

2009–1136 and Airspace Docket No. 09–ANM–26) and be submitted in triplicate to the Docket Management System (*see ADDRESSES* section for address and phone number). You may also submit comments through the Internet at <http://www.regulations.gov>.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: “Comments to FAA Docket No. FAA–2009–1136 and Airspace Docket No. 09–ANM–26”. The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at <http://www.regulations.gov>. Recently published rulemaking documents can also be accessed through the FAA’s web page at http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (*see the ADDRESSES* section for the address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue, SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRM’s should contact the FAA’s Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by establishing Class E

surface airspace within a 4.1-mile radius of Deer Park Airport to accommodate existing RNAV (GPS) SIAPs at the airport. This action also would remove the Non-Directional Radio Beacon (NDB) from the legal description of the existing Class E airspace area extending upward from 700’ above the surface, as the NDB soon will be decommissioned. This action would enhance the safety and management of aircraft operations at the airport.

Class E airspace designations are published in paragraph 6002 and 6005, respectively, of FAA Order 7400.9T, signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation; (1) Is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA’s authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency’s authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes additional controlled airspace at Deer Park Airport, Deer Park, WA.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the FAA Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009 is amended as follows:

Paragraph 6002 Class E airspace Designated as Surface Areas.

* * * * *

ANM WA E2 Deer Park, WA [New]

Deer Park Airport, WA
(Lat. 47°58’01” N., long. 117°25’43” W.)

Within a 4.1-mile radius of Deer Park Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM WA E5 Deer Park, WA [Modified]

Deer Park Airport, WA
(Lat. 47°58’01” N., long. 117°25’43” W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Deer Park Airport, excluding the Spokane, WA, Class E airspace area.

Issued in Seattle, Washington, on July 1, 2010.

John Warner,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2010–17516 Filed 7–16–10; 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.

ACTION: Notice of proposed rulemaking (“Notice”).

SUMMARY: The Commodity Futures Trading Commission (“CFTC” or “Commission”) hereby proposes to collect certain ownership, control, and related information for all trading accounts active on U.S. futures exchanges and other reporting entities. The information collected will enhance market transparency, increase the Commission’s trade practice and market surveillance capabilities, leverage existing surveillance systems and data, and facilitate the Commission’s enforcement and research programs. Upon adoption of a final rule, the Commission will codify its requirements in Commission Regulation 16.03. The Commission welcomes public comments on its proposal.

DATES: Comments must be received on or before September 17, 2010. The Commission or Commission staff will hold a public meeting during the comment period in order to discuss the proposed rulemaking.

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 OCR@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 by connecting to the Federal eRulemaking Portal at <http://www.regulations.gov> and following comment submission instructions. All comments must be in English.

FOR FURTHER INFORMATION CONTACT: Sebastian Pujol Schott, Associate Deputy Director, Market Compliance, 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

The Commission proposes to collect ownership and control information via an account “Ownership and Control Report” (“OCR”) submitted weekly by all U.S. futures exchanges and other reporting entities (collectively, “reporting entities”).¹ This Notice

¹ “Reporting entities” are defined broadly to include any registered entity required to provide the Commission with trade data on a regular basis, where such data is used for the Commission’s trade

specifies the proposed content of the OCR, as well as its form and manner. In addition, it summarizes public comments received in response to a previously published Advanced Notice of Proposed Rulemaking (“ANPR”) in which the Commission explained its need and intended uses for ownership and control information.

A. Advanced Notice of Proposed Rulemaking

On July 2, 2009, the Commission published for public comment an ANPR where it proposed to collect certain ownership, control, and related information for all trading accounts active on U.S. futures exchanges. The Commission stated its intention to collect this information via an OCR submitted periodically by DCMs and other reporting entities.² The ANPR was not a formal rule proposal; however, it did provide a detailed explanation of the Commission’s need and intended uses for ownership and control information. The ANPR explained that the OCR would be designed to enhance market transparency, leverage the Commission’s existing surveillance systems, and foster synergies between its market surveillance, trade practice, enforcement, and economic research programs. In addition, it addressed key technical points, including: (1) The data that the Commission planned to collect through OCRs; (2) the frequency with which OCRs were to be submitted; and (3) the form and manner in which OCRs should be provided. Finally, the ANPR gave examples of the Commission’s intended uses for ownership and control information, and described existing Commission surveillance systems that would benefit from OCRs.

practice or market surveillance programs. At present, reporting entities would include designated contract markets (“DCMs”), derivatives transaction execution facilities (“DTEFs”), and exempt commercial markets with significant price discovery contracts (“ECM SPDCs”). In addition, should the Commission adopt the proposed rule, it would also collect ownership and control information from foreign boards of trade (“FBOTs”) operating in the U.S. pursuant to staff direct access no-action letters if such letters are conditioned on the regular reporting of trade data to the Commission. The Commission notes that much of the data required in the proposed OCR is already maintained by one or more registered entities to comply with existing regulatory requirements. The OCR will necessitate each reporting entity to collate and correlate these and other data points into a single record for trading accounts active on its trading facility, and to transmit such record to the Commission for regulatory purposes.

² 74 FR 31642 (July 2, 2009). The ANPR noted 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.” Footnote 1, above, emphasizes that reporting entities are not limited to DCMs.

The Commission invited all interested parties to submit general comments on the OCR within a 45-day comment window.³ In addition, it posed eight specific questions addressing what additional information, if any, should be included in the OCR; the root sources of ownership and control information; the flow of data from those sources through reporting entities and on to the Commission; the form and manner of OCR transmission; the costs and burdens that the OCR might impose on reporting entities and their root data sources; and related matters. The Commission stated that comments received in response to the ANPR would help it “formulate an effective and practical rule,” and that comments would be “used in developing a proposed rule at a later date.”⁴ The Commission received a total of 12 comment letters from 16 interested parties.

All comment letters were reviewed carefully by Commission staff. They expressed a range of opinions, both in support and opposition to the OCR. Many comment letters understood the utility of gathering ownership and control information for at least some trading accounts, but questioned specific elements of the Commission’s approach as outlined in the ANPR. The comments received and the Commission’s responses are summarized in Section III below. Briefly stated, however, the Commission continues to believe that ownership and control information is fundamental to the effective regulation of 21st-century futures markets. While it has made some modifications in response to comments received, and also added several new data points, the Commission is now formally proposing the OCR largely as described in the ANPR.⁵ The Commission welcomes all public comments.

II. Ownership and Control Information as a Regulatory Tool

A. Commission’s Need for the OCR

The Commission’s need for ownership and control information reflects fundamental changes in the technology, products, and platforms of

³ Comments were due on or before August 17, 2009.

⁴ 74 FR 31642, at 31646 and 31643.

⁵ For example, the proposed OCR does not require the last four digits of account owners’ and controllers’ social security numbers or taxpayer identification numbers, as was contemplated in the ANPR. In their place, however, it would collect account owners’ and controllers’ dates of birth, as well as their National Futures Association (“NFA”) identification numbers, if any. The proposed OCR’s complete data requirements are described in Section IV(A).

U.S. futures trading. DCMs, in particular, have undergone a decade-long transition from geographically-defined trading pits to electronic platforms with global reach. Between 2000 and 2009, electronic trading grew from approximately 9 percent to approximately 81 percent of volume on all U.S. DCMs. Over the same time period, the number of actively-traded futures and options contracts listed on U.S. exchanges increased more than seven fold, from approximately 266 contracts in 2000 to approximately 1,866 contracts in 2009.⁶ Most importantly, total DCM futures and options trading volume rose from approximately 594.5 million contracts in 2000 to approximately 2.78 billion in 2009, an increase of over 368%.⁷

Volume growth and changes in trading technology have coincided with equally important developments in the business of futures trading. One development of significant regulatory consequence is the growing economic integration between DCM contracts and their equivalents traded on ECMs, FBOTs, or other DCMs. Such linkages present both new trading opportunities and new regulatory challenges for the Commission and exchanges. In particular, both must be vigilant that trading in one market is not used to distort another, or to facilitate abusive trading practices across markets. The Commission's role with respect to such linked contracts is especially vital, as it is best equipped to collect regulatory information from competing exchanges and conduct surveillance of linked contracts across markets.

