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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 36

RIN 3038–AE25

Exemptions From Swap Trade Execution Requirement

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is adopting a final rule (''Final Rule'') that establishes two exemptions from the statutory requirement to execute certain types of swaps on a swap execution facility (''SEF'') or a designated contract market (''DCM'') (this requirement, the ''trade execution requirement'').

DATES: The Final Rule is effective on March 15, 2021.

FOR FURTHER INFORMATION CONTACT: Roger Smith, Associate Chief Counsel, Division of Market Oversight, (202) 418–5344, *rsmith@cftc.gov,* Commodity Futures Trading Commission, 525 West Monroe Street, Suite 1100, Chicago, IL 60661; or Michael Penick, Senior Economist, (202) 418–5279, *mpenick@cftc.gov,* Office of the Chief Economist, Commodity Futures Trading Commission, Three Lafayette Centre, 1151 21st Street NW, Washington, DC 20581.

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I. Background and Introduction

A. Statutory and Regulatory History

Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act [1] amended the Commodity Exchange Act (''CEA'' or ''Act'') [2] to establish a comprehensive new swaps regulatory framework that addresses, *inter alia,* the trading of swaps and the registration and oversight of SEFs.[3] CEA section 2(h)(8) provides that swap transactions that are subject to the swap clearing requirement under CEA section 2(h)(1)(A) [4] must be executed on a DCM, a registered SEF, or a SEF that is exempt from registration pursuant to CEA section 5h(g) (''Exempt SEF''),[5] unless (i) no DCM or SEF [6] ''makes the swap available to trade'' or (ii) the related transaction is subject to the exception from the swap clearing requirement under CEA section 2(h)(7). The swap clearing requirement exception under CEA section 2(h)(7) applies to non-financial entities that are using swaps to hedge or mitigate commercial risk and notify the Commission how they generally meet their financial obligations related to uncleared swaps, and has been implemented under Commission regulation 50.50.[7]

In 2013, pursuant to its discretionary rulemaking authority in CEA sections 5h(f)(1) and 8a(5), the Commission issued an initial set of rules implementing this statutory framework for swap trading and the registration and oversight of SEFs (''2013 SEF Rules'').[8]

In November 2018, the Commission issued a proposed rule (''Proposed

[1] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, tit. VII, 124 Stat. 1376 (2010) (codified as amended in various sections of 7 U.S.C.), *https://www.cftc.gov/sites/default/files/idc/groups/public/@lrfederalregister/documents/file/2013-12242a.pdf* (''Dodd-Frank Act'').

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

[3] 7 U.S.C. 2(h)(8), 7b–3. As amended, CEA section 1a(50) defines a SEF as a trading system or platform that allows multiple participants to execute or trade swaps with multiple participants through any means of interstate commerce.'' 7 U.S.C. 1a(50). CEA section 5h(a)(1) requires an entity to register as a SEF or a DCM prior to operating a facility for the trading or processing of swaps. 7 U.S.C. 7b–3(a)(1). CEA section 5h(f) requires registered SEFs to comply with fifteen core principles. 7 U.S.C. 7b–3(f).

[4] Section 723(a)(3) of the Dodd-Frank Act added a new CEA section 2(h) to establish the clearing requirement for swaps. 7 U.S.C. 2(h). CEA section 2(h)(1)(A) provides that it is unlawful for any person to engage in a swap unless that person submits such swap for clearing to a derivatives clearing organization that is registered under the Act or a derivatives clearing organization that is exempt from registration under the Act if the swap is required to be cleared. 7 U.S.C. 2(h)(1)(A). CEA section 2(h)(2) specifies the process for the Commission to review and determine whether a swap, or a group, category, type or class of swap should be subject to the clearing requirement. 7 U.S.C. 2(h)(2). The Commission further implemented the clearing requirement determination process under regulation 39.5 and part 50. Part 50 specifies the interest rate and credit default swaps that are currently subject to the Commission's clearing requirement. 17 CFR part 50.

[5] The Commission notes that CEA section 2(h)(8)(A)(ii) contains a typographical error that specifies CEA section 5h(f), rather than CEA section 5h(g), as the provision that allows the Commission to exempt a SEF from registration. Where appropriate, the Commission corrects this reference in the discussion herein.

[6] CEA sections 2(h)(8)(A)(i)–(ii) provide that with respect to transactions involving swaps subject to the clearing requirement, counterparties shall execute the transaction on a board of trade designated as a contract market under section 5; or execute the transaction on a swap execution facility registered under 5h or a swap execution facility that is exempt from registration under section 5h(g) of the Act. Given this reference in CEA section 2(h)(8)(A)(ii), the Commission accordingly interprets ''swap execution facility'' in CEA section 2(h)(8)(B) to include a swap execution facility that is exempt from registration pursuant to CEA section 5h(g).

[7] This regulation codifies the statutory exception to the swap clearing requirement set forth in 7 U.S.C. 2(h)(7)(A). *See infra* notes 19–20 and accompanying text. Recently, the Commission renumbered Commission regulation 50.50(d) as a new numbered section and heading, namely, Commission regulation 50.53. A stand-alone exemption from the clearing requirement for certain banks, savings associations, farm credit system institutions, and credit unions separated this exemption from the non-financial entities' exception provided for under CEA section 2(h)(7) and codified in regulation 50.50(a)–(c). *See* Swap Clearing Requirement Exemptions, 85 FR 76428 (Nov. 30, 2020).

[8] Core Principles and Other Requirements for Swap Execution Facilities, 78 FR 33476 (Jun. 4, 2013) (''SEF Core Principles Final Rule''); Process for a Designated Contract Market or Swap Execution Facility to Make a Swap Available to Trade, Swap Transaction Compliance and Implementation Schedule, and Trade Execution Requirement Under the Commodity Exchange Act, 78 FR 33606 (Jun. 4, 2013) (''MAT Final Rule'').

Rule''), again under CEA sections 5h(f)(1) and 8a(5), that set forth comprehensive structural reforms to the SEF regulatory regime.[9] For example, the Proposed Rule would have removed existing limitations on swap execution methods on SEFs,[10] while expanding the categories of swaps that are subject to the trade execution requirement as well as the types of entities that must register as SEFs. In addition to these broad reforms, the Proposed Rule also contained, among other things, more targeted regulatory proposals to codify exemptions from the trade execution requirement, including two such exemptions linked to exceptions to, or exemptions from, the swap clearing requirement.[11]

Commenters provided limited and generally positive feedback regarding these two proposed exemptions from the trade execution requirement.[12] By contrast, the Proposed Rule's broader market reforms elicited a number of public comments expressing concerns with the expansive scope of the changes and recommending that the Commission focus on more targeted improvements to the swap trading regulatory regime.[13] In light of available resources and current priorities, the Commission agrees that it is appropriate to proceed with incremental improvements rather than a wholesale reform package at this time.[14] Accordingly, this Final Rule addresses only the two proposed exemptions from the trade execution requirement linked to the swap clearing requirement's exemptions and exceptions under part 50, such as the end-user exception under Commission regulation 50.50, the exemption for co-operatives under Commission regulation 50.51, and the inter-affiliate exemption under Commission regulation 50.52.[15] Additional targeted improvements to the swap trading regulatory framework have been and will continue to be made via discrete rulemakings.[16]

B. Summary of the Final Rule

The Final Rule establishes two exemptions from the trade execution requirement for swaps, both of which are linked to the Commission's exemptions from, and exceptions to, the swap clearing requirement. The first such trade execution requirement exemption applies to a swap that qualifies for, and meets the associated requirements of, any exception or exemption under part 50 of the Commission's regulations. The second codifies relief provided under CFTC Letter No. 17–67, and prior staff letters,[17] and applies to a swap that is entered into by eligible affiliate counterparties and cleared, regardless of the affiliates' ability to claim the inter-affiliate clearing exemption under § 50.52 of the Commission's regulations.

II. Part 36—Trade Execution Exemptions Linked to Swap Clearing Requirement Exceptions and Exemptions

A. Background and Proposed Rule

CEA section 2(h)(8) specifies that swap transactions that are excepted from the clearing requirement pursuant to CEA section 2(h)(7) are not subject to the trade execution requirement.[18] CEA section 2(h)(7)(C)(i), which is codified in Commission regulation 50.50, is known as the ''end-user exception'' and provides an exception from the swap clearing requirement if one of the counterparties to the transaction (i) is not a financial entity; (ii) is using the swap to hedge or mitigate commercial risk; and (iii) notifies the Commission as to how it generally meets its financial obligations associated with entering into uncleared swaps.[19] The Commission adopted requirements under § 50.50 to implement this exception.[20] CEA section 2(h)(7)(C)(ii) provided the Commission with the authority to consider whether to exempt from the definition of ''financial entity'' small banks, savings associations, farm credit system institutions and credit unions. The Commission exercised this authority at the same time it

[9] Swap Execution Facilities and Trade Execution Requirement, 83 FR 61946 (Nov. 30, 2018).

[10] Under the CFTC's current regulations, swaps subject to the trade execution requirement must be executed via a central limit order book (''Order Book'') or a request for quote to no fewer than three unaffiliated market participants in conjunction with an Order Book (''RFQ''). 17 CFR 37.9(a).

[11] 83 FR at 62036–62040. The Proposed Rule also included a trade execution exemption for swap components of package transactions that includes both a swap that is otherwise subject to the trade execution requirement and a new bond issuance (''New Issuance Bonds package transactions''). The Commission in a separate proposal, that sought to codify the majority of relief currently provided to package transactions, also proposed an exemption from the trade execution requirement for swap components of New Issuance Bond package transactions. *See* Swap Execution Facility Requirements and Real-Time Reporting Requirements, 85 FR 9407 (Feb. 19, 2020). On November 18, 2020, the Commission adopted that exemption in a separate rulemaking, as § 36.1(a) of its regulations. *See* Swap Execution Facility Requirements, 85 FR 82313 (Dec. 18, 2020).

[12] *See* Comment Letter from Japanese Bankers Association at 4 (Mar. 13, 2019) (''JBA Letter''); Comment Letter from Citadel and Citadel Securities at 40–41 (Mar. 15, 2019) (''Citadel Letter''). As discussed below, Citadel recommended certain limitations on the applicability of these exemptions. While the Commission received numerous comments on the Proposed Rule, only the JBA Letter and Citadel Letter commented directly on the two proposed exemptions addressed in these Final Rules.

[13] *See, e.g.,* Comment Letter from the Alternative Investment Management Association at 1–2 (Feb. 25, 2019) (urging the CFTC ''to approach any change to swap execution facilities and trade execution in a phased and targeted manner, rather than adopt a wholesale package of changes in a single rulemaking''); Comment Letter from Managed Funds Association at 2–3 (Mar. 15, 2019) (expressing concern with the breadth of the Proposed Rule and recommending targeted rather than comprehensive changes to the swap trading framework); Comment Letter from IATP at 3–4 (Mar. 15, 2019) (same); Comment Letter from Securities Industry and Financial Markets Association at 1 (Mar. 15, 2019) (''SIFMA Letter'') (same); Comment Letter from SIFMA Asset Management Group at 1 (Mar. 15, 2019) (same); Comment Letter from Tradeweb Markets LLC at 1–2 (Mar. 14, 2019) (''Tradeweb Letter'') (same); Comment Letter from Wellington Management Company LLP at 1 (Mar. 15, 2019) (same); *see also* Comment Letter from Futures Industry Association at 7–9 (Mar. 15, 2019) (''FIA Letter'') (stating that proposed market reforms ''would present tall operational challenges and impose substantial costs on all market participants''); Comment Letter from Commodity Markets Council at 2 (Mar. 15, 2019) (same).

[14] In addition, the Proposed Rule addressed a number of SEF operational challenges arising from incongruities between the 2013 SEF Rules and existing technology and market practice. Proposed solutions to these operational challenges also received broad support from commenters. The Commission finalized certain of these proposals in a parallel rulemaking.

[15] *See infra* note 23.

[16] For example, the Commission recently codified staff no-action relief related to block trades, error trades, and package transactions. *See* Real-Time Public Reporting Requirements, 85 FR 75422 (Nov. 25, 2020) (codifying stat no-action relief related to block trades). The adopting release codifying staff no-action relief related to package transactions and error trades is available on the Commission's website at *https://www.cftc.gov/media/5276/votingdraft111820b/download.*

[17] CFTC Letter No. 17–67, Re: Extension of No-Action Relief from Commodity Exchange Act Section 2(h)(8) for Swaps Executed Between Certain Affiliated Entities that Are Not Exempt from Clearing Under Commission Regulation 50.52 (Dec. 14, 2017) (''NAL No. 17–67''); CFTC Letter No. 16–80, Re: Extension of No-Action Relief from Commodity Exchange Act Section 2(h)(8) for Swaps Executed Between Certain Affiliated Entities that Are Not Exempt from Clearing Under Commission Regulation 50.52 (Nov. 28, 2016); CFTC Letter No. 15–62, Re: Extension of No-Action Relief from Commodity Exchange Act Section 2(h)(8) for Swaps Executed Between Certain Affiliated Entities that Are Not Exempt from Clearing Under Commission Regulation 50.52 (Nov. 17, 2015); CFTC Letter No. 14–136, Re: Extension of No-Action Relief from Commodity Exchange Act Section 2(h)(8) for Swaps Executed Between Certain Affiliated Entities that Are Not Exempt from Clearing Under Commission Regulation 50.52 (Nov. 7, 2014); CFTC Letter No. 14–26, Time-Limited No-Action Relief from the Commodity Exchange Act Section 2(h)(8) for Swaps Executed Between Certain Affiliated Entities Not Electing Commission Regulation § 50.52 (Mar. 6, 2014).

[18] 7 U.S.C. 2(h)(8)(B).

[19] 7 U.S.C. 2(h)(7).

[20] 17 CFR 50.50. Among other things, § 50.50 establishes when a swap transaction is considered to hedge or mitigate commercial risk; specifies how to satisfy the reporting requirement; and exempts small financial institutions from the definition of ''financial entity.'' 17 CFR 50.50.

promulgated the end-user exception final rule.[21]

In contrast to swaps that are eligible for the end-user exception, the Commission's regulations do not specifically exempt from the trade execution requirement swaps that are not subject to the swap clearing requirement based on other statutory authority provisions. Pursuant to its exemptive authority under CEA section 4(c), the Commission promulgated additional exemptions from the clearing requirement for swaps between certain types of entities. Commission regulation 50.51 allows an ''exempt cooperative'' to elect a clearing exemption for swaps entered into in connection with loans to the cooperative's members.[22] Commission regulation 50.52 provides a clearing exemption for swaps between eligible affiliate counterparties.[23]

At the time of the drafting of the Proposed Rule, the Commission was in the process of considering a proposal to codify certain exemptions from the clearing requirement.[24] The Proposed Rule applied the Commission's section 4(c) exemptive authority to create an explicit exemption from the trade execution requirement for any future exceptions to, or exemptions from, the clearing requirement under part 50.[25]

Proposed § 36.1(c) established an exemption to the trade execution requirement for swap transactions for which an exception or exemption has been elected pursuant to part 50. The Proposed Rule also indicated that the trade execution requirement would not apply to swap transactions for which a future exemption has been adopted by the Commission under part 50.

Proposed § 36.1(e) established a separate exemption from the trade execution requirement that may be elected by eligible affiliate counterparties to a swap submitted for clearing, notwithstanding the eligible affiliate counterparties' option to elect a clearing exemption pursuant to § 50.52. Eligible affiliate counterparties may rely on this exemption from the trade execution requirement regardless of their decision not to elect the inter-affiliate clearing exemption and instead clear the swap.

The Commission has determined that these two exemptions are consistent with the objectives of CEA section 4(c). The following sections address the exemptions in turn.

B. Trade Execution Requirement Exemption for Swaps Eligible for a Clearing Requirement Exception or Exemption Under Part 50

1. Summary of Comments

The Commission received several comments on the proposed regulations to codify exemptions to the trade execution requirement for swaps that are not subject to the clearing requirement under part 50. JBA expressed support for the proposed exemption.[26] Citadel also expressed support for the exemption for swap transactions that are currently subject to a clearing exception or exemption. However, Citadel stated that the Commission should not preemptively grant a trade execution requirement exemption for swaps falling under future clearing exceptions or exemptions, but rather should consider additional future trade execution requirement exemptions on a case-by-case basis.[27] In addition, Citadel recommended that participants be required to actually elect the clearing exemption in order to be eligible for the corresponding exemption from the trade execution requirement.

In addition to the proposed exemptions for swaps not subject to the clearing requirement, Blackrock, ISDA, SIFMA, and GFXD requested an exemption from the trade execution requirement that would apply in instances where a SEF outage or system disruption or limited hours of operation prevent participants from complying with the requirement.[28] Some commenters also requested additional exemptions from the trade execution requirement for block trades and package transactions, such as package transactions that include a futures component.[29] Mercaris separately requested exemptions from the trade execution requirement for swaps that are based on new agricultural assets or have a notional value not exceeding $5 billion, on the grounds that the Proposed Rule would have an adverse impact on small swaps broking entities due to its expansion of the types of swaps that are subject to the trade execution requirement (to include all swaps that are required to be cleared) as well as the types of entities that are required to register as SEFs (to include trading platforms operated by swaps broking entities).[30]

2. Final Rule: CEA Section 4(c) Authority and Standards

For the purposes of promoting responsible economic or financial

[21] On May 12, 2020, the Commission proposed a non-substantive change to § 50.50(d). The Commission proposed to move the exception from the clearing requirement for small banks, loan associations, farm credit system institutions, and credit unions under § 50.50(d) to a stand-alone regulation, namely § 50.53. Swap Clearing Requirement Exemptions, 85 FR 27955, 27962–63 (May 12, 2020). The Commission adopted this proposal on November 2, 2020. *See* Swap Clearing Requirement Exemptions, 85 FR 76428 (Nov. 30, 2020). Those regulations are now codified in Commission regulation 50.53.

[22] 17 CFR 50.51. The exemption permits a qualifying exempt cooperative to elect not to clear swaps that are executed in connection with originating a loan or loans for the members of the cooperative, or hedging or mitigating commercial risk related to member loans or arising from swaps related to originating loans for members. 17 CFR 50.51(b)(1)–(2).

[23] 17 CFR 50.52. Counterparties have ''eligible affiliate counterparty'' status if: (i) One counterparty, directly or indirectly, holds a majority ownership interest in the other counterparty, and the counterparty that holds the majority interest in the other counterparty reports its financial statements on a consolidated basis under Generally Accepted Accounting Principles or International Financial Reporting Standards, and such consolidated financial statements include the financial results of the majority-owned counterparty; or (ii) a third party, directly or indirectly, holds a majority ownership interest in both counterparties, and the third party reports its financial statements on a consolidated basis under Generally Accepted Accounting Principles or International Financial Reporting Standards, and such consolidated financial statements include the financial results of both of the swap counterparties. 17 CFR 50.52(a)(1)(i)–(ii). To elect the exemption, such counterparties must also meet additional conditions, including documentation requirements; centralized risk management requirements; reporting requirements; and a requirement to clear outward-facing swaps that are of a type identified in the Commission's clearing requirement (subject to applicable exceptions, exemptions, and alternative compliance frameworks). 17 CFR 50.52(b)–(c).

[24] *E.g.,* Swap Clearing Requirement Exemptions, 85 FR 27955 (May 12, 2020) (proposing to exempt from the clearing requirement swaps entered into by central banks, sovereign entities, international financial institutions (''IFIs), bank holding companies, savings and loan holding companies, and community development financial institutions); Amendments to the Clearing Exemption for Swaps Entered into by Certain Bank Holding Companies, Savings and Loan Holding Companies, and Community Development Financial Institutions, 83 FR 44001 (Aug. 29, 2018). As noted above, the Commission adopted the May 12, 2020 proposal on November 2, 2020. Swap Clearing Requirement Exemptions, 85 FR 76428 (Nov. 30, 2020). *See also* Proposed Rule at 62038 (discussing the proposed exemption from the clearing requirement for swaps entered by eligible bank holding companies, savings and loan holding companies, and community development financial institutions).

