCE is to help the Commission achieve deeper and more sophisticated knowledge of the futures markets from the data available to it. The OCR will advance this objective in significant ways.

OCE is particularly interested in the OCR as a tool for enhancing the transparency of regulated markets through the disclosure of information on related accounts. It has a number of initiatives under way designed to enhance the Commission's surveillance capabilities, assist in enforcement, and improve data integrity. Related account information derived from the OCR will help OCE to better link traders' intraday transactions with their end-of-day positions. It will also help OCE to calculate how different categories of traders contribute to market wide open-interest. Building on these results, OCE will achieve more sophisticated benefits for the Commission, including new avenues of surveillance and enforcement tools. For example, armed with OCR/Trade Capture Report-derived data, OCE will eventually be able to accurately identify and categorize market participants based on their actual trading behavior on a contract-by-contract basis, rather than on how they self-report to the Commission (e.g. registration type, marketing/merchandising activity, *etc.* on Commission Form 40).

In addition to these specific projects, ownership and control information available via the OCR will allow OCE to perform more complete and accurate studies and provide more targeted guidance to other Commission staff in pursuing trade practice violations and attempted manipulations.

#### C. The Division of Market Oversight

DMO's primary responsibility is to ensure that U.S. futures markets accurately reflect the underlying forces of supply and demand for all products traded, and that futures markets are free from fraud and abuse. DMO monitors all futures and option markets to detect and prevent price manipulation, abusive trading practices, and customer harm. It is concerned with both aggregate abuses against the market (market surveillance)

<sup>12</sup> Reporting firms include exchange clearing members, futures commission merchants, and foreign brokers.

and individual trading violations (trade practice surveillance); often, the two are connected. DMO's surveillance efforts include routine monitoring of markets and trades, and detailed, data-driven investigations of both when appropriate.

DMO's market surveillance and trade practice surveillance programs rely on ISS and TSS, respectively, as their primary technology platforms. ISS tools and data serve to detect and prevent price manipulation and market congestion on regulated exchanges, and to enforce speculative position limits pursuant to section 4g of the Act. ISS receives data from reporting firms via large trader reports filed daily with the Commission. Large trader reports show open end-of-day positions in futures and options that are at or above specific reporting levels set by the Commission ("large traders"). Related accounts are aggregated by reporting firms and given a "special account number" which DMO uses to track their consolidated end of day positions. Through ISS, DMO can account for 70 to 90% of the total open interest in a given market.

ISS' strength lies in capturing market-wide open interest and the large traders most responsible for that open interest. At the same time, ISS is limited by its inability to reconstruct trading and determine how large traders established their reportable positions. ISS, whose data includes large traders' names but not their trading account numbers, cannot communicate with TSS, whose data includes trading account numbers, but no names. This simple disconnect prevents the efficient integration of market and trade practice surveillance by DMO. The Commission is determined to link TSS trading account numbers with ISS large trader names through the OCR.

As previously explained, DMO's trade practice surveillance program relies on TSS as its primary technology platform. Armed with trade register/Trade Capture Report data, TSS aids in the detection, analysis, and investigation of numerous abusive trading practices, including trading ahead of customer orders, wash trading, pre-arranged trading, money-passing, and other violations. TSS and trade register/Trade Capture Report data also aid in the detection of market abuses, such as banging the close, and in enforcement and research programs led by other Commission offices and Divisions.

Like ISS, TSS possesses both strengths and limitations arising from its raw data resources. TSS' power lies in its totality of information: it is a detailed record of every trade executed on every U.S. futures exchange every day. It is a robust instrument for customer

protection, direct monitoring of markets by DMO, and oversight of exchange self-regulation. In this era of electronic trading, TSS is an unparalleled means of "seeing" regulated markets directly and without filter. TSS' limitations, however, are equally data-driven. TSS is unable to quickly aggregate related trading accounts because its Trade Capture Report data feeds do not contain the necessary ownership and control information. DMO cannot efficiently police for small and medium sized traders whose open interest does not reach reportable levels, but who can still have deleterious effects on the markets during concentrated periods of intra-day trading. Similarly, trade practice violations whose discovery might depend on recognizing concerted action by related accounts are more difficult to detect. The Commission can resolve each of these limitations via the OCR.