A second development of regulatory consequence is the increased dispersion and opacity of market participants as U.S. exchange floors are replaced by a broader, global customer base. Whereas the Commission once monitored trading via on-site surveillance of open-outcry pits, today surveillance is primarily electronic and data-driven.

Paradoxically, while electronic trading has conferred important informational advantages, including improved audit trails, the concomitant increases in trading volumes, products offered, and trader dispersion and anonymity have created equally important regulatory challenges. Foremost among these is scale. Effective surveillance of millions of daily records—for example, an average of approximately 2.9 million

trades per day in December 2009—requires automated systems capable of intelligently searching for patterns and anomalies buried deep within the data. Crucially, it also requires comprehensive data streams with sufficient reference points to uncover relationships where none appear to exist and to analyze information based on desired criteria. The proposed OCR helps both the Commission and self-regulatory organizations accomplish these tasks by adding account control, account ownership, and common control or ownership as new reference points for trade practice and market surveillance programs.

Taken together, these and other changes have transformed regulation and self-regulation in the futures industry. The Commission has worked diligently to keep pace in every respect. Its efforts have included the assertion of jurisdiction where appropriate, and the acquisition of regulatory data—such as the proposed OCR—from all necessary sources. In March 2009, for example, the Commission adopted final rules with respect to significant price discovery contracts (“SPDCs”) traded on ECMs, which, in some cases, have grown from nascent trading facilities to large electronic trading platforms listing contracts that rival DCM contracts and contracts that serve a significant price discovery function.⁸ The final rules address concerns that trading in SPDCs, if insufficiently regulated, could adversely impact the contracts to which they are linked or the parties that refer to SPDCs for the pricing of transactions. The final rules also describe, in guidance, how the Commission expects to apply the statutory criteria for determining whether an ECM contract serves a significant price discovery function.⁹ Once such a determination is made, SPDCs become subject to nine core principle requirements, including the provision of regulatory data to the Commission. As of June 28, 2010, eight ECM contracts have been recognized as SPDCs.¹⁰ In another example, Commission staff has twice amended its direct access no-action letter for an FBOT offering DCM-linked contract(s), ultimately requiring additional regulatory data, including large trader reports and trade execution and audit

trail data with respect to the linked contract(s).¹¹

The Commission has also worked diligently to modernize its automated surveillance systems and to upgrade the data sources available for those systems. 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.¹² The proposed OCR is intended to integrate these existing resources, and leverage them in dynamic new ways. As explained below, it would improve the Division of Market Oversight's (“DMO”) detection and deterrence capabilities with respect to specific trade practice violations and market abuses. It would also help bridge the gap between individual transactions reported to the Commission on exchange trade registers and aggregate positions reported to it in large trader data.

The OCR would allow the Commission's Division of Enforcement (“DOE”) and its Office of Chief Economist (“OCE”) to better and more efficiently utilize regulatory data in support of their own missions. In addition, it would increase market

¹¹ See Letter from Richard A. Shilts, Director, Division of Market Oversight, to Dee Blake, Director of Regulation, ICE Futures Europe (June 17, 2008) (requiring, among other things, that ICE Futures Europe provide a daily report of large trader positions in each linked contract). On January 21, 2009, the Commission published a Notice in the *Federal Register* to provide notice that the conditions set forth in the staff no-action letter dated June 17, 2008, would equally apply to no-action relief of any FBOT that lists for trading by direct access from the U.S. any linked contract. 74 FR 3570, 3572 (January 21, 2009). See also Letter from Richard A. Shilts, Director, Division of Market Oversight, to Dee Blake, Director of Regulation, ICE Futures Europe (August 20, 2009) (requiring, among other things, that ICE Futures Europe provide trade execution and audit trail data for the CFTC's Trade Surveillance System on a trade-date plus one basis).

¹² “Trade register” is a generic term for a comprehensive, daily record of every trade facilitated by an exchange, whether executed on the centralized market (via open-outcry or electronically) or off of it (e.g., block trades and exchange of futures for swaps). Trade registers contain detailed information with respect to the terms of a trade (e.g., contract, price, quantity, etc.), 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 trade registers often do not correspond to account numbers reported to 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. The Commission notes that OCR reporting requirements will be triggered by the regular reporting of trade data for use in the Commission's trade practice or market surveillance programs, regardless of whether such data is deemed a “trade register” by the entity providing it.

⁸ Final rules were adopted on March 23, 2009 and became effective April 22, 2009. See 74 FR 12178.

⁹ The criteria established by Section 2(h)(7) of the Act include price linkage and arbitrage relationships with other contracts, material price reference, and material liquidity.

¹⁰ See for example 74 FR 37988 (July 30, 2009) (wherein the ICE Henry Financial LD1 Fixed Price contract became the first contract found by the Commission to perform a significant price discovery function).

⁶ Based on fiscal years 2000 and 2009, as reported in the Commission's *FY 2009 Performance and Accountability Report*, p.14.

⁷ In addition, futures and options trading volume reached a peak of approximately 3.37 billion contracts traded in 2008, an increase of over 466% compared to the year 2000.

transparency and respond to new regulatory data needs in an era of predominantly electronic trading. In short, the proposed OCR reflects the Commission's belief that its traditional data resources—exchange trade registers and large trader reports—must be expanded. Accordingly, the Commission proposes to supplement those resources with ownership and control information for all trading accounts.

B. Specific Benefits Expected From the OCR

1. Benefits to DMO's Trade Practice and Market Surveillance Programs

The Commission'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 market-wide abuses, such as manipulation (*i.e.*, market surveillance) and individual trading violations (*i.e.*, trade practice surveillance); often, the two are connected. DMO's surveillance programs include routine monitoring of markets and trades, and detailed, data-driven investigations when appropriate.

To conduct its surveillance programs, DMO collects daily trade data from all U.S. DCMs or their regulatory service providers, as well as from ECMs with SPDCs and FBOs with linked contracts. The data collected is central to DMO's trade practice surveillance program, and of growing importance to market surveillance and other regulatory efforts, as explained below. Presently, the Commission's trade practice and market surveillance programs utilize distinct platforms—the Integrated Surveillance System (“ISS”) for market surveillance and the Trade Surveillance System (“TSS”) for trade practice surveillance.¹³

¹³ ISS tools and data are used to detect and prevent price manipulation and market congestion on regulated exchanges, and to enforce speculative position limits pursuant to section 4a of Commodity Exchange Act (“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. Like ISS, TSS is also a combination of analytical tools and databases. It also includes powerful algorithms to analyze large quantities of trade data for suspicious trading patterns. TSS forms the backbone of the Commission's automated trade practice surveillance program and also provides data and analysis for

Broadly speaking, ISS facilitates the storage, analysis, and mining of large trader data while TSS does the same for trade data. Both 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 would help integrate these two primary systems by linking individual transactions reported on exchange trade registers (TSS) with aggregate positions reported in large trader data (ISS). DMO would have the data necessary to reconstruct trading based on trade registers, and determine how large traders established their positions as recorded in the large trader reporting system.

One important benefit of the OCR is that it would help TSS to make more sophisticated analytical use of the trade register data already available. As indicated previously, “trade register” is a generic term for a comprehensive, daily record of every trade facilitated by an exchange. Trade registers contain detailed information with respect to the terms of a trade, but no OCR-type data. Together, TSS and exchange trade registers aid 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 trade practice violations.

To identify these violations and others that may arise in the future, DMO's trade practice analysts, equipped with TSS, must distinguish violative trading patterns hidden within extremely large data sets. However, TSS's analytical capabilities are proportional to the content of its source data, which presently does not include ownership and control information sufficient to aggregate related trading accounts within and across exchanges. This absence of ownership and control information impairs DMO's ability to efficiently detect trade practice violations such as those listed above, or to uncover other violations that would be evident with ownership and control information. For example, instances of potential money-passing (including money laundering) become much more evident when two apparently unrelated accounts with frequent trading activity are known to be under common ownership. In addition, the absence of ownership and control information impairs DMO's ability to identify small and medium sized traders whose open interest does not reach reportable levels, but who can still have deleterious

Commission enforcement and research programs, as described below.

effects on the markets during concentrated periods of intra-day trading. Such scenarios include intra-day position limit violations and “banging the close” manipulations. The OCR would allow DMO to address each of these current limitations.

