www.archives.gov/federal-register/cfr/ibr-locations.html.

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Walter Tweedy, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5900.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of 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 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 would amend controlled airspace in Class E airspace, at Lac Qui Parle County Airport, Madison, MN, to support instrument flight rules (IFR) operations at the airport.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (83 FR 44248; August 30, 2018) for Docket No. FAA–2018–0194 to amend Class E airspace extending upward from 700 feet above the surface at Lac Qui Parle County Airport, Madison, MN. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11C, dated August 13, 2018, and effective September 15, 2018, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018. FAA Order 7400.11C is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11C lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 modifies Class E airspace extending upward from 700 feet above the surface within a 6.4-mile radius (increased from a 6.3-mile radius) at Lac Qui Parle County Airport, Madison, MN. The segment 7.4 miles southeast of the airport will be removed due to the decommissioning of the Madison NDB and cancellation of the associated approach. This action enhances the safety and management of the standard instrument approach procedures for IFR operations at the airport.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (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 only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5.a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 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 part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 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 FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AGL MN E5 Madison, MN [Amended]

Madison-Lac Qui Parle Airport, MN
(Lat. 44°59′11″ N, long. 96°10′40″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Madison-Lac Qui Parle Airport, MN.

Issued in Fort Worth, Texas, on November 14, 2018.

Anthony Schneider,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2018–25576 Filed 11–23–18; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 23

RIN 3038–AE71

Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is adopting amendments (''Final Rule'') to its margin requirements for uncleared swaps for swap dealers (''SD'') and major swap participants (''MSP'') for which there is no prudential regulator (''CFTC Margin Rule''). The Commission is adopting these amendments in light of the rules recently adopted by the Board of Governors of the Federal Reserve System (''Board''), the Federal Deposit Insurance Corporation (''FDIC''), and the Office of the Comptroller of the Currency (''OCC'') (collectively, the

''QFC Rules'') that impose restrictions on certain uncleared swaps and uncleared security-based swaps and other financial contracts. Specifically, the Commission is amending the definition of ''eligible master netting agreement'' in the CFTC Margin Rule to ensure that master netting agreements of firms subject to the CFTC Margin Rule are not excluded from the definition of ''eligible master netting agreement'' based solely on such agreements' compliance with the QFC Rules. The Commission also is amending the CFTC Margin Rule such that any legacy uncleared swap (*i.e.,* an uncleared swap entered into before the applicable compliance date of the CFTC Margin Rule) that is not now subject to the margin requirements of the CFTC Margin Rule will not become so subject if it is amended solely to comply with the QFC Rules. These amendments are consistent with amendments that the Board, FDIC, OCC, the Farm Credit Administration (''FCA''), and the Federal Housing Finance Agency (''FHFA'' and, together with the Board, FDIC, OCC, and FCA, the ''Prudential Regulators''), jointly published in the **Federal Register** on October 10, 2018.

DATES: This final rule is effective December 26, 2018.

FOR FURTHER INFORMATION CONTACT: Matthew Kulkin, Director, (202) 418–5213, *mkulkin@cftc.gov;* Frank Fisanich, Chief Counsel, (202) 418–5949, *ffisanich@cftc.gov; or* Jacob Chachkin, Special Counsel, (202) 418–5496, *jchachkin@cftc.gov,* Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

A. The CFTC Margin Rule

Section 731 of the Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'') [1] added a new section 4s to the Commodity Exchange Act (''CEA'') [2] setting forth various requirements for SDs and MSPs. Section 4s(e) of the CEA directs the Commission to adopt rules establishing minimum initial and variation margin requirements on all swaps [3] that are (i) entered into by an SD or MSP for which there is no Prudential Regulator [4] (collectively, ''covered swap entities'' or ''CSEs'') and (ii) not cleared by a registered derivatives clearing organization (''uncleared swaps'').[5] To offset the greater risk to the SD or MSP [6] and the financial system arising from the use of uncleared swaps, these requirements must (i) help ensure the safety and soundness of the SD or MSP and (ii) be appropriate for the risk associated with the uncleared swaps held as an SD or MSP.[7]

To this end, the Commission promulgated the CFTC Margin Rule in January 2016,[8] establishing requirements for a CSE to collect and post initial margin [9] and variation margin [10] for uncleared swaps. These requirements vary based on the type of counterparty to such swaps.[11] These requirements generally apply only to uncleared swaps entered into on or after the compliance date applicable to a particular CSE and its counterparty (''covered swap'').[12] An uncleared swap entered into prior to a CSE's applicable compliance date for a particular counterparty (''legacy swap'') is generally not subject to the margin requirements in the CFTC Margin Rule.[13]

To the extent that more than one uncleared swap is executed between a CSE and its covered counterparty, the CFTC Margin Rule permits the netting of required margin amounts of each swap under certain circumstances.[14] In particular, the CFTC Margin Rule, subject to certain limitations, permits a CSE to calculate initial margin and variation margin, respectively, on an aggregate net basis across uncleared swaps that are executed under the same eligible master netting agreement (''EMNA'').[15] Moreover, the CFTC Margin Rule permits swap counterparties to identify one or more separate netting portfolios (*i.e.,* a specified group of uncleared swaps the margin obligations of which will be netted only against each other) under the same EMNA, including having separate netting portfolios for covered swaps and legacy swaps.[16] A netting

[1] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

[2] 7 U.S.C. 1 *et seq.*

[3] For the definition of swap, *see* section 1a(47) of the CEA and Commission regulation 1.3. 7 U.S.C. 1a(47) and 17 CFR 1.3. It includes, among other things, an interest rate swap, commodity swap, credit default swap, and currency swap.

