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 adds additional controlled airspace at Blair Municipal Airport, Blair, NE.

List 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 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 part 71.1 of the Federal Aviation Administration Order 7400.9S, Airspace Designations and Reporting Points, signed October 3, 2008, and effective October 31, 2008, is amended as follows:

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

* * * * *

ACE NE E5 Omaha, NE [Amended]

Omaha, Eppley Airfield, NE
(Lat. 41°18′11″ N., long. 95°53′39″ W.)
Omaha, Offutt AFB, NE
(Lat. 41°07′10″ N., long. 95°54′31″ W.)
Council Bluffs, Council Bluffs Municipal Airport, IA
(Lat. 41°15′36″ N., long. 95°45′31″ W.)
Blair, Blair Municipal Airport, NE
(Lat. 41°24′53″ N., long. 96°06′32″ W.)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of Eppley Airfield and within 3 miles each side of the Eppley Airfield Runway 14R ILS Localizer course extending from the 6.9-mile radius to 12 miles northwest of the airport and within a 7-mile radius of Offutt AFB and within 4.3 miles each side of the Offutt AFB ILS Runway 30 localizer course extending from the 7-mile radius to 7.4 miles southeast of Offutt AFB and within a 6.4-mile radius of the Council Bluffs Municipal Airport, and within a 6.4-mile radius of Blair Municipal Airport, and within 2 miles each side of the 317° bearing from the Blair Municipal Airport extending from the 6.4-mile radius to 11.6 miles, and within 2 miles each side of the 137° bearing from the Blair Municipal Airport extending from the 6.4-mile radius to 12.2 miles.

* * * * *

Issued in Fort Worth, TX, on March 24, 2009.

Ronnie L. Uhlenhaker,

Acting Manager, Operations Support Group, Central Service Center.

[FR Doc. E9–8577 Filed 4–14–09; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 40, 41, and 145

RIN 3038–AC44

Confidential Information and Commission Records and Information

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission is adopting final rules to specify the exclusive procedures under which designated contract markets (DCMs), derivatives clearing organizations (DCOs) and derivatives transaction execution facilities (DTEFs) (collectively, ''regulated entities'') may request confidential treatment for products and rules submitted via certification procedures or for Commission review and approval under parts 40 and 41 of the Commission's regulations. The amendments also revise the Commission's part 145 regulations under the Freedom of Information Act by providing that the confidential treatment procedures specified in section 145.9 do not apply to information filed by regulated entities pursuant to parts 40 and 41.

DATES: May 15, 2009.

FOR FURTHER INFORMATION CONTACT: Susan Nathan, Senior Special Counsel, (202) 418–5133, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Electronic mail: *snathan@cftc.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

A. Procedural History

On July 20, 2007, the Commission requested comment from the public regarding its proposal to establish in part 40 of its regulations the exclusive procedure to be followed by regulated entities when requesting confidential treatment for information they are required to submit under parts 40 and 41 of the Commission's regulations,[1] and to clarify the standards under which requests for confidential treatment will be considered.[2] Three commenters responded to this proposal: the CME Group (''CME''), CBOE Futures Exchange (''CFE'') and the New York Mercantile Exchange (''NYMEX'').[3] While CFE generally supported the proposal, CME and NYMEX questioned the merits of the proposed amendments and the adequacy of the Commission's explanation for proposing the changes.

In light of the CME and NYMEX comments, the Commission re-proposed the rule amendments in order to (1) Clarify the procedure for seeking review of an adverse determination; (2) amend Commission regulation 145.9 to make clear that that process for requesting confidential treatment under the Commission's Freedom of Information Act regulations does not apply to submissions filed pursuant to parts 40 and 41; and (3) address more fully the reasons for proposing the amendments. The **Federal Register** release announcing the re-proposal fully addressed the substantive issues raised by the commenters and invited additional public comment on one issue raised by NYMEX: whether the Commission should honor requests for confidential treatment of algorithms or similar trading tools that are mechanisms for executing transactions.[4] CME submitted comments on this matter.

B. Confidential Treatment of Trading Mechanisms

1. Comments: Confidential Treatment of Information Made Public by Statute or Rule

The Commodity Exchange Act (''CEA'') and regulations promulgated thereunder require that substantial portions of the material filed pursuant to Parts 40 and 41 be made publicly available by the submitters. Section

[1] Part 40 of the Commission's regulations, 17 CFR part 40, specifies the standards and procedures to be followed by regulated entities for listing products for trading by certification to the Commission; voluntary submission of new products for Commission review and approval; amendments to terms or conditions of enumerated agricultural contracts; voluntary submission of rules for Commission review and approval; and self certification of rules by DCMs and DCOs. Part 41, 17 CFR part 41, contains the standards and procedures for filing required information with respect to security futures products.