2. Benefits to the Division of Enforcement

DOE investigates and prosecutes alleged violations of the Act and Commission regulations.¹⁴ 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.

The OCR will be of immediate help to this investigatory work, especially if it relies on aggregating related trading accounts. DOE investigations in the areas of intra-day manipulation and trade practice abuses rely on exchange trade registers. At present, however, the absence of ownership and control information in trade register data presents an obstacle when DOE is investigating potential price manipulations or trade practice abuses, such as front-running. Without this information, 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 would significantly reduce the time and resources expended in determining the identities and relationships between account holders, and thus facilitate DOE investigations and prosecutions across markets and exchanges.

¹⁴ The Act is codified at 7 U.S.C. 1 *et seq.* (2000).

3. Benefits to 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' intra-day 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 register-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 or marketing/merchandising activity 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.

III. Comments Received in Response to the Advanced Notice

The Commission received 12 comment letters from 16 commenters in response to the ANPR. Comment letters were submitted by: the Air Transport Association of America, Inc. ("ATA"); CME Group Inc. ("CME Group"); the Futures Industry Association ("FIA"); Foley & Lardner LLP ("F&L"); ICE Futures U.S., Inc. ("ICE Futures"); the

Kansas City Board of Trade ("KCBT"); MF Global Inc. ("MF Global"); the Minneapolis Grain Exchange ("MGEX"); Newedge USA, LLC ("Newedge"); Paul, Hastings, Janofsky & Walker LLP ("PH"); the Petroleum Marketers Association of America and the New England Fuel Institute, writing jointly ("PMMA/NEFI"); and one private commenter (Mr. Zhang).¹⁵ Commission staff reviewed all comments carefully.

Many commenters recognized potential regulatory benefits stemming from enhanced ownership and control information, including benefits for the public, the Commission, or industry self-regulatory organizations.¹⁶ Two commenters representing commodity trade associations strongly endorsed the OCR, noting their approval of "efforts to acquire all information from DCMs, ECMs, and DTEFs to improve market transparency and integrity."¹⁷ The OCR also received qualified support from some DCMs. One DCM, for example, indicated that the OCR will promote "further integration of our existing market surveillance and trade practice surveillance data and bridge gaps that may exist between individual transaction data contained in the Exchange trade register and position data contained in large trader reports filed with the Exchange."¹⁸ Another stated the OCR will "exponentially increase market transparency" and "Commission and exchange compliance staffs will benefit greatly from the wealth of information at their disposal."¹⁹

While commenters often acknowledged the regulatory value of gathering ownership and control information, many also expressed specific concerns with one or more elements of the OCR as described in the ANPR. One significant area of concern focused on the OCR's potential costs. Comments in this regard ranged from proposals to curtail the OCR to outright opposition to any OCR implementation. Commenters were also broadly concerned with the potential difficulty of acquiring certain OCR data points,

and with whether every OCR data point contemplated in the ANPR is necessary to achieve the Commission's regulatory objectives. Finally, commenters raised concerns with respect to the privacy of ownership and control information and equal implementation of OCR requirements across exchanges. These concerns, and the Commission's responses to them, are summarized below.

A. The OCR's Costs, Benefits, and Alternatives

Several commenters raised concerns with respect to the OCR's potential costs. At one extreme, an FCM commenter expressed outright opposition to the OCR, claiming that it would "result in an inordinate amount of work and expense for many, if not most FCMs" and may "cause some FCMs to go out of business."²⁰ The FCM also asserted that the CFTC apparently had not "considered the burden that would be imposed on FCMs other than to a relatively nominal extent."²¹ Similarly, an industry association representing numerous large FCMs stated that the OCR "would impose a significant burden on FCMs" and "the potential costs will far outweigh the expected benefits to the Commission."²²

Many commenters concerned with the OCR's potential costs recommended that the Commission pursue a more limited OCR that focuses only on a limited number of trading accounts. Specifically, they suggested that the OCR should be a record of ownership and control for trading accounts tied to "special accounts" in the Commission's large trader reporting system. One DCM group, for example, asked the Commission to consider whether ownership and control information was necessary for every account, "as experience suggests there is little incremental regulatory value below certain thresholds."²³ It recommended that the Commission instead "automate the data collection process for Form 102s."²⁴ In support of its

²⁰ Newedge Comment Letter at 1 and 5.

²¹ Newedge Comment Letter at 8. In a related footnote, Newedge described how the SEC "conducts a cost-benefit analysis," analyzes new rules under the Paperwork Reduction Act, and "prepares a final regulatory flexibility analysis in its rulemakings." The Commission notes that these elements were not included in the ANPR, which was not a proposed or final rule, but they are included in this Notice.

²² FIA Comment Letter at 2.

²³ CME Group Comment Letter at 5.

²⁴ CME Group Comment Letter at 4. The Form 102, titled "Identification of Special Accounts," is part of the Commission's large-trader reporting system. The Form 102 must be filed by FCMs, clearing members and foreign brokers who carry

¹⁵ CME Group submitted a single comment letter on behalf of four DCMs: the Chicago Mercantile Exchange, Inc.; the Board of Trade of the City of Chicago, Inc.; the New York Mercantile Exchange, Inc.; and the Commodity Exchange, Inc. Its comments are noted here as those of a "DCM group."

¹⁶ ATA, CME Group, ICE Futures, KCBT, MGEX, PMMA/NEFI, and Zhang.

¹⁷ PMMA/NEFI Joint Comment Letter at 1. In the ANPR, the Commission stated that it anticipates most OCR reporting entities will be DCMs, but they could be any registered entity that provides trade data to the Commission on a regular basis.

¹⁸ ICE Futures Comment Letter at 1.

¹⁹ KCBT Comment Letter at 1.

recommendation, the DCM group argued that the OCR is a “largely duplicative report” when compared to the Form 102 and that “modernizing” and “enhancing the accuracy” of the Form 102 would be more cost effective than developing a new report.²⁵ Similarly, an FCM commenter “question[ed] the benefits to be gained by obtaining Form 102-type information for small trades and/or inactive accounts,”²⁶ and an industry association contested “the necessity of collecting OCR data with respect to accounts that have not been designated ‘special accounts.’”²⁷

The Commission appreciates commenters’ concerns with respect to the OCR’s potential costs. However, it also believes that commenters have not fully understood the Commission’s intended uses for ownership and control information. For example, commenters’ emphasis on an enhanced Form 102 as an alternative to the OCR suggest that they view the OCR primarily as an addendum to the Commission’s market surveillance program, which aims to detect and deter price manipulation through reporting and surveillance of open positions. In this regard, the Commission notes that while its objectives do include improved position surveillance, they also include improved trade surveillance—regardless of position size—and other regulatory goals outlined previously. Indeed, the proposed OCR forms a new category of surveillance data that will benefit any regulatory effort focused on trades and trading behavior by account owners and controllers within and across reporting entities. The Commission believes that such information is vital for effective oversight of the U.S. futures markets.

At the same time, the Commission is sensitive to the cost concerns raised in response to the ANPR. It invites interested parties to include detailed cost estimates in any future comment letters submitted with respect to the proposed OCR. Such estimates should be as specific as possible, should itemize different categories of costs (e.g., hardware and software, personnel, one-time “start-up” costs, and on-going operational costs), and should reflect the costs to the commenter itself rather than an industry average. The Commission is also open to comments

special accounts. Special accounts are accounts that reach large-trader reportable position levels in a particular product, these levels are established by the Commission.

²⁵ CME Group Comment Letter at 4.

²⁶ Newedge Comment Letter at 7. The Form 102, titled “Identification of Special Accounts,” is part of the Commission’s large-trader reporting system.

²⁷ FIA Comment Letter at 4.

suggesting that the OCR should be limited to accounts meeting certain thresholds as a way of containing its costs. However, such comments should address an account’s *trading volume or frequency* within a given time period, and not just its relationship to a reportable position under the large trader reporting system. Any comments suggesting that the Commission gather ownership and control information for only a subset of accounts based on their trading volume or frequency should also document the cost savings to the commenter from reporting only that subset. In addition, any such comments should also address how the commenter’s proposed threshold would meet the Commission’s regulatory needs as explained in this Notice.