[25] Proposed Rule at 62038.

[26] JBA Letter at 4.

[27] Citadel Letter at 40–41.

[28] *See* Comment Letter from Blackrock at 2 (Mar. 15, 2019) (''Blackrock Letter''); Comment Letter from International Swaps and Derivatives Association, Inc. at 11 (Mar. 15, 2019) (''ISDA Letter''); SIFMA Letter at 14; Comment Letter from the Global Foreign Exchange Division of the Global Financial Markets Association at 5 (Mar. 15, 2019) (''GFXD Letter'').

[29] *See* ISDA Letter at 11, Appendix at 5; SIFMA Letter at 13–14; GFXD Letter at 5–6; Tradeweb Letter at 6; FIA Letter at 15, Comment Letter from Vanguard at 2 (Mar. 15, 2019).

[30] Comment Letter from Mercaris at 1–2 (Mar. 4, 2019) (''Mercaris Letter'').

innovation and fair competition,[31] CEA section 4(c) provides the Commission with the authority to exempt any agreement, contract, or transaction from any CEA provision, subject to specified factors. Specifically, the Commission must first determine that (i) the requirement should not be applied to the agreement, contract, or transaction for which the exemption is sought; (ii) the exemption would be consistent with the public interest and the purposes of [the Act]; (iii) the agreement, contract, or transaction at issue will be entered into solely between appropriate persons; [32] and (iv) the agreement, contract, or transaction at issue will not have a material adverse effect on the ability of the Commission or exchange to discharge its regulatory or self-regulatory duties under the Act.[33]

For the reasons stated below, the Commission believes that the trade execution requirement should not be applied to a swap transaction that is eligible for a clearing requirement exception or exemption under part 50, and that the exemption from the trade execution requirement is in the public interest and consistent with the CEA in such circumstances.

The Commission has determined to finalize the exemption largely as proposed, renumbered as § 36.1(b).[34] As modified in this adopting release for additional clarity and consistency, § 36.1(b) will apply to any swap transaction that qualifies for the exception under section 2(h)(7) of the Act or an exception or exemption under part 50 of this chapter, and for which the associated requirements are met.[35] As discussed below, applying the trade execution requirement to swaps that are eligible for an exception to or exemption from the clearing requirement, or are otherwise not subject to the clearing requirement, is not consistent with section 2(h)(8) of the CEA and would impose additional burdens on market participants that would be required to incur the costs and burdens of SEF or DCM onboarding and execution. For example, a counterparty that determines not to clear a swap pursuant to a part 50 exemption, but otherwise remains subject to the trade execution requirement, may be limited in where it may trade or execute that swap and subsequently incur costs and operational burdens related to SEF or DCM onboarding and trading. Therefore, the Commission believes swaps that are excepted or exempted from the clearing requirement should also be exempted from the trade execution requirement.

In response to Citadel's comment that swaps subject to future exemptions from the clearing requirement should not automatically be eligible for an exemption from the trade execution requirement, the Commission notes that Congress expressly chose to link the statutory exemption from the trade execution requirement under CEA section 2(h)(8) to the 2(h)(7) exemption from the clearing requirement. Therefore, as explained elsewhere, the Commission considers it appropriate to follow this statutory intent with respect to the trade execution requirement and recognize that any swaps eligible for an exemption from the clearing requirement should qualify for an exemption from the trade execution requirement. The Commission notes that, consistent with the statutory restrictions on the use of its CEA section 4(c) authority, it has been judicious in issuing clearing exceptions and exemptions, and will continue to be so particularly in light of this linking of clearing exceptions and exemptions with the trade execution exemption.

Additionally, while the Final Rule automatically makes swaps that are eligible for future exemptions from, and exceptions to, the clearing requirement eligible for this exemption from the trade execution requirement, nothing in the Final Rule limits a future Commission's ability to issue new clearing exemptions or exceptions but still require compliance with CEA section 2(h)(8) by amending this exemption. Given the limited nature of these part 50 exceptions and exemptions, the Commission does not believe that this approach with regard to the trade execution requirement will diminish swaps market transparency or liquidity in a manner likely to implicate systemic risk concerns.

Commenters' requests for additional exemptions from the trade execution requirement are outside the scope of the current rulemaking. However, the Commission will take these requests under advisement for future rulemakings.[36]

In its comments, Citadel also recommended that participants be required to elect the clearing exemption in order to be eligible for this exemption from the trade execution requirement. The Commission notes that as proposed, renumbered § 36.1(b) required that the appropriate swap clearing requirement exception or exemption be elected in order to be eligible for this exemption. However, since the Proposed Rule, the Commission has adopted exemptions from the swap clearing requirement under part 50 that do not to need be elected, but rather apply by virtue of the status of a counterparty to the transaction.[37] In particular, the swap clearing requirement exemptions for swaps entered into by central banks, sovereign entities, and IFIs apply by virtue of a counterparty's status as such an entity.

Therefore, the Commission is amending § 36.1(b) to state that section 2(h)(8) of the Act does not apply to a swap transaction that qualifies for an exception under section 2(h)(7) of the Act or one or more of the exceptions or exemptions under part 50 of chapter I of title 17, and for which the associated requirements are met. This amendment will still require, as recommended by Citadel, that, where applicable, the

[31] 7 U.S.C. 6(c)(1). CEA section 4(c)(1) is intended to allow the Commission to ''provid[e] certainty and stability to existing and emerging markets so that financial innovation and market development can proceed in an effective and competitive manner.'' House Conf. Report No. 102–978, 102d Cong. 2d Sess. at 81 (Oct. 2, 1992), *reprinted in* 1992 U.S.C.C.A.N. 3179, 3213.

[32] 7 U.S.C. 6(c)(3). CEA section 4(c)(3) includes a number of specified categories of persons within ''appropriate persons'' that are deemed as appropriate to enter into swaps exempted pursuant to CEA section 4(c). This includes persons the Commission determines to be appropriate in light of their financial profile or other qualifications, or the applicability of appropriate regulatory protections. As noted below, for purposes of the Final Rule's section 4(c) exemptions, the Commission has determined that eligible contract participants as defined in CEA section 1a are ''appropriate persons.''

[33] 7 U.S.C. 6(c)(2). Notwithstanding the adoption of exemptions from the Act, the Commission emphasizes that their use is subject to the Commission's anti-fraud and anti-manipulation enforcement authority. In this connection, § 50.10(a) prohibits any person from knowingly or recklessly evading or participating in, or facilitating, an evasion of CEA section 2(h) or any Commission rule or regulation adopted thereunder. 17 CFR 50.10(a). Further, § 50.10(c) prohibits any person from abusing any exemption or exception to CEA section 2(h), including any associated exemption or exception provided by rule, regulation, or order. 17 CFR 50.10(c).

[34] The Commission recently adopted a final rule which adopted an exemption from the trade execution requirement under § 36.1(a) of the Commission's regulations to establish an exemption to the trade execution requirement for swap transactions that are components of a ''New Issuance Bond'' package transaction. *See supra* note 11.

[35] For avoidance of doubt, the Commission makes clear that swap transactions that qualify for a swap clearing requirement exception or exemption under subparts C and D of part 50, and for which the associated requirements are met, are eligible for the exemption from the trade execution requirement under renumbered § 36.1(b).

[36] In addition, the Commission notes that Mercaris grounded its exemption requests on a concern that the Proposed Rule's expansion of the trade execution and SEF registration requirements would adversely affect small swaps broking entities. Because the Final Rule would not enact either of the changes that Mercaris cited as likely to adversely affect small swaps broking entities, the Commission assumes that Mercaris' exemption requests are inapplicable to the Final Rule.

[37] *See supra* note 24.

relevant swap clearing requirement exception or exemption be elected in order to be eligible for this exemption. In addition, the amendment also reflects, as discussed above, that there are certain swap clearing requirement exemptions that are not required to be elected. However, the Commission notes that consistent with Citadel's comment, this amendment would still require that all associated requirements of the relevant swap clearing requirement exception or exemption be met in order to be eligible for this exemption.

Under § 36.1(b), swap transactions would still be entered into solely between eligible contract participants (''ECPs''),[38] whom the Commission believes, for purposes of this Final Rule, to be appropriate persons. The scope of this exemption is limited and applies to transactions that are already excepted or exempted from the swap clearing requirement. Further, transactions subject to this exemption are still subject to the Commission's reporting requirements under parts 43 and 45. Therefore, the Commission will still be able to conduct oversight and surveillance of the transactions covered by the exemption. For these reasons, the Commission believes that the exemption would not have a material adverse effect on the ability of the Commission or any SEF or DCM to discharge its regulatory or self-regulatory responsibilities under the CEA and the Commission's regulations.

C. Trade Execution Exemption for Swaps Between Eligible Affiliate Counterparties

1. Proposed Rule

The Proposed Rule proposed to create a new § 36.1(e) to establish an exemption from the trade execution requirement for swaps between certain affiliates that are submitted for clearing. Counterparties are eligible to elect the exemption if they meet the conditions set forth under § 50.52(a) for ''eligible affiliate counterparty'' status.[39]

The Commission has previously stated that transactions subject to the inter-affiliate exemption from the swap clearing requirement are exempt from the trade execution requirement.[40] In accordance with time-limited no-action relief granted by Commission staff, counterparties that meet the ''eligible affiliate counterparty'' definition under § 50.52(a), but do not claim the inter-affiliate clearing requirement exemption may execute swaps away from a SEF or DCM that are otherwise subject to the trade execution requirement.[41] CFTC staff has granted relief to address the difficulty cited by market participants in executing inter-affiliate swap transactions through the required methods of execution prescribed for swaps subject to the trade execution requirement under § 37.9, *i.e.,* Order Book and RFQ, and subpart J of part 38 of the Commission's regulations. In particular, executing these transactions via competitive means of execution would be difficult because inter-affiliate swaps generally are not intended to be executed on an arm's-length basis or based on fully competitive pricing.[42] Rather, such swaps are used to manage risk among and between affiliates and are subject to internal accounting processes.

In the 2013 rulemaking adopting the inter-affiliate exemption from the clearing requirement, commenters explained that corporate groups often use a single affiliate to face the swap market on behalf of multiple affiliates within the group, which permits the corporate group to net affiliates' trades. This netting effectively reduces the overall risk of the corporate group and the number of open swap positions with external market participants, which in turn reduces operational, market, counterparty credit, and settlement risk.[43] Market participants have asserted that requiring these swap transactions to be executed through a SEF or DCM would impose unnecessary costs and inefficiencies without any of the related benefits associated with competitive means of execution.[44] Accordingly, the Commission sought through the Proposed Rule to provide permanent relief from the trade execution requirement for eligible affiliate counterparties.

2. Summary of Comments

JBA expressed support for the proposed exemption on the grounds that inter-affiliate transactions ''do not necessarily seek competitive pricing, but are generally based on intra-group risk management and trading strategies.'' [45] Citadel generally supported the proposed exemption but recommended that participants be required to actually elect the clearing exemption in order to be eligible for the corresponding exemption from the trade execution requirement.[46]

3. Final Rule: CEA Section 4(c) Authority and Standard

The Commission believes that exempting an inter-affiliate swap from the trade execution requirement is consistent with the objectives of CEA section 4(c) regardless of whether or not it has been submitted for clearing. For the reasons discussed below, the Commission has determined to finalize this exemption as proposed, renumbered as § 36.1(c).

As noted above, these transactions are not intended to be arm's-length, market-facing, or competitively executed under any circumstance, irrespective of the type of swap involved. Therefore, these transactions would not contribute to the price discovery process if executed on a SEF or a DCM. The statutory purposes of the swaps trading regulatory regime are ''to promote the trading of swaps on swap execution facilities *and* to promote pre-trade price transparency in the swaps market.'' [47] The Commission does not believe that these dual purposes are served by requiring on-SEF trading of swaps that will not contribute to the price discovery process. The Commission therefore agrees with commenters that subjecting these types of transactions to the trade execution requirement confers little if any benefit to the overall swaps market.

The Commission recognizes the efficiency benefits associated with entering into inter-affiliate swaps via internal processes and acknowledges that applying the trade execution requirement to such transactions could inhibit affiliated counterparties from efficiently executing these types of transactions for risk management, operational, and accounting purposes. The Commission therefore believes this trade execution requirement exemption would promote economic and financial innovation by allowing affiliated counterparties to efficiently utilize the risk management approach that best suits their specific needs, including with respect to decisions regarding whether to clear inter-affiliate swaps, without being unduly influenced by whether that choice would require them to execute swaps on a SEF or DCM.

In response to Citadel's comment, the Commission has determined not to require affiliate counterparties to elect the inter-affiliate exemption under § 50.52 in order to claim the

[38] 7 U.S.C. 2(e) (providing that it shall be unlawful for any person, other than an eligible contract participant, to enter into a swap unless the swap is entered into on, or subject to the rules of, a board of trade designated as a contract market).

[39] *See supra* note 23 (describing requirements for meeting ''eligible affiliate counterparty'' status).

[40] MAT Final Rule, 78 FR 33606, 33606 n. 1 (June 4, 2013).

[41] *See supra* note 17.

[42] *See* NAL No. 17–67 at 2.

[43] Clearing Exemption for Swaps Between Certain Affiliated Entities, 78 FR 21750, 21753–54 (Apr. 11, 2013).

[44] NAL No. 17–67 at 2.

[45] JBA Letter at 4.

[46] Citadel Letter at 41.

[47] 7 U.S.C. 7b–3(e) (emphasis added).

concomitant trade execution exemption.[48] Promoting central clearing of standardized swaps is a key objective of the G–20 commitments set out at the 2009 Pittsburgh Summit, as implemented by Section 2(h) of the CEA.[49] A rule requiring counterparties to elect *not* to clear a swap in order to claim a trade execution requirement exemption would frustrate this purpose. Moreover, the Commission finds this exemption appropriate for counterparties that meet the definition of ''eligible affiliate counterparty'' but decide to clear the swap perhaps because they recognize a benefit from clearing or they do not want to satisfy the other conditions of § 50.52 that are required to elect that exemption from the clearing requirement.

As explained previously, the Commission recognizes the benefits of inter-affiliate swap transactions, including their contributions to efficient risk management within corporate groups. Given that inter-affiliate trades are not executed on a competitive basis and therefore do not contribute to meaningful price discovery, the Commission does not believe that subjecting such transactions to the trade execution requirement would provide any benefit to the swaps markets that would justify the costs and burdens of such a requirement, which may discourage corporate groups from using these transactions as part of an effective risk-management strategy.

For these reasons, the exemption from the trade execution requirement for affiliated counterparties is appropriate and consistent with the public interest and purposes of the CEA. This exemption is limited to transactions between eligible affiliate counterparties. The transactions subject to this exemption are still required to be reported under the Commission's regulatory reporting requirements under part 45. Therefore, the Commission will still be able to conduct oversight and surveillance of the transactions covered by the exemption. For these reasons, the Commission does not believe that it would have a materially adverse effect on the ability of the Commission or any SEF or DCM to discharge its regulatory or self-regulatory duties under the CEA. Finally, under the exemption, swap transactions would still be entered into solely between ECPs, whom the Commission believes, for purposes of this Final Rule, to be appropriate persons.

[48] As noted above, the Commission previously determined that swaps for which the counterparties claim the inter-affiliate clearing exemption are not subject to the trade execution requirement. *Supra* note 37 and accompanying text.

[49] *See* Leaders' Statement at the Pittsburgh Summit (Sept. 24–25, 2009), *available at https://www.treasury.gov/resource-center/international/g7-g20/Documents/pittsburgh_summit_leaders_statement_250909.pdf* (stating that standardized derivatives should be centrally cleared and should be traded on exchanges or electronic trading platforms where appropriate).

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') [50] requires Federal agencies, in promulgating regulations, to consider the impact of those regulations on small businesses. The regulations adopted herein will affect SEFs, DCMs, and ECPs. The Commission has previously established certain definitions of ''small entities'' to be used by the Commission in evaluating the impact of its regulations on small entities in accordance with the RFA.[51] The Commission previously concluded that SEFs and DCMs are not small entities for the purpose of the RFA.[52] The Commission has also previously stated its belief that ECPs [53] as defined in section 1a(18) of the CEA,[54] are not small entities for purposes of the RFA.[55]

As noted above, one commenter, Mercaris, stated that the Proposed Rule would have an adverse impact on small swaps broking entities due to its expansion of the types of swaps that are subject to the trade execution requirement (to include all swaps that are required to be cleared) as well as the types of entities that are required to register as SEFs (to include trading platforms operated by swaps broking entities). Mercaris accordingly requested exemptions from the trade execution requirement for swaps that are based on new agricultural assets or have a notional value not exceeding $5 billion, and stated that a failure to provide such exemptions would violate the RFA.[56] Because the Final Rule would not adopt either of the changes that Mercaris cited as having an adverse impact on small swaps broking entities, Mercaris's exemption requests and statements regarding the RFA are inapplicable to the Final Rule.

[50] 5 U.S.C. 601 *et seq.*

[51] 47 FR 18618–18621 (Apr. 30, 1982).

[52] SEF Core Principles Final Rule, 78 FR 33476, 33548 (June 4, 2013) (citing 47 FR 18618, 18621 (Apr. 30, 1982) (discussing DCMs)); 66 FR 42256, 42268 (Aug. 10, 2001) (discussing derivatives transaction execution facilities, exempt commercial markets, and exempt boards of trade); and 66 FR 45604, 45609 (Aug. 29, 2001) (discussing registered derivatives clearing organizations (''DCOs''))).

[53] 17 CFR 37.703.

[54] 7 U.S.C. 1(a)(18).

[55] 66 FR 20740, 20743 (Apr. 25, 2001) (stating that ECPs by the nature of their definition in the CEA should not be considered small entities).

[56] Mercaris Letter at 1–2.

Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the regulations 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'') [57] imposes certain requirements on Federal agencies (including the Commission) in connection with conducting or sponsoring any ''collection of information,'' [58] as defined by the PRA. Among its purposes, the PRA is intended to minimize the paperwork burden to the private sector, to ensure that any collection of information by a government agency is put to the greatest possible use, and to minimize duplicative information collections across the government.[59]

The PRA applies to all information, regardless of form or format, whenever the government is obtaining, causing to be obtained, or soliciting information, and includes required disclosure to third parties or the public, of facts or opinions, when the information collection calls for answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons.[60] The PRA requirements have been determined to include not only mandatory, but also voluntary information collections, and include both written and oral communications.[61]

The Final Rule establishes two exemptions from the trade execution requirement. The Final Rule will not create any new, or revise any existing, collections of information under the PRA. Therefore, no information collection request has been submitted to the Office of Management and Budget for review.

C. Cost-Benefit Considerations

1. Introduction

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 or issuing certain orders.[62] Section 15(a) further specifies that the costs and

[57] 44 U.S.C. 3501 *et seq.*

[58] For purposes of this PRA discussion, the terms ''information collection'' and ''collection of information'' have the same meaning, and this section will use the terms interchangeably.

[59] 44 U.S.C. 3501.

[60] 44 U.S.C. 3502.

[61] 5 CFR 1320.3(c)(1).

[62] 7 U.S.C. 19(a).

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.

2. Background

The Commission is amending § 36.1 to codify two exemptions from the trade execution requirement for swaps. As noted, the trade execution requirement applies to any swap that is subject to the swap clearing requirement and has been ''made available to trade'' by a SEF or DCM pursuant to § 37.10 or § 38.12. The first trade execution requirement exemption applies to a swap transaction that qualifies for an exception to, or exemption from, the clearing requirement under part 50 of the Commission's regulations, and for which the associated requirements are met. The second applies to a swap that is entered into by eligible affiliate counterparties and cleared, regardless of the affiliates' decision not to claim the inter-affiliate clearing exemption under § 50.52 of the Commission's regulations and instead clear the swap.