[4] *See* 7 U.S.C. 6s(e)(1)(B). SDs and MSPs for which there is a Prudential Regulator must meet the margin requirements for uncleared swaps established by the applicable Prudential Regulator. 7 U.S.C. 6s(e)(1)(A). *See also* 7 U.S.C. 1a(39) (defining the term ''Prudential Regulator'' to include the Board; the OCC; the FDIC; the FCA; and the FHFA). The definition further specifies the entities for which these agencies act as Prudential Regulators. The Prudential Regulators published final margin requirements in November 2015. *See* Margin and Capital Requirements for Covered Swap Entities, 80 FR 74840 (Nov. 30, 2015) (''Prudential Margin Rule'').

[5] *See* 7 U.S.C. 6s(e)(2)(B)(ii). In Commission regulation 23.151, the Commission further defined this statutory language to mean all swaps that are not cleared by a registered derivatives clearing organization or a derivatives clearing organization that the Commission has exempted from registration as provided under the CEA. 17 CFR 23.151.

[6] For the definitions of SD and MSP, *see* section 1a of the CEA and Commission regulation 1.3. 7 U.S.C. 1a and 17 CFR 1.3.

[7] 7 U.S.C. 6s(e)(3)(A).

[8] Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 81 FR 636 (Jan. 6, 2016). The CFTC Margin Rule, which became effective April 1, 2016, is codified in part 23 of the Commission's regulations. 17 CFR 23.150–23.159, 23.161.

[9] Initial margin, as defined in Commission regulation 23.151 (17 CFR 23.151), is the collateral (calculated as provided by § 23.154 of the Commission's regulations) that is collected or posted in connection with one or more uncleared swaps. Initial margin is intended to secure potential future exposure following default of a counterparty (*i.e.,* adverse changes in the value of an uncleared swap that may arise during the period of time when it is being closed out), while variation margin is provided from one counterparty to the other in consideration of changes that have occurred in the mark-to-market value of the uncleared swap. *See* CFTC Margin Rule, 81 FR at 664 and 683.

[10] Variation margin, as defined in Commission regulation 23.151 (17 CFR 23.151), is the collateral provided by a party to its counterparty to meet the performance of its obligation under one or more uncleared swaps between the parties as a result of a change in the value of such obligations since the trade was executed or the last time such collateral was provided.

[11] *See* Commission regulations 23.152 and 23.153, 17 CFR 23.152 and 23.153. For example, the CFTC Margin Rule does not require a CSE to collect margin from, or post margin to, a counterparty that is neither a swap entity nor a financial end user (each as defined in 17 CFR 23.151). Pursuant to section 2(e) of the CEA, 7 U.S.C. 2(e), each counterparty to an uncleared swap must be an eligible contract participant (''ECP''), as defined in section 1a(18) of the CEA, 7 U.S.C. 1a(18).

[12] Pursuant to Commission regulation 23.161, compliance dates for the CFTC Margin Rule are staggered such that SDs must come into compliance in a series of phases over four years. The first phase affected SDs and their counterparties, each with the largest aggregate outstanding notional amounts of uncleared swaps and certain other financial products. These SDs began complying with both the initial and variation margin requirements of the CFTC Margin Rule on September 1, 2016. The second phase began March 1, 2017, and required SDs to comply with the variation margin requirements of Commission regulation 23.153 with all relevant counterparties not covered in the first phase. *See* 17 CFR 23.161. On each September 1 thereafter ending with September 1, 2020, SDs will begin to comply with the initial margin requirements with counterparties with successively lesser outstanding notional amounts.

[13] *See* CFTC Margin Rule, 81 FR at 651 and Commission regulation 23.161. 17 CFR 23.161.

[14] *See* CFTC Margin Rule, 81 FR at 651 and Commission regulations 23.152(c) and 23.153(d). 17 CFR 23.152(c) and 23.153(d).

[15] *Id.* The term EMNA is defined in Commission regulation 23.151. 17 CFR 23.151. Generally, an EMNA creates a single legal obligation for all individual transactions covered by the agreement upon an event of default following certain specified permitted stays. For example, an International Swaps and Derivatives Association (''ISDA'') form Master Agreement may be an EMNA, if it meets the specified requirements in the EMNA definition.