A second significant theme in the comment letters pertained to the flow of ownership and control information from its root sources, through reporting entities, and on to the Commission. Citing cost and efficiency, two DCMs recommended that FCMs and clearing members submit their ownership and control information directly to the Commission.²⁸ They suggested that FCM reporting entities would benefit if their reporting systems could be built to a single Commission standard rather than to multiple exchange standards.²⁹ Another DCM recommended that ownership and control information be sent directly to the Commission to resolve any jurisdictional issues that might arise when exchanges require data from non-members.³⁰ In contrast to these DCM perspectives, an industry association representing FCMs agreed that “DCMs would be the appropriate funnel through which [OCR] information is transmitted to the Commission.”³¹ However, to avoid undue burden arising from divergent OCR standards at different exchanges, it also proposed that the “protocols prescribing the content, format and transmission of ownership and control information from FCMs to the several DCMs be uniform.”³²

The Commission agrees that uniform protocols are an absolute necessity for the OCR. Accordingly, the proposed rule specifies that reporting entities must adopt a single standard, acceptable to the Commission, for submitting their OCRs to the Commission. Such standards will apply to the OCR’s content, format, and the time and

²⁸ KCBT Comment Letter at 1. MGEX Comment Letter at 1.

²⁹ KCBT Comment Letter at 2.

³⁰ ICE Futures Comment Letter at 4.

³¹ FIA Comment Letter at 2.

³² FIA Comment Letter at 2.

manner of its transmission. The Commission anticipates that this requirement will lead reporting entities and their root data sources to coordinate their efforts and develop an industry-wide standard for the flow of ownership and control information from root data sources to reporting entities.³³ In addition, the Commission proposes to grant the industry adequate time to design and implement the OCR once a final rule is adopted, as explained below. With respect to jurisdictional issues, the Commission is aware that some market participants may not be members of their corresponding reporting entity. However, in these cases, or where “membership” is not a relevant concept based on a reporting entity’s business structure, market participants must still access the exchange directly via its facilities or via those of an intermediary providing a technology interface, a clearing guarantee, or some other service. Successful implementation of the OCR will require reporting entities to offer their services only on the condition that ownership and control information be provided upon request by the relevant party in possession of such information. Finally, the Commission believes that reporting entities are the appropriate vehicle for reporting ownership and control information to the Commission. The trading account numbers which they provide in their OCRs must correlate perfectly to those reported on their related trade registers. Thus, reporting entities are in the best position to ensure that their trade registers and their OCRs match as required.

B. Ownership and Control Information May Be Difficult To Obtain or Unnecessary

Many commenters raised concerns with respect to the organizational and technological challenges that reporting entities and root data sources may face in gathering and standardizing ownership and control information. The FCM community, in particular, focused on the difficulty of aggregating data from different internal systems into a single OCR file. An industry association, for example, stated that “[t]he creation, use, form, storage and retention of data are not uniform across FCMs” and some information might even be “on paper stored at offsite retention centers” or otherwise unavailable.³⁴ An FCM explained how “many FCMs maintain

³³ “Root data sources” are those entities from which reporting entities may need to gather certain ownership and control information in order to provide the Commission with a complete OCR for every trading account active in its markets.

³⁴ FIA Comment Letter at 2.

trade reporting information and trader/system IDs in different locations” and how it would be a “difficult and time-consuming task” to reconcile this data.³⁵

A number of letters identified specific account and trade types that may present special challenges in an OCR.³⁶ One DCM group noted that “[g]ive-up transactions, bunched orders and omnibus accounts are widespread in the industry, and each creates challenges in the context of the OCR as currently proposed.”³⁷ An industry association provided additional information, explaining that for give-up trades “[t]he account number used by the executing firm does not necessarily tie back to the account number used by the clearing firm for a customer’s account.”³⁸ Another DCM noted that “[e]xtra efforts will be needed to obtain and keep current detail[ed] information that involves omnibus accounts, index accounts with multiple investors, or any accounts with multiple owners, participants or controllers.”³⁹ A third DCM explained its belief that omnibus and give-up accounts will be difficult to obtain information from “because the underlying accounts are not carried on the clearing member’s books.”⁴⁰ This concern was echoed by another FCM as an important component of its comment letter.

Some commenters questioned whether every OCR data point contemplated in the ANPR is necessary to achieve the Commission’s regulatory objectives. One DCM, for example, stated that “it does not believe that all the information itemized in the Advanced Notice is necessary” and that “some of the information would be redundant.”⁴¹ Similarly, a DCM group focused specifically on the date of ownership assignment and the commodity trading advisor number, stating that these data points “may add complexity to the reporting process without commensurate value.”⁴²

As a consequence of these perceived challenges, the Commission received a significant number of comment letters suggesting that it form an industry-wide working group to discuss the OCR and its implementation. DCM and FCM commenters both concurred in the recommendation. One commenter, for example, called for an “inclusive, industry-wide committee calling on the

expertise of all affected stakeholders * * * to address significant operational and other issues regarding the appropriate design of the OCR.”⁴³

The Commission is aware of the numerous challenges posed by the OCR. However, it believes that those challenges can be overcome via a coordinated industry effort and a reasonable implementation schedule. Upon the adoption of any final rule in this area, the Commission will grant reporting entities and root data sources considerable time to coordinate, develop, and implement the OCR. Specifically, the Commission would propose to require OCR test files from all reporting entities within 12 months of a final rule, and final OCR implementation within 18 months of a final rule. Interested parties are invited to comment on this proposed schedule. Any comments requesting additional time to implement test or final OCRs should include an alternate implementation schedule with specific dates and benchmarks.

The Commission also emphasizes that its proposal has a number of features intended to eliminate unnecessary data points from the OCR and to define ownership and control in less than the broadest possible terms. First, to facilitate implementation, the Commission has determined to eliminate from the OCR several data points that were included in the ANPR. For example, the proposed OCR does not include the date on which the trading account was assigned to its current owner(s). In addition, as discussed below, the proposed OCR would not collect information with respect to social security numbers or taxpayer identification numbers.

Second, the Commission notes that at least one technical obstacle, pertaining to give-ups, can potentially be addressed via improvements to the daily exchange trade registers on which OCR account numbers will be based. Via a separate initiative, the Commission has already requested that exchanges create a “give-up group ID” that links two related events—the execution of a trade and its subsequent give-up, both of which are reported on trade registers. In cases where an execution-only firm does not possess ownership and control information for the given-up trade, the reporting entity may collect it from the clearing firm, and the Commission will be able to form a complete record of the trade and its subsequent allocation through the give-up group ID.⁴⁴ With

respect to omnibus accounts, however, the Commission believes that identifying their ultimate beneficial owners and controllers remains necessary despite the acquisition of information which will be required with respect to accounts trading on an undisclosed basis.

Third, the proposed OCR reduces the overall reporting burden by narrowing the definition of “ownership” with respect to collective investment vehicles (“CIV”).⁴⁵ Under the proposed OCR, CIV ownership information will be required only with respect to persons whose ownership share is 10 percent or more of the CIV’s net asset value, as defined in Commission Regulation 4.10. Fourth, the proposed OCR defines “controller” as an individual or individuals with the legal authority to exercise discretion over trading decisions by a trading account or with the authority to determine the trading strategy of an automated trading system. The *authority* to exercise discretion is sufficient to qualify as a controller, regardless of whether such authority is actually used. Individuals acting without discretion will not be considered account controllers.

Interested parties are invited to comment on the Commission’s proposed definitions, including its proposed definitions of ownership and control, and to suggest specific alternatives if they will achieve the Commission’s objectives in a more efficient manner. The Commission also invites comments from interested parties who believe that a data point in the proposed OCR is impossible to collect for technical reasons. Such comments should fully explain the technical obstacle, including the account, trade, or ownership type to which the obstacle applies. Comments should also identify the entity holding the data in question, or an explanation that the data is not maintained by any entity subject to the Commission’s authority or that of a Commission registrant (including any requirement that a user of an exchange’s facilities consent to providing ownership and control information prior to utilizing such facilities). Any request to deviate from the definitions or data points in the proposed OCR should include

execution account, and the clearing firm should provide the account to which the trade is given-up. The Commission will link both through the give-up group ID.

⁴⁵ While “collective investment vehicle” is not defined in regulations under the CEA, it is “commonly used to describe any entity through which persons combine funds (*i.e.*, cash) or other assets, which are invested and managed by the entity.” 67 FR 48328, 48331 (July 23, 2002).