The baseline against which the Commission considers the costs and benefits of this Final Rule is the statutory and regulatory requirements of the CEA and Commission regulations now in effect, in particular CEA section 2(h)(8) and certain rules in part 37 of the Commission's regulations. The Commission, however, notes that as a practical matter certain market participants, such as eligible affiliates and non-financial end-users, have adopted trade execution practices consistent with this Final Rule based upon statutory provisions or no-action relief provided by Commission staff that is time-limited in nature.[63] As such, to the extent that market participants have relied on statutory provisions to provide an exception from the trade execution requirement or relevant staff no-action relief, the actual costs and benefits of the Final Rule may not be as significant.

In some instances, it is not reasonably feasible to quantify the costs and benefits with respect to certain factors, for example, price discovery or market integrity. Notwithstanding these types of limitations, however, the Commission otherwise identifies and considers the costs and benefits of these rules in qualitative terms. The Commission did not receive any comments from commenters which quantified or attempted to quantify the costs and benefits of the Proposed Rule.

The following consideration of costs and benefits is organized according to the rules and rule amendments adopted in this release. For each rule, the Commission summarizes the amendments and identifies and discusses the costs and benefits attributable to such rule. The Commission, where applicable, then considers the costs and benefits of the rules in light of the five public interest considerations set out in section 15(a) of the CEA.

The Commission notes that this consideration of costs and benefits is based on the understanding that the swaps market functions internationally, with many transactions involving U.S. 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 discussion of costs and benefits below refers to the effects of the Final Rule on all swaps activity subject to the new and amended regulations, whether by virtue of the activity's physical location in the United States or by virtue of the activity's connection with activities in, or effect on, U.S. commerce under CEA section 2(i).[64]

CEA section 2(h)(8) specifies that swap transactions that are excepted from the clearing requirement pursuant to CEA section 2(h)(7) (described in more detail above) are not subject to the trade execution requirement.[65] The Commission adopted requirements under § 50.50 to implement the end-user exception under CEA section 2(h)(7).[66]

The Commission is adopting § 36.1(b) to expressly exempt from the trade execution requirement swaps that are exempt from the clearing requirement pursuant to part 50 of the Commission's regulations. Part 50 exempts from the clearing requirement swaps that have at least one counterparty that is a certain type of entity, including ''exempt cooperatives'', entities that qualify for the statutory end-user exception,[67] and eligible affiliate counterparties.[68] In addition, the Commission recently adopted amendments to part 50 codifying additional clearing exemptions for swaps entered into with certain central banks, sovereign entities, IFIs, bank holding companies, savings and loan holding companies, and community development financial institutions.[69]

3. Benefits and Costs

The Final Rule exempts from the trade execution requirement swap transactions between eligible affiliate counterparties that elect to clear such transactions, notwithstanding their ability to elect the clearing exemption under § 50.52. Under the current rules, inter-affiliate transactions are only exempt from the trade execution requirement if the eligible affiliate counterparties elect not to clear the transaction. However, eligible affiliate counterparties that elect to clear their inter-affiliate transactions are not exempted from the trade execution requirement despite these transactions also not being intended to be price forming or arm's length and therefore may not be suitable for trading on SEFs or DCMs.

Therefore, the Final Rule treats cleared and uncleared inter-affiliate swap transactions the same with respect to the trade execution requirement. The Commission believes that this approach will be beneficial because inter-affiliate swap transactions do not change the ultimate ownership and control of swap positions (or result in netting), and permitting them to be executed internally (provided that they qualify for the clearing exemption under existing § 50.52) may reduce costs relative to requiring that they be executed on a SEF or a DCM. Finally, the Commission believes that this exemption may help ensure that eligible affiliate counterparties are not discouraged from clearing their inter-affiliate swap transactions in order not to have to trade them on SEFs or DCMs subject to the trade execution requirement, which may

[63] *See* NAL No. 17–67.

[64] Section 2(i)(1) applies the swaps provisions of both the Dodd-Frank Act and Commission regulations promulgated under those provisions to activities outside the United States that ''have a direct and significant connection with activities in, or effect on, commerce of the United States[.]'' 7 U.S.C. 2(i). Section 2(i)(2) makes them applicable to activities outside the United States that contravene Commission rules promulgated to prevent evasion of the Dodd-Frank Act.

[65] 7 U.S.C. 2(h)(8)(B).

[66] 17 CFR 50.50. Among other things, § 50.50 establishes when a swap is being used to hedge or mitigate commercial risk and specifies how to satisfy the reporting requirement to elect such an exception from the clearing requirement. 17 CFR 50.50.

[67] This includes the exemption for qualifying banks, savings associations, farm credit system institutions, and credit unions in Commission regulation 50.53.

[68] *See supra* note 23 (describing requirements for meeting ''eligible affiliate counterparty'' status).

[69] *See* Swap Clearing Requirement Exemptions, 85 FR 76428 (Nov. 30, 2020).

have systemic risk benefits.[70] Market participants are currently realizing these benefits pursuant to no-action relief and as discussed below, inter-affiliate volume in cleared swaps executed off-exchange appears to be a significant proportion of the overall swap volume that would be subject to the trade execution requirement in fixed-to-floating interest rate swaps (''IRS'').

In an effort to estimate the scope of the Final Rule, Commission staff reviewed swap transaction data for fixed-to-floating IRS for the week ending September 18, 2020. Staff found that approximately $496 billion notional amount was traded in fixed-to-floating IRS subject to the trade execution requirement (''TER IRS'') during that week.[71] A significant proportion of this volume (approximately $176 billion notional or 35% of the total) was in swap transactions between eligible affiliate counterparties. Of these inter-affiliate trades, approximately $96 billion notional was uncleared and approximately $80 billion notional was cleared. About $3 billion in swap transactions between eligible affiliate counterparties was cleared and executed on-SEF while the remaining $77 billion in cleared inter-affiliate transactions in TER IRS was cleared and traded off-exchange pursuant to no-action relief.

The Final Rule also exempts swap transactions that are excepted or exempted from the clearing requirement under part 50 from the trade execution requirement. The Commission believes that swap transactions which are excepted or exempted from the clearing requirement also benefit from exemption from the trade execution requirement, and that the same reasoning that supports the clearing exemptions supports an explicit exemption from the trade execution requirement. The Commission also believes that exempting these transactions from the trade execution requirement is consistent with CEA section 2(h)(8) and adoption of the Final Rule may reduce transaction costs and may permit some entities to avoid incurring the costs associated with onboarding on a SEF or DCM.

The Commission's staff analysis identified relatively little volume in TER IRS that was marked as being executed by end-users, $760 million notional of which $10 million was traded on-SEF and the rest traded off-exchange. However, it is unclear whether the data captures all the TER IRS trades executed by entities that are trading TER IRS off-exchange pursuant to the no-action relief. In a separate analysis for the recently adopted amendments to part 50, adopting additional clearing exemptions, the Commission found that that final rule exempted only a small fraction of IRS transactions from the clearing requirement.[72] Since only a fraction of IRS transactions are subject to the trade execution requirement, the Commission believes that the scope of swaps subject to this Final Rule is significantly smaller than the scope of swaps subject to the recent amendments to part 50.

The Commission notes that some swap transactions that are subject to the trade execution requirement involving entities that are eligible for existing exemptions (or existing no-action relief) are nevertheless executed on SEFs (as permitted transactions without restrictions on execution method) and all market participants will continue to have the option to execute on SEFs if they determine that they obtain benefits from trading on a SEF voluntarily.

The Commission believes that the exemptions for certain swaps from the trade execution requirement will not impose new costs on market participants or on SEFs and DCMs and, since they are limited in scope and in some instances involve affiliates and thus are not arm's-length transactions, will not significantly detract from price discovery or protection of market participants and the public.

4. Section 15(a) Factors

a. Protection of Market Participants and the Public

The Commission anticipates that the exemptions for certain swaps from the trade execution requirement should not materially affect the protection of market participants and the public. The exemptions finalized today are intended to establish that a limited set of swap transactions which are otherwise subject to the trade execution requirement may occur off-exchange (or on-SEF as permitted transactions). These transactions include inter-affiliate swap transactions and other swap transactions that are exempt under part 50 from the clearing requirement.

b. Efficiency, Competitiveness, and Financial Integrity of the Markets

The Commission anticipates that the exemptions from the trade execution requirement, as discussed above, will maintain the current efficiency of those trades and thus maintain the financial integrity of the counterparties consistent with statutory intent. The Commission believes that the exemptions under part 50 are appropriately tailored and thus, should not materially affect the competitiveness of the swap markets. The Commission does not believe that there would be a benefit to competition in the swap markets if inter-affiliate trades were required to trade on a SEF or on a DCM since these trades merely transfer positions between different entities within the same corporate group.

c. Price Discovery

While, as a general matter, the Commission believes that price discovery in swaps subject to the trade execution requirement should occur on SEFs or DCMs, the Commission nevertheless believes that the exemptions from the trade execution requirement should not materially impact price discovery in the U.S. swaps markets. Most of the transactions eligible for the exemptions, such as inter-affiliate trades, are not price forming, while others involve end-users and similar entities.

d. Sound Risk Management Practices

The Commission anticipates that the exemptions from the trade execution requirement should not significantly impair the furtherance of sound risk management practices because firms using the exemptions should continue to be able to move swap positions between affiliates, and to take advantage of the statutory end-user exception from the clearing requirement as well as the exemptions from the clearing requirement set forth in part 50. The Commission observes that eligible market participants have been engaging in swaps activity consistent with this Final Rule pursuant to statutory provisions or CFTC staff no-action relief and the practice has not been found to impair risk management practices.

e. Other Public Interest Considerations

The Commission has not identified any effects of the rules and the trade execution requirement exemption on other public interest considerations.

[70] The Commission notes that the Division of Market Oversight previously provided no-action relief that mirrors this Final Rule so these benefits may have already been realized. *See* NAL No. 17–67.

[71] Total volume in fixed-to-floating IRS that week was about $1.37 trillion notional.

[72] Specifically, the Commission found using DCO data that during calendar year 2018, 16 IFIs entered an estimated notional amount of $220 billion in uncleared interest rate swaps pursuant to existing no-action relief. During the same time period, eligible bank holding companies and other eligible financial institutions entered an estimated notional amount of $235 million in uncleared interest rate swaps pursuant to existing no-action relief. *See* Swap Clearing Requirement Exemptions, 85 FR 76428, 76435 (Nov. 30, 2020).

5. Consideration of Alternatives

Commenters were generally supportive of the Proposed Rule and section 4(c) exemptions and recommended only one viable alternative.[73] Specifically, Citadel stated that the Commission should not preemptively grant a trade execution exemption for swaps falling under future clearing exemptions, but rather should consider additional future exemptions from the trade execution requirement on a case-by-case basis. The Commission is finalizing the rule automatically granting such exemptions, and as a consequence will consider the costs and benefits in future rulemakings of both any proposed clearing exemption and the associated exemption from the trade execution requirement. Interested persons will have the opportunity to comment on the appropriateness of both exemptions.

D. Antitrust Considerations

CEA section 15(b) 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 Act, in issuing any order or adopting any Commission rule or regulation (including any exemption under section 4(c) or 4c(b)), or in requiring or approving any bylaw, rule, or regulation of a contract market or registered futures association established pursuant to section 17 of the Act.[74]

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 comments on whether the Proposed Rule implicates any other specific public interest to be protected by the antitrust laws. The Commission has considered the Final Rule to determine whether it is anticompetitive and has identified no significant anticompetitive effects. Although the Final Rule exempts certain swaps from the requirement to trade competitively on a SEF or DCM, as noted above, these exemptions are narrowly circumscribed in scope, and the Commission has determined the exemptions to be in the public interest. The Commission also notes that the inter-affiliate transactions exempted under new § 36.1(b) would not be executed on a competitive, arm's-length basis even if they were required to occur on a SEF or DCM.

[73] As discussed above, commenters did recommend several other potential Commission actions that are outside the scope of this rulemaking and are therefore not addressed in this consideration of costs and benefits.

[74] 7 U.S.C. 19(b).

List of Subjects in 17 CFR Part 36

Trade execution requirement.

For the reasons stated in the preamble, the Commodity Futures Trading Commission amends 17 CFR part 36 as follows:

PART 36—TRADE EXECUTION REQUIREMENT

■ 1. The authority citation for part 36 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 5, 6, 6c, 7, 7a–2, and 7b–3, as amended by Titles VII and VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (2010).

■ 2. In § 36.1, add paragraphs (b) and (c) to read as follows:

§ 36.1 Exemptions to trade execution requirement.

* * * * *

(b) Section 2(h)(8) of the Act does not apply to a swap transaction that qualifies for the exception under section 2(h)(7) of the Act or an exception or exemption under part 50 of this chapter, and for which the associated requirements are met.

(c) Section 2(h)(8) of the Act does not apply to a swap transaction that is executed between counterparties that have eligible affiliate counterparty status pursuant to § 50.52(a) of this chapter even if the eligible affiliate counterparties clear the swap transaction.

Issued in Washington, DC, on December 23, 2020, by the Commission.

Christopher Kirkpatrick,

Secretary of the Commission.

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

Appendices to Exemptions From Swap Trade Execution Requirement—Commission Voting Summary and Commissioners' Statements

Appendix 1—Commission Voting Summary

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

Appendix 2—Statement of Concurrence of Commissioner Rostin Behnam

More than two years ago, in November 2018, the Commission voted to propose a comprehensive overhaul of the existing framework for swap execution facilities (SEFs).[1] Today, the Commission issues two rules finalizing aspects of the SEF Proposal and a withdrawal of the SEF Proposal's unadopted provisions. This is the final step in a long road. Last month, the Commission finalized rules emanating from the SEF Proposal regarding codification of existing no-action letters regarding, among other things, package transactions.[2] Today's final rules and withdrawal complete the Commission's consideration of the SEF Proposal.

Back in November 2018, I expressed concern that finalization of the SEF Proposal would reduce transparency, increase limitations on access to SEFs, and add significant costs for market participants.[3] I also noted that, while the existing SEF framework could benefit from targeted changes, particularly the codification of existing no-action relief, the SEF framework has in many ways been a success. I pointed out that the Commission's work to promote swaps trading on SEFs has resulted in increased liquidity, while adding pre-trade price transparency and competition. Nonetheless, I voted to put the SEF Proposal out for public comment, anticipating that the notice and comment process would guide the Commission in identifying a narrower set of changes that would improve the current SEF framework and better align it with the statutory mandate and the underling policy objectives shaped after the 2008 financial crisis.[4] More than two years and many comment letters later, that is exactly what has happened. The Commission has been precise and targeted in its finalization of specific provisions from the SEF Proposal that provide needed clarity to market participants and promote consistency, competitiveness, and appropriate operational flexibility consistent with the core principles.

In addition to expressing substantive concerns about the overbreadth of the SEF Proposal, I also voiced concerns that we were rushing by having a comparatively short 75-day comment period.[5] In the end, the comment period was rightly extended, and the Commission has taken the time necessary to carefully evaluate the appropriateness of the SEF Proposal in consideration of its regulatory and oversight responsibilities and the comments received. I think that the consideration of the SEF Proposal is an example of how the process is supposed to work. When we move too quickly toward the finish line and without due consideration of the surrounding environment, we risk making a mistake that will impact our markets and market participants.

Finally, I would like to address the Commission's separate vote to withdraw the

[1] Swap Execution Facilities and Trade Execution Requirement, 83 FR 61946 (Nov. 30, 2018) (the ''SEF Proposal'').

[2] Swap Execution Facility Requirements (Nov. 18, 2020), *https://www.cftc.gov/PressRoom/PressReleases/8313-20.*

[3] Statement of Concurrence of Commissioner Rostin Behnam Regarding Swap Execution Facilities and Trade Execution Requirement, *https://www.cftc.gov/PressRoom/SpeechesTestimony/behnamstatement110518a.*

[4] *Id.*

[5] *Id.*

unadopted provisions of the SEF Proposal. In the past, I have expressed concern with such withdrawals by an agency that has historically prided itself on collegiality and working in a bipartisan fashion.[6] In the case of today's withdrawal, the Commission has voted on all appropriate aspects of the SEF Proposal through three rules finalized during the past month. The Commission has voted unanimously on all of these rules, including today's decision to withdraw the remainder from further consideration. While normally a single proposal results in a single final rule, in this instance, multiple final rules have been finalized emanating from the SEF Proposal. This could lead to confusion regarding the Commission's intentions regarding the many unadopted provisions of the SEF Proposal. Under such circumstances, I think it is appropriate to provide market participants with clarity regarding the SEF Proposal. Accordingly, I will support today's withdrawal of the SEF Proposal. But rather than viewing it as a withdrawal of the SEF Proposal, I see it as an affirmation of the success of the existing SEF framework and the careful process to markedly improve the SEF framework in a measured and thoughtful way.

Appendix 3—Statement of Commissioner Dan M. Berkovitz

I support the Commission's decision to withdraw its 2018 proposal to overhaul the regulation of swap execution facilities (''SEFs'') [1] (''2018 SEF NPRM'') and proceed instead with targeted adjustments to our SEF rules (''Final Rules''). The two Final Rules approved today will make minor changes to SEF requirements while retaining the progress we have made in moving standardized swaps onto electronic trading platforms, which has enhanced the stability, transparency, and competitiveness of our swaps markets.[2]

When the Commission issued the 2018 SEF NPRM, I proposed that we enhance the existing swaps trading system instead of dismantling it. For example, I urged the Commission to clarify the floor trader exception to the swap dealer registration requirement and abolish the practice of post-trade name give-up for cleared swaps. I am pleased that the Commission already has acted favorably on both of those matters. Today's rulemaking represents a further positive step in this targeted approach.

Many commenters to the 2018 SEF NPRM supported this incremental approach, advocating discrete amendments rather than wholesale changes. Today, the Commission is adopting two Final Rules that codify tailored amendments that received general support from commenters. The first rule—Swap Execution Facilities—amends part 37 to address certain operational challenges that SEFs face in complying with current requirements, some of which are currently the subject of no-action relief or other Commission guidance. The second rule—Exemptions from Swap Trade Execution Requirement—exempts two categories of swaps from the trade execution requirement, both of which are linked to exceptions to or exemptions from the swap clearing requirement.

Swap Execution Facilities: Audit Trail Data, Financial Resources and Reporting, and Requirements for Chief Compliance Officers

Commission regulations require a SEF to capture and retain all audit trail data necessary to detect, investigate, and prevent customer and market abuses, which currently includes identification of each account to which fills are ultimately allocated.[3] Following the adoption of these regulations, SEFs represented that they are unable to capture post-execution allocation data because the allocations occur away from the SEF, prompting CFTC staff to issue no-action relief. Other parties, including DCOs and account managers, must capture and retain post-execution allocation information and produce it to the CFTC upon request, and SEFs are required to establish rules that allow them obtain this allocation information from market participants as necessary to fulfill their self-regulatory responsibilities. Given that staff is not aware of any regulatory gaps that have resulted from SEFs' reliance on the no-action letter, codifying this alternative compliance framework is appropriate.

This Swap Execution Facility final rule also will amend part 37 to tie a SEF's financial resource requirements more closely to the cost of its operations, whether in complying with core principles and Commission regulations or winding down its operations. Based on its experience implementing the SEF regulatory regime, the Commission believes that these amended resource requirements—some of which simply reflect current practice—will be sufficient to ensure that a SEF is financially stable while avoiding the imposition of unnecessary costs. Additional amendments to part 37, including requirements that a SEF must prepare its financial statements in accordance with U.S. GAAP standards, identify costs that it has excluded in determining its projected operated costs, and notify the Commission within 48 hours if it is unable to comply with its financial resource requirements, will further enhance the Commission's ability to exercise it oversight responsibilities.

Finally, this rule makes limited changes to the Chief Compliance Officer (''CCO'') requirements. As a general matter, I agree that the Commission should clarify certain CCO duties and streamline CCO reporting requirements where information is duplicative or not useful to the Commission. Although the CCO requirements diverge somewhat from those for futures commission merchants and swap dealers, the role of SEFs is different and therefore, standardization is not always necessary or appropriate. I expect that the staff will continue to monitor the effects of all of the changes adopted today and inform the Commission if it believes further changes to our rules are needed.

