



## Commodity Futures Trading Commission Privacy Impact Assessment

**System Name:** Ownership and Control Reporting (OCR) System

**Date:** February 24, 2015

### 1. Overview

On November 18, 2013, the Commodity Futures Trading Commission (“Commission” or “CFTC”) published new ownership and control rules and related forms (the “OCR final rule”) to better identify futures and swap market participants. The OCR final rule is available on the **Federal Register website** (78 FR 69177) and leverages the Commission’s current position and transaction reporting programs by requiring the electronic submission of trader identification and market participant data on amended Forms 102 and 40, and on new Form 71.<sup>1</sup>

The Commission receives end-of-day position reports electronically from exchange clearing members, Futures Commission Merchants (FCMs), Designated Contract Markets (DCMs), foreign brokers and other reporting firms.<sup>2</sup> The new and amended forms require the reporting of certain trading accounts active on designated contract markets or swap execution facilities (SEFs).

Form 102A collects information on all “persons” that own or control position-based special accounts and the trading accounts associated with that special account.<sup>3</sup> Form 102B collects information on all persons that own or control trading accounts that meet specified volume-based reporting levels. The information collected in these forms will allow the Commission to more efficiently link special accounts holding reportable positions to the transactions and associated trading accounts identified on daily trade capture reports received by the Commission. By illustrating the connections between end-of-day position reporting and daily trade capture reports, the OCR final rule will enable the Commission to perform a more accurate and timely accounting of market position at the level of individual trading accounts. Furthermore, the addition of volume-based reporting on Form 102B will provide the Commission with an efficient means to collect the information required to aggregate positions, detect intra-day position limit violations, and calculate market share.

The CFTC designed the Ownership and Control Reporting (OCR) System to:

---

<sup>1</sup> Note that a no-action letter (**CFTC Staff Letter 15-03**) was issued by the Division of Market Oversight (DMO) on February 10, 2015 that provides additional time for certain reporting parties to comply with certain reporting requirements of the OCR final rule. This privacy impact assessment does not have any effect upon that no-action letter and does not modify a reporting party’s reporting obligations under the OCR final rule.

<sup>2</sup> Any terms not defined in this document are defined in the OCR final rule.

<sup>3</sup> For the purposes of the OCR System, “persons” include individuals, associations, partnerships, corporations, and trusts.

- receive and store ownership and control information concerning each large trader and reportable account related to futures, options, swaps and positions;
- automate and update the Forms 40 and 102 (under the legacy system, the CFTC received these data via postal mail and email/PDF); better secure those forms during transmission and receive the new Form 71 through the same secure transmission processes;
- link transaction-level data to position-based data (the legacy system included trading account numbers, but not traders' names and contained large traders' names but not their trading account numbers);
- email a notification to the reporting firm carrying the account if a trader misses the Form 40 filing deadline; the email will list persons with accounts who have missed the deadline for submitting the Form 40;
- collect ownership and control information for market participants' special (or consolidated) accounts and certain trading accounts;
- correlate trade data with end-of-day position data so that CFTC staff can more easily conduct analysis and monitor intraday position limits; and
- aggregate and anonymize OCR System data for use in the Commission's public reports, such as the **Commitment of Traders report** and the **Cotton on Call report**.

The OCR System also enables the CFTC to load the data into powerful analytical tools that perform a variety of functions across the oversight program. CFTC staff in the Division of Market Oversight (DMO), Division of Enforcement (DOE), Office of the Chief Economist (OCE) and the Division of Clearing and Risk (DCR) rely on the OCR System to understand the ownership and control structures of organizations or individuals who hold positions in the markets that the CFTC oversees.

## **2. Data Collected and Stored Within the System**

### 2.1. What information will be collected, used, disseminated or maintained in the system?

Among other information, the OCR System collects data about special accounts and underlying trading accounts, volume-based trading accounts, consolidated accounts, the owners and controllers of such accounts, and certain traders identified on the reporting forms.