³⁵ Newedge Comment Letter at 4.

³⁶ CME Group, FIA, ICE Futures, KCBT, MF Global, and MGEX.

³⁷ CME Group Comment Letter at 4.

³⁸ FIA Comment Letter at 3.

³⁹ MGEX Comment Letter at 2.

⁴⁰ KCBT Comment Letter at 3.

⁴¹ ICE Futures Comment Letter at 2.

⁴² CME Group Comment Letter at 4.

⁴³ FIA Comment Letter at 1.

⁴⁴ In this scenario, the executing firm should provide ownership and control information for the

technical diagrams; data flow-charts; FCM, introducing broker (“IB”) and foreign broker account opening and record retention procedures with respect to that data point; and other detailed information as appropriate to establish the difficulty or impossibility of implementing the OCR as proposed. In short, while the Commission is prepared to amend the proposed OCR where necessary, it will do so only on the basis of detailed and well-documented comments.

Finally, the Commission notes that it does not intend to convene an industry working-group to develop the OCR. While industry coordination will be crucial, the Commission’s role is to clearly articulate its requirements and expectations. Industry participants are best situated to determine how those requirements can be met. Should any element of the proposed OCR remain unclear, the Commission strongly encourages industry participants to present their questions via the public comment process for this proposed rule.

C. The OCR Should Be Implemented Equally Across Exchanges and Should Respect Privacy Considerations

Some commenters argued that DCMs should not be the only registered entities required to provide the OCR. One DCM group noted its concern that the OCR is limited to trading accounts active on U.S. futures exchanges, and does not “encompass trading on exempt commercial markets (“ECMs”) and foreign boards of trade (“FBOTs”).” The DCM group stated that such an exclusion “would give ECMs and FBOTs an unfair competitive advantage over U.S. futures exchanges.”⁴⁶ Similarly, a commodity trade association urged the Commission to obtain OCR information from all trading platforms including the OTC market.⁴⁷

The Commission agrees that OCR requirements should apply equally to all entities reporting trade data to the Commission on a regular basis for trade practice or market surveillance purposes. For purposes of this Notice, however, the proposed OCR specifically includes DCMs, DTEFs, and ECM SPDCs within the definition of reporting entities.⁴⁸ In addition, the Commission emphasizes that its proposed rule requires ownership and control

information equally regarding both U.S. and non-U.S. entities and natural persons.

Should the Commission receive appropriate statutory authority with respect to OTC and swap transactions, it would consider collecting ownership and control information with respect to such transactions.⁴⁹ The Commission invites public comment in this area, including comment with respect to the entities (*e.g.*, trade repositories, designated contract markets, or swap execution facilities) from which the Commission should collect OCR data and the product and transaction types for which the Commission should collect data. The Commission invites public comment on any additional types of information or data elements related to OTC and swap transactions that should be collected and reported to the Commission.

Five commenters expressed concerns regarding OCR information security and confidentiality.⁵⁰ One law firm commenter, for example, focused its comment letter, on “ensuring that all identifying information, including highly sensitive Social Security number information, will be treated as confidential and not subject to public disclosure.”⁵¹ It specifically asked that the Commission “address confidentiality concerns as it moves forward with its rulemaking” and “incorporate a requirement that the exchanges, in gathering this information, have a duty to treat it as non-public and confidential.”⁵² An FCM commenter raised a similar concern when it asked “can the CFTC ensure that exchanges will not use sensitive account ownership or controller information for their own purposes?”⁵³ One DCM stated that the exchange “rarely found it necessary to obtain the Social Security Number (“SSN”) or Tax Identification Number (“TIN”) of a trader” and that the risks involved in the “collection, transmission and use of client SSN/TIN information by multiple entities outweigh the benefit that collection of such information would bestow.”⁵⁴

⁴⁹ Congress has begun to take steps to promote transparency in swap contracts. The financial services reform bills passed by the House of Representatives and the Senate each requires swaps to be cleared, subject to certain exemptions, and further requires, with respect to swaps that are subject to the clearing requirement, that such swaps be executed on a board of trade designated as a contract market under Section 5 of the Act or on a swap execution facility registered or exempt under Section 5h of the Act (where such a trading environment is available).

⁵⁰ FIA, F&L, ICE Futures, Newedge, and PH.

⁵¹ F&L Comment Letter at 1.

⁵² F&L Comment Letter at 1 and 2.

⁵³ Newedge Comment Letter at 6.

⁵⁴ ICE Futures Comment Letter at 2.

The Commission agrees with several of the privacy concerns raised above. Its internal use and handling of ownership and control information will be protected using controls mandated by the Federal Information Security Management Act of 2002 (“FISMA”).⁵⁵ Specifically, OCR data will be treated as non-public personal information and will be subject to internal access controls. Submission of the OCR to the Commission will be through secure communications protocols. Any CFTC system or equipment used to store or transmit the OCR will be certified and accredited as a major system with medium risk and will have appropriate controls for access; awareness and training; audit and accountability; configuration management; contingency planning; identification and authentication; incident response; maintenance; media protection; physical environment; personnel; acquisition; communications; and integrity. Subject to a number of narrow exceptions, the Commission notes that Section 8(a) of the Act severely restricts disclosure of “information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers.”⁵⁶ Furthermore, the Commission pursuant to Section 8a(6) of the Act, may in connection with investigations of improper trading or transactions, disclose to any registered entity, registered futures association or self-regulatory organization (“SRO”), factual data such as market positions, business transactions, and the names of the parties. However, the registered entity, registered futures association or SRO, may not disclose this information

⁵⁵ See 44 U.S.C. 3541 *et seq.* FISMA was enacted in 2002 as Title III of the E-Government Act of 2002 (Pub. L. 107–347, 116 Stat. 2899) and recognizes the importance of information security to the economic and national security interests of the United States. It requires the Commission and other federal agencies to develop, document and implement agency-wide programs to provide information security for the information and information systems that support the operations and assets of the agency, including those provided or managed by another agency, contractor, or other source.

⁵⁶ Section 8(e) of the Act provides that the Commission may “upon request” furnish information in its possession to any committee of Congress, another U.S. government department or agency, individual state or foreign futures authority “acting within the scope of its jurisdiction.” Similarly, disclosure of information is also permitted under Section 8(b) of the Act in connection with congressional, administrative or judicial proceedings, in any receivership proceeding involving a receiver appointed in a judicial proceeding brought under the Act, or in any bankruptcy proceeding in which the Commission has intervened, or in which the Commission has the right to appear and be heard under Title 11 of the U.S. Code.

⁴⁶ CME Group Comment Letter at 3.

⁴⁷ ATA Comment Letter at 1.

⁴⁸ The Commission notes that OCRs will only be required with respect to trading account numbers reported on trade registers. Thus, an ECM SPDC reporting trades in only certain contracts (*i.e.*, SPDC contracts) will be required to provide ownership and control information only for trading accounts active in those contracts.

received from the Commission except in any SRO action or proceeding.⁵⁷

The Commission has also determined not to collect the last four digit of account owners' and controllers' SSNs or TINs, as originally contemplated in the ANPR. While its objectives for the OCR require that the Commission identify all trading account owners and controllers uniquely within and across reporting entities, the Commission is also sensitive to the privacy and security concerns summarized above. Accordingly, the Commission proposes to achieve the unique identification that SSNs and TINs would have provided via a combination of other data points. The proposed OCR would require reporting entities to provide the name and address of a trading account's owner(s) and controller(s). It would also require the date of birth for each account owner and controller, as well as their NFA ID number, if any. These data points are additions to the OCR as contemplated in the ANPR, and seek to mitigate the loss of SSNs and TINs as unique identifiers for account owners and controllers.

In the alternative, or in addition to the aforementioned data points, the Commission invites public comment with respect to how the futures industry could develop and maintain a system to assign unique account identification numbers ("UAIN") to all account owners and account controllers. The Commission would consider requiring that the UAIN be utilized in the OCR and potentially other data reports submitted to the Commission for regulatory purposes. The Commission also invites comment on how this UAIN could be linked to all orders submitted to an exchange's electronic trading system or executed via open outcry, and included in the trade registers submitted daily to the Commission by exchanges. The Commission seeks comment on how the UAIN could be automatically linked to a trade when a user signs into a trading system. Should the Commission receive appropriate statutory authority with respect to OTC and swap transactions, the Commission

seeks comment on how the UAIN could be linked to a swap transaction.