[16] *See* CFTC Margin Rule, 81 FR at 651 and Commission regulations 23.152(c)(2)(ii) and

portfolio that contains only legacy swaps is not subject to the initial and variation margin requirements set out in the CFTC Margin Rule.[17] However, if a netting portfolio contains any covered swaps, the entire netting portfolio (including all legacy swaps) is subject to such requirements.[18]

A legacy swap may lose its legacy treatment under the CFTC Margin Rule, causing it to become a covered swap and causing any netting portfolio in which it is included to be subject to the requirements of the CFTC Margin Rule. For reasons discussed in the CFTC Margin Rule, the Commission elected not to extend the meaning of legacy swaps to include (1) legacy swaps that are amended in a material or nonmaterial manner; (2) novations of legacy swaps; and (3) new swaps that result from portfolio compression of legacy swaps.[19] Therefore, and as relevant here, a legacy swap that is amended after the applicable compliance date may become a covered swap subject to the initial and variation margin requirements in the CFTC Margin Rule. In that case, netting portfolios that were intended to contain only legacy swaps and, thus, not be subject to the CFTC Margin Rule may become so subject.

B. The QFC Rules

In late 2017, as part of the broader regulatory reform effort following the financial crisis to promote U.S. financial stability and increase the resolvability and resiliency of U.S. global systemically important banking institutions (''U.S. GSIBs'') [20] and the U.S. operations of foreign global systemically important banking institutions (together with U.S. GSIBS, ''GSIBs''), the Board, FDIC, and OCC adopted the QFC Rules. The QFC Rules establish restrictions on and requirements for uncleared qualified financial contracts [21] (collectively, ''Covered QFCs'') of GSIBs, the subsidiaries of U.S. GSIBs, and certain other very large OCC-supervised national banks and Federal savings associations (collectively, ''Covered QFC Entities'').[22] They are designed to help ensure that a failed company's passage through a resolution proceeding—such as bankruptcy or the special resolution process created by the Dodd-Frank Act—would be more orderly, thereby helping to mitigate destabilizing effects on the rest of the financial system.[23] Two aspects of the QFC Rules help achieve this goal.[24]

First, the QFC Rules generally require the Covered QFCs of Covered QFC Entities to contain contractual provisions explicitly providing that any default rights or restrictions on the transfer of the Covered QFC are limited to the same extent as they would be pursuant to the Federal Deposit Insurance Act (''FDI Act'')[25] and Title II of the Dodd-Frank Act. Requiring these points to be stated as explicit contractual provisions in the Covered QFCs is expected to reduce the risk that the relevant limitations on default rights or transfer restrictions would be challenged by a court in a foreign jurisdiction.[26]

Second, the QFC Rules generally prohibit Covered QFCs from allowing counterparties to Covered QFC Entities to exercise default rights related, directly or indirectly, to the entry into resolution of an affiliate of the Covered QFC Entity (''cross-default rights'').[27] This is to ensure that if an affiliate of a solvent Covered QFC Entity fails, the counterparties of that solvent Covered QFC Entity cannot terminate their contracts with it based solely on the failure of its affiliate.[28]

Covered QFC Entities are required to enter into amendments to certain pre-existing Covered QFCs to explicitly provide for these requirements and to ensure that Covered QFCs entered into after the applicable compliance date for the rule explicitly provide for the same.[29]

C. Interaction of CFTC Margin Rule and QFC Rules

As noted above, the current definition of EMNA in Commission regulation 23.151 allows for certain specified permissible stays of default rights of the CSE. Specifically, consistent with the QFC Rules, the current definition provides that such rights may be stayed pursuant to a special resolution regime such as Title II of the Dodd-Frank Act, the FDI Act, and substantially similar foreign resolution regimes.[30] However, the current EMNA definition does not explicitly recognize certain restrictions on the exercise of a CSE's cross-default rights required under the QFC Rules.[31] Therefore, a pre-existing EMNA that is amended in order to become compliant with the QFC Rules or a new master netting agreement that conforms to the QFC Rules will not meet the current definition of EMNA, and a CSE that is a counterparty under such a master netting agreement—one that does not meet the definition of EMNA—would be required to measure its exposures from covered swaps on a gross basis, rather than aggregate net basis, for purposes of the CFTC Margin Rule.[32] Further, if a legacy swap were amended to comply

23.153(d)(2)(ii). 17 CFR 23.152(c)(2)(ii) and 23.153(d)(2)(ii).

[17] *Id.*

[18] *Id.*

[19] *See* CFTC Margin Rule, 81 FR at 675. The Commission notes that certain limited relief has been given from this standard. *See* CFTC Staff Letter No. 17–52 (Oct. 27. 2017), available at *http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/17-52.pdf.*

[20] *See* 12 CFR 217.402 (defining global systemically important banking institution).

[21] Qualified financial contract (''QFC'') is defined in section 210(c)(8)(D) of the Dodd-Frank Act to mean any securities contract, commodity contract, forward contract, repurchase agreement, swap agreement, and any similar agreement that the FDIC determines by regulation, resolution, or order to be a qualified financial contract. 12 U.S.C. 5390(c)(8)(D).