Personally identifiable information (PII) stored by the OCR System includes:

PII Categories	Collected, Generated or Maintained within the system	CFTC Employees	Members of the Public	Other (e.g., Contractors, Other government employees)
Name (for purposes other than contacting federal employees)	X		X	
Date of Birth				
Social Security Number (SSN)				

Tax Identification Number (TIN)				
Photographic Identifiers				
Driver's License				
Mother's Maiden Name				
Vehicle Identifiers				
Personal Mailing Address	X		X	
Personal E-Mail Address	X		X	
Personal Phone Number	X		X	
Medical Records Number				
Medical Notes				
Financial Account Information, specifically includes:				
Trader Information	X		X	
Trading Account Number	X		X	
Special Account Reporting Number	X		X	
Certificates				
Legal Documents				
Device Identifiers				
Web Uniform Resource Locator(s)				
Education Records				
Military Status				
Employment Status (e.g., job title)	X		X	
Trader relationship with foreign government	X		X	

## 2.2. What will be the sources of the information in the system?

The sources of the OCR System data are:

- Form 102A – This is an updated version of the legacy 102 form, the Identification of “Special Accounts” form, described in Part 17.01 of the Commodity Exchange Act (CEA). The new version of the form, Form 102A, captures data about the Special Account (including more owner and controller information) as well as data about the trade accounts that comprise the Special Account, including ownership and control data associated with those trade accounts.
- Form 102S – This is an updated version of the legacy 102S form, the Identification of “Consolidated Accounts” form, described in Part 20.4-5 of the CEA. This enhanced version of the previous 102S form captures more data about the Consolidated Account including more information about the owners and controllers of the account.
- Form 102B – This new form, the Identification of Volume Threshold Accounts, is described in Part 17.01(b) of the CEA. Form 102B is used to identify trade accounts that meet a volume threshold set forth in the OCR final rule within a

- single trading day, regardless of whether positions continue to be held at the end of day. The new form captures data about the owners and controllers of the trade account.
- Form 40/40S – The Statement of Reporting Trader requires traders to identify themselves to the Commission, describe the type of traders that they are (e.g., individual, corporation) as well as their registration type (e.g., broker, trader, FCM), and describe their trading and related business activities. The updated version of the current Form 40 also requires more detailed information about the owners and controllers of the trader. The Commission sends Form 40 (described in Part 18.04 of the CEA) or Form 40S (described in Part 20.5 of the CEA) to the trader via a special call.

- Form 71 – The Identification of Omnibus Accounts and Sub-Accounts Form is a new form described in Part 17.01(c) of the CEA. Form 71 identifies owners and controllers of omnibus accounts identified on the Form 102B and other reportable sub-accounts. The Commission sends Form 71 via a special call to the originating firm of a volume threshold account that is identified as a customer omnibus account on Form 102B.

### 2.3. Why will the information be collected, used, disseminated or maintained?

As explained above, CFTC staff use the OCR System to stay apprised of market actors and their interactions within the market. CFTC staff also use OCR System data in conjunction with other systems to closely and actively monitor the futures, options and swaps market activity of traders whose positions size is large enough to potentially impact orderly market operation. The OCR System further supports enforcement litigation by helping CFTC investigators conduct research. Authorized Commission staff can research anomalies referred to them by CFTC divisions, other government agencies or members of the public and check the OCR System to focus their investigative activities and independently validate data collected during litigation discovery.

### 2.4. How will the information be collected by the Commission?

The CFTC collects the information contained in the OCR system in the following ways:

- a. Traders submit Statements of Reporting Trader (**Form 40/40S**) to the CFTC. In the legacy process, traders submitted the forms as PDFs via email, via fax or via the US Mail. The OCR final rule requires traders to submit Form 40 data electronically through the CFTC Portal or through Secured File Transfer Protocol (SFTP).
- b. Reporting parties electronically submit “Identification of Special Account” (Form 102A), “Identification of a Volume Threshold Account” (Form 102B) and “Identification of a Consolidated Account” (Form 102S) through the CFTC Portal or through SFTP.
- c. Reporting parties electronically submit “The Identification of Omnibus Accounts and Sub-Accounts Form” (Form 71) through the CFTC Portal or through SFTP.
- d. The CFTC collects, in paper form or electronically, correspondence and notes of telephone conversations between the Commission and the entity or individual or other government agencies dealing with official business concerning the entity or individual.