Finally, the proposed rule implementing the OCR requires each reporting entity to segregate information provided to it by root data sources if such data is provided in furtherance of the Commission's OCR requirements and not otherwise required to be provided by the reporting entity ("protected data"). More specifically, reporting entities must ensure that their protected data is used only for regulatory or enforcement purposes such as trade practice surveillance, market surveillance, audit, investigative, or rule enforcement. The use of protected data for any commercial reasons, including business development, is strictly prohibited. In addition, protected data must be under the exclusive control of the reporting entity's regulatory compliance department. Reporting entities should establish appropriate "firewall" procedures and access controls to ensure the confidentiality, privacy, and safekeeping of protected data within their regulatory compliance departments. Commission staff will review the adequacy and implementation of such controls during its periodic reviews of trading facilities' self-regulatory programs.

IV. 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 reporting entities' trade registers. The data points proposed for the OCR have been specifically selected to achieve four Commission objectives. These include: (1) Identifying all accounts that are under common ownership or control at a single reporting entity; (2) identifying all accounts that are under common ownership or control at multiple reporting entities; (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, each reporting entity's OCR should include the

following information with respect to each account reported in its trade registers:

- The trading account number, as reported in the reporting entity's trade register (tags 448 and 452, Party Role 24, in the Trade Capture Report);
- The trading account's ultimate beneficial owner(s), including:
 - For each ultimate beneficial owner who is a natural person—
 - Their first, middle, and last name,
 - Their date of birth,
 - The address of their primary residence,
 - Their NFA identification number, if any;
 - For each ultimate beneficial owner who is not a natural person—
 - Their name and primary business address,
 - Their NFA identification number, if any;
- For trading account controller(s) (who must be natural persons):
 - The first, middle, and last name of each controller,
 - The date of birth of each controller,
 - The name and primary business address of the entity that employs each controller with respect to the reported account, if any;
 - The NFA identification number of each controller, if any;
- The date on which the trading account was assigned to its current controller(s);
- A designation of the trading account as one whose orders are generated exclusively by a natural person, exclusively by an automated trading system, or generated sometimes by a natural person and sometimes by an automated trading system;
 - The special account number associated with the trading account, if one has been assigned;
 - An indication of whether the trading account is part of a reportable account under the Commission's large trader reporting system,
 - In addition, for a trading account that becomes part of a reportable account under the Commission's large trader reporting system after December 31st, 2011, the date on which the trading account first becomes part of a reportable account;
 - Indication of whether the trading account is a firm omnibus account, and if so, the name of the firm,
 - In addition, for a trading account that becomes part of firm omnibus account after December 31st, 2011, the date on which the trading account is first included in the firm's omnibus account;
 - The name of the executing firm for the trading account, and its unique

⁵⁷ In connection with Section 8a(6), the Commission has designated and authorized certain Commission employees to disclose confidential information to certain, designated Exchange staff. See 17 CFR 140.72. The disclosure of confidential information in this Regulation specifically requires a prior determination by the Commission or its designees that the disclosure is necessary because "the transaction or market operation disrupts or tends to disrupt any market or is otherwise harmful or against the best interests of producers, consumers, or investors or that disclosure is necessary or appropriate to effectuate the purposes of the [CEA]." 17 CFR 140.72(a).

identifier as reported in the TCR (TCR tags 448 and 452, Party Role 1);

- The name of the clearing firm for the trading account, and its unique identifier as reported in the TCR (TCR tags 448 and 452, Party Role 4);

- The name of each root data source providing the reporting entity with information with respect to the trading account;

- The name of the exchange or other entity submitting the OCR to the Commission; and

- The OCR transmission date.

B. Definition of Account Controller

For purposes of the OCR, “account controller” is defined as a natural person, or group of natural persons, with the legal authority to exercise discretion over trading decisions by a trading account, with the authority to determine the trading strategy of an automated trading system, or responsible for the supervision of any automated system or strategy. The authority to exercise discretion is sufficient, regardless of whether such authority is actually exercised. An individual who executes trades for an account, without input or discretion in any decision involving the account or its trades, will not be considered an account controller with respect to that account. With respect to CIVs, “ultimate beneficial owner” excludes those whose ownership share of the CIV is less than 10 percent of its net asset value, as defined in Commission Regulation 4.10.

V. Form, Manner, and Frequency of the Ownership and Control Report

Reporting entities should submit the OCR weekly, in FIXML via SFTP. Each reporting entity’s first OCR submission should constitute a “master file” containing the required data for all trading account numbers present in its trade register 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 owner(s) or controller(s), the effective date of such change should also be reported.

VI. Related Matters

A. Cost-Benefit Analysis

Section 15(a) of the Act requires the Commission to consider the costs and benefits of its actions before issuing a new regulation or order under the Act.⁵⁸ By its terms, section 15(a) does not require the Commission to quantify the

costs and benefits of a new rule or to determine whether the benefits of the adopted rule outweigh its costs. Rather, section 15(a) requires the Commission to “consider the costs and benefits” of a subject rule. Section 15(a) further specifies that the costs and benefits of proposed rules shall be evaluated in light of five broad areas of market and public concern: (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 conducting its analysis, the Commission may, in its discretion, give greater weight to any one of the five enumerated areas of concern and may determine that, notwithstanding its costs, a particular rule is necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.⁵⁹

The proposed rule requires reporting entities to provide the Commission with certain ownership, control, and related information on a weekly basis for all active trading accounts. The Commission understands that reporting entities may not have all of the required OCR information and that the proposed rule could also have an impact on other entities that are sources of root data. While the Commission cannot fully quantify all of the costs to be borne by reporting entities and root data sources until the data collection process is fully implemented, it recognizes that the initial cost of developing and implementing the OCR could be significant. However, the Commission also believes that the OCR program, once implemented, will be less burdensome for reporting entities and root data sources to maintain on an ongoing basis.

Notwithstanding the costs to be incurred by reporting entities and root data sources, the Commission believes the OCR’s benefits are substantial and important. As described above, the OCR will increase regulated markets’ transparency to the Commission. It will also help the Commission to better meet regulatory data needs that have arisen as electronic platforms have become the dominant venue for regulated futures trading in the United States. In addition, the OCR will better equip the Commission to monitor trading practices across markets. It will also

⁵⁹ *E.g., Fishermen’s Dock Co-op., Inc. v. Brown*, 75 F.3d 164 (4th Cir. 1996); *Center for Auto Safety v. Peck*, 751 F.2d 1336 (D.C. Cir. 1985) (agency has discretion to weigh factors in undertaking cost-benefit analyses).

provide additional data and reference points which will further empower the Commission’s automated trade surveillance system, TSS, and allow Commission staff to make more sophisticated analytical use of the trade register data already available. For example, OCE will be able to perform more complete and accurate studies and provide more targeted guidance to other Commission staff in pursuing trade practice violations and attempted manipulations. Also, DOE will use the information to reduce the time and resources expended in determining the identities and relationships between account holders, thereby facilitating DOE investigations and prosecutions across markets and exchanges.

After considering the costs and benefits, the Commission has determined to issue the proposed rule.

B. Paperwork Reduction Act

Provisions of proposed Commission Regulation 16.03 would result in new collection of information requirements within the meaning of the Paperwork Reduction Act of 1995 (“PRA”).⁶⁰ The Commission therefore is submitting this proposal to the Office of Management and Budget (OMB) for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for this collection of information is “Regulation 16.03—Ownership and control report” (OMB control number 3038–NEW). If adopted, responses to this new collection of information would be mandatory. The Commission will protect proprietary information according to the Freedom of Information Act and 17 CFR part 145, “Commission Records and Information.” In addition, section 8(a)(1) of the Act strictly prohibits the Commission, unless specifically authorized by the 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.”⁶¹

1. Information Provided by Reporting Entities

Under proposed Regulation 16.03, reporting entities, which presently would include DCMs, DTEFs, and ECM SPDCs, would be required to provide ownership and control reports to the Commission on a weekly basis. Such reports would include ownership, control and related information for each account active on the reporting entity.