[22] *See, e.g.,* 12 CFR 252.82(c) (defining Covered QFC). *See also* 82 FR 42882 (Sep. 12, 2017) (for the Board's QFC Rule). *See also* 82 FR 50228 (Oct. 30, 2017) (for FDIC's QFC Rule). *See also* 82 FR 56630 (Nov. 29, 2017) (for the OCC's QFC Rule). The effective date of the Board's QFC Rule is November 13, 2017, and the effective date for the OCC's QFC Rule and the substance of the FDIC's QFC Rule is January 1, 2018. The QFC Rules include a phased-in conformance period for a Covered QFC Entity, beginning on January 1, 2019 and ending on January 1, 2020, that varies depending upon the counterparty type of the Covered QFC Entity. *See, e.g.,* 12 CFR 252.82(f).

[23] *See, e.g.,* Board's QFC Rule at 42883. In particular, the QFC Rules seek to facilitate the orderly resolution of a failed GSIB by limiting the ability of the firm's Covered QFC counterparties to terminate such contracts immediately upon entry of the GSIB or one of its affiliates into resolution. Given the large volume of QFCs to which covered entities are a party, the exercise of default rights en masse as a result of the failure or significant distress of a covered entity could lead to failure and a disorderly resolution if the failed firm were forced to sell off assets, which could spread contagion by increasing volatility and lowering the value of similar assets held by other firms, or to withdraw liquidity that it had provided to other firms.

[24] *Id.*

[25] 12 U.S.C. 1811 *et seq.*

[26] *See, e.g.,* Board's QFC Rule at 42883 and 42890 and 12 CFR 252.83(b).

[27] *See, e.g.,* Board's QFC Rule at 42883 and 12 CFR 252.84(b). Covered QFC Entities are similarly generally prohibited from entering into Covered QFCs that would restrict the transfer of a credit enhancement supporting the Covered QFC from the Covered QFC Entity's affiliate to a transferee upon the entry into resolution of the affiliate. *See, e.g.,* Board's QFC Rule at 42890 and 12 CFR 252.84(b)(2).

[28] *Id.*

[29] *See, e.g.,* 12 CFR 252.82(a) and (c). The QFC Rules require a Covered QFC Entity to conform Covered QFCs (i) entered into, executed, or to which it otherwise becomes a party on or after January 1, 2019 or (ii) entered into, executed, or to which it otherwise became a party before January 1, 2019, if the Covered QFC Entity or any affiliate that is a Covered QFC Entity also enters, executes, or otherwise becomes a party to a new Covered QFC with the counterparty to the pre-existing Covered QFC or a consolidated affiliate of the counterparty on or after January 1, 2019.

[30] 17 CFR 23.151.

[31] *Id.*

[32] *See* CFTC Margin Rule, 81 FR at 651 and Commission regulations 23.152(c) and 23.153(d). 17 CFR 23.152(c) and 23.153(d).

with the QFC Rules,[33] it would become a covered swap subject to initial and variation margin requirements under the CFTC Margin Rule.[34]

II. Proposal

On May 23, 2018, the Commission published a Notice of Proposed Rulemaking (''Proposal'') [35] to amend Commission regulations 23.151 and 23.161 to protect CSEs and their counterparties from being disadvantaged because their master netting agreements do not satisfy the definition of an EMNA, solely because such agreements' comply with the QFC Rules or because such agreements would have to be amended to achieve compliance. Specifically, the Commission proposed to (i) revise the definition of EMNA in Commission regulation 23.151 such that a master netting agreement that meets the requirements of the QFC Rules may be an EMNA and (ii) amend Commission regulation 23.161 such that a legacy swap will not be a covered swap under the CFTC Margin Rule if it is amended solely to conform to the QFC Rules.

The Commission requested comments on the Proposal and also solicited comments on the impact of the Proposal on small entities, the Commission's cost benefit considerations, and any anti-competitive effects of the Proposal. The comment period for the Proposal ended on July 23, 2018.

III. Summary of Comments

The Commission received four relevant comments in response to the Proposal—from the Institute of International Bankers (''IIB''), ISDA, Navient Corporation (''Navient''), and NEX Group plc (''NEX''), respectively.[36] Though these comments raised issues unrelated to the Proposal or suggested additions that would go beyond the scope of the Proposal,[37] the comments were generally supportive of the aims of the Proposal.

Navient and NEX were supportive of the Commission's Proposal in full. ISDA was supportive of the Commission's proposal to revise the definition of EMNA. IIB did not comment on this aspect of the Proposal. ISDA and IIB were appreciative of the proposal on the treatment of legacy swaps impacted by the QFC Rules, but, on balance, thought broad guidance on the treatment of amendments to legacy swaps more generally was a better alternative to the proposed limited amendment of the CFTC Margin Rule relating to the QFC Rules. Such broad guidance requested by ISDA and IIB is outside of the scope of the Proposal.

IV. Final Rule

After consideration of relevant comments, the Commission is adopting this Final Rule as proposed.