Exemptions From Swap Trade Execution Requirement

Commodity Exchange Act (''CEA'') section 2(h)(8) specifies that a swap that is excepted from the clearing requirement pursuant to CEA section 2(h)(7) is not subject to the requirement to trade the swap on a SEF. Accordingly, swaps that fall into the statutory swap clearing exceptions (*e.g.,* commercial end-users and small banks) are also excepted from the trading mandate. However, the Commission has also exempted from mandatory clearing swaps entered into by certain entities (*e.g.,* cooperatives, central banks, and swaps between affiliates) using different exemptive authorities from section 2(h)(7).

The Exemptions from Swap Trade Execution Requirement final rule affirms the link between the clearing mandate and the trading mandate for swaps that are exempted from the clearing mandate under authorities other than CEA section 2(h)(7). The additional clearing exemptions are typically provided by the Commission to limited types of market participants, such as cooperatives or central banks that use swaps for commercial hedging or have financial structures or purposes that greatly reduce the need for mandatory clearing and SEF trading. In addition, limited data provided in the release indicates that, at least up to this point in time, these exempted swaps represent a small percentage of the notional amount of swaps traded.

This final rule also exempts inter-affiliate swaps from the trade execution requirement. These swaps are exempted from the clearing requirement primarily because the risks on both sides of the swap are, at least in some respects, held within the same corporate enterprise. As described in the final rule release, these swaps may not be traded at arms-length and serve primarily to move risk from one affiliate to another within the same enterprise. Neither market transparency nor price discovery would be enhanced by including these transactions within the trade execution mandate. For these reasons, I am approving the Exemptions from Swap Trade Execution Requirement final rule as a sensible exemption consistent with the relevant sections of the CEA.

Conclusion

These two Final Rules provide targeted changes to the SEF regulations based on experience from several years of implementing them. These limited changes, together with the withdrawal of the remainder of the 2018 SEF NPRM, effectively leave in place the basic framework of the SEF rules as originally adopted by the Commission. This framework has enhanced market transparency, improved competition, lowered transaction costs, and resulted in better swap prices for end users. While it

[6] Rostin Behnam, Commissioner, CFTC, Dissenting Statement of Commissioner Rostin Behnam Regarding Electronic Trading Risk Principles (June 25, 2020), *https://www.cftc.gov/PressRoom/SpeechesTestimony/behnamstatement062520b.*

[1] Swap Execution Facilities and Trade Execution Requirement, 83 FR 61946 (Nov. 30, 2018).

[2] Dissenting Statement of Commissioner Dan M. Berkovitz Regarding Proposed Rulemaking on Swap Execution Facilities and Trade Execution Requirement (Nov, 5, 2018), available at *https://www.cftc.gov/PressRoom/SpeechesTestimony/berkovitzstatement110518a.*

[3] 17 CFR 37.205(a), b(2)(iv).

may be appropriate to make other incremental changes going forward, it is important that we affirm the established regulatory program for SEFs to maintain these benefits and facilitate further expansion of this framework.

I thank the staff of the Division of Market Oversight for their work on these two rules and their helpful engagement with my office.

[FR Doc. 2020–28943 Filed 2–10–21; 8:45 am]

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LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 210

[Docket No. 2020–7]

Treatment of Confidential Information by the Mechanical Licensing Collective and the Digital Licensee Coordinator

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Interim rule.

SUMMARY: The U.S. Copyright Office is issuing an interim rule regarding the protection of confidential information by the mechanical licensing collective and the digital licensee coordinator under title I of the Orrin G. Hatch-Bob Goodlatte Music Modernization Act. After soliciting public comments through a notification of inquiry and a notice of proposed rulemaking, the Office is now issuing interim regulations identifying appropriate procedures to ensure that confidential, private, proprietary, or privileged information contained in the records of the mechanical licensing collective and the digital licensee coordinator is not improperly disclosed or used.

DATES: Effective March 15, 2021.

FOR FURTHER INFORMATION CONTACT: Regan A. Smith, General Counsel and Associate Register of Copyrights, by email at *regans@copyright.gov* or Anna B. Chauvet, Associate General Counsel, by email at *achau@copyright.gov*. Each can be contacted by telephone at (202) 707–8350.

SUPPLEMENTARY INFORMATION:

I. Background

On October 11, 2018, the president signed into law the Orrin G. Hatch–Bob Goodlatte Music Modernization Act (''MMA'') which, among other things, substantially modifies the compulsory ''mechanical'' license for making and distributing phonorecords of nondramatic musical works under 17 U.S.C. 115.[1] It does so by switching from a song-by-song licensing system to a blanket licensing regime administered by a mechanical licensing collective (''MLC''), which became available on January 1, 2021 (the ''license availability date''). In July 2019, the Copyright Office (the ''Office'') designated an entity to serve as the MLC, as required by the MMA.[2] Among other things, the MLC is responsible for collecting and distributing royalties under the blanket license, engaging in efforts to identify musical works embodied in particular sound recordings and to identify and locate the copyright owners of such musical works, and administering a process by which copyright owners can claim ownership of musical works (or shares of such works).[3] It also must ''maintain the musical works database and other information relevant to the administration of licensing activities under [section 115].'' [4] The Office has also designated a digital licensee coordinator (''DLC'') to represent licensees in proceedings before the Copyright Royalty Judges (''CRJs'') and the Office, to serve as a non-voting member of the MLC, and to carry out other functions.[5]

A. Regulatory Authority Granted to the Office

The MMA specifically directs the Office to ''adopt regulations to provide for the appropriate procedures to ensure that confidential, private, proprietary, or privileged information contained in the records of the mechanical licensing collective and digital licensee coordinator is not improperly disclosed or used, including through any disclosure or use by the board of directors or personnel of either entity, and specifically including the unclaimed royalties oversight committee and the dispute resolution committee of the mechanical licensing collective.'' [6] The MMA additionally makes several explicit references to the Office's regulations governing the treatment of confidential and other sensitive information, including with respect to: (1) ''all material records of the operations of the [MLC]''; [7] (2) steps the MLC must take to ''safeguard the confidentiality and security of usage, financial, and other sensitive data used to compute market shares'' when distributing unclaimed accrued royalties; [8] (3) steps the MLC and DLC must take to ''safeguard the confidentiality and security of financial and other sensitive data shared'' by the MLC with the DLC about significant nonblanket licensees; [9] (4) voluntary licenses administered by the MLC; [10] (5) examination of the MLC's ''books, records, and data'' pursuant to audits by copyright owners; [11] and (6) examination of digital music providers' ''books, records, and data'' pursuant to audits by the MLC.[12]

Beyond these specific directives, Congress invested the Office with ''broad regulatory authority'' [13] to ''conduct such proceedings and adopt such regulations as may be necessary or appropriate to effectuate the provisions of [the MMA pertaining to the blanket license].'' [14] The legislative history contemplates that the Office will ''thoroughly review[ ]'' [15] policies and procedures established by the MLC and its three committees, which the MLC is statutorily bound to ensure are ''transparent and accountable,'' [16] and promulgate regulations that ''balance[ ] the need to protect the public's interest with the need to let the new collective operate without over-regulation.'' [17]

Congress acknowledged that ''[a]lthough the legislation provides specific criteria for the collective to operate, it is to be expected that situations will arise that were not contemplated by the legislation,'' and that ''[t]he Office is expected to use its best judgement in determining the

[1] Public Law 115–264, 132 Stat. 3676 (2018).

[2] 84 FR 32274 (July 8, 2019).

[3] 17 U.S.C. 115(d)(3)(C)(i)(V).

[4] *Id.* at 115(d)(3)(C)(i)(IV).

[5] *Id.* at 115(d)(5)(B); 84 FR 32274 (July 8, 2019); *see also* 17 U.S.C. 115(d)(3)(D)(i)(IV), (d)(5)(C).

[6] 17 U.S.C. 115(d)(12)(C).

[7] *Id.* at 115(d)(3)(M)(i) (''The mechanical licensing collective shall ensure that all material records . . . are preserved and maintained in a secure and reliable manner, with appropriate commercially reasonable safeguards against unauthorized access, copying, and disclosure, and subject to the confidentiality requirements prescribed by the Register of Copyrights under paragraph (12)(C) for a period of not less than 7 years after the date of creation or receipt, whichever occurs later.'').

[8] *Id.* at 115(d)(3)(J)(i)(II)(bb).

[9] *Id.* at 115(d)(6)(B)(ii).

[10] *Id.* at 115(d)(11)(C)(iii).

[11] *Id.* at 115(d)(3)(L)(i)(II).

[12] *Id.* at 115(d)(4)(D)(i)(II).

[13] H.R. Rep. No. 115–651, at 5–6 (2018); S. Rep. No. 115–339, at 5 (2018); Report and Section-by-Section Analysis of H.R. 1551 by the Chairmen and Ranking Members of Senate and House Judiciary Committees, at 4 (2018), *https://www.copyright.gov/legislation/mma_conference_report.pdf* (''Conf. Rep.'').

[14] 17 U.S.C. 115(d)(12)(A).

[15] H.R. Rep. No. 115–651, at 5–6, 14; S. Rep. No. 115–339, at 5, 15; Conf. Rep. at 4, 12. The Conference Report further contemplates that the Office's review will be important because the MLC must operate in a manner that can gain the trust of the entire music community, but can only be held liable under a standard of gross negligence when carrying out certain of the policies and procedures adopted by its board. Conf. Rep. at 4.

[16] 17 U.S.C. 115(d)(3)(D)(ix)(I)(aa).

[17] H.R. Rep. No. 115–651, at 5–6, 14; S. Rep. No. 115–339, at 5, 15; Conf. Rep. at 4, 12.

appropriate steps in those situations.'' [18] Legislative history further states that ''[t]he Copyright Office has the knowledge and expertise regarding music licensing through its past rulemakings and recent assistance to the Committee[s] during the drafting of this legislation.'' [19] Accordingly, in designating the MLC as the entity to administer the section 115 license, the Office stated that it ''expects ongoing regulatory and other implementation efforts to . . . extenuate the risk of self-interest,'' and that ''the Register intends to exercise her oversight role as it pertains to matters of governance.'' [20]

B. Rulemaking Background

On September 24, 2019, the Office issued a notification of inquiry (''NOI'') seeking, among other things, public input on any issues that should be considered regarding the treatment of confidential and other sensitive information under the blanket license regime.[21] In response, the Office received suggested regulatory language from both the DLC and the MLC, and a few comments about confidentiality more generally from other stakeholders. The MLC's approach generally proposed requiring the MLC and the DLC to implement confidentiality policies to prevent improper or unauthorized use of various categories of confidential information, but lacked specific requirements for those policies or a proposed definition of ''confidential information.'' [22] By contrast, the DLC contended that the MLC's proposal, by investing the MLC and DLC with broad discretion to implement policies regarding confidentiality, ''would inappropriately redelegate that authority [granted to the Register] to itself and DLC.'' [23] The DLC maintained that the Office's regulations should provide necessary guidance, not merely give the MLC and DLC discretion to create their own policies.[24]

On April 22, 2020, the Office issued a notice of proposed rulemaking (''NPRM'') regarding the treatment of confidential and other sensitive information under the blanket license regime, and solicited public comments on the proposed rule, including comments about the use of confidentiality designations and nondisclosure agreements.[25] Overall, the Office proposed to adopt specific confidentiality regulations in order to assure those providing confidential and commercially sensitive information to the MLC that this information will be protected, as well as ''provide the ground rules for the relationship between DLC, the MLC, and its respective members.'' [26] In response to the proposed rule, the DLC found its ''basic framework'' to be ''sound.'' [27] The MLC noted that ''it is critical that confidential information be maintained with appropriate safeguards,'' and offered proposed adjustments to certain provisions.[28] Another commenter expressed appreciation for the Office's approach ''in distinguishing what is commonly thought of as generic 'confidential information' and what ought to be confidential information for the DLC, [t]he MLC, their respective vendors and in particular the MLC's three Statutory Committees.'' [29]

Having carefully considered the comments and other record materials in this proceeding, the Office is now issuing an interim rule. The Office has determined that it is prudent to promulgate this rule on an interim basis in order to retain added flexibility for responding to unforeseen circumstances. In some cases, the Office has adopted certain provisions in light of conflicting approaches suggested by various stakeholders. At times, the Office has opted for the more conservative approach to new issues presented in this rulemaking to ward against inappropriate disclosure or use of sensitive business information in the first instance, concluding that subsequent adjustment of an overly cautious rule is preferable to later addressing types of information that have already been shared. The Office will consider modifications as needed in response to new evidence, unforeseen issues, or where something is otherwise not functioning as intended as the MLC starts receiving confidential information from digital music providers and copyright owners for purposes of administering the section 115 license.

In issuing this interim rule, the Office is mindful of Congress's overall goals for the MMA to enhance transparency, accountability, and public access to musical work ownership information.[30] The Office thus intends for its interim confidentiality rule to complement separate regulations regarding transparency, accountability, and public accessibility, which were adopted to prescribe the categories of information to be included in the public musical works database and rules related to the usability, interoperability, and usage restrictions of the database, as well as require the MLC to disclose certain categories of information in its statutorily-required annual reports and one-time written public update in December 2021 regarding its operations.[31]

II. Interim Rule

The interim rule adopts certain provisions of the proposed rule and makes a number of adjustments in response to public comments regarding the definition of ''confidential information'' and the use and disclosure of such information.

Because the MMA does not define the term ''confidential,'' the interim rule defines ''confidential information''—both by what it is and what it is *not.* The definition of ''confidential information'' is adjusted to mean sensitive financial or business information disclosed by DMPs, significant non-blanket licensees, or copyright owners (or any of their authorized agents or vendors) to the

[18] H.R. Rep. No. 115–651, at 14; S. Rep. No. 115–339, at 15; Conf. Rep. at 12.

[19] H.R. Rep. No. 115–651, at 14; S. Rep. No. 115–339, at 15; Conf. Rep. at 12.

[20] 84 FR at 32280.

[21] 84 FR 49966, 49973 (Sept. 24, 2019). All rulemaking activity, including public comments, as well as educational material regarding the Music Modernization Act, can currently be accessed via navigation from *https://www.copyright.gov/music-modernization/*. Specifically, comments received in response to the NOI are available at *https://beta.regulations.gov/document/COLC-2019-0002-0001* and comments received in response to the notice of proposed rulemaking are available at *https://beta.regulations.gov/document/COLC-2020-0004-0001.* Guidelines for *ex parte* communications, along with records of such communications, are available at *https://www.copyright.gov/rulemaking/mma-implementation/ex-parte-communications.html*. References to these comments are by party name (abbreviated where appropriate), followed by ''Initial NOI Comment,'' ''Reply NOI Comment,'' ''NPRM Comment,'' ''Letter,'' or ''*Ex Parte* Letter,'' as appropriate.

[22] *See* MLC Initial NOI Comment at 29–30, App. H.

[23] DLC Reply NOI Comment at 27.

[24] *See id.* at 28.

[25] 85 FR 22559 (Apr. 22, 2020).

[26] *Id.* at 22561 (quoting DLC Initial NOI Comment at 3).

[27] DLC NPRM Comment at 1.

[28] MLC NPRM Comment at 2.

[29] Castle NPRM Comment at 1.

[30] *See, e.g.,* 17 U.S.C. 115(d)(3)(E), (e)(20); *id.* at 115(d)(3)(E)(v) (stating the database must ''be made available to members of the public in a searchable, online format, free of charge''); 164 Cong. Rec. S501, 504 (daily ed. Jan. 24, 2018) (statement of Sen. Chris Coons) (''This important piece of legislation will bring much-needed transparency and efficiency to the music marketplace.'').

[31] *See* 37 CFR 210.31, 210.32, 210.33; DLC *Ex Parte* Letter Feb. 24, 2020 (''DLC *Ex Parte* Letter #2'') at 5 (acknowledging that the ''MLC will be under certain legal transparency requirements,'' and that confidentiality regulations should ''not stand in the way of that transparency''); The International Confederation of Societies of Authors and Composers (''CISAC'') & The International Organisation representing Mechanical Rights Societies (''BIEM'') Reply NOI Comment at 2 (stating that ''musical works information populated in the database can include confidential, personal and/or sensitive data, and as such, the Regulations should ensure the required balance between the public interest in having transparent access to such information and the protection of commercially sensitive information and personal data'').

MLC or DLC, as opposed to information provided to the MLC and DLC more generally (*e.g.,* supply contracts). The definition is also adjusted to generally refer to ''information'' (as opposed to ''documents and information'') to clarify that a document containing both confidential and non-confidential information should be extended protection, though the rule retains provisions identifying specific documents that the Office's regulations require to be disclosed (*e.g.,* notices of license) to clarify that they are not subject to the interim rule's restrictions on disclosure and use. As proposed by the MLC, ''confidential information'' does not include any top-level compilation data presented in anonymized format that does not allow identification of such data as belonging to any particular digital music provider, significant nonblanket licensee, or copyright owner. At the DLC's suggestion, the rule creates categories of ''MLC Internal Information'' and ''DLC Internal Information,'' to separately address the use and disclosure of sensitive financial or business information about the MLC's and DLC's internal operations (as opposed to confidential information disclosed *to* the MLC and DLC by third parties).

The interim rule creates various restrictions on the disclosure and use of confidential information by the MLC and DLC, as well as their employees, agents, consultants, vendors, and independent contractors, and members of their boards of directors and committees. In response to concerns about competitive harm that could result from the improper disclosure of confidential information from DMPs and copyright owners, the interim rule states that the MLC and DLC must limit disclosure of confidential information to their employees, agents, consultants, vendors, and independent contractors who are engaged in the entities' respective authorized functions and who require access to confidential information for the purpose of performing their duties during the ordinary course of their work. The MLC and DLC are prohibited from disclosing confidential information to members of their boards of directors and committees, and from using confidential information for any purpose other than their authorized functions under section 115. Consistent with the proposed rule, the MLC and DLC may disclose confidential information to qualified auditors or outside counsel under the statutorily-permitted audits, and to the Office, Copyright Royalty Board, and federal courts, or when such disclosure is required by court order or subpoena, subject to an appropriate protective order. Notwithstanding any restrictions, the rule states that the MLC may fulfill its disclosure obligations under section 115 (*e.g.,* delivering royalty statements to copyright owners or communicating with the DLC). In keeping with the Office's preexisting rule governing comparable royalty statement reporting requirements under the song-by-song section 115 license, the interim rule does not place any confidentiality restrictions on copyright owners once they receive royalty statements from the MLC. The rule clarifies, however, that royalty statements to copyright owners should not include confidential information that does not relate to the recipient copyright owner or relevant songwriter in addition to the minimum information required by the Office's regulations.

Because ''MLC Internal Information'' and ''DLC Internal Information'' do not relate to sensitive business information disclosed by DMPs, significant nonblanket licensees, or copyright owners, the rule does not impose strict disclosure requirements as it does with ''confidential information.'' Instead, it creates categories of individuals to whom the MLC and DLC *may* disclose ''MLC Internal Information'' and/or ''DLC Internal Information'' (subject to a confidentiality agreement), giving the MLC and DLC some flexibility if they decide additional disclosure is necessary. For example, the interim rule states that the MLC may disclose MLC Internal Information to members of the MLC's board of directors and committees, including representatives of the DLC who serve on the board or committees. Should the MLC decide to disclose MLC Internal Information to a contractor, the rule does not prohibit the MLC from doing so; it states that the MLC may disclose MLC Internal Information to other individuals in its discretion, subject to the adoption of reasonable confidentiality policies. The rule contains a parallel provision for the DLC and DLC Internal Information. It also permits representatives of the DLC who serve on the MLC's board of directors or committees and who receive MLC Internal Information to share such information (subject to a confidentiality agreement) with employees, agents, consultants, vendors, and independent contractors of the DLC who require access to MLC Internal Information for the purpose of performing their duties.[32]

These issues are discussed in turn below.