See the **OCR Technical Guidance Document** for technical specifications for transmitting Forms 102A, 102B, 102S, 40, 40S and 71 via SFTP to the CFTC.

- 2.5. Is the system using technologies in ways that the Commission has not previously employed (e.g., monitoring software)?

No. All software and technologies used by the Commission are common to the Commission's current infrastructure.

- 2.6. What specific legal authorities authorize the collection of the information?

The Commodity Exchange Act, 7 U.S.C. 1 *et seq.*, including Sections 4g, 4i, and 8 of that Act, at 7 U.S.C. 6g, 6i and 12, and the rules and regulations promulgated thereunder authorize the collection of this information.

### **3. Data and Records Retention**

- 3.1. For what period of time will data collected by this system be maintained and in what form will the data be retained?

The OCR System maintains in electronic form the Form 40/40S, any supporting documentation and trader code numbers and related information. That data is destroyed or deleted when position data for a trader has not been received for ten years. The OCR System also maintains in electronic form the CFTC Form 102 and 102/A/B/S, any supporting documentation and account numbers assigned by an FCM. That data is destroyed or deleted when data for an account has not been received for three years.

Paper records created from faxes, emails and regular mail are retained in file folders, loose-leaf binders and similar paper filing methods. Records in paper form are maintained in lockable offices and filing cabinets.

- 3.2. What are the plans for destruction and/or disposition of the information?

Paper files that have been scanned into the OCR System are placed in shredding bins after 30 days. Electronic records are deleted if they have exceeded their retention period. For additional information, refer to the **CFTC's records disposition schedule**, record code 511.

### **4. Access to and Sharing of the Data**

- 4.1. Who will have access to the information in the system (internal and external parties), and with whom will the data be shared? If contractors, are the Federal Acquisition Regulations clauses included in the contract (24.104 Contract clauses; 52.224-1 Privacy Act Notification; and 52.224-2 Privacy Act)?

OCR System security features allow access to information only to those individuals whose official duties require access. DMO, DOE, OCE, DCR and Office of Data and Technology (ODT) staff designate specific Commission staff who may regularly access the information. These individuals will include employees of the Commission, developers and administrators, and possibly others with a legitimate and confirmed need to know the information to perform their Commission responsibilities. CFTC contractors with

access to the OCR System are required to comply with the Privacy Act contractually through either Federal Acquisition Regulations (FAR) terms or other terms and conditions. The Office of the Executive Director's Financial Management Branch (FMB) ensures that the contract between the Commission and contractors contains the provisions necessary to protect and secure information to which the contractors have access.

The information also may be shared in accordance with the applicable Privacy Act System of Records Notice, **CFTC-15, Enterprise Surveillance, Oversight & Risk Monitoring System**, 77 Fed. Reg. 58814 (September 24, 2012).

- 4.2. If the data will be shared outside the Commission's network, how will the data be transferred or shared?

OCR System identifiable data only shared outside of the Commission's network in accordance with the CFTC-15 System of Records Notice, as described above. For example, such data may be shared as allowed under the CEA with other US government agencies or counterpart regulators outside the United States in specific situations. If transferred or shared outside the Commission's network, the data is transferred in a manner designed to prevent the unnecessary and/or unauthorized disclosure of sensitive information. Such methods may include encryption of electronic information or hand delivery of documentation.

Some data from the OCR System is aggregated and/or de-identified and included in CFTC public reports. The weekly **Cotton on Call** and **Commitment of Traders** reports posted to the Commission's public website use aggregation or de-identification strategies that have been designed to prevent re-identification of such information through other publicly available information.

- 4.3. If the data will be released to the public, consultants, researchers or other third parties, will it be aggregated or otherwise de-identified (i.e. anonymized)? If yes, please also explain the steps that the Commission will take to aggregate or de-identify the data.

Information that the CFTC reports publicly is aggregated by the classifications of the types of work that the traders perform (e.g., swap dealer, money manager) to decrease the likelihood that it can be linked to an individual. For example, the Commitment of Traders report does not list positions held by fewer than twenty traders to mitigate the chance of re-identification.