Accordingly, the Commission is adding a new paragraph (2)(ii) to the definition of ''eligible master netting agreement'' in Commission regulation 23.151 and making other minor related changes to that definition such that a master netting agreement may be an EMNA even though the agreement limits the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default of the counterparty to the extent necessary for the counterparty to comply with the requirements of any of the following parts of Title 12 of the Code of Federal Regulations: Part 47, subpart I of part 252, or part 382, as applicable. These enumerated provisions contain the relevant requirements that have been added by the QFC Rules.

Further, so that a legacy swap will not be a covered swap under the CFTC Margin Rule if it is amended solely to conform to the QFC Rules, the Commission is adding a new paragraph (d) to the end of Commission regulation 23.161, as shown in the rule text in this document. This addition will provide certainty to a CSE and its counterparties about the treatment of legacy swaps and any applicable netting arrangements in light of the QFC Rules. However, if, in addition to amendments required to comply with the QFC Rules, the parties enter into any other amendments, the amended legacy swap will be a covered swap in accordance with the application of the CFTC Margin Rule.

This Final Rule is consistent with amendments to the Prudential Margin Rule that the Prudential Regulators jointly published in the **Federal Register** on October 10, 2018.[38] Making amendments to the CFTC Margin Rule that are consistent with those of the Prudential Regulators furthers the Commission's efforts to harmonize its margin regime with the Prudential Regulators' margin regime and is responsive to suggestions received as part of the Commission's Project KISS initiative.[39]

V. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') requires Federal agencies, in promulgating regulations, to consider whether the rules they propose will have a significant economic impact on a substantial number of small entities and, if so, to provide a regulatory flexibility analysis regarding the economic impact on those entities. In the Proposal, the Commission certified that the Proposal would not have a significant economic impact on a substantial number of small entities. The Commission requested comments with respect to the RFA and received no such comments.

As discussed in the Proposal, this Final Rule only affects certain SDs and

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[33] Covered QFC Entities must conform to the requirements of the QFC Rules for Covered QFCs entered into on or after January 1, 2019 and, in some instances, Covered QFCs entered into before that date.[33] To do so, a Covered QFC Entity may need to amend the contractual provisions of its pre-existing Covered QFCs.

[34] Note, therefore, that such amendment would affect all parties to the legacy swap, not only the Covered QFC Entity subject to the QFC Rules.

[35] 83 FR 23842 (May 23, 2018).

[36] The Commission also received one comment that was not relevant to the Proposal. All of the comments are available at *https://comments.cftc.gov/PublicComments/CommentList.aspx?id=2878*.

[37] Navient requested relief from covered swap status arising from certain amendments to legacy swaps involving special purpose vehicles created for securitization purposes (''Securitization SPVs'') and more generally requested an exemption from the CFTC Margin Rule for certain Securitization SPVs. NEX requested relief from covered swap status for legacy swaps which are compressed in a multilateral portfolio compression exercise. ISDA and IIB requested the Commission, in conjunction with the Prudential Regulators, more generally provide broad guidance on amendments to legacy swaps, including that amendments required by domestic or foreign regulatory or legislative developments (*e.g.,* reforms of benchmark interest rates) will not cause them to become covered swaps. These requests for additional changes and exemptions to the CFTC Margin Rule are outside of the scope of the Proposal, as the Proposal relates solely to changes to the CFTC Margin Rule in relation to the requirements of the QFC Rules. However, as the Commission continues to assess industry developments such as interest rate benchmark reform, it will take into account any associated implementation ramifications surrounding the treatment of legacy swaps under the CFTC Margin Rule.

[38] Margin and Capital Requirements for Covered Swap Entities; Final Rule, 83 FR 50805 (Oct. 10, 2018).

[39] *See* Project KISS Initiatives, available at *https://comments.cftc.gov/KISS/KissInitiative.aspx*. The Commission received requests to coordinate revisions to the CFTC Margin Rule with the Prudential Regulators. *See* comments from Credit Suisse (''CS''), the Financial Services Roundtable (''FSR''), ISDA, the Managed Funds Association (''MFA''), and SIFMA Global Foreign Exchange Division (''GFMA''). GFMA requested that the Commission coordinate with the Prudential Regulators on proposing or making any changes to the CFTC Margin Rule to ensure harmonization and consistency across the respective rule sets. In addition, CS, FSR, ISDA, and MFA, as well as GFMA requested that the Commission make certain specific changes to the CFTC Margin Rule in coordination with the Prudential Regulators relating to, for example, initial margin calculations and requirements, margin settlement timeframes, netting product sets, inter-affiliate margin exemptions, and cross-border margin issues. Project KISS suggestions are available at *https://comments.cftc.gov/KISS/KissInitiative.aspx*.

MSPs that are subject to the QFC Rules and their covered counterparties, all of which are required to be ECPs.[40] The Commission has previously determined that SDs, MSPs, and ECPs are not small entities for purposes of the RFA.[41] Therefore, the Commission finds that this Final Rule will not have a significant economic impact on a substantial number of small entities, as defined in the RFA.

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

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (''PRA'')[42] imposes certain requirements on Federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information, as defined by the PRA. The Commission may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget control number. As discussed in the Proposal, this Final Rule contains no requirements subject to the PRA.