Commission staff estimates that each reporting entity would expend 480

⁶⁰ 44 U.S.C. 3501–3520.

⁶¹ 7 U.S.C. 12(a)(1).

⁵⁸ 7 U.S.C. 19(a).

hours for discussions with staff and representatives of other reporting entities and root data sources to develop and implement the OCR process. The proposed rule would also require each reporting entity to expend approximately 5,676 hours to establish the required information technology infrastructure. At present, the Commission staff would receive weekly OCRs from up to 17 reporting entities.⁶² Accordingly, the aggregate hours required for start-up by all reporting entities would total 104,652.

Annualized over an estimated useful life of ten years, start-up requirements for all reporting entities combined would be approximately 10,465 hours per year.

In addition to the hours required for start-up, proposed Regulation 16.03, if adopted, would impose certain ongoing costs. Commission staff estimates that each reporting entity would expend about 33 hours for each weekly OCR transmitted to the Commission resulting in an aggregate requirement of 29,172 hours annually (assuming that such reports are provided by each reporting entity for each of 52 weeks).

It is also estimated that start-up and continuing costs may involve product and service purchases. Commission staff estimates that reporting entities could expend up to \$8,000 annually per reporting entity on product and service purchases to comply with proposed Regulation 16.03. This would result in an aggregated cost of \$ 136,000 per annum (17 reporting entities × \$ 8,000).

The analysis above is a best estimate. Reporting entities may need to expend additional resources in order to acquire OCR data from root data sources; the number of reporting entities and their reporting requirements may change; and the trade volume (and the corresponding amount of OCR information) may vary at each reporting entity.⁶³

While reporting entities are responsible for providing the OCR, the Commission is nonetheless aware that root data sources may be required to supply reporting entities with certain OCR data.⁶⁴ However, the Commission is not collecting information directly from the root data sources nor is it estimating their reporting burden under the PRA.

⁶² Reporting entities presently include 1 ECM SPDC and 16 DCMs. As of June 28, 2010, all eight recognized SPDCs were trading on the same ECM.

⁶³ For example, an ECM is only required to provide OCR data with respect to their SPDCs and the number of SPDCs on an ECM may vary over time.

⁶⁴ Root data sources may include FCMs, CPOs, CTAs, and IBs.

2. Information Collection Comments

The Commission invites the public and other federal agencies to comment on any aspect of the reporting and recordkeeping burdens discussed above. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments in order to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Comments may be submitted directly to the Office of Information and Regulatory Affairs, by fax at (202) 395-6566 or by e-mail at OIRA-submissions@omb.eop.gov. Please provide the Commission with a copy of submitted comments so that all comments can be summarized and addressed in the final rule preamble. Refer to the Addresses section of this notice of proposed rulemaking for comment submission instructions to the Commission. A copy of the supporting statements for the collections of information discussed above may be obtained by visiting RegInfo.gov. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release.

Consequently, a comment to OMB is most assured of being fully effective if received by OMB (and the Commission) within 30 days after publication of this notice of proposed rulemaking.

C. Regulatory Flexibility Act

1. Reporting Entities

The Regulatory Flexibility Act ("RFA") requires that agencies consider the impact of their regulations on small entities.⁶⁵ In a policy statement the Commission has already established certain definitions of "small entities" to be used in evaluating the impact of its rules on such small entities in accordance with the RFA.⁶⁶ In that statement, the Commission concluded that DCMs are not small entities.⁶⁷ The Commission has also previously

⁶⁵ 5 U.S.C. 601 *et seq.*

⁶⁶ 47 FR 18618 at 18619 (April 30, 1982).

⁶⁷ *Id.*

determined that DTEFs and ECMs (with or without SPDCs) are not small entities for purposes of the RFA.⁶⁸

2. FCMs, IBs, Commodity Pool Operators ("CPOs"), and Commodity Trading Advisors ("CTAs")

The requirements of the proposed rule fall mainly on reporting entities, as described above. However, the Commission believes that root data sources may be prompted to provide reporting entities with some OCR data. In this regard, the Commission has previously determined that one potential root data source—FCMs—are not small entities for the purposes of the RFA.⁶⁹

Other potential sources of root data include CPOs, CTAs, and IBs who may be required to provide OCR information to FCMs or reporting entities. With respect to CPOs, the Commission has previously determined that registered CPOs are not small entities based upon the Commission's existing regulatory standard for exempting certain small CPOs from the requirement to register under the Act.⁷⁰ In the case of CPOs exempt from registration, the Commission has previously determined that a CPO is a small entity if it meets the criteria for exemption from registration under Regulation 4.13(a)(2).⁷¹ In the case of CTAs, the Commission has stated that it would evaluate within the context of a particular rule proposal whether all or some affected CTAs would be considered to be small entities and, if so, the economic impact on them of the proposal.⁷² Under the proposed rule, those CTAs and exempt CPOs that are in exclusive control of OCR information may be required to provide that information to reporting entities. The Commission believes much of the data to be provided by CTAs and exempt CPOs should already be possessed by CTAs and exempt CPOs. Also, any expenditure that must be made in order to comply with the proposed rule will likely be proportionate to the size of the CTA or exempt CPO. Therefore, to the extent a CTA or exempt CPO is a small entity and must provide OCR information, its related costs should also be smaller. In the event a CTA or exempt CPO might be considered a small entity required to provide OCR information, the Commission does not believe the proposed reporting

⁶⁸ 66 FR 42255 at 42268 (August 10, 2001).

⁶⁹ 47 FR 18618 (April 30, 1982).

⁷⁰ *Id.* at 18619–20.

⁷¹ *Id.* at 18620.

⁷² *Id.*

requirements to have a significant economic impact on that small entity.

With respect to IBs, the Commission previously stated that it is appropriate to evaluate within the context of a particular rule proposal whether some or all IBs should be considered to be small entities and, if so, to analyze the economic impact on such entities at that time.⁷³ Under the proposed rule, reporting entities may require OCR information from IBs. However, much of the information required by the OCR, such as customer name and date of birth, is already maintained by registered IBs and/or FCMs in order to comply with anti-money laundering rules.⁷⁴ Also, Commission Regulation 1.37 already requires IBs to maintain the name of the person exercising control of the account.⁷⁵ Additional information required by the proposed rule, if not already available to reporting entities through an FCM, is likely maintained by IBs as part of their normal business practice. Furthermore, to the extent expenditures must be made to comply with the proposed rule, they should be commensurate with the size of the IB. For example, if an IB is small, with a limited number of customers, the burden to comply with the proposed rule should also be smaller. To the extent that IBs can be deemed to be small entities, the Commission does not consider the provision of OCR data to have a significant economic impact.

The Commission specifically requests comment on whether the proposed rules will have a significant economic impact on a substantial number of small entities.

Accordingly, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the actions proposed to be taken herein will not have a significant economic impact on a substantial number of small entities.

List of Subjects

17 CFR Part 16

Commodity futures, Reports by contract markets.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act, the Commission hereby proposes to amend 17 CFR Part 16 as follows:

PART 16—REPORTS BY CONTRACT MARKETS

1. The Authority Citation for Part 16 will be amended to read as follows:

Authority: 7 U.S.C. 2, 2(h)(7), 6a, 6c, 6g, 6i, 7, 7a, and 12a, as amended by Title XIII of the Food, Conservation and Energy Act of 2008, Public Law 110-246, 122 Stat. 1624 (June 18, 2008), unless otherwise noted.

2. Add § 16.03 to read as follows:

§ 16.03 Ownership and control report (“OCR”).

(a) *Entities required to submit reports.* Ownership and control reports shall be filed by any registered entity required to provide the Commission with trade data on a regular basis, where such data is used for the Commission’s trade practice or market surveillance programs (“reporting entities”). Reporting entities include, but are not limited to, designated contract markets, derivatives transaction execution facilities, and exempt commercial markets with significant price discovery contracts.