While DMO's current data resources are substantial, the OCR will elevate them to a level of sophistication and completeness that is appropriate for the size and complexity of modern futures markets. Integrated data—large trader reports in ISS, trade data in TSS, and OCR ownership and control information to bind them together—will complete the information chain for the Commission's entire surveillance infrastructure. For the first time, DMO will be empowered to monitor the totality of a market in an efficient, integrated, and automated manner. No more than 24 hours after trades are executed and positions are established, DMO will see everything from large reportable positions to the individual trades responsible for those positions, and down further to the individual account owners and controllers responsible for those trades. Similarly, DMO will be empowered to monitor markets from the bottom up, linking individual accounts under common ownership and control, aggregating their intra-day trading, and viewing their end-of-day positions even when they do not reach reporting thresholds.

Equipped with the OCR and its resulting synergies, all futures transactions will be fully transparent to DMO. DMO staff will have the ability to perform more timely analyses of trading activity in order to detect price distortions, manipulative conduct, trade practice abuses, and customer harm on individual markets and across markets and exchanges.

#### *D. Exchange Compliance Departments*

While this Advanced Notice has focused primarily on the OCR's benefit to the Commission, OCR data may also

be useful to exchange compliance departments and other regulatory entities in the futures industry. Many of the information challenges faced by the Commission are shared by other industry regulatory bodies who are themselves striving for maximum market transparency and effective regulation. Indeed, at least one major exchange already works with an information file that seeks to accomplish some of the same goals as the OCR. The exchange uses a "related accounts file" to aggregate certain trading accounts that are under common control, if those trading accounts are associated with a reportable account. The information collected thus acts as a reference file and supplement to the exchange's large trader reporting system. The exchange's related accounts file does not necessarily collect the same information as the Commission's contemplated OCR. However, the Commission believes that all exchanges can benefit from the OCR, and from the complete data set proposed in this Advanced Notice.

#### **IV. Request for Comments**

The Commission invites public comment on any relevant aspect of the OCR contemplated in this Advanced Notice. In addition, to help the Commission formulate an effective and practical rule implementing the OCR, the Commission encourages responses to the following specific questions:

1. Is there additional information, not included in Section II(A), that should be included in the OCR?

2. What is the lifecycle of the information required by the OCR? Who possesses it at a root level? From what types of entities will exchanges draw the information required by the OCR (e.g. exchange clearing members, non-member futures commission merchants, etc.)? How will exchanges obtain OCR information?

3. Will OCR information be more difficult to acquire for some account types than for others? If so, what types of accounts will present a greater challenge and why? How can the challenge be overcome?

4. The Commission expects that initially the OCR will be submitted in FIXML via FTP. Is there a better way to electronically transmit the OCR? Is there an existing FIXML report that may be used to transmit OCR information? If not, is there an existing FIXML report that can be easily modified to supply the information contained in the OCR?

5. The Commission anticipates that each exchange will initially transmit a "master file" containing the required information for every trading account

number included in the Trade Capture Report during the previous month or longer. The master file will effectively establish a baseline of account information. Subsequently, each exchange would be required to file a weekly "change file" reporting only changes that occurred during the week (e.g., new accounts, deleted accounts, or changes to accounts already in the master file). Is there a more convenient way to provide the required information on a regular basis? Do changes occur so frequently that a change file should be submitted daily instead of weekly?

6. What entities will have to report raw data to exchanges so that exchanges can compile the information required by the OCR? Since these entities will already be in possession of OCR information, what additional measures will they have to take to transmit it to exchanges or prepare it for transmission? What will be the dollar and staff-hour cost of those measures? To the extent possible, please itemize costs related to initial implementation as well as regular reporting costs.

7. How long will it take exchanges to assemble the necessary information and transmit the first OCR to the Commission? What will be the dollar and staff-hour costs associated with providing the OCR? To the extent possible, please itemize costs related to initial implementation as well as regular reporting.

8. Will the OCR impose any disparate impact on small businesses? If so, how can it be minimized? Please describe and estimate the number of small entities that will be impacted.

## V. Conclusion

The Commission invites comment on this Advanced Notice and the specific questions presented above. The comments and answers received will be used in developing a proposed rule with respect to the OCR at a later date.

Issued in Washington, DC, on June 26, 2009 by the Commission.