C. Cost-Benefit Considerations

The Commission received no comments with regard to its preliminary cost-benefit considerations in the Proposal. Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of the following 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. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the section 15(a) considerations.

This Final Rule prevents certain CSEs and their counterparties from being disadvantaged because their master netting agreements do not satisfy the definition of an EMNA, solely because such agreements' comply with the QFC Rules or because such agreements would have to be amended to achieve compliance. It revises the definition of EMNA such that a master netting agreement that meets the requirements of the QFC Rules may be an EMNA and provides that an amendment to a legacy swap solely to conform to the QFC Rules will not cause that swap to be a covered swap under the CFTC Margin Rule.

The Commission notes that the consideration of costs and benefits below is based on the understanding that the markets function internationally, with many transactions involving United States firms taking place across international boundaries; with some Commission registrants being organized outside of the United States; with leading industry members typically conducting operations both within and outside the United States; and with industry members commonly following substantially similar business practices wherever located. Where the Commission does not specifically refer to matters of location, the below discussion of costs and benefits refers to the effects of this Final Rule on all activity subject to it, whether by virtue of the activity's physical location in the United States or by virtue of the activity's connection with or effect on United States commerce under CEA section 2(i).[43] In particular, the Commission notes that some persons affected by this rulemaking are located outside of the United States.

The baseline against which the benefits and costs associated with this Final Rule is compared is the uncleared swaps markets as they exist today, with the QFC Rules in effect.[44] With this as the baseline for this Final Rule, the following are the benefits and costs of this Proposal.

1. Benefits

As described above, this Final Rule will allow parties whose master netting agreements satisfy the proposed revised definition of EMNA to continue to calculate initial margin and variation margin, respectively, on an aggregate net basis across uncleared swaps that are executed under that EMNA. Otherwise, a CSE that is a counterparty under a master netting agreement that complies with the QFC Rules and, thus, does not satisfy the current definition of EMNA, would be required to measure its exposures from covered swaps on a gross basis for purposes of the CFTC Margin Rule. In addition, this Final Rule allows legacy swaps to maintain their legacy status, notwithstanding that they are amended to comply with the QFC Rules. Otherwise, such swaps would become covered swaps subject to initial and variation margin requirements under the CFTC Margin Rule. This Final Rule provides certainty to CSEs and their counterparties about the treatment of legacy swaps and any applicable netting arrangements in light of the QFC Rules.

2. Costs

Because this Final Rule (i) will solely expand the definition of EMNA to potentially include those master netting agreements that meet the requirements of the QFC Rules and allow the amendment of legacy swaps solely to conform to the QFC Rules without causing such swaps to become covered swaps and (ii) does not require market participants to take any action to benefit from these changes, the Commission believes that this Final Rule will not impose any additional costs on market participants.

3. Section 15(a) Considerations

In light of the foregoing, the CFTC has evaluated the costs and benefits of this Final Rule pursuant to the five considerations identified in section 15(a) of the CEA as follows:

(a) Protection of Market Participants and the Public

As noted above, this Final Rule will protect market participants by allowing them to comply with the QFC Rules without being disadvantaged under the CFTC Margin Rule. This Final Rule will facilitate market participants' use of swaps that would be affected by this Final Rule to hedge. Without this Final Rule, posting gross margin instead of net margin for those swaps would be required, which would raise transaction costs and thus likely reduce the use of such swaps for hedging.

(b) Efficiency, Competitiveness, and Financial Integrity of Markets

This Final Rule will make the uncleared swap markets more efficient by allowing net margining of swap portfolios under master netting agreements that comply with the QFC Rules and, thus, do not satisfy the current EMNA definition instead of requiring the payment of gross margin under such agreements. Also, absent this Final Rule, market participants that are required to amend their EMNAs to comply with the QFC Rules and, thereafter, required to measure their

[40] *See supra,* n.12.

[41] *See* Registration of Swap Dealers and Major Swap Participants, 77 FR 2613, 2620 (Jan. 19, 2012) (SDs and MSPs) and Opting Out of Segregation, 66 FR 20740, 20743 (April 25, 2001) (ECPs).

[42] 44 U.S.C. 3501 *et seq.*

[43] 7 U.S.C. 2(i).

[44] Although, as described above, the QFC Rules will be gradually phased in, for purposes of the cost benefit considerations, we assume that the affected CSEs are in compliance with the QFC Rules.

exposure on a gross basis and to post margin on their legacy swaps, would be placed at a competitive disadvantage as compared to those market participants that are not so required to amend their EMNAs. Therefore, this Final Rule may increase the competitiveness of the uncleared swaps markets. In addition, this Final Rule furthers the Commission's efforts to harmonize its margin regime with the Prudential Regulators' margin regime, and therefore may improve the efficiency, competitiveness, and financial integrity of markets.

(c) Price Discovery

This Final Rule permits the payment of net margin instead of gross margin on portfolios of swaps affected by this Final Rule, which would reduce margining costs to those swaps transactions. Reducing the cost to transact these swaps, might lead to more trading, which could potentially improve liquidity and benefit price discovery.