[2] 72 FR 39764.

[3] In August 2008, subsequent to the Commission's Notice of Proposed Rulemaking in this matter, CME and NYMEX completed a merger. As a result, NYMEX is currently a wholly-owned indirect subsidiary of CME Group, Inc.

[4] 73 FR 44939 (Aug. 1, 2008).

5(d)(7) of the CEA—DCM Core Principle 7—requires that the terms and conditions of contracts and the ''mechanisms for executing transactions on or through'' a DCM be made available by the DCM to market authorities, market participants and the public.[5] Similarly, DTEF Core Principle 5 requires that boards of trade publicly disclose specified information, and Core Principle L requires that DCOs make available to market participants information concerning the rules and operating systems of clearing and settlement systems. Moreover, Commission regulations 40.3(a)(7) and 40.5(a)(8) specify that a product's terms and conditions become publicly available at the time of submission to the Commission.

The commenters' concerns focused on the Commission's proposal to amend part 40 by adding new paragraph (d) to regulation 40.8 to clarify that staff will not consider requests for confidential treatment of information that is considered publicly available pursuant to section 5(d)(7) of the CEA or regulations 40.3(a)(7) or 40.5(a)(8). In response to CME's concern that DCMs have legitimate commercial and competitive interests in maintaining the confidentiality of information about the contractual obligations of, and incentives offered to, their market makers, the Commission distinguished between the two types of information. The Commission noted that both market maker and incentive programs are considered ''rules'' under Commission regulations and thus are presumptively public. Compensation structures are properly made public because they may affect the quality of price quotations provided by market makers as well as liquidity in the market; because this material is routinely available, no exchange is at a competitive disadvantage. On the other hand, the Commission acknowledged that access to particular information related to incentive programs could give an unfair advantage to potential counterparties of market makers or to other markets. Incentive programs may, therefore, include information for which confidential treatment is appropriate. Commission staff has, for example, withheld information relating to participant names, bid-ask spreads and minimum size requirements because access to this information could unfairly advantage potential counterparties of market makers and provide other market makers with a competitive edge when setting up their own market maker programs. Thus, while incentive programs are presumptively public, these programs may include commercially valuable information which is entitled to protection. For this reason, the Commission believes it would be inappropriate to summarily deny confidential treatment to all information submitted in connection with incentive programs.

In its comment letter, NYMEX urged that the same reasoning should apply to confidential treatment for trading mechanisms, which it stated could include ''an algorithm or other similar proprietary trading tool'' for which a registered entity might seek patent or trademark protection.[6] Although trading mechanisms are required to be made publicly available pursuant to section 7(d)(8) of the CEA, and the Commission is unaware of any circumstance in which trading mechanisms warrant protection from public disclosure, the Commission in an abundance of caution invited further public comment with respect to whether specific types of trading tools should be considered for confidential treatment.

2. CME's September 15, 2008 Comment Letter.

In response to this invitation, CME submitted additional comments urging the Commission to (1) conclude that summary denial of confidential treatment to ''mechanisms for executing transactions, including trading algorithms or similar proprietary trading tools'' could cause competitive harm to the submitter, and is, therefore, inappropriate and (2) refrain from utilizing a rulemaking to determine blanket confidential treatment for specific types of trading tools. Rather, CME proposed that the Commission make confidentiality determinations on a case-by-case basis at the time of the initial request for confidential treatment.[7]

The Commission has carefully considered these comments and agrees that, to the extent that NYMEX's and CME's comments refer to specific hardware, software or ''code'' underlying a trading tool or algorithm, such hardware, software, or code may qualify for confidential treatment. The Commission does not consider such information to be part of the ''trading mechanism;'' it thus is not presumptively public and is accordingly outside the scope of this rulemaking.

The Commission wishes to emphasize that the purpose of the proposed amendments is to improve its ability to provide the public with immediate access to material filed under Parts 40 and 41 that does not warrant confidential treatment, i.e., that must be made publicly available by statute or rule. CME's suggestion of a case-by-case determination would preserve the *status quo* that the proposed amendments were intended to correct.

Accordingly, the proposed amendments are being adopted in the final rules.

II. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601 *et seq.* (2000), requires federal agencies, in proposing regulations, to consider the impact of those regulations on small entities. The regulations proposed herein would affect derivatives transaction execution facilities, designated contract markets, and derivatives clearing organizations. The Commission previously has determined that the foregoing entities are not small entities for purposes of the RFA.[8] Accordingly, the Acting Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the proposed regulations will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3504(h), the Commission submitted a copy of the proposed rule amendments to the Office of Management and Budget for its review. The Commission did not receive any public comments relative to its analysis of paperwork burdens associated with this rulemaking.