A. Defining ''Confidential Information''

1. ''Confidential Information'' as Defined Under the Proposed Rule

The MMA does not define the term ''confidential.''[33] The proposed rule defined ''confidential information'' as including ''sensitive financial or business information, including information relating to financial or business terms that could be used for commercial advantage'' and ''trade secrets,'' and enumerated categories of information and documents expressly intended by the statute to be covered by the Office's regulations governing the treatment of confidential and other sensitive information,[34] including with respect to''the confidentiality and security of usage, financial, and other sensitive data used to compute market shares,''[35] ''financial and other sensitive data shared'' by the MLC to the DLC about significant nonblanket licensees,[36] and voluntary licenses.[37] The proposed rule also defined ''confidential information'' as including ''sensitive personal information, including but not limited to, an individual's Social Security number, taxpayer identification number, financial account number(s), or date of birth (other than year).''[38]

As these are potentially broad categories, the proposed rule also refined the definition of ''confidential information'' by excluding information that is *not* confidential. Borrowing from current regulations governing SoundExchange in connection with the section 114 license, and as recommended by the DLC, the proposed

[32] In a parallel rulemaking regarding notices of license, notices of nonblanket activity, and reports of usage and payment, the Office expressed an intention to adjust those regulations to directly reference the Office's confidentiality regulations once they had taken effect. 85 FR 58114, 58140 n.365 (Sept. 17, 2020). The Office has now determined that such adjustment is not necessary.

[33] *See* 17 U.S.C. 115(d)(12)(C), (e).

[34] 85 FR at 22562.

[35] 17 U.S.C. 115(d)(3)(J)(i)(II)(bb); *see* H.R. Rep. No. 115–651, at 27 (''Unclaimed royalties are to be distributed based upon market share data that is confidentially provided to the collective by copyright owners.''); S. Rep. No. 115–339, at 24 (same); Conf. Rep. at 20 (same). CISAC & BIEM contend that creators' percentage share should not be made publicly accessible in the database. CISAC & BIEM NPRM Comment at 2. The statute, however, contemplates such information being made publicly available in the database. 17 U.S.C. 115(d)(3)(E)(ii)–(iii).

[36] 17 U.S.C. 115(d)(6)(B)(ii).

[37] *Id.* at 115(d)(11)(C)(iii). Music Artists Coalition (''MAC'') contends that ''data relating to market share determinations and voluntary licenses'' should be publicly shared. MAC Reply NOI Comment at 2–3. The statute, however, specifically contemplates such information being treated as confidential information. *Id.* at 115(d)(3)(J)(i)(II)(bb), (d)(11)(C)(iii).

[38] 85 FR at 22562.

rule stated that ''confidential information'' excludes ''documents or information that may be made public by law'' or ''that at the time of delivery to the [MLC] or [DLC] is public knowledge,'' and that ''[t]he party seeking information from the [MLC] or [DLC] based on a claim that the information sought is a matter of public knowledge shall have the burden of proving that fact.'' [39] Because documents and information may be subsequently disclosed by the party to whom the information would otherwise be considered confidential, or by the MLC or DLC pursuant to participation in proceedings before the Office or Copyright Royalty Judges (including proceedings to redesignate the MLC or DLC), the proposed rule also excluded such information and documents from the definition of ''confidential information.'' [40]

Recognizing that important restrictions on the disclosure of information are cabined by equally significant countervailing considerations of transparency in reporting certain types of information, the proposed rule also excluded the following from the definition of ''confidential information'': Information made publicly available through notices of license,[41] notices of nonblanket activity, the MLC's online database, and information disclosable through the MLC bylaws, annual report, audit report, or the MLC's adherence to transparency and accountability with respect to the collective's policies or practices, including its anti-commingling policy, pursuant to 17 U.S.C. 115(d)(3)(D)(ii), (vii), and (ix).[42] In addition, adopting a suggestion from the MLC, the proposed rule excluded from the meaning of ''confidential information'' any top-level compilation data presented in anonymized format that does not allow identification of such data as belonging to any digital music provider, significant nonblanket licensee, or copyright owner.[43] Finally, the proposed rule clarified that documents or information created by a party will not be considered confidential with respect to usage of that information by the same party (*e.g.*, documents created by the DLC should not be considered confidential with respect to the DLC).[44]

As discussed below, the interim rule adjusts the definition of ''confidential information'' based on public comments.

2. Royalty Statements Provided to Musical Work Copyright Owners by the MLC

The DLC contends that the definition of ''confidential information'' should expressly include ''any sensitive data provided by digital music providers related to royalty calculations (including, but not limited to, service revenues, subscriber counts, and performing rights organization fee information).'' [45] The DLC states that ''statements of account delivered to copyright owners contain highly sensitive information'' such as ''service revenues, subscriber counts, and amounts paid to performing rights organizations,'' and ''this information is competitively sensitive between digital music providers, in that it provides extremely granular detail about each digital music provider's operations and performance.'' [46] The DLC asserts that ''[i]f the Office places *no* restrictions on copyright owners' use of the sensitive digital music provider information they receive from the MLC on statements of account, the Office will have failed to comply with [the] unambiguous congressional direction'' to ensure that confidential, private, proprietary, or privileged information contained in the records of the mechanical licensing collective is not improperly disclosed or used.[47] While recognizing that ''[c]opyright owners are entitled to know how their royalties have been calculated,'' [48] the DLC proposes regulatory language that would require copyright owners' access to be contingent upon ''a written confidentiality agreement with the MLC that is enforceable by the licensee,'' [49] as ''this sensitive data [should] be used only to provide transparency into how mechanical royalties have been calculated and paid,'' and not ''for other, unrelated purposes.'' [50]

By contrast, the MLC, the National Music Publishers' Association (''NMPA''), the Songwriters of North America (''SONA''), and the Future of Music Coalition (''FMC'') maintain that receipt of statements of account should not impose confidentiality restrictions on copyright owners, with SONA ''seek[ing] to ensure that the final confidentiality rule . . . does not become a basis to withhold records from copyright owners, self-published songwriters, and their authorized representatives.'' [51] Likewise, the MLC expressed concern that the proposed rule ''leaves unclear the right of copyright owners to receive the royalty pool calculation information that they have always received in royalty statements.'' [52] The MLC would exclude from the definition of ''confidential information,'' ''[i]nformation concerning the calculation of the payable royalty pool and the per-work royalty allocation under part 385 to be reported in royalty statements to copyright owners under 37 CFR 210.29(c)(1)(vi).'' [53] The MLC also proposes that the ''MLC and the DLC may disclose Confidential Information to'' ''[c]opyright owners, including their agents, whose works were used in covered activities, in connection with royalty payments and statements.'' [54]

[39] *Id.;* DLC Reply Add. at A–20.

[40] 85 FR at 22562.

[41] Consistent with the Office's then-proposed rule regarding notices of license, the definition of confidentiality excluded any addendum to general notices of license that provides a description of any applicable voluntary license or individual download license the digital music provider is, or expects to be, operating under concurrently with the blanket license that is sufficient for the mechanical licensing collective to fulfill its obligations under 17 U.S.C. 115(d)(3)(G)(i)(I)(bb). 85 FR at 22567; *see* 85 FR 22518 (Apr. 22, 2020).

[42] 85 FR at 22562.

[43] *Id.; see* MLC Initial NOI Comment at 30 (proposing that ''the MLC, when providing necessary data to its board or committee Members, will only share proprietary or confidential data as necessary, and in a format that is anonymized and cannot be identified as belonging to any particular copyright owner, in order to prevent any disclosure to potential competitors''); MLC Reply NOI Comment App. at 27.

[44] 85 FR at 22562.

[45] DLC NPRM Comment at 5, Add. A–1.

[46] *Id.* at 4.

[47] *Id.*

[48] *Id.*

[49] *Id.* at 5.

[50] *Id.*

[51] SONA NPRM Comment at 4 (''[R]oyalty recipients need to be able to use and share royalty information with attorneys, financial advisors, and others in order to carry on their business affairs.''); *see* MLC NPRM Comment at 3 (''[T]he Proposed Regulation on confidentiality should be modified to expressly state that information required to be reported by the MLC to copyright owners in . . . statements [of account] is not confidential information.''); NMPA NPRM Comment at 5 (''[T]he Office should revise the proposed rule to make clear that royalty pool information reported by DMPs to the MLC shall not be subject to confidentiality restrictions so that the MLC may report that information to copyright owners, and so that the copyright owners themselves shall not be burdened by restrictions on their use of such information, as is the current practice.''). *See also* FMC NPRM Comment at 1; Alliance for Recorded Music (''ARM'') NPRM Comment at 2 n.1 (both in general accord). One commenter suggests that the MLC should publicly post ''the basic elements of these rate sheets.'' Castle NPRM Comment at 12. In a parallel rulemaking, the Office issued interim regulations setting forth the information that the MLC is required to report in statements to copyright owners. *See* 37 CFR 210.29.

[52] MLC NPRM Comment at 8; *see* MLC NPRM Comment at 7, U.S. Copyright Office Dkt. No. 2020–6, available at *https://beta.regulations.gov/docket/COLC-2020-0003* (''[T]he proposed regulation being addressed in the Confidentiality Proceeding should be revised to provide that information required to be included in royalty statements does not fall under the definition of Confidential Information.'').

[53] MLC NPRM Comment App. at ii.

[54] *Id.* at iv.

While the Office appreciates that DMPs understandably want to ensure that sensitive business information provided to the MLC is not unlawfully or inappropriately disclosed or used, the definition of ''confidential information'' is already inclusive of information that is competitively sensitive as between digital music providers. Indeed, the DLC itself states that this information ''plainly falls within the definition of Confidential Information in the Proposed Rule.'' [55] The Office believes that amending the language to define ''confidential information'' as including ''*any* sensitive data provided by digital music providers related to royalty calculations'' could be overly broad in light of various statutory transparency and disclosure obligations; the suggestion to include ''subscriber counts'' and ''service revenues'' may also overreach as some DMPs are public companies who already disclose this information in financial statements.[56] The Office previously declined to adopt the DLC's proposed definition that included ''*all* the usage and royalty information'' reported by DMPs for this reason.[57] Nonetheless, for clarity, the interim rule includes ''sensitive data provided by digital music providers related to royalty calculations'' in the enumeration of types of confidential information. As explained further below, however, the interim rule also separately addresses the DLC's concerns by imposing restrictions on disclosure of these types of information to MLC board members and others involved with the operation of the mechanical license.

With respect to disclosure of information provided in royalty statements to copyright owners specifically, prior to the MMA, the Office previously considered and rejected the suggestion to place confidentiality requirements on copyright owners receiving statements of account under the section 115 statutory license due to the inclusion of ''competitively sensitive'' information, determining instead that ''once the statements of account have been delivered to the copyright owners, there should be no restrictions on the copyright owners' ability to use the statements or disclose their contents.'' [58] Royalty statements for the section 115 license have been provided to copyright owners for years without the confidentiality restrictions now requested by the DLC. No commenters provided examples of past harm caused by the existing regulations failing to impose such restrictions.[59] Given that an animating goal of the MMA is to facilitate increased transparency and accuracy in reporting payments to copyright owners, the Office reiterates that it sees no compelling reason to deviate from this established policy.[60] Further supporting the Office's conclusion that it should not depart from the status quo, the Office's adopted royalty payment and accounting information reporting requirements similarly ''essentially retain the current rule governing non-blanket section 115 licenses.'' [61] The Office is not persuaded by the DLC's suggestion that the statutory directive to promulgate regulations to avoid information ''in the records of the mechanical licensing collective'' being ''improperly disclosed or used'' counsels differently.[62] Royalty statements are records of, and designed to be provided to, recipient copyright owners, and the statute and legislative history do not suggest that maintaining status quo expectations with respect to copyright owners' receipt of royalty information would fall under the category of improper use.

Accordingly, the interim rule states that once a royalty statement has been delivered to a copyright owner, there are no restrictions on that copyright owner's ability to use the statement or disclose its contents. The Office declines the MLC's proposal to exclude from the definition of ''confidential information,'' ''[i]nformation concerning the calculation of the payable royalty pool and the per-work royalty allocation under part 385 to be reported in royalty statements to copyright owners under 37 CFR 210.29(c)(1)(vi).'' Instead, as discussed below, the rule states that the mechanical licensing collective shall be permitted to prepare and deliver royalty statements to musical work copyright owners (and the contents therein) in accordance with the Office's regulations governing royalty statements, which require ''[a] detailed and step-by-step accounting of the calculation of royalties under applicable provisions of part 385 of this title, sufficient to allow the copyright owner to assess the manner in which the royalty owed was determined and the accuracy of the royalty calculations, which shall include details on each of the components used in the calculation of the payable royalty pool.'' [63] This language is meant to clarify that despite the rule's general restrictions on disclosing confidential information, the MLC is not prevented from preparing and delivering royalty statements to copyright owners. The rule clarifies, however, that royalty statements to copyright owners should not include confidential information that does not relate to the recipient copyright owner or relevant songwriter in addition to the minimum information required by the Office's regulations. As discussed more below, the Office believes the MLC's proposed language that the MLC and DLC may disclose confidential information to ''[c]opyright owners, including their agents, whose works were used in covered activities, in connection with royalty payments and statements'' becomes unnecessary.

3. Information Disclosed by Digital Music Providers, Copyright Owners, and Third Parties

The MLC and FMC suggest that the proposed rule's definition of ''confidential information'' is too broad.[64] Specifically, the MLC contends the definition ''is not limited to information exchanged in connection with the MLC's royalty processing functions, and thus on its face could be read to regulate every aspect of the MLC's and DLC's businesses.'' [65] The MLC maintains that instead, the ''definition should be limited to information disclosed by DMPs, copyright owners, the MLC, or the DLC, and that relate to the MLC's statutory functions, so that it does not inadvertently sweep into its ambit

[55] DLC NPRM at 4.

[56] *See, e.g.,* Press Release, Spotify Technology S.A., Shareholder Letter Q4 2020 (Feb. 3, 2021), *https://s22.q4cdn.com/540910603/files/doc_financials/2020/q4/Shareholder-Letter-Q4-2020_FINAL.pdf*; Spotify Technology S.A, Form 6–K Report of Foreign Private Issuer (2020) *https://s22.q4cdn.com/540910603/files/doc_financials/2020/q3/69e72911-517a-47bb-ab3e-1b1248654d1a.pdf.*

[57] 85 FR at 22561.

[58] *Id.;* 79 FR 56190, 56206 (Sept. 18, 2014); *see* SONA NPRM Comment at 3 (''[S]trongly endors[ing] the Copyright Office's rejection of any confidentiality restrictions on the use of royalty statements issued to copyright owners by the MLC.''). The Office similarly declined to adopt the DLC's proposal that copyright owners (and their designated agents) could receive confidential information, ''so long as they sign an appropriate confidentiality agreement with the MLC.'' 85 FR at 22561; *see* DLC *Ex Parte* Letter #2 at 5; *see* DLC Reply NOI Comment at 28; 37 CFR 380.5(c)(3).

[59] Similarly, the administrative record contains no indicia that direct, voluntary licensing typically include restrictions on the uses of information in royalty statements by copyright owners.

[60] *See* 85 FR at 22561.

[61] *See* 85 FR at 22529; 85 FR 58160, 58162 (Sept. 17, 2020) (''This information is provided to copyright owners under the song-by-song license. It will continue to be reported by DMPs to the MLC as part of their monthly reports of usage, and the MLC intends to pass along this information to copyright owner.'').

[62] DLC NPRM at 4 (citing 17 U.S.C. 115(d)(12)(C)).

[63] 37 CFR 210.29(c)(4)(v).

[64] MLC NPRM Comment at 2; FMC NPRM Comment at 1.

[65] MLC NPRM Comment at 2.

information that the MLC or DLC receives in connection with leasing office space or equipment, requisitioning supplies, or making other contractual arrangements.'' [66] FMC asserts that '' '[f]inancial or business terms that could be used for commercial advantage' is an inherently problematic category definition when some DSPs and some copyright owners have seemed eager to use every piece of available data for their commercial advantage, if they can think of a possible way to do so.'' [67]

The Office agrees that cabining ''confidential information'' to include ''sensitive financial or business information'' disclosed by digital music providers, significant non-blanket licensees, or copyright owners (or any of their authorized agents or vendors) to the mechanical licensing collective or digital licensee coordinator would help reasonably ensure that the Office's regulations apply in relation to the administration of the section 115 statutory license, as opposed to information provided to the MLC and DLC more generally (*e.g.,* supply contracts). The interim rule accordingly adjusts the definition of ''confidential information'' to mean sensitive financial or business information disclosed by digital music providers, significant non-blanket licensees, and copyright owners (or any of their authorized agents or vendors) to the mechanical licensing collective or digital licensee coordinator. With respect to FMC's position that the phrase ''financial or business terms that could be used for competitive disadvantage or be used for commercial advantage'' could apply to data generally—to even non-confidential information—the Office notes that the phrase already modifies ''*sensitive* financial or business information'' to exclude broader types of information, and is also limited by the enumeration of non-confidential information articulated above.

ARM, while asserting that the proposed ''general definition is appropriate,'' asks that the definition specifically include ''information such as royalty rates and other provisions of agreements between recorded music companies and digital service providers.'' [68] The MLC supports ARM's position.[69] In recognition of the need to protect sensitive data in agreements between recorded music companies and DMPs, the interim rule amends the definition of ''confidential information'' to also mean sensitive data concerning agreements between sound recording companies and digital music providers.

At the MLC's suggestion, the proposed rule excluded from the definition of ''confidential information,'' top-level compilation data presented in anonymized format that does not allow identification of such data as belonging to any digital music provider, significant nonblanket licensee, or copyright owner.[70] Both the MLC and DLC incorporated this language into their respective proposed regulatory language,[71] and no commenters objected. Accordingly, the interim rule adopts this aspect of the proposed rule without modification.

Commenters supported the definition of ''confidential information'' including ''information submitted by a third party that is reasonably designated as confidential by the party submitting the information,'' as well as ''usage data and other sensitive data used to compute market shares when distributing unclaimed accrued royalties, sensitive data shared between the MLC and DLC regarding any significant nonblanket licensee, and sensitive data concerning voluntary licenses or individual download licenses administered by and/or disclosed to the MLC.'' [72] In their respective proposals, the MLC and DLC retained the Office's proposed provisions stating that ''confidential information'' does *not* include ''documents or information that are public or may be made public by law or regulation,'' or ''documents or information that may be made public by law or that at the time of delivery to the MLC or DLC is public knowledge.'' [73] By contrast, ARM expresses concern with the phrase ''information that may be made public by law,'' saying it is ''unclear,'' and that ''[w]hen inserted in an exception to the general definition of Confidential Information, that phrase could be read to say that any information the disclosure of which is not otherwise prohibited by law is excluded from the definition of Confidential Information, meaning that information only qualifies as Confidential Information when its disclosure is otherwise prohibited by law.'' [74] The Office believes the language is reasonably clear, and notes that the phrase ''information that may be made public by law'' is meant to cover information for which the Office's own regulations require certain disclosures from DMPs and significant nonblanket licensees that would not be considered confidential. This intention is made clear by subsequent subparagraphs enumerating these categories. After carefully considering these comments, the interim rule retains these aspects of the proposed definition.

Finally, ARM contends that because this rule focuses on the protection of information, ''referring to *documents* uniquely in the exclusions from the definition of Confidential Information creates interpretive issues,'' as documents ''embody information'' and ''a document that contains some Confidential Information should not be excluded from protection simply because it also includes some other information that is excluded from the definition of Confidential Information.'' [75] ARM maintains that ''the exceptions should apply only to information, and not to some potentially broader category of documents.'' [76] The Office agrees that the regulation intends to prevent the improper use or disclosure of confidential information. The Office also agrees that a document containing both confidential and non-confidential information should be extended protection, and did not suggest otherwise when issuing the proposed rule. Rather, the proposed rule identified specific documents (*e.g.,* notices of nonblanket activity) and sources of information (*e.g.,* the public musical works database) for which the Office's regulations require disclosure and to which confidentiality restrictions would not apply.