(b) *Information to be provided.* Each reporting entity shall provide the following information with respect to every trading account also reported in its trade register:

- (1) The trading account number;
- (2) The trading account’s ultimate beneficial owner(s), including:
 - (i) For each ultimate beneficial owner who is a natural person—
 - (A) Their first, middle, and last name,
 - (B) Their date of birth, and
 - (C) The address of their primary residence,
 - (D) Their National Futures Association (“NFA”) identification number, if any;
 - (ii) For each ultimate beneficial owner that is not a natural person—
 - (A) Their name and primary business address, and
 - (B) Their NFA identification number, if any;
 - (3) For trading account controller(s) (who must be natural persons):
 - (i) The first, middle, and last name of each controller,
 - (ii) The date of birth of each controller, and
 - (iii) The name and primary business address of the entity that employs each controller with respect to the reported account, if any, and
 - (iv) The NFA identification number of each controller, if any;
 - (4) The date on which the trading account was assigned to its current controller(s);
 - (5) A designation of the trading account as one whose orders are generated exclusively by a natural

person, exclusively by an automated trading system, or generated sometimes by a natural person and sometimes by an automated trading system;

(6) The special account number associated with the trading account, if one has been assigned;

(7) An indication of whether the trading account is part of a reportable account under the Commission’s large trader reporting system,

(i) In addition, for a trading account that becomes part of reportable account under the Commission’s large trader reporting system after December 31st, 2011, the date on which the trading account first becomes part of a reportable account;

(ii) [Reserved]

(8) An indication of whether the trading account is a firm omnibus account, and if so, the name of the firm,

(i) In addition, for a trading account that becomes part of firm omnibus account after December 31st, 2011, the date on which the trading account is first included in the firm’s omnibus account;

(ii) [Reserved]

(9) The name of the executing firm for the trading account, and its unique identifier reported in the reporting entity’s trade register;

(10) The name of the clearing firm for the trading account, and its unique identifier reported in the reporting entity’s trade register;

(11) The name of each root data source providing the reporting entity with information with respect to the trading account;

(12) The name of the reporting entity submitting the OCR to the Commission; and

(13) The OCR transmission date.

(c) *Definition of account controller.* For purposes of this section, “account controller” means a natural person, or a group of natural persons, with the legal authority to exercise discretion over trading decisions by a trading account, with the authority to determine the trading strategy of an automated trading system, or responsible for the supervision of any automated system or strategy. The authority to exercise discretion is sufficient, regardless of whether such authority is actually exercised. An individual who executes trades for an account, without input or discretion in any decision involving the account or its trades, will not be considered an account controller with respect to that account.

(d) *Account types subject to reporting.* Each reporting entity shall provide the information required in paragraph (b) of this section for all trading accounts also reported in its trade register, including

⁷³ 48 FR 35248, 35275–78 (Aug. 3, 1983).

⁷⁴ IBs may rely on FCMs to carry out customer identification procedures and thus customer information may be retained by the FCM.

⁷⁵ 17 CFR 1.37(a)(1).

commodity pools and other collective investment vehicles (“CIV”), and omnibus accounts and any accounts trading on an undisclosed basis. Disclosure shall be made equally for accounts representing U.S. and non-U.S. entities and natural persons. *Provided however*, that if an ultimate beneficial owner’s ownership share of a CIV is less than 10 percent of the CIV’s net asset value, as defined in Commission Regulation 4.10, then the ultimate beneficial owner need not be reported.

(e) *Form, time, and manner of filing reports; uniform protocol required.* Each reporting entity shall submit its OCR in the time, manner, and format required by the Commission or its designee. Reporting entities shall adopt a single, uniform protocol, acceptable to the Commission, for the technical structure of the OCR.

(f) *Protection of OCR data.* Each Reporting entity shall segregate any information provided by its root data sources, if such data is provided in furtherance of the Commission’s OCR requirements and not otherwise required to be provided by the reporting entity (“protected data”). Reporting entities must ensure that protected data is used only for regulatory or enforcement purposes such as trade practice surveillance, market surveillance, audit, investigation, or rule enforcement. Protected data shall be under the exclusive control of the reporting entity’s regulatory compliance department. Reporting entities shall establish appropriate firewall procedures and access controls to ensure the confidentiality, privacy and safekeeping of protected data within their regulatory compliance departments.

Issued in Washington, DC, on July 8, 2010 by the Commission.

David A. Stawick,
Secretary of the Commission.

Note: The following appendix will not appear in the Code of Federal Regulations.

Concurring Statement of Commissioner O’Malia Regarding the Proposal for the Account Ownership and Control Report

I concur on the release of the Notice of proposed rulemaking related to Account Ownership and Control Report (“OCR”). The Commission must gain greater transparency over the data it receives. The OCR represents a place where technology must catch-up to how trades are executed in the futures markets so critical data ultimately flows to the Commission.

The events of May 6th clearly highlight that technology drives the structure and function of the markets. In order to better understand trading behavior in the derivatives markets, including the trading

behaviors of high frequency traders, it is essential to discover who controls which accounts and how those trading styles impact markets, including the order book, which is vital to fulfilling our surveillance and enforcement obligations. CFTC staff recently noted in the preliminary report on the events of May 6th that “obtaining account ownership and control information in the exchange trade registers * * * would increase the timeliness and efficiency of account identification, an essential step in data analysis.”⁷⁶ The Commission must get as close as possible to real-time surveillance and post-trade transparency; the OCR would move the Commission a step closer to that goal.

Currently, the data the Commission receives from exchanges and other reporting entities lacks information because the Commission has not demanded it. However, I believe the Commission must now demand ownership and control information on all trading accounts in order to enhance the transparency of information reported to the Commission. The proposed rule will allow the Commission to aggregate related trading accounts within and across exchanges in order to better detect abusive trading practices. For example, the OCR will allow the Commission’s Division of Market Oversight to identify 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. Such intra-day trading scenarios include intra-day position limit violations and “banging the close” manipulations.

The OCR will also bridge the gap between individual transactions reported to the Commission on exchange trade registers and aggregate positions reported to it in large trader data so the Commission can determine how traders established their positions. The OCR will allow the Commission’s Office of the Chief Economist 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 or marketing/merchandising activity on CFTC Form 40). In short, the OCR will allow the Commission to better oversee the markets.

Based on the comments received from the Advanced Notice of Proposed Rulemaking published in the **Federal Register** on July 2, 2009, I appreciate that there are concerns regarding the implementation of the OCR for numerous reasons, including the costs and the difficulty of acquiring specific data points. Therefore, it is critical that the Commission engage market participants including exchanges, clearing organizations, futures commission merchants, introducing brokers, and others to understand what data is available and the most effective means by which to acquire this data. I strongly support the modification to this proposed rule to accommodate a staff technical conference to

⁷⁶ Preliminary Findings Regarding the Market Events of May 6, 2010, Report of the Staffs of the CFTC and SEC to the Joint Advisory Committee on Emerging Regulatory Issues (May 18, 2010).

provide market participants an opportunity to provide constructive recommendations as to the most effective means by which the Commission can collect this data.

The proposed financial reform legislation that is currently being negotiated by the Conference Committee will issue a new mandate to the Commission for the oversight of the swaps market. Under the proposed legislation the Commission will be hit with a tsunami of data that will need to be standardized to reflect ownership, control, and other information of the massive over-the-counter (OTC) market. If this legislation is signed into law, the OCR rulemaking, whether in the post-comment or possible implementation phase, will coincide with the Commission’s rulemaking efforts under its new mandate. Therefore, I hope to receive comment with respect to the entities (e.g., trade repositories, designated contract markets, or swap execution facilities) from which the Commission should collect OCR data and the product and transaction types for which the Commission should collect data. I hope to receive comment on any additional types of information or data elements related to OTC and swap transactions that should be collected and reported to the Commission. Finally, I am interested in receiving comment on how the derivatives industry could develop and maintain a system to assign unique account identification numbers (“UAIN”) to all account owners and account controllers.

On a related issue, I understand that Commission staff is seeking to automate the information collected via CFTC Forms 40 and 102. This process is long overdue and must be accomplished in an expedited fashion. Automation of these forms will minimize the manual entry and cross checking of data and will minimize opportunities for human error. It is my hope that the Commission will release for public comment a proposed rule related to these forms later this summer.

[FR Doc. 2010–17530 Filed 7–16–10; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 54

[REG–120391–10]

RIN 1545–BJ58

Requirement for Group Health Plans and Health Insurance Issuers To Provide Coverage of Preventive Services Under the Patient Protection and Affordable Care Act

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: Elsewhere in this issue of the **Federal Register**, the IRS is issuing