- 4.4. Do the recipients of the aggregated or de-identified information have another dataset, or is there a publicly available dataset that could be used to re-identify Commission information?

As described above, the CFTC uses techniques to aggregate or de-identify OCR System information that is released to the public with the goal of preventing re-identification of such information through other publicly available information.

- 4.5. Describe how the CFTC will track disclosures of information that will be shared with outside entities. The Privacy Act requires that the CFTC record the date,

nature, and purpose of each disclosure of a record to any person or to another agency.

The daily and weekly aggregated reports posted to the Commission's public website are each dated and the purpose of each is described on the webpage that features it. The CFTC makes other disclosures as authorized by the CFTC-15 System of Records Notice, e.g., to other US government agencies or to foreign regulators. These disclosures are tracked by the division that discloses the information and/or by ODT in its system logs or using other tools.

Additionally, the CFTC's Office of General Counsel (OGC) handles all Privacy Act and Freedom of Information Act (FOIA) requests and OGC tracks any disclosures made pursuant to such requests. OGC documents, among other things, which person or party/organization made the request, the date and nature of the request, the decision made to disclose or not disclose the data and by whom it was made.

- 4.6. Do other systems share the information or have access to the information in this system? If yes, explain who will be responsible for protecting the privacy rights of the individuals affected by the interface (e.g., System Administrators, System Developers, System Managers)?

The OCR System integrates with CFTC systems ISS, TSS, Stressing Positions at Risk (SPARK), and Swaps Position Data Repository. The OCR System displays a Privacy Notice to end-users immediately following the log in screen that discusses the importance of maintaining the confidentiality and integrity of its contents. End users and OCR System Administrators are responsible for protecting the privacy rights of individuals whose information may be accessible through these interfaces. In addition, general privacy training is mandatory for all CFTC employees on an annual basis.

ODT staff regularly monitor the information travelling to and stored by the CFTC. They are responsible for detecting unusual system behavior and raising any privacy concerns with the CFTC Privacy Office.

## **5. Notice, Consent and Access for Individuals**

- 5.1. What notice will be provided to individuals about the collection, use, sharing and other processing of their personal data?

Each form that collects OCR System information has its own Privacy Act Notice. The following statement appears to each reporting party at the top of the electronic form 102 A/B/S:

"The Commission's authority for soliciting this information is granted in sections 4a, 4c(b), 4g, 4i and 8 of the CEA and related regulations (see e.g., 17 CFR § 17.01(b)). The information solicited from entities and individuals engaged in activities covered by the CEA is required to be provided to the CFTC, and failure to comply may result in the imposition of criminal or administrative sanctions (see e.g., 7 U.S.C. sections 9 and 13a-1, and/or 18 U.S.C. 1001)."

The information requested is most commonly used in the Commission's market and trade practice surveillance activities to (a) provide information concerning the size and composition of the commodity derivatives markets, (b) permit the Commission to monitor and enforce speculative position limits and (c) enhance the Commission's trade surveillance data. The requested information may be used by the Commission in the conduct of investigations and litigation and, in limited circumstances, may be made public in accordance with provisions of the CEA and other applicable laws. It may also be disclosed to other government agencies and to contract markets to meet responsibilities assigned to them by law. The information will be maintained in, and any additional disclosures will be made in accordance with the CFTC System of Records Notice **CFTC-15, Enterprise Surveillance, Oversight & Risk Monitoring System.**"

This statement appears to each reporting party at the top of the electronic form 71:

"The Commission's authority for soliciting this information is granted in sections 4a, 4c(b), 4g, 4i and 8 of the CEA and related regulations (see e.g., 17 CFR 17.01(c)). The information solicited from entities and individuals engaged in activities covered by the CEA is required to be provided to the CFTC, and failure to comply may result in the imposition of criminal or administrative sanctions (see e.g., 7 U.S.C. sections 9 and 13a-1, and/or 18 U.S.C. 1001). The information requested is most commonly used in the Commission's market and trade practice surveillance activities to (a) provide information concerning the size and composition of the commodity derivatives markets, (b) permit the Commission to monitor and enforce speculative position limits and (c) enhance the Commission's trade surveillance data. The requested information may be used by the Commission in the conduct of investigations and litigation and, in limited circumstances, may be made public in accordance with provisions of the CEA and other applicable laws. It may also be disclosed to other government agencies and to reporting markets to meet responsibilities assigned to them by law. The information will be maintained in, and any additional disclosures will be made in accordance with the CFTC System of Records Notice **CFTC-15, Enterprise Surveillance, Oversight & Risk Monitoring System.**"