(d) Sound Risk Management

This Final Rule prevents the payment of gross margin on swaps affected by this Final Rule, which does not reflect true economic counterparty credit risk for swap portfolios transacted with counterparties. Therefore, this Final Rule supports sound risk management.

(e) Other Public Interest Considerations

The Commission has not identified an impact on other public interest considerations as a result of this Final Rule.

D. Antitrust Laws

Section 15(b) of the CEA requires the Commission to take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the purposes of the CEA, in issuing any order or adopting any Commission rule or regulation.[45] The Commission believes that the public interest to be protected by the antitrust laws is generally to protect competition. The Commission requested and did not receive any comments on whether the Proposal implicated any other specific public interest to be protected by the antitrust laws.

The Commission has considered this Final Rule to determine whether it is anticompetitive and has preliminarily identified no anticompetitive effects. The Commission requested and did not receive any comments on whether the Proposal was anticompetitive and, if it is, what the anticompetitive effects are.

[45] 7 U.S.C. 19(b).

Because the Commission has preliminarily determined that this Final Rule is not anticompetitive and has no anticompetitive effects and received no comments on its determination, the Commission has not identified any less anticompetitive means of achieving the purposes of the CEA.

List of Subjects in 17 CFR Part 23

Capital and margin requirements, Major swap participants, Swap dealers, Swaps.

For the reasons stated in the preamble, the Commodity Futures Trading Commission amends 17 CFR part 23 as follows:

PART 23—SWAP DEALERS AND MAJOR SWAP PARTICIPANTS

■ 1. The authority citation for part 23 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 6, 6a, 6b, 6b–1,6c, 6p, 6r, 6s, 6t, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21.

Section 23.160 also issued under 7 U.S.C. 2(i); Sec. 721(b), Pub. L. 111–203, 124 Stat. 1641 (2010).

■ 2. In § 23.151, revise paragraph (2) in the definition of *Eligible master netting agreement* to read as follows:

§ 23.151 Definitions applicable to margin requirements.

* * * * *

Eligible master netting agreement

* * *

(2) The agreement provides the covered swap entity the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default, including upon an event of receivership, conservatorship, insolvency, liquidation, or similar proceeding, of the counterparty, provided that, in any such case,

(i) Any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than:

(A) In receivership, conservatorship, or resolution under the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*), Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5381 *et seq.*), the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended (12 U.S.C. 4617), or the Farm Credit Act of 1971, as amended (12 U.S.C. 2183 and 2279cc), or laws of foreign jurisdictions that are substantially similar to the U.S. laws referenced in this paragraph in order to facilitate the orderly resolution of the defaulting counterparty; or

(B) Where the agreement is subject by its terms to, or incorporates, any of the laws referenced in paragraph (2)(i)(A) of this definition; and

(ii) The agreement may limit the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default of the counterparty to the extent necessary for the counterparty to comply with the requirements of 12 CFR part 47; 12 CFR part 252, subpart I; or 12 CFR part 382, as applicable;

* * * * *

■ 3. In § 23.161, add paragraph (d) to read as follows:

§ 23.161 Compliance dates.

* * * * *

(d) For purposes of determining whether an uncleared swap was entered into prior to the applicable compliance date under this section, a covered swap entity may disregard amendments to the uncleared swap that were entered into solely to comply with the requirements of 12 CFR part 47; 12 CFR part 252, subpart I; or 12 CFR part 382, as applicable.

Issued in Washington, DC, on November 19, 2018, by the Commission.

Robert Sidman,

Deputy Secretary of the Commission.

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

Appendix to Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants—Commission Voting Summary and Chairman's Statement

Appendix 1—Commission Voting Summary

On this matter, Chairman Giancarlo, and Commissioners Quintenz, Behnam, Stump, and Berkovitz voted in the affirmative. No Commissioner voted in the negative.

Appendix 2—Statement of Chairman J. Christopher Giancarlo

Through the Commission's Project KISS initiative, the Commission received suggestions to harmonize its uncleared swap margin rule with that of the Prudential Regulators. In response, this final rule does so and provides market certainty, specifically with respect to amending the CFTC's definition of ''eligible master netting agreement'' (EMNA) and amending the CFTC Margin Rule such that any legacy swap will not become subject to the CFTC Margin Rule if it is amended solely to comply with changes adopted by the Prudential Regulators in 2017. The Commission recognizes that the CFTC Margin Rule does not provide relief for legacy swaps that might need to be amended to meet regulatory changes or requirements,

and is committed to considering other meritorious requests for relief.

[FR Doc. 2018–25602 Filed 11–23–18; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket Nos. RM16–5–000; RM16–5–001; RM16–23–000; AD16–20–000]

Non-Discriminatory Open Access Transmission Tariff; Corrections

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Correcting amendment.

SUMMARY: This document corrects one section of the regulations of the Federal Energy Regulatory Commission, as published in the **Federal Register** on March 6, 2018. This correction restores regulatory text that was inadvertently replaced with other regulatory text adopted in another, later final rule.

DATES: Effective November 26, 2018.