C. Cost-Benefit Analysis

Section 15(a) of the Act, as amended by section 119 of the CFMA, requires the Commission to consider the costs and benefits of its action before issuing a new regulation under the Act. By its terms, section 15(a) as amended does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of a regulation outweigh its

[5] The CEA does not define the phrase ''mechanisms for executing transactions,'' but the Commission noted in its proposal and re-proposal that this generally includes such information as trading algorithms, market maker programs, and information from an exchange's rule book that pertains to or impacts trading. 72 FR 39764 (Jul. 20, 2007); 73 FR 44941 n.17 (Aug. 1, 2008).

[6] Letter from NYMEX dated Aug. 23, 2007, at 3.

[7] Letter from CME Group dated September 15, 2008, at 3.

[8] 47 FR 18618, 18619 (April 30, 1992) discussing contract markets; 66 FR 42256, 42268 (August 10, 2001), discussing exempt boards of trade, exempt commercial markets and derivatives transaction execution facilities; 66 FR 45605, 45609 (August 29, 2001), discussing derivatives clearing organizations.

costs. Rather, section 15(a) simply requires the Commission to ''consider the costs and benefits'' of its action.

Section 15(a) further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: Protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations. Accordingly, the Commission could, in its discretion, give greater weight to any one of the five enumerated areas and could, in its discretion, determine that, notwithstanding its costs, a particular regulation was necessary or appropriate to protect the public interest or to effectuate any of the provisions to accomplish any of the purposes of the Act.

The Commission published its analysis of the costs and benefits when it proposed and reproposed the rule amendments that have now been adopted.[9] It did not receive any public comments pertaining to the analysis.

List of Subjects

17 CFR Part 40

Commodity futures, Contract markets, Designation application, Reporting and recordkeeping requirements.

17 CFR Part 41

Security futures.

17 CFR Part 145

Commission records and information.

■ For the reasons stated in the preamble, the Commission amends 17 CFR parts 40, 41 and 145 as follows:

PART 40—PROVISIONS COMMON TO CONTRACT MARKETS, DERIVATIVES TRANSACTION EXECUTION FACILITIES AND DERIVATIVES CLEARING ORGANIZATIONS

■ 1. The authority for part 40 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 5, 6, 6c, 7, 7a, 8 and 12a, as amended by appendix E of Public Law 106–554, 114 Stat. 2763A–365.

■ 2. Section 40.2 is amended by adding paragraph (a)(3)(v) to read as follows:

§ 40.2 Listing products for trading by certification.

(a) * * *

(3) * * *

(v) A request for confidential treatment as permitted under the procedures of 40.8

* * * * *

[9] 72 FR 39764 (July 20, 2007); 73 FR 44939 (August 1, 2008).

■ 3. Section 40.3 is amended by revising paragraph (a)(7) to read as follows:

§ 40.3 Voluntary submission of new products for Commission review and approval.

(a) * * *

(7) Include a request for confidential treatment as permitted under the procedures of § 40.8.

* * * * *

■ 4. Section 40.5 is amended by revising paragraph (a)(8) to read as follows:

§ 40.5 Voluntary submission of rules for Commission review and approval.

(a) * * *

(8) Include a request for confidential treatment as permitted under the procedures of § 40.8.

* * * * *

■ 5. Section 40.6 is amended by adding new paragraph (a)(3)(vi) to read as follows:

§ 40.6 Self-certification of rules.

(a) * * *

(3) * * *

(vi) A request for confidential treatment as permitted under the procedures of 40.8.

* * * * *

■ 6. Section 40.8 is amended by adding new paragraphs (c) and (d) to read as follows:

§ 40.8 Availability of public information.

* * * * *

(c) A registered entity's filing of new products under the self-certification procedures, new products for Commission review and approval, new rules and rule amendments for Commission review and approval, and new rules and rule amendments submitted under the self-certification procedures will be treated as public information unless covered by a request for confidential treatment. If a registered entity files a request for confidential treatment, the following procedures will apply:

(1) A detailed written justification of the confidential treatment request must be filed simultaneously with the request for confidential treatment. The form and content of the detailed written justification shall be governed by § 145.9 of this chapter;

(2) All material for which confidential treatment is requested must be segregated in an appendix to the submission;

(3) The submission itself must indicate that material has been segregated and, as appropriate, redacted;

(4) Commission staff may make an initial determination with respect to the request for confidential treatment without regard to whether a request for the information has been sought under the Freedom of Information Act;

(5) A submitter of information under this Part may appeal an adverse decision by staff to the Commission's Office of General Counsel. The form and content of such appeal shall be governed by § 145.9(g) of this chapter;

(6) The grant of any part of a request for confidential treatment under this section may be reconsidered if a subsequent request under the Freedom of Information Act is made for the information.