This statement appears to each trader at the top of the electronic form 40:

"The Commission's authority for soliciting information from traders with large futures, option, swap, or other derivatives market positions is granted in sections 4a, 4i, 4t and 8 of the CEA (see 7 U.S.C. sections 6i and 12). The Commission's authority for soliciting information from volume threshold account controllers, persons who own volume threshold accounts, reportable sub-account controllers, and persons who own reportable sub-accounts is granted in sections 4i and 8 of the CEA and related regulations (see, 17 CFR 18.04(b)). Such entities and individuals are required to provide the information requested, and failure to comply may result in the imposition of criminal or administrative sanctions (see e.g., 7 U.S.C. sections 9 and 13a-1, and/or 18 U.S.C. 1001).

The information requested is most commonly used in the Commission's market and trade practice surveillance activities to (a) provide information concerning the size and composition of the commodity derivatives markets, (b) permit the Commission to monitor and enforce speculative position limits and (c) enhance the Commission's trade surveillance data. Information contained in these records may be used by the Commission in the conduct of investigations or litigation and, in limited circumstances, may be made public in accordance with provisions of the CEA and other applicable laws. It may also be disclosed to other government agencies and to contract markets to meet responsibilities assigned to them by law. In accordance with the Privacy Act and the Commission's rules thereunder (see 17 CFR part 146), the complete listing of uses of the information contained in these records is found in the Commission's System of Records Notice **CFTC-15, Enterprise Surveillance, Oversight & Risk Monitoring System**.

Information contained in these records may be used by the Commission in the conduct of investigations or litigation and, in limited circumstances, may be made public in accordance with provisions of the CEA and other applicable laws. It may also be disclosed to other government agencies and to reporting markets to meet responsibilities assigned to them by law."

This PIA shall also appear on **the Privacy Office's CFTC website**.

- 5.2. What opportunities will exist for an individual to decline to provide information or to consent to particular uses of the information? If opportunities exist, how will this notice be given to the individual and how will an individual grant consent?

During the online submission process for Forms 40, 40S, 71 and 102A/B/S, the CFTC notifies individuals and firms that they must provide the requested information in order to participate in the financial markets covered by the CEA.

- 5.3. What procedures will exist to allow individuals to gain access to their information and request amendment/correction, and how will individuals be notified of these procedures?

The OCR final rule requires reporting parties to submit updates to Forms 102A/B/S if any information on a previously submitted form becomes inaccurate. The OCR final rule also requires reporting parties to submit refreshed versions of Forms 102A/B/S on an annual basis. See Parts 17.02(b) and 20.5 of the CEA.

The instructions on Form 40/40S state that a reporting trader required to complete a Form 40 will be under a continuing obligation, per direction in the special call, to update and maintain the accuracy of the information it provides. Reporting traders can update this information by either visiting the CFTC's web-based Form 40 portal to review, verify, and/or update their information, or by submitting updated information via SFTP.

The OCR final rule requires reporting parties to electronically submit updates and refresh updates of certain reporting forms (see, e.g., Parts 17.02(b), 18.04 and 20.5 of the CEA, and the instructions to the reporting forms).

Pursuant to the Privacy Act of 1974, individuals seeking access to records about themselves, or seeking amendment of records about themselves, may also **address a written inquiry** to the Office of General Counsel, Paralegal Specialist, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Please note that any such requests pursuant to the Privacy Act do not modify or eliminate a reporting party's reporting obligations under the OCR final rule.

## **6. Maintenance of Controls**

- 6.1. What controls will be in place to prevent the misuse of the information by those having authorized access and to prevent unauthorized access, use or disclosure of the information?