**David Stawick,**

*Secretary of the Commission.*

[FR Doc. E9-15665 Filed 7-1-09; 8:45 am]

**BILLING CODE P**

## SUSQUEHANNA RIVER BASIN COMMISSION

### 18 CFR Parts 806 and 808

### Review and Approval of Projects

**AGENCY:** Susquehanna River Basin Commission (SRBC).

**ACTION:** Notice of proposed rulemaking and public hearing.

**SUMMARY:** This document contains proposed rules that would amend project review regulations to include provisions specifically requiring Commission approval of projects undergoing Federal Energy Regulatory Commission (FERC) and Nuclear Regulatory Commission (NRC) licensing actions that affect the basin's water resources; restricting the use of docket reopening petitions to avoid abuses of process; amending the "Approval by Rule" (ABR) process to standardize ABR notice procedures and allow for project sponsors to utilize approved water sources at approved drilling pad sites without the need for modification of the ABR; clarifying that the public hearing requirement for rulemaking shall be applicable to the proposed rulemaking stage of that process; and further providing for the time period within which administrative appeals must be filed.

**DATES:** Comments on these proposed rules may be submitted to the SRBC on or before August 15, 2009. The Commission has scheduled two public hearings on the proposed rules, to be held August 4, 2009, in Harrisburg, Pennsylvania, and August 5, 2009, in Elmira, New York. The locations of the public hearings are listed in the addresses section of this document. Additionally, individuals wishing to testify are asked to notify the Commission in advance, if possible, at the regular or electronic addresses given below.

**ADDRESSES:** Comments may be mailed to: Mr. Richard A. Cairo, Susquehanna River Basin Commission, 1721 N. Front Street, Harrisburg, PA 17102-2391, or by e-mail to [rcairo@srbc.net](mailto:rcairo@srbc.net).

The public hearings will be held on Tuesday, August 4, 2009, at 10 a.m., at the Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA 17101, and Wednesday, August 5, 2009, at 7 p.m., at the Holiday Inn—Elmira Riverview, 760 E. Water Street, Elmira, New York 14901. Those wishing to testify are asked to notify the Commission in advance, if possible, at the regular or electronic addresses given below.

**FOR FURTHER INFORMATION CONTACT:** Richard A. Cairo, General Counsel, telephone: 717-238-0423, ext. 306; fax: 717-238-2436; e-mail: [rcairo@srbc.net](mailto:rcairo@srbc.net). Also, for further information on the proposed rulemaking, visit the Commission's Web site at <http://www.srbc.net>.

**SUPPLEMENTARY INFORMATION:**

## Background and Purpose of Amendments

The SRBC adopted final rulemaking on December 5, 2006, published at 71 FR 78570, December 29, 2006, establishing: (1) The scope and procedures for review and approval of projects under Section 3.10 of the Susquehanna River Basin Compact, Public Law 91-575; 83 Stat. 1509 *et seq.* (the compact); (2) special standards under Section 3.4 (2) of the compact governing water withdrawals, consumptive use of water; diversions of the basin's waters, water conservation, and water use registration; and (3) procedures for hearings, administrative appeals, and enforcement actions.

18 CFR 806.4(a) contains broad authority for the review and approval of water resources projects by the Commission, including projects on or crossing the boundary between two member States, projects in a member State having a significant effect on the water resources in another member State, and projects affecting the SRBC comprehensive plan. Nevertheless, there is no express provision in § 806.4 specifically requiring that projects affecting the water resources of the basin and undergoing licensing actions by the FERC or the NRC be approved by the Commission, although that is its current practice. To remove any uncertainty regarding the need for approval of such projects, the Commission proposes to insert language covering certain projects involved in FERC and NRC licensing procedures.

18 CFR 806.22(f), which was adopted by the Commission as a final rule on December 4, 2008, and published in the **Federal Register** on December 23, 2008, at p. 78618, provides an "Approval by Rule" (ABR) procedure for consumptive use related to natural gas well development that is separate from the pre-existing ABR process for projects supplied by public water systems, which is contained in 18 CFR 806.22(e). The Commission proposes to modify the public notice provisions related to both ABR provisions to make them consistent, and simplify the administration of the natural gas ABR procedure to allow project sponsors to utilize all approved sources at any approved drilling pad site without the need to register its own water source approvals or the need to modify each ABR issued for subsequently issued approvals. It also would allow for registration of other approved sources to allow for use at the project sponsor's approved drilling pad sites.

18 CFR 806.32 allows for the reopening of a project approval upon