FOR FURTHER INFORMATION CONTACT: Anne Marie Hirschberger, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–8387, *annemarie.hirschberger@ferc.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

1. On November 17, 2016, the Federal Energy Regulatory Commission (Commission) issued Order No. 831 concerning offer caps in Regional Transmission Organization (RTO) and Independent System Operator (ISO) markets,[1] which was published in the **Federal Register** on December 5, 2016. Order No. 831 amended 18 CFR 35.28 by adding new paragraph (g)(9).

2. On November 9, 2017, the Commission issued Order No. 831–A,[2] which was published in the **Federal Register** on November 16, 2017. Order No. 831–A further revised 18 CFR 35.28(g)(9) regarding offer caps.

3. On February 15, 2018, the Commission issued Order No. 841 concerning electric storage participation in RTO/ISO markets,[3] which was published in the **Federal Register** on March 6, 2018. Order No. 841 amended 18 CFR 35.28(g) by adding a further new paragraph, which was also numbered (g)(9).[4] As a result, the regulatory text adopted in Order No. 841 incorrectly replaced—rather than added to—the regulatory text adopted in Order Nos. 831 and 831–A.

4. In this Correcting Amendment, 18 CFR 35.28(g) is corrected by restoring the regulatory text from Order Nos. 831 and 831–A as new paragraph 18 CFR 35.28(g)(11). Nothing in this Correcting Amendment is intended to alter any previous compliance requirements or effective dates established under Order Nos. 831, 831–A, or 841, nor does this Correcting Amendment affect any tariff changes previously accepted by the Commission in compliance with these orders.

List of Subjects in 18 CFR Part 35

Electric power rates, Electric utilities, Non-discriminatory open access transmission tariffs.

By the Commission. Commissioner McIntyre is not voting on this order.

Issued: November 16, 2018.

Kimberly D. Bose,

Secretary.

In consideration of the foregoing, 18 CFR part 35 is corrected by making the following correcting amendments:

PART 35—FILING OF RATE SCHEDULES AND TARIFFS

■ 1. The authority citation for part 35 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

■ 2. Amend § 35.28 by adding a new paragraph (g)(11) to read as follows:

§ 35.28 Non-discriminatory open access transmission tariff.

* * * * *

(g) * * *

(11) A resource's incremental energy offer must be capped at the higher of $1,000/MWh or that resource's cost-based incremental energy offer. For the purpose of calculating Locational Marginal Prices, Regional Transmission Organizations and Independent System Operators must cap cost-based incremental energy offers at $2,000/MWh. The actual or expected costs underlying a resource's cost-based incremental energy offer above $1,000/MWh must be verified before that offer can be used for purposes of calculating Locational Marginal Prices. If a resource submits an incremental energy offer above $1,000/MWh and the actual or expected costs underlying that offer cannot be verified before the market clearing process begins, that offer may not be used to calculate Locational Marginal Prices and the resource would be eligible for a make-whole payment if that resource is dispatched and the resource's actual costs are verified after-the-fact. A resource would also be eligible for a make-whole payment if it is dispatched and its verified cost-based incremental energy offer exceeds $2,000/MWh. All resources, regardless of type, are eligible to submit cost-based incremental energy offers in excess of $1,000/MWh.

[FR Doc. 2018–25584 Filed 11–23–18; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket Nos. RM18–8–000 and RM15–11–003; Order No. 851]

Geomagnetic Disturbance Reliability Standard; Reliability Standard for Transmission System Planned Performance for Geomagnetic Disturbance Events

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) approves Reliability Standard TPL–007–2 (Transmission System Planned Performance for Geomagnetic Disturbance Events). The North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization, submitted Reliability Standard TPL–007–2 for Commission approval. The Commission also directs NERC to develop and submit modifications to Reliability Standard TPL–007–2: To require the development and implementation of corrective action plans to mitigate assessed supplemental GMD event vulnerabilities; and to authorize extensions of time to implement corrective action plans on a

[1] *Offer Caps in Markets Operated by Regional Transmission Organizations and Independent System Operators,* Order No. 831, FERC Stats. & Regs. ¶ 31,387 (2016) (cross-referenced at 157 FERC ¶ 61,115), *order on reh'g and clarification,* Order No. 831–A, 82 FR 53403 (Nov. 16, 2017), FERC Stats. & Regs. ¶ 31,394 (2017).

[2] Order No. 831–A, FERC Stats. & Regs. ¶ 31,394.

[3] *Electric Storage Participation in Markets Operated by Regional Transmission Organizations and Independent System Operators,* Order No. 841, 83 FR 9580 (Mar. 6, 2018), FERC Stats. & Regs. ¶ 31,398 (2018) (cross-referenced at 162 FERC ¶ 61,127).

[4] On February 28, 2018, the Commission issued an Errata Notice for Order No. 841. *Electric Storage Participation in Markets Operated by Regional Transmission Organizations and Independent System Operators,* Errata Notice, Docket Nos. RM16–23–000, AD16–20–000 (Feb. 28, 2018). Among other things, the Errata Notice revised 18 CFR 35.28(g)(9).