Commission staff are trained to recognize the sensitive nature of OCR System information. Various administrative, technical and physical security measures are designed to protect CFTC records from unauthorized access and improper use. Technical security measures include restrictions on computer access to authorized individuals, unique usernames, strong passwords that are frequently changed, use of encryption for certain data types and transfers, and regular review of security procedures and best practices to enhance security. Audit logs record all access to OCR System data.

Remote access to the OCR System is only available via the CFTC's virtual private network (VPN). Physical security measures include restrictions on building access to authorized individuals and maintenance of records in lockable offices and filing cabinets.

- 6.2. While the information is retained in the system, what will the requirements be for determining if the information is still sufficiently accurate, relevant, timely, and complete to ensure fairness in making determinations?

CFTC uses technical controls to help ensure that OCR System data is not altered during transmission to the CFTC or when maintained within CFTC systems. Under CFTC rules, reporting firms and individual traders are responsible for ensuring that information provided to the CFTC is accurate and, therefore, for updating information as needed. If CFTC staff determine that Special Account Information or Trader data submitted by a reporting firm or trader is missing or incorrect, they contact the source to request that the data be re-submitted.

- 6.3. Will this system provide the capability to identify, locate and monitor individuals? If yes, explain.

No. The information provided does not allow the CFTC to monitor an individual's movement or actions.

- 6.4. Are all IT security requirements and procedures required by Federal law being followed to ensure that information is appropriately secured?

Yes. The CFTC follows the National Institute of Standards and Technology (NIST) Special Publication 800-53, '**Recommended Security Controls for Federal**

**Information Systems**' to secure its systems as required by the Federal Information Security Management Act (FISMA).

- 6.5. Describe the privacy training provided to users either generally or specifically relevant to the program or system.

Commission personnel are subject to agency-wide procedures for safeguarding PII and receive annual privacy and security training. Many staff receive additional training focused on their specific job duties, for example, Division of Enforcement staff regularly receive training concerning privacy rights of individuals and the importance of safeguarding information, and system administrators receive role-based training.

## 7. Privacy Act

- 7.1. Will the data in the system be retrieved by a personal identifier in the normal course of business? If yes, explain. If not, can it be retrieved by a personal identifier?

Yes. CFTC Form 40/40S, Form 102A/B/S, Form 71, correspondence, and other miscellaneous information are maintained in the OCR System directly under the name of the reporting trader. The large trader reporting forms are maintained by identifying code number and can be retrieved by that unique identifier.

- 7.2. Is the system covered by an existing Privacy Act System of Records Notice ("SORN")? Provide the name of the system and its SORN number, if applicable.

Yes, **CFTC – 15 Enterprise Surveillance, Oversight & Risk Monitoring System**.

## 8. Privacy Policy

- 8.1. Confirm that the collection, use and disclosure of the information in this system have been reviewed to ensure consistency with the Commission's Privacy Policy on [www.cftc.gov](http://www.cftc.gov).

Yes, the following sub-headers of **the CFTC privacy policy** are relevant to the OCR System:

- If You Choose to Send Us Personal Information
- Sharing of Your Information

## 9. Privacy Risks and Mitigation

- 9.1. What privacy risks are associated with the collection, use, dissemination and maintenance of the data? How have those risks been mitigated?

The CFTC has adopted the following protections, in addition to those stated above in Section 6 and others, to appropriately safeguard OCR System information:

- OCR System data is confidential; the CFTC has limited access strictly to those with a need-to-know based upon an individual's role and responsibility.

- Whenever OCR System information is accessible through other CFTC internal systems (e.g., ISS, TSS), access to that information continues to be role-based. ODT has vetted the administrators of the connected systems.
- The OCR System data sent to the CFTC through the CFTC Portal or through the Secure FTP are secured in transit and upon receipt.
  - During transmission to the CFTC via the Portal or SFTP, the information is secured according to **Federal Information Processing Standards (FIPS) Publication 140-2** requirements.
  - Once within the CFTC network, the information is secured by, among other controls, complex, frequently-changed passwords; sound security practices that are integrated into the daily routines of CFTC staff; audits of events that are significant and relevant to the security of the OCR System and the environment in which it operates; only qualified and authorized individuals may make changes to the OCR System; and the OCR System uniquely identifies and authenticates users. All of the above controls are implemented according to FISMA standards.