Accordingly, the Office has adjusted the phrase ''documents or information that are public or may be made public by law or regulation'' to refer solely to ''information.'' By focusing on ''information'' as opposed to ''documents,'' the rule clarifies that the MLC and DLC would be prohibited from disclosing documents containing ''confidential information'' disclosed by digital music providers, significant non-blanket licensees, and copyright owners (or any of their authorized agents or vendors) or third parties that reasonably designate information as confidential—

[66] *Id.*

[67] FMC NPRM Comment at 1.

[68] ARM NPRM Comment at 4; *see id.* at 12–14.

[69] MLC NPRM Comment at 20 (''[C]onfidential information for particular sound recording licensors shall not be disclosed to copyright owners, songwriters or digital music providers.'').

[70] 85 FR at 22562; MLC Initial NOI Comment at 30; MLC Reply NOI Comment App. at 27.

[71] MLC NPRM Comment App. at ii; DLC NPRM Comment Add. at A–2.

[72] 85 FR at 22567; *see* MLC NPRM Comment at 8 (stating that the phrase ''information submitted by a third party that is reasonably designated as confidential by the party submitting the information'' ''can largely be integrated into this definition of Confidential Information''); DLC NPRM Comment Add. at A–1; ARM NPRM Comment at 11.

[73] MLC NPRM Comment App. at i–ii; DLC NPRM Comment Add. at A–1.

[74] ARM NPRM Comment at 5.

[75] *Id.* at 4–5.

[76] *Id.* at 5.

even in cases where the MLC or DLC may have created the underlying documents.[77] The Office is retaining, however, the provisions identifying specific documents that the Office's regulations require to be disclosed (*e.g.,* notices of license, the MLC's annual report) to clarify that they do not embody confidential information, subject to any exceptions included in the relevant regulatory section (*e.g.,* addendums to notices of license, to the extent they provide a description of any applicable voluntary license or individual download license the digital music provider is, or expects to be, operating under concurrently with the blanket license).

4. Personal Information

In response to stakeholder concern about the disclosure of sensitive personal information, particularly relating to copyright owner information,[78] the proposed rule included in the definition of ''confidential information'' ''sensitive personal information, including but not limited to, an individual's Social Security number, taxpayer identification number, financial account number(s), or date of birth (other than year).'' [79] In response, SONA generally agrees with the proposed definition, but believes it ''should explicitly include other instances of 'personal information,' including home address and home phone number.'' [80] CISAC & BIEM maintain that date of birth should be confidential, noting that ''creators often wish to keep [it] confidential in order to protect their image.'' [81]

Having carefully considered these issues, the Office has adjusted the interim rule to include birth year in the definition of confidential information.[82] Because the statute requires the musical works database to make contact information for musical work copyright owners for matched works publicly available,[83] the interim rule includes ''home address or personal email'' in the definition of ''confidential information'' to the extent they are ''not musical work copyright owner contact information as required under 17 U.S.C. 115(d)(3)(E)(ii)(III).'' [84]

5. Information Made Publicly Available to the Office or Copyright Royalty Judges

Under the proposed rule, ''confidential information'' excluded information made publicly available by the MLC or DLC pursuant to participation in proceedings before the Office or Copyright Royalty Judges (including proceedings to redesignate the MLC or DLC).[85] In response, the DLC states that ''if this provision is meant to only cover material that the DLC and MLC have voluntarily (and with appropriate authority) filed in a CRB or Copyright Office docket publicly and without any restrictions, the provision is unnecessary, because by definition such material is not confidential.'' [86] The DLC also contends that the reference ''will lead to considerable confusion,'' as ''[f]ilings in CRB proceedings are governed by comprehensive protective orders, and those orders should determine whether material is or is not confidential.'' [87] ARM similarly asserts that this specific reference to Office and Copyright Royalty Board proceedings should be removed in the definition of ''confidential information,'' as ''[t]he MLC and DLC should not have the power to make other entities' confidential information non-confidential by disclosing it publicly in a proceeding,'' and that rather that an exception to the definition of ''confidential information,'' ''it would be more consistent with protection of third-party confidential information . . . to treat disclosure in proceedings'' through the proposed rule's provision stating that the MLC and DLC may disclose confidential information to ''[a]ttorneys and other authorized agents of parties to proceedings before federal courts, the Copyright Office, or the Copyright Royalty Judges, or when such disclosure is required by court order or subpoena, subject to an appropriate protective order or agreement.'' [88] For its part, the MLC does not object to including this provision.[89]

After consideration, the Office has adjusted this aspect of the proposed rule by eliminating the reference to ''information made publicly available by the mechanical licensing collective or digital licensee coordinator pursuant to participation in proceedings before the Office or Copyright Royalty Judges.'' The Office agrees that this specific reference is not necessary because information is no longer confidential once it has been publicly disclosed voluntarily and without any restrictions (and with appropriate authority). The Office retains the provision that excludes ''information that is public'' from the definition of ''confidential information'' so as to cover authorized public filings by the MLC or DLC with the Office or Copyright Royalty Board.

6. Confidentiality as to a Party's Own Information

In the definition of ''confidential information,'' the proposed rule stated that documents or information created by a party will not be considered confidential with respect to usage of those documents or information by the same party (*e.g.,* documents created by the DLC should not be considered confidential with respect to the DLC).[90] ARM agrees that it ''makes sense'' to ''avoid imposing on the MLC or DLC a duty to protect its own information,'' but advises against implementing this principle as part of the definition of ''confidential information.'' [91] ARM

[77] *See* ARM NPRM Comment at 6 n.7 (stating that restrictions on ''confidential information of a third party (such as a recorded music company)'' should not be lifted ''merely because the MLC or DLC wrote down the third-party confidential information in a new document'').

[78] CISAC & BIEM Reply NOI Comment at 8 (encouraging ''the Office to adopt suitable regulations that aim to protect sensitive and/or private information from public disclosure''); MAC Reply NOI Comment at 2–3 (noting that ''certain information such as . . . personal addresses should obviously be kept out of public documents'').

[79] 85 FR at 22562.

[80] SONA NPRM Comment at 3.

[81] CISAC & BIEM NPRM Comment at 1. CISAC & BIEM also maintain that ''[e]xisting regulations, such as the GDPR, can be used as a reference for the protection of personal data.'' CISAC & BIEM NPRM Comment at 3. While the Office does not disagree that the MLC may used GDPR as a reference, the interim rule does not incorporate GDPR. As noted previously by the Office, the MLC has committed to establishing an information security management system that is certified with ISO/IEC 27001 and meets the EU General Data Protection Regulation requirements, and other applicable laws. 84 FR at 32290 (citing Proposal of Mechanical Licensing Collective, Inc. Submitted in Response to U.S. Copyright Office's December 21, 2018, Notice of Inquiry, at 50 (Mar. 21, 2019). The MLC has also expressed its ''commit[ment] to maintaining robust security to protect confidential user data, and that it contractually requires vendors to maintain robust security to protect confidential information handled for the MLC.'' MLC *Ex Parte* Letter Jan. 29, 2020 (''MLC *Ex Parte* Letter #1'') at 4.

[82] The MLC does not intend to include date of birth in the public musical works database. MLC NOI Comment at 16, U.S. Copyright Office Dkt. No. 2020–8, available at *https://beta.regulations.gov/docket/COLC-2020-0006.* In a parallel rulemaking, the Office issued regulations prohibiting the MLC from including data of birth in the database. *See* 37 CFR 210.31(g).

[83] 17 U.S.C. 115(d)(3)(E)(ii)(III).

[84] In a parallel rulemaking, the Office issued a proposed rule prohibiting the mechanical licensing collective from ''includ[ing] in the public musical works database any individual's Social Security Number (SSN), taxpayer identification number, financial account number(s), date of birth (DOB), or home address or personal email to the extent it is not musical work copyright owner contact information required under 17 U.S.C. 115(d)(3)(E)(ii)(III).'' 85 FR at 58189.

[85] 85 FR at 22562.

[86] DLC NPRM Comment at 7.

[87] *Id.*

[88] ARM NPRM Comment at 6; *see* 85 FR at 22568.

[89] *See* MLC NPRM Comment App. at ii.

[90] 85 FR at 22562.

[91] ARM NPRM Comment at 6.

maintains that, for example, the provision of the proposed rule intending to prevent the MLC and DLC from imposing use and disclosure restrictions on their board members in addition to those contemplated by the regulations "may not achieve its intended effect" if the MLC's own confidential information "is not included in the defined term Confidential Information as to the MLC." [92] ARM contends that "[t]he principle of not restricting an entity's use or disclosure of its own confidential information is typically accomplished in nondisclosure agreements by carefully drafting the substantive provisions so as to limit disclosure and use of other entities' confidential information, rather than one's own," and "[t]hat seems like a preferable approach here." [93] Though not expressly commenting on this issue, in its proposed regulatory language the DLC excludes the paragraph referencing use of a party's own documents or information.[94] For its part, the MLC suggests revising the paragraph to "documents or information concerning a party, to the extent such party authorizes the usage of such documents or information." [95]

The Office has adjusted the interim rule to remove the paragraph referencing "documents or information created by a party" from the definition of "confidential information." Because the definition of "confidential information" has been revised to mean sensitive financial or business information disclosed by digital music providers, significant non-blanket licensees, or copyright owners (or any of their authorized agents or vendors) to the MLC or DLC, and because the rule clearly restricts use and disclosure of such information by the MLC and DLC (as discussed below), this paragraph is no longer necessary. As described below, the Office has also adopted provisions relating to the confidentiality of MLC and DLC internal information. Should the Office learn of instances where a party is prevented from using or disclosing its own confidential information under the regulations, the Office will consider any necessary adjustments.

[92] *Id.*

[93] *Id.*

[94] DLC NPRM Comment Add. at A–2.

[95] MLC NPRM Comment App. at ii.

B. Disclosure and Use of Confidential Information

1. Proposed Rule's Approach to Disclosure and Use of Confidential Information

The proposed rule included various categories of permitted disclosure and use by MLC and DLC employees, board and committee members of the MLC and DLC (and their respective employers), and vendors and agents of the MLC and DLC. Given the somewhat divergent views from the MLC and DLC in response to the NOI, and the need for regulatory language to accommodate unforeseen issues, the proposed rule was intended to provide parity in access to confidential information, rather than hard and fast categories prohibiting disclosure of information relevant to, or accessed by, digital music providers or music publishers.[96] The proposed rule permitted the following disclosures, while requiring all individuals receiving confidential information to execute a written confidentiality agreement: [97]

- Employees of the MLC or DLC may receive confidential information.
- Agents, consultants, vendors, and independent contractors of the MLC or DLC may receive confidential information, only when necessary to carry out their duties.
- Other individuals authorized by the MLC may receive confidential information, but only to the extent necessary for such persons to know such information and only when necessary for the MLC to perform its duties.
- Non-DLC members of the MLC's board or statutory committees as well as DLC representatives on the MLC's board or statutory committees may receive confidential information only on a need-to-know basis and to the extent necessary to carry out their duties.
- The MLC and DLC may disclose confidential information to qualified auditors or outside counsel under the statutorily-permitted audits.[98]
- The MLC and DLC may disclose confidential information to the Office, Copyright Royalty Board, and federal courts by parties to their proceedings, or when such disclosure is required by court order or subpoena, subject to an appropriate protective order.
- DLC representatives who serve on the board of directors or committees of the MLC may share confidential information with individuals:
  - Serving on the board of directors and committees of the DLC, but only to the extent necessary for such persons to know such information and only when necessary to carry out their duties for the DLC.
  - Employed by DLC members, only to the extent necessary for such persons to know such information and for the DLC to perform its duties.

[96] *See* 85 FR at 22564.

[97] 85 FR at 22567.

[98] The MMA expressly permits audits by copyright owners of the MLC's "books, records, and data," 17 U.S.C. 115(d)(3)(L)(i)(II), and by the MLC of digital music providers' "books, records, and data," *id.* at 115(d)(4)(D)(i)(II).

The proposed rule included the following use restrictions for confidential information: [99]

- The MLC, including its employees, agents, consultants, vendors, independent contractors, and non-DLC members of the MLC board of directors or committees, shall not use any confidential information for any purpose under than for section 115 activities for the MLC.[100]
- The DLC, including its employees, agents, consultants, vendors, independent contractors, members of the DLC board of directors or committees, and DLC representatives serving on the board of directors or committees of the MLC, shall not use any confidential information for any purpose other than section 115 activities for the DLC.[101]
- Individuals employed by DLC members who receive confidential information from DLC representatives would be prohibited from using confidential information for any purpose other than for work performed during the ordinary course of business for the DLC or MLC.

2. Interim Rule—Disclosure of Confidential Information

Comments in response to disclosure requirements under the proposed rule were mixed. As discussed below, the DLC objected to this aspect of the proposed rule, maintaining that members of the MLC's board of directors and committees should not have access to DMP-specific information relating to sensitive financial or business information. By contrast, the MLC

[99] 85 FR at 22567.

[100] The specific provision stated that they "shall not use any Confidential Information for any purpose other than determining compliance with statutory license requirements, royalty calculation, collection, matching, and distribution, and activities related directly thereto, in performing their duties during the ordinary course of their work for the MLC." *Id.*

[101] The specific provision stated that they "shall not use any Confidential Information for any purpose other than determining compliance with statutory license requirements, royalty calculation, collection, matching, and distribution, and activities related directly thereto, in performing their duties during the ordinary course of their work for the DLC." *Id.*

asserted that MLC governance requires seeing DMP-specific information, subject to appropriate written confidentiality agreements and the restriction that they not see information relating to specific, identified copyright owners. Other commenters supported either a more limited or a broader approach. These comments are discussed in turn below.

The DLC contends that ''it is absolutely critical that the Office maintain a strict firewall between the MLC Board and the sensitive information provided by digital music providers to the MLC,'' [102] and that ''[i]t would likewise be inappropriate for the MLC Board to gain information about the identity of digital music providers' voluntary license partners, or the terms of those licenses.'' [103] The DLC suggests that the MLC's forty employees ''are the ones who should be running the day-to-day operations of the MLC, and reporting high-level, anonymized, aggregate information to the Board, sufficient for the Board to engage in oversight.'' [104] The DLC states that ''the MMA requires the MLC's officers to be independent of the Board, prohibiting anyone serving as an officer of the MLC to simultaneously 'also be an employee or agent of any member of the board of directors of the collective or any entity represented by a member of the board of directors,' '' and that ''[i]t would be improper for MLC Board members to circumvent this restriction by becoming directly involved in the day-to-day operations of the MLC, especially if it means demanding special access to commercially sensitive information from digital music providers as a result.'' [105] The DLC expresses concern about music publishers serving on the MLC Board and having access to sensitive financial and business information about DMPs, as they would ''gain a special advantage in any commercial negotiations with [a] digital music provider,'' which ''harms both the digital music providers, and (crucially) publishers that do not serve on the Board, who will be at a competitive disadvantage.'' [106]

The DLC proposes that ''[a]t most, members of MLC and DLC boards and committees should be given access only to aggregated and anonymized data—a category of information that the Proposed Rule already excludes from the definition of Confidential Information.'' [107] The DLC also argues that ''the final rule needs to address in some manner the confidentiality of information that the MLC and DLC themselves generate as part of their own operations, while maintaining the ability for DLC members to get and share information related to MLC operations.'' [108] To achieve this, the DLC proposes creating categories of ''MLC Internal Information'' and ''DLC Internal Information'' that may be more widely shared amongst the MLC and DLC because these categories would encompass information that ''may be confidential from the perspective of the MLC and DLC,'' but do not include ''information specific to a particular digital music provider or licensee,'' and so are ''less likely to create a risk that the Office expressed concern about—of 'confidential information from being misused by competitors for commercial advantage.' '' [109]

The DLC's proposal would also specify conditions under which DLC members of the MLC board and committees could ''share information *about MLC operations* with its membership, and with appropriate personnel within DLC member companies,'' as well as DLC activities.[110] Under the DLC's approach, the MLC could share MLC Internal Information with representatives of the DLC who serve on the board of directors or committees of the MLC, only to the extent necessary for such persons to know such information, only when necessary to carry out their duties for the DLC, and subject to an appropriate written confidentiality agreement.[111] The DLC proposes that DLC recipients of this information may further share such MLC Internal Information with (1) employees, agents, consultants, vendors, and independent contractors of the DLC, only to the extent necessary for the purpose of performing their duties during the ordinary course of their work for the DLC, only to the extent necessary for such persons to know such information, subject to an appropriate written confidentiality agreement; (2) individuals serving on the board of directors and committees of the DLC, only to the extent necessary for such persons to know such information and only when necessary to carry out their duties for the DLC, subject to an appropriate written confidentiality agreement; and (3) individuals otherwise employed by members of the DLC, only to the extent necessary for such persons to know such information and only when necessary for the DLC to perform its duties, subject to an appropriate written confidentiality agreement.[112] DLC Internal Information could be shared with members of the DLC board of directors and committees, subject to an appropriate written confidentiality agreement.[113]

By contrast, the MLC contends that it would not ''be appropriate to promulgate a regulation that prevents the MLC's governance from seeing DMP-specific information, subject to appropriate written confidentiality agreements and the restriction that they not see information relating to specific, identified copyright owners.'' [114] The MLC asserts that ''because the MLC board oversees the blanket license administration and administrative assessment collection processes, [it] must be able to be informed as to compliance with these processes,'' and that because ''compliance is an individual DMP issue, not an industry

[102] DLC *Ex Parte* Letter Oct. 14, 2020 (''DLC *Ex Parte* Letter #6'') at 5; *see id.* (''This is particularly so because, in addition to the regular usage and royalty reporting that digital music providers will provide to the MLC the Office's interim rule gives the MLC access to a broad range of additional information through the records of use provision.'').

[103] *Id.* at 6.

[104] *Id.* (citation omitted).

[105] *Id.* (quoting 17 U.S.C. 115(d)(3)(D)(viii)).

[106] *Id.*

[107] DLC NPRM Comment at 6.

[108] *Id.* at 5.

[109] *Id.* at 6–7 (quoting 85 FR at 22564). The DLC proposes defining ''MLC Internal Information'' as ''sensitive financial or business information created or collected by the mechanical licensing collective for purposes of its internal operations, such as personnel, procurement, or technology information.'' DLC *Ex Parte* Letter Dec. 11, 2020 (''DLC *Ex Parte* Letter #8'') at 5. The DLC also proposes that ''MLC Internal Information'' would be subject to certain exclusion provisions in the proposed rule so as not to include documents or information that are public or may be made public as well as top-level compilation data presented in anonymized format. DLC *Ex Parte* Letter #8 at 5. The DLC similarly proposes a category of information called ''DLC Internal Information'' to cover sensitive financial or business information created or collected by the digital licensee coordinator for purposes of its internal operations. DLC NPRM Comment at 6–7, Add. A–2–A–3; DLC *Ex Parte* Letter #8 at 5.

[110] DLC NPRM Comment at 5.

[111] *Id.* at Add. A–3. As discussed more below, the DLC proposes that confidentiality agreements covering MLC Internal Information may be executed by the employers of the DLC representatives serving on the MLC board of directors or committees. DLC NPRM Comment at 3, Add. A–3.

[112] DLC NPRM Comment Add. at A–3.

[113] *Id.* In response to the NOI, the DLC initially proposed making a category of information called ''MLC *Confidential* Information'' available to DLC representatives serving on the boards or committees of the MLC, which the DLC defined as ''any non-public financial or business information created by the mechanical licensing collective.'' DLC Reply NOI Comment Add. at A–22 (emphasis added). In the NPRM, the Office noted that ''without more background, the Office [was] not sure this approach [was] advisable. It was not immediately clear to the Office whether the MLC would be able to recreate information that would otherwise not be accessible to board and committee members, and so the Office tentatively conclude[d] that the proposed rule offer[ed] a reasonable alternative.'' 85 FR at 22564 n.55.