(d) Commission staff will not consider requests for confidential treatment of information that is required to be made public under section 5(d)(7) of the Act of Commission regulations § 40.3(a)(7) or § 40.5(a)(8).

7. Appendix D is amended by adding a new sentence to the end of the first paragraph of section 8, ''Other requirements,'' to read as follows:

Appendix D to Part 40—Submission Cover Sheet and Instructions

* * * * *

(8) *Other requirements*— * * * Checking the box marked ''confidential treatment requested'' on the Submission Cover Sheet does not obviate the submitter's responsibility to comply with all applicable requirements for requesting confidential treatment in rule 40.8(c) and, where appropriate, rule 145.9, and will not substitute for notice or full compliance with such requirements.

* * * * *

PART 41—SECURITY FUTURES PRODUCTS

■ 8. The authority citation for part 41 continues to read as follows:

Authority: Sections 206, 251 and 252, Pub. L. 106–554, 114 Stat. 2763, 7 U.S.C. 1a, 2, 6f, 6j, 7a–2, 12a, 15 U.S.C. 78g(c)(2).

■ 9. Section 41.23 is amended by adding new paragraph (a)(7) to read as follows:

§ 41.23 Listing of security futures products for trading.

(a) * * *

(7) Includes a request for confidential treatment as permitted under the procedures of § 40.8.

* * * * *

■ 10. Section 41.24 is amended by adding new paragraph (a)(6) to read as follows:

§ 41.24 Rule amendments to security futures products.

(a) * * *

(6) Includes a request for confidential treatment as permitted under the procedures of § 40.8.

* * * * *

PART 145—COMMISSION RECORDS AND INFORMATION

■ 11. The authority citation for part 145 continues to read as follows:

Authority: Public Law 99–570, 100 Stat. 3207; Public Law 89–554, 80 Stat. 383; Public Law 90–23, 81 Stat. 54; Public Law 98–502, 88 Stat. 1561–1564 (5 U.S.C. 552); Sec. 101(a), Public Law 93–463, 88 Stat. 1389 (5 U.S.C. 4a(j)), unless otherwise noted.

■ 12. Section 145.9 is amended by revising paragraph (b) to read as follows:

§ 145.9 Petition for confidential treatment of information submitted to the Commission.

* * * * *

(b) *Scope.* The provisions of this section shall apply only where the Commission has not specified that an alternative procedure be utilized in connection with a particular study, report, investigation, or other matter. See 40.8 for procedures to be utilized in connection with filing information required to be filed pursuant to 17 CFR parts 40 and 41.

* * * * *

Issued in Washington, DC on April 3, 2009 by the Commission.

David Stawick,

Secretary of the Commission.

[FR Doc. E9–8024 Filed 4–14–09; 8:45 am]

BILLING CODE 6351–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4022

Benefits Payable in Terminated Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: Pension Benefit Guaranty Corporation's regulation on Benefits Payable in Terminated Single-Employer Plans prescribes interest assumptions for valuing and paying certain benefits under terminating single-employer plans. This final rule amends the benefit payments regulation to adopt interest assumptions for plans with valuation dates in May 2009. Interest assumptions are also published on PBGC's Web site (*http://www.pbgc.gov*).

DATES: *Effective Date:* May 1, 2009.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, Manager, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

These interest assumptions are found in two PBGC regulations: The regulation on Benefits Payable in Terminated Single-Employer Plans (29 CFR part 4022) and the regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044). Assumptions under the asset allocation regulation are updated quarterly; assumptions under the benefit payments regulation are updated monthly. This final rule updates only the assumptions under the benefit payments regulation.

Two sets of interest assumptions are prescribed under the benefit payments regulation: (1) A set for PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by PBGC (found in Appendix B to Part 4022), and (2) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using PBGC's historical methodology (found in Appendix C to Part 4022).

This amendment (1) adds to Appendix B to Part 4022 the interest assumptions for PBGC to use for its own lump-sum payments in plans with valuation dates during May 2009, and (2) adds to Appendix C to Part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using PBGC's historical methodology for valuation dates during May 2009.

The interest assumptions that PBGC will use for its own lump-sum payments (set forth in Appendix B to part 4022) will be 3.50 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. These interest assumptions represent an increase (from those in effect for April 2009) of 0.25 percent in the immediate annuity rate and are otherwise unchanged. For private-sector payments, the interest assumptions (set forth in Appendix C to part 4022) will be the same as those used by PBGC for determining and paying lump sums (set forth in Appendix B to part 4022).

PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect current market conditions as accurately as possible.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during May 2009, PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, 29 CFR part 4022 is amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE–EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, the entry for Rate Set 187 is added to the table to read as follows:

Appendix B to Part 4022—Lump Sum Interest Rates For PBGC Payments

* * * * *