[114] MLC *Ex Parte* Letter Oct. 15, 2020 (''MLC *Ex Parte* Letter #9'') at 2.

issue, it is critical that the MLC governance be informed at the DMP level, not just the industry-aggregate level.'' [115] Regarding the MLC's committees, the MLC ''envisions that the Unclaimed Royalties Oversight Committee would review DMP-specific data'' to ''create policies and procedures to minimize the incidence of unclaimed accrued royalties,'' such as ''specific examples of potential matches to get a concrete understanding of what types of results fall into different confidence levels'' when analyzing matching performance and confidence levels.[116] Finally, regarding the DLC's proposed categories of ''MLC Internal Information'' and ''DLC Internal Information,'' the MLC maintains they are ''unnecessary'' because the ''MLC and DLC can control disclosures of their internal information through appropriate written confidentiality agreements.'' [117]

Instead, to ''ensure that the MLC board and committee members shall not receive inappropriate confidential information,'' the MLC proposes language to ''clarif[y] . . . that no copyright owners or songwriters (which captures all of the MLC's directors and committee members, except for those representing DMPs) will be shown confidential information of other copyright owners,'' and that digital music providers should ''not receiv[e] information concerning competitors.'' [118] The MLC maintains that ''neither DLC appointees, nor publisher or songwriter representatives should be permitted to share confidential information received in their roles as MLC board or committee members with their employers,'' [119] and that allowing ''disclosure[s] to employers by any board or committee member, including DLC appointees, would raise significant competitive concerns and jeopardize the MLC's ability to control, and ensure against, unfettered dissemination of confidential or competitively sensitive information.'' [120] The MLC also contends that ''MLC board and committee members, regardless of the identity of their employer (*i.e.,* whether a DMP, a publisher, a songwriter or a trade organization) should be subject to the same, strict provisions concerning the confidential information received in connection with their board or committee engagement.'' [121] The MLC contends that the proposed conditions limiting access to information only ''where necessary to carry out their duties'' and ''during the ordinary course of their work'' is ''confusing and unnecessary,'' and suggests that ''[i]f use of the information is limited to the performance of the MLC's statutory functions, that should be sufficient.'' [122] The MLC says these phrases also ''create[ ] the argument that MLC vendors or contractors would have to use an alternate procedure to perform work without using Confidential Information if such was possible, even where it would be highly inefficient and costly.'' [123]

Other comments regarding access of MLC and DLC board and committee members, and DLC member employers, to confidential information generally supported a more limited approach. CISAC & BIEM assert that ''[w]hile there is certainly a need for the DLC to access certain Confidential Information to perform its duties, disclosure to individual employees of DLC members is not justified.'' [124] Similarly, ARM argues that ''it is not apparent that there is any need for board and committee members to share confidential information with their employers, except . . . to give them access to MLC confidential information to obtain feedback concerning operational policies.'' [125] To ARM, ''[i]t is not apparent that the MLC board would ever need to discuss confidential information of particular third-party companies,'' and ''even in the context of considering whether to authorize an enforcement action by the MLC against a particular DMP, it would seem sufficient for the MLC board to understand that MLC management believes the DMP underpaid royalties by a certain aggregate amount.'' [126] NMPA recommended that the Office's regulations adopt the same standard for all board and committee members,[127] and stated that ''DLC representatives on the MLC board and [committees] may have access to a host of sensitive confidential information that, if provided to their employers, could put music publishers and DMPs that are not members of the DLC at a competitive disadvantage.'' [128] Noting that the MLC's statutorily-created Operations Advisory Committee ''is made up of various operations technology experts at the DMPs and music publishers'' who were ''presumably selected for their roles precisely because they have the relevant subject matter expertise,'' NMPA further stated that because ''DLC representatives work for technology companies,'' they ''are far less likely to need to 'solicit additional subject matter expertise' on 'technical considerations' from another individual employed by his or her DMP employer than might a music publisher representative on the MLC board or a committee.'' [129]

In contrast, the Songwriters Guild of America, Inc. (''SGA'') and the Society of Composers & Lyricists (''SCL'') proposed a broader approach whereby ''[n]on-DLC members on the MLC board of directors or committees may receive Confidential Information from the MLC subject to an appropriate written

[115] *Id.; see also id.* at 3 (stating that ''it is appropriate and necessary for the MLC to be permitted to share'' information about specific DMP interactions with the MLC regarding ''certifications, efforts obligations, or other reporting or royalty payment obligations,'' and that such information ''can be essential context for substantial decisions as to compliance that the board is tasked in the MMA with overseeing, such as whether to audit, notice a default or take other action against a DMP'').

[116] *Id.* at 2. The MLC does not anticipate its Dispute Resolution Committee or the Operations Advisory Committee needing to view DMP-specific data. *Id.* at 3.

[117] *Id.* at 4.

[118] MLC NPRM Comment at 19; *see id.* at 16 (''[J]ust as music publisher employees who sit on the MLC board or committees should not be permitted to share with their publisher employers confidential information provided to the MLC by competitors of such employer (which the Proposed Regulation does not allow), a DLC appointee employed by a DMP should not be permitted to share with their DMP employer confidential information provided to the MLC by a competitor of such DMP employer.'').

[119] *Id.* at 5.

[120] *Id.* at 15; *see also id.* at 16–17 (''Each DLC appointee was specifically chosen for his or her knowledge and expertise in the relevant subject matter (*e.g.,* individuals chosen to serve on the operations advisory committee have technological and operational expertise),'' and ''[i]t would be wholly inappropriate to grant these individuals discretion to share the confidential information of copyright owners and other DMPs with any of more than a million people.'').

[121] *Id.* at 19.

[122] *Id.* at 12.

[123] *Id.*

[124] CISAC & BIEM NPRM Comment at 2; *see also id.* (''[A]ny disclosure of Confidential Information should at all times (i) be justified by a 'need-to-know' basis, and (ii) be very strictly interpreted in connection to the performance of the relevant duties. Furthermore, (iii) any individual receiving the Confidential Information should always be obliged to execute a Non-Disclosure Agreement ('NDA').'').

[125] ARM NPRM Comment at 7–8; *see also* ARM NPRM Comment at 7 (''[T]he MLC simply should not have information about sound recording royalties to share with board and committee members and the like.''); *id.* (''If the MLC were to have access to such information, that kind of information should be protected either through an additional category of Highly Confidential Information that would include recorded music company deal terms and other third-party competitively sensitive information and could not be shared with such persons or through an equivalent mechanism (such as simply prohibiting disclosure of that type of Confidential Information to such persons).'').

[126] *Id.* at 7; *see id.* (noting that MLC committee members' roles ''seem directed to setting policy, rather than digging into the details of particular companies' activities'').

[127] NMPA NPRM Comment at 3.

[128] *Id.* at 2 (providing music publisher market share data as an example).

[129] *Id.* at 3.

confidentiality agreement,'' and ''Confidential Information may be withheld from such members only in those instances in which it is demonstrably unnecessary for such persons to know such information in the course of carrying out their duties for the MLC.'' [130]

i. Disclosure of Confidential Information to Mechanical Licensing Collective and Digital Licensee Coordinator Persons and Entities

After carefully considering these comments, the Office concludes that taking a more conservative approach to new issues presented in this rulemaking regarding the protection of sensitive financial or business information disclosed by digital music providers, significant non-blanket licensees, and copyright owners (or any of their authorized agents or vendors) to the mechanical licensing collective or digital licensee coordinator is appropriate. Although the MLC advocates for a generally more open approach than the DLC, both entities acknowledge that improper disclosure of confidential information could be harmful.[131] It is not apparent that the MLC's board of directors must access *DMP-specific* confidential information in order to generally supervise and ''manage the business and affairs of the Collective;'' [132] as also raised by the MLC, the Office is mindful of the need to ''control, and ensure against, unfettered dissemination of confidential or competitively sensitive information.'' [133] The Office is inclined to agree with the DLC that although the MLC's officers should be overseen by the MLC's board of directors, the officers should be able to operate generally independently on a day-to-day basis, including when considering information that would be competitively sensitive if disclosed to MLC directors.[134] As noted above, the interim rule adopts the MLC's proposal of excluding from the meaning of ''confidential information'' any top-level compilation data presented in anonymized format that does not allow identification of such data as belonging to any digital music provider, significant nonblanket licensee, or copyright owner.[135] Accordingly, members of the MLC's board of directors (and committees) will still receive aggregated data to know how the blanket license is functioning and whether remedial actions may be necessary (*e.g.,* the collective's matching rates and distribution times, royalty collection and distribution, budgeting and expenditures, aggregated royalty receipts and payments). As to the MLC's examples for which it proposes that access to DMP-specific confidential information would be necessary (*i.e.,* whether to audit, notice a default, or take other action against a DMP), the Office expects that the collective would be able to notify the MLC's board of directors of such situations without needing to disclose granular details regarding the DMP's sensitive financial or business information. To the extent future developments challenge this assumption, the Office believes the more prudent approach is to consider whether easing of restrictions is appropriate, as opposed to tightening up disclosure rules after the fact. Once the MLC has progressed in its administration of the blanket license, if there are concrete, specific examples of situations where members of the MLC or DLC boards or committees find themselves requiring access to certain information to fulfill their duties but are prohibited such access under the interim rule, the Office will consider adjustment of its regulations.

Against this backdrop, the interim rule takes the following approach. The mechanical licensing collective shall limit disclosure of confidential information to its employees, agents, consultants, vendors, and independent contractors who are engaged in the collective's authorized functions under 17 U.S.C. 115(d) and activities related directly thereto and who require access to confidential information for the purpose of performing their duties during the ordinary course of their work for the mechanical licensing collective, subject to an appropriate written confidentiality agreement.[136] In response to the MLC's concern regarding the phrase ''only when necessary to carry out their duties'' being interpreted to require vendors or contractors to use an alternate procedure to perform work without using confidential information if possible (even where it would be highly inefficient and costly), the Office changed the language to read ''require access to Confidential Information for the purpose of performing their duties.'' [137] The interim rule includes this language because not all employees, agents, consultants, vendors, and independent contractors of the MLC and DLC will need access to confidential information (or the same types of confidential information) to perform their jobs (*e.g.,* receptionists answering telephones for the MLC's office).[138]

For the reasons discussed, the interim rule precludes the mechanical licensing collective from disclosing confidential information to members of its board of directors or committees, including the collective's Unclaimed Royalties Oversight Committee, or the DLC's board of directors or committees. Recipients of confidential information from the MLC shall not disclose such confidential information to anyone else except as expressly permitted in the Office's regulations, with an exception for qualified auditors or outside counsel conducting statutorily-permitted audits, or attorneys and other authorized agents of parties to proceedings before federal courts, the Copyright Office, or the Copyright Royalty Judges, or when such disclosure is required by court order or subpoena (discussed below).

For parity, the interim rule states that the digital licensee coordinator shall limit disclosure of confidential information to its employees, agents, consultants, vendors, and independent contractors who are engaged in the digital licensee coordinator's authorized functions under 17 U.S.C. 115(d)(5)(C) and activities related directly thereto, and require access to confidential information for the purpose of performing their duties during the

[130] SGA & SCL NPRM Comment at 2.

[131] *See* DLC *Ex Parte* Letter #6 at 6; MLC NPRM Comment at 5, 15.

[132] *See* The MLC, The MLC Bylaws, *https://themlc.com/sites/default/files/2020-05/Bylaws%20of%20The%20MLC.pdf* (last visited Feb. 6, 2021).

[133] MLC NPRM Comment at 15.

[134] *See* 17 U.S.C. 115(d)(3)(D)(viii); Conf. Rep. at 4 (''To ensure that the [MLC's] officers are independent, individuals serving as officers of the collective may not, at the same time, also be an employee or agent of any member of the collective's Board of Directors or any entity represented by a member of the collective's Board of Directors.'').

[135] *See* MLC Initial NOI Comment at 30.

[136] *See* MLC *Ex Parte* Letter #9 at 5 (proposing general approach). The Office also adjusted some provisions of the interim rule to focus on *disclosure* rather than receipt of information, as the MLC requested. *See* MLC NPRM Comment at 3 (''A regulation governing the treatment of confidential information, like a confidentiality or nondisclosure agreement, should regulate disclosure, not receipt, of such information, as the party disclosing the information is in the best position to control dissemination of, and to protect, confidential information . . . .'').

[137] *See* 37 CFR 380.5(c)(1) (requiring SoundExchange to limit access to confidential information to ''employees, agents, consultants, and independent contractors of the Collective, subject to an appropriate written confidentiality agreement, who are engaged in the collection and distribution of royalty payments hereunder and activities related directly thereto who require access to the Confidential Information for the purpose of performing their duties during the ordinary course of their work''); *id.* at 380.24(d)(1) (similar); *id.* at 380.34(d)(1) (similar).

[138] As discussed below, regarding disclosure of MLC Internal Information, the Office made similar adjustments with respect to receipt of such information by parties performing work for the DLC.

ordinary course of their work for the digital licensee coordinator, subject to an appropriate written confidentiality agreement. The interim rule also states that the digital licensee coordinator shall not disclose confidential information to members of the digital licensee coordinator's board of directors or committees, or the mechanical licensing collective's board of directors or committees. Recipients of confidential information from the DLC shall not disclose such confidential information to anyone else except as expressly permitted in the Office's regulations, with an exception for qualified auditors or outside counsel conducting statutorily-permitted audits, or attorneys and other authorized agents of parties to proceedings before federal courts, the Copyright Office, or the Copyright Royalty Judges, or when such disclosure is required by court order or subpoena (discussed below).

Notwithstanding the above restrictions, the interim rule clarifies that the mechanical licensing collective shall continue to fulfill its disclosure obligations under section 115 including, but not limited to, delivering royalty statements to copyright owners [139] and providing monthly reports to the digital licensee coordinator identifying any significant nonblanket licensees that are not in compliance with the Office's regulations regarding notices of nonblanket activity and reports of usage for the making and distribution of phonorecords of nondramatic musical works.[140] Because royalty statements could be confidential *to* copyright owners themselves, and given the MLC's suggestion that regulations should prohibit disclosure of confidential information regarding a ''particular, identified copyright owner to other copyright owners (including their agents or representatives) or songwriters,'' [141] the interim rule states that members of the MLC's board of directors or committees shall not have access to other musical work copyright owners' royalty statements, except where a copyright owner discloses its own statement to such bodies.[142] For parity, the digital licensee coordinator, including members of the digital licensee coordinator's board of directors or committees, shall be similarly restricted. Under the rule, members of the mechanical licensing collective's board and committees are not, however, restricted in accessing their own royalty statements from the mechanical licensing collective.

Disclosure of MLC Internal Information and DLC Internal Information

As proposed by the DLC, the interim rule also incorporates ''MLC Internal Information'' as a category of information that can be shared with the MLC board of directors and committees, including representatives of the DLC, subject to an appropriate written confidentiality agreement.[143] To ensure that ''MLC Internal Information'' does not extend to sensitive business and financial information disclosed by DMPs, copyright owners, and significant nonblanket licensees to the MLC (*i.e.,* ''confidential information''), the interim rule defines ''MLC Internal Information'' as sensitive financial or business information created by or collected by the mechanical licensing collective for purposes of its internal operations, such as personnel, procurement, or technology information.[144] Under the interim rule, ''MLC Internal Information'' excludes information that is public or may be made public by various avenues, similar to the regulatory definition of ''Confidential Information.'' [145] In addition, the interim rule creates a corresponding category of ''DLC Internal Information.''

Because ''MLC Internal Information'' and ''DLC Internal Information'' do not relate to sensitive business information disclosed by DMPs, significant nonblanket licensees, or copyright owners, the rule does not impose strict disclosure requirements as it does with ''confidential information'' due to the less-sensitive nature of these information categories. Rather, the rule creates categories of individuals to whom the MLC and DLC *may* disclose ''MLC Internal Information'' and/or ''DLC Internal Information'' (subject to a confidentiality agreement), which gives the MLC and DLC some flexibility if they decide additional disclosure is necessary. The rule also states that the MLC may disclose MLC Internal Information to other individuals in its discretion, subject to the adoption of reasonable confidentiality policies. The rule contains a parallel provision for the DLC and DLC Internal Information. Specifically, the interim rule states that the MLC may disclose MLC Internal Information to members of the MLC's board of directors and committees, including representatives of the DLC who serve on the MLC's board of directors or committees. The interim rule also states that representatives of the DLC who serve on the board of directors or committees of the mechanical licensing collective and receive MLC Internal Information may share such MLC Internal Information with the following persons, who require access to such information for the purpose of performing their duties during the ordinary course of their work for the DLC, subject to an appropriate written confidentiality agreement:

- Employees, agents, consultants, vendors, and independent contractors of the DLC;
- Individuals serving on the board of directors or committees of the DLC or MLC; and
- Individuals otherwise employed by members of the DLC.

Under the interim rule, the DLC may disclose DLC Internal Information to the following persons, subject to an appropriate written confidentiality agreement:

- Members of the DLC's board of directors and committees; and
- Members of the MLC's board of directors and committees.

ii. Disclosure of Confidential Information to Non-Mechanical Licensing Collective and Non-Digital Licensee Coordinator Persons and Entities

The proposed rule allowed disclosure of confidential information to attorneys and other authorized agents of parties to proceedings before federal courts, the Office, or the Copyright Royalty Judges, or when such disclosure is required by court order or subpoena, subject to an appropriate protective order or agreement.[146] The proposed rule also permitted disclosure to qualified auditors or outside counsel pursuant to the statutorily-permitted audits by the MLC of a digital music provider operating under the blanket license or audits by copyright owners of the MLC. No commenter objected to these provisions, and the MLC, DLC, and

[139] *See id.* at 210.29(c).

[140] *See* 17 U.S.C. 115(d)(6)(A); 37 CFR 210.25; *id.* at 210.28.

[141] MLC NPRM Comment at 19.

[142] *See id.,* App. at iii (proposing that no copyright owners or songwriters should have access to confidential information of other copyright owners).

[143] *See* DLC NOI Initial Comment at 23 (''DLC representatives are thus meant to represent the entire digital licensee community, and should be able to share information among DLC membership.''); *see also id.* at 28.

[144] *See* DLC *Ex Parte* Letter #6 at 7 (including ''disciplinary files for personnel, or competing vendor bids'' as examples of ''MLC Internal Information'').

[145] The definition of ''MLC Internal Information'' does not, as proposed by the DLC, exclude ''top level, compilation data presented in anonymized format that does not allow identification of such data as belonging to any specific digital music provider, significant nonblanket licensee, or copyright owner.'' *See* DLC *Ex Parte* Letter #8 at 5. By definition, ''MLC Internal Information'' is restricted to information regarding the MLC's internal operations.

[146] 85 FR at 22568.

ARM retained them in their respective proposed statutory text.[147] In light of these comments, the interim rule adopts this aspect of the proposed rule. As noted above, while the rule generally states that recipients of confidential information from the MLC or DLC shall not disclose such confidential information to anyone else except as expressly permitted in the Office's regulations, it creates an exception for qualified auditors or outside counsel conducting statutorily-permitted audits, or attorneys and other authorized agents of parties to proceedings before federal courts, the Copyright Office, or the Copyright Royalty Judges, or when such disclosure is required by court order or subpoena.

3. Interim Rule—Restrictions on Use of Confidential Information

In response to multiple commenters expressing concern about MLC vendors using the confidential information they acquire while conducting work for the MLC for other purposes,[148] the proposed rule restricted MLC vendors from using confidential information for purposes other than for duties performed during the ordinary course of work for the MLC, including the administration of voluntary bundled licensing of performance and mechanical uses that the MLC itself is prohibited from administering.[149] The proposed rule similarly restricted DLC vendors.[150] In issuing the proposed rule, the Office tentatively declined to adopt the MLC's proposal to preferentially allow ''users who submit confidential data to the MLC an ability to voluntarily 'opt in' to share that data for general use by its primary royalty processing vendor, the Harry Fox Agency'' (''HFA''), as the MLC did not detail what it meant by ''general use.'' [151]

FMC and CISAC & BIEM support this aspect of the proposed rule, noting that vendors' use of confidential information other than for duties performed during the ordinary course of work for the MLC or DLC has the potential to increase the risk of anti-competitive harm and conflicts of interest.[152] In a parallel rulemaking, the DLC, FMC, and SoundExchange emphasized the importance of MLC vendors not receiving preferential treatment or market advantage by virtue of their association with the MLC, with FMC stating that ''Congress intended to encourage a healthy competitive marketplace for other kinds of licensing businesses and intermediaries,'' and ''it's important that MLC's chosen vendors not be able to leverage their status with the MLC to advantage themselves in other business activities not covered under the MMA.'' [153] SoundExchange asserted that Congress ''intended to preserve a vibrant and competitive marketplace for intermediaries [besides the MLC] who provide other license administration services,'' and this intent would be frustrated ''[i]f the MLC's vendors were to receive an unfair advantage in the music licensing marketplace through means such as preferred access to digital music providers or referrals by the MLC for extrastatutory business opportunities in a manner not available to their competitors.'' [154] The DLC did not oppose this aspect of the proposed rule,[155] and in a parallel rulemaking, expressed concern as ''to whether the MLC's selected vendors will gain a special competitive advantage in related marketplaces—such as the administration of voluntary licenses—merely by dint of their association with the collective responsible for licensing all mechanical rights in the United States.'' [156]

For its part, the MLC contends that this aspect of the proposed rule ''is overly prescriptive, imposes unnecessary burdens and costs on copyright owners, and is likely not within the scope of the Office's authority.'' [157] While the proposed rule would restrict only actions of the mechanical licensing collective, the MLC argues that the proposed rule ''prevent[s] the MLC's copyright owner members from voluntarily electing to share their own information with the MLC's vendors,'' [158] and that ''[c]opyright owners that wish to use the MLC's vendors for purposes other than the administration of the blanket license should not have to incur the time and expense to input duplicates of information that can be transferred voluntarily without any transaction costs.'' [159] NMPA echoes the MLC's position, maintaining that ''[w]here a copyright owner provides to HFA its confidential information by virtue of HFA's role as administrator of the blanket license, it may make the most business sense (and be most efficient) to authorize HFA to use that information for the copyright [owners'] other licenses.'' [160] NMPA also asserts that ''HFA gains no special advantage by receiving the same information one time rather than multiple times,'' but that ''copyright owners are decidedly disadvantaged in having to submit multiple but identical data sets.'' [161]

As noted above, the MMA expressly directs the Office to adopt regulations to, among other things, prevent the improper use of confidential information contained in the mechanical licensing collective's records.[162] The MMA also expressly restricts the mechanical licensing collective to administering the mechancial license,[163] as the MLC

[147] *See* MLC NPRM Comment App. at v; DLC NPRM Comment Add. at A–4; ARM NPRM Comment at 14.

[148] *See, e.g.,* National Association of Independent Songwriters (''NOIS'') et al. Initial NOI Comment at 16 (''The vendors for the MLC should not be . . . able to use information and data that the MLC will gather and control to their competitive advantage. If they are in competition with other entities considered to be similar in nature or can use the data to their own unique proprietary advantage, they should not be eligible to be selected as a vendor.''); Lowery Reply NOI Comment at 12 (''If the Copyright Office does not prohibit HFA from selling for other commercial purposes the data it acquires through its engagement by MLC to facilitate the compulsory blanket license, the Congress will have just handed HFA a near insurmountable advantage over its competitors.''); *see also* DLC NPRM Comment at 2, U.S. Copyright Office Dkt. No. 2020–8, available at *https://beta.regulations.gov/docket/COLC-2020-0006*.

[149] 85 FR at 22565; *see also* 37 CFR 380.5(b) (prohibiting SoundExchange from using ''any Confidential Information for any purpose other than royalty collection and distribution and activities related directly thereto'').

[150] 85 FR at 22565.

[151] *Id.* (quoting MLC *Ex Parte* Letter #1 at 4) (citation omitted).

[152] FMC NPRM Comment at 1 (''There should be no provision for HFA to use confidential data for 'general use', even on an opt-in basis. The risk of anti-competitive harm is too great.''); CISAC & BIEM NPRM Comment at 3 (''Our organisations support this Proposed Rulemaking because some Vendors may obtain commercially valuable information, use it for their own activities and thus create conflicts of interest.'').

[153] FMC NRPM Comment at 1–2, U.S. Copyright Office Dkt. No. 2020–8, available at *https://beta.regulations.gov/docket/COLC-2020-0006; see also id.* at 2 (''The Office can require the MLC to disclose what it is doing to prevent any vendor from being too operationally enmeshed with the MLC that it either enjoys an unfair advantage through that relationship, or that it would be practically impossible for another vendor to step in.'').

[154] SoundExchange NRPM Comment at 8, U.S. Copyright Office Dkt. No. 2020–8, available at *https://beta.regulations.gov/docket/COLC-2020-0006*.

[155] *See* DLC NPRM Comment Add. at A–2; DLC *Ex Parte* Letter #6 at 7. The DLC does propose an adjustment to the proposed rule to restrict its vendors from using confidential information to ''duties that are made the responsibility of the DLC, under 17 U.S.C. 115(d)(5)(C), including efforts to enforce notice and payment obligations with respect to the administrative assessment.'' DLC *Ex Parte* Letter #6 at 7.

[156] DLC NPRM Comment at 1, U.S. Copyright Office Dkt. No. 2020–8, available at *https://beta.regulations.gov/docket/COLC-2020-0006*.

[157] MLC NPRM Comment at 13.

[158] *Id.* at 4.

[159] *Id.*

[160] *Id.*

[161] *Id.*

[162] 17 U.S.C. 115(d)(12)(C).

[163] *Id.* at 115(d)(3)(C)(iii) (limiting administration of voluntary licenses to ''only [the] reproduction or distribution rights in musical works for covered activities'').

acknowledges,[164] and the legislative history reflects Congress's intention that this provision was critical to safeguard continued private competition outside of the MLC's administration of the blanket mechanical license.[165] Given Congress's actions to preserve competition for music licensing vendors and the overwhelming concern from commenters that MLC vendors should not be able to gain commercial advantage due to its association with the MLC, the Office again declines to adopt the MLC's proposal to allow ''users who submit confidential data to the MLC an ability to voluntarily 'opt in' to share that data for general use by its primary royalty processing vendor, the Harry Fox Agency.'' [166]

If the Office were to adopt the MLC's proposal, HFA would receive an advantage for non-mechanical business opportunities not granted to competitors (*i.e.,* confidential information ''for purposes other than the administration of the blanket license,'' [167] such as the administration of copyright owners' ''other licenses'' [168]) and preferential access and treatment (*i.e.,* data ''by virtue of HFA's role as administrator of the blanket license,'' [169] and ''without any transaction costs'' [170]). Allowing HFA to benefit from its association with the MLC for business opportunities outside the administration of the blanket license is precisely the scenario multiple commenters have warned against, and is in tension with Congress's deliberate decision to limit the scope of the mechanical licensing collective. Contrary to the MLC and NMPA's position, the Office is not preventing copyright owners from sending their information to a particular vendor; rather, the Office is preventing the MLC from providing its vendor with confidential information in a manner that results in disparate and preferential treatment.

The Office similarly rejects the MLC's proposed language stating that ''[n]othing herein shall preclude the party or parties to whom information is confidential from voluntarily transmitting such Confidential Information to a third party with lesser restrictions on use, and nothing herein shall preclude the MLC from assisting in any such voluntary transfer.'' [171] To the extent this language is suggested to clarify the ability of those outside the MLC to exchange information, the Office finds it unnecessary, and to the extent the language is intended to allow the MLC to facilitate exchange of otherwise confidential information to preferred entities for private use, it would seem to create an end-run around the limitations of the rule.

In the NPRM, the Office noticed a potential alternative to the MLC's proposal. The Office had considered whether to propose language requiring the MLC to offer such information equally to third parties, perhaps restricted to those offering or administering music licensing services, for a reasonable cost, *i.e.,* both the MLC's preferred vendors and others similarly situated in the marketplace.[172] The Office noted that this approach would have the potential benefit of leveraging the unique nature of the MLC database in other aspects of the music ecosystem, without potentially affecting the competitive landscape in ways unrelated to the section 115 license.[173] The MLC and NMPA, however, did not respond regarding this proposed alternative.

After careful consideration, the interim rule adopts this aspect of the proposed rule, with the following slight modifications. The Office adjusted the interim rule so that instead of stating the MLC ''shall not use any Confidential Information for any purpose other than determining compliance with statutory license requirements, royalty calculation, collection, matching, and distribution, and activities related directly thereto,'' it states that the MLC ''shall not use any Confidential Information for any purpose other than the collective's authorized functions under 17 U.S.C. 115(d) and activities related directly thereto.'' [174] Anyone to whom the MLC discloses confidential information as permitted under the regulations shall not use any confidential information for any purpose other than in performing their duties during the ordinary course of their work for the mechanical licensing collective, with an exception for qualified auditors or outside counsel conducting statutorily-permitted audits, or attorneys and other authorized agents of parties to proceedings before federal courts, the Copyright Office, or the Copyright Royalty Judges, or when such disclosure is required by court order or subpoena. For parity, the interim rule adopts similar language with respect to the DLC and its authorized functions under 17 U.S.C. 115(d)(5)(C).[175]

C. Safeguarding Confidential Information

Both the MLC and DLC proposed having the MLC and DLC implement policies and procedures to prevent unauthorized access and/or use of confidential information, an approach that seems necessary to effectuate the intent of the regulations.[176] Accordingly, the proposed rule stated that the MLC, DLC, and recipients of confidential information from one of those entities must implement procedures to safeguard against

[164] *See* MLC NOI Comment at 10, U.S. Copyright Office Dkt. No. 2020–8, available at *https://www.regulations.gov/docketBrowser?rpp=25&so=DESC&sb=commentDueDate&po=0&dct=PS&D=COLC-2020-0006* (''[B]ecause the MLC is prohibited from licensing rights other than mechanical rights, . . . the MLC agrees with the Office that . . . it is 'unlikely to be prudent or frugal to require the MLC to expend resources to maintain [in the public database] PRO affiliations for rights it is not permitted to license.' '') (citing 85 FR at 22576).

[165] *See also* Senate Judiciary Comm., *Executive Business Meeting,* C–SPAN, at 53:24–53:59 (June 28. 2018), *https://www.c-span.org/video/?447464-1/judiciary* (statement of Sen. Cruz) (''The problem is that there is already right now a functioning marketplace that is doing that –there are many companies today that manage, collect, and distribute mechanical rights for digital music companies and this bill would put them all out of business. . . . The amendment that I filed, what it would do is open up blanket licenses to other entities—to promote competition at a lower price.''); *Id.* at 50:41–50:55 (statement of Sen. Cornyn) (''I did want to highlight one issue that's been brought to my attention. The creation of this mechanical licensing collective in the Copyright Office—and precludes any private entity from perhaps providing that same service.''); Shirley Halperin, *Music Modernization Act Stares Down Potential Snag,* Variety (July 23, 2018), *https://variety.com/2018/music/news/music-modernization-act-blackstone-sesac-congress-senate-1202881536/* (describing issue as endangering prospects for MMA passage); Steve Brachmann, *Compromise on Music Modernization Act Leads to Unconditional Support From Music Industry Organizations,* IPWatchdog (Aug. 18, 2018), *https://www.ipwatchdog.com/2018/08/18/compromise-music-modernization-act-music-industry-support/id=100162/* (reporting resolution through amendment limiting the MLC's ability to administer voluntary licenses).

[166] MLC *Ex Parte* Letter #1 at 4.

[167] MLC NPRM Comment at 4.

[168] NMPA NPRM Comment at 4.

[169] *Id.*

[170] MLC NPRM Comment at 4.

[171] MLC NPRM Comment App. at iii.

[172] 85 FR at 22565.

[173] *Id.*

[174] *See* MLC NPRM Comment at 10 (''The MLC proposes, at a minimum, clarifying the Proposed Regulation to ensure that the MLC can conduct the statutory functions charged by Congress.'').

[175] The Office adjusted the interim rule to align with the DLC's responsibilities under section 115. *See* DLC NPRM Comment at 7–8.

[176] MLC Initial NOI Comment at 29 (stating ''protection of such confidential, private, proprietary or privileged information may be accomplished through a regulation that requires the MLC and the DLC to implement confidentiality policies that prevent improper or unauthorized use of such material by their directors, committee members, and personnel''); DLC Reply NOI Comment Add. at A–21–22 (proposing that the MLC and DLC (and any person authorized to receive confidential information) ''must implement procedures to safeguard against unauthorized access to or dissemination of Confidential Information using a reasonable standard of care, but no less than the same degree of security that the recipient uses to protect its own Confidential Information or similarly sensitive information'').

unauthorized access to or dissemination of confidential information using a reasonable standard of care, but no less than the same degree of security that the recipient uses to protect its own confidential information or similarly sensitive information.[177] In addition, the proposed rule stated that the MLC and DLC shall each implement and enforce reasonable policies governing the confidentiality of its records.[178]

The MLC and DLC retained this aspect of the proposed rule in their suggested regulatory text.[179] CISAC & BIEM maintain that the ''reasonable standard of care'' requirement is ''vague and does not constitute a sufficient commitment.'' [180] As the ''reasonable standard of care'' is commonly used in U.S. jurisprudence, and in light of a similar provision governing obligations of SoundExchange, the collective designated to administer the section 114 license, this aspect of the proposed rule is retained without modification.[181]

The NPRM also sought public comment on whether the regulations should address instances of inadvertent unauthorized disclosure.[182] The MLC contends that ''the circumstances of such inadvertent disclosures, and the consequences of such disclosure are fact-specific'' and that it should be afforded flexibility to establish its own policies to ''permit the MLC to assess the facts and circumstances giving rise to the inadvertent disclosure and determine the most appropriate way to address and remedy such disclosure.'' [183] Similarly, the DLC maintains that instances of inadvertent disclosure should ''be addressed on a case-by-case basis.'' [184] In light of these comments, the interim rule does not address inadvertent disclosures.

D. Maintenance of Records

The proposed rule also provided that any written confidentiality agreements relating to the use or disclosure of confidential information must be maintained and stored by the relevant parties for at least the same amount of time that certain digital music providers are required to maintain records of use pursuant to 17 U.S.C. 115(d)(4)(A)(iv). At the time of the NPRM, a separate rulemaking proposed a five-year retention period for such records; the Office subsequently adopted a seven-year period in response to public comments in that proceeding.[185]

ARM generally supported this aspect of the proposed rule, but suggested an adjustment to require retention for a defined retention period of ''five years after disclosures cease to be made pursuant to [the agreements].'' [186] ARM suggests that any confidentiality agreements ''should be retained until some years after disclosures cease to be made pursuant to it (such as when an employment relationship ends or the agreement is replaced by a new agreement).'' [187] The Office has adopted ARM's suggestion to tie retention requirements of confidentiality agreements to their dates of effectiveness in order to ensure they are retained for an appropriate period of time. The Office has also extended the retention period for two additional years, similar to records requirements imposed on digital music providers. Accordingly, the interim rule states that any written confidentiality agreements relating to the use or disclosure of confidential information must be maintained and stored by the relevant parties until at least seven years after disclosures cease to be made pursuant to them.

E. Confidentiality Designations

The proposed rule did not impose a requirement that confidential information must bear a designation of confidentiality, although the Office noted that the MLC or DLC could presumably impose such a requirement in their own policies.[188] No commenters responded to this aspect of the proposed rule, and so the interim rule does not impose a designation of confidentiality requirement.

Relatedly, the Office asked in the NPRM whether, in addition to a category of ''Confidential Information,'' the regulations should provide for a ''Highly Confidential Information'' category to provide an additional layer of protection for certain documents and information.[189] Neither the MLC nor DLC believe a heightened category of ''highly confidential'' information is necessary,[190] and ARM ''does not have strong views'' as long as the regulations prohibit MLC board and committee members and companies that employ MLC and DLC board members from accessing confidential information of third-party companies (including recorded music companies).[191] Given these comments, and (as noted above) because the interim rule precludes the MLC from disclosing sensitive data concerning agreements between sound recording companies and digital music providers to members of the MLC's board of directors or committees or the digital licensee coordinator's board of directors or committees, the interim rule does not include a heightened category of ''Highly Confidential Information.''

F. Nondisclosure Agreements

The MLC and DLC disagree as to whether DLC representatives on the MLC's board of directors or committees should be required to sign nondisclosure agreements (''NDAs'') in their personal capacities. The DLC initially suggested that only the DLC as an organization should be bound, and not DLC representatives in their personal capacities or as representatives of their employers.[192] Instead, the DLC maintained, confidentiality obligations for the MLC and DLC should operate at ''an organization-to-organization level,'' [193] as ''some companies prohibit [DLC representatives from] taking on such personal liability for actions taken in the scope of employment.'' [194] The MLC disagreed, stating that if only the DLC, which lacks assets relatively, is bound by a confidentiality agreement, there would be no recourse against the DLC for breach, and that such a proposal ''disincentiv[izes] individuals on the MLC Board and committees from protecting confidential information, as

[177] 85 FR at 22565; *see* 37 CFR 380.5(d) (''[SoundExchange] and any person authorized to receive Confidential Information from [SoundExchange] must implement procedures to safeguard against unauthorized access to or dissemination of Confidential Information using a reasonable standard of care, but no less than the same degree of security that the recipient uses to protect its own Confidential Information or similarly sensitive information.'').

[178] 85 FR at 22565.

[179] *See* MLC NPRM Comment App. at v; DLC NPRM Comment Add. at A–4.

[180] CISAC & BIEM NPRM Comment at 3.

[181] *See* 37 CFR 380.5(d) (''The Collective and any person authorized to receive Confidential Information from the Collective must implement procedures to safeguard against unauthorized access to or dissemination of Confidential Information using a reasonable standard of care, but no less than the same degree of security that the recipient uses to protect its own Confidential Information or similarly sensitive information.''); *id.* at 380.24(e) (similar); *id.* at 380.34(e) (similar).

[182] 85 FR at 22566.

[183] MLC NPRM Comment at 21.

[184] DLC NPRM Comment at 8.

[185] *See* 37 CFR 210.27(m) (generally requiring digital music providers to retain relevant records for seven years).

[186] ARM NPRM Comment at 8–9, 14.

[187] *Id.* at 9.

[188] 85 FR at 22565.

[189] *Id.* at 22566.

[190] MLC NPRM Comment at 21 (''[T]he MLC does not believe further heightened restrictions are necessary.''); DLC NPRM Comment at 8 (''DLC believes it unnecessary to create an additional category of 'highly' confidential . . .'').

[191] ARM NPRM Comment at 8.

[192] DLC Initial NOI Comment at 23.

[193] *Id.*

[194] DLC *Ex Parte* Letter #2 at 6.

there will be no penalty for unlawful disclosure.'' [195]

In the NPRM, the Office was disinclined to require that confidentiality obligations for the MLC and DLC operate at an organization-to-organization level. Instead, the proposed rule stated that the various categories of individuals to receive confidential information do so subject to an appropriate written confidentiality agreement. In response, the MLC ''believes that the current Proposed Regulation, which provides that any DLC appointee to the MLC board or committees must sign a confidentiality agreement is the appropriate solution.'' [196] The MLC maintains that ''[i]f the DLC member company would like its employee to serve as an MLC board or committee member, then it can except the employee from such restriction and allow that individual to serve as a DLC appointee (and thus comply with the confidentiality obligations imposed on all board and committee members),'' or else ''identify an alternate appointee that can participate with full accountability to the MLC and its members.'' [197] By contrast, the DLC asserts that because it proposes disclosing only MLC Internal Information to MLC and DLC board and committee members (as discussed above), the ''[l]ess-sensitive nature of this internal MLC and DLC information diminishes to a substantial degree the rationale for imposing potential *personal* liability as a condition for board and committee membership.'' [198] The DLC also notes that it has adopted a confidentiality policy that operates between itself and DLC member companies, which ''allows the individual DLC representatives to share information and consult as needed within their companies, without the cumbersome process of requiring each person that is so consulted to first sign a confidentiality agreement with DLC.'' [199]

The Office recognizes that the DLC would prefer for DLC representatives to be able to easily share MLC Internal Information and consult as needed within their companies, but the Office is mindful that sensitive information regarding the MLC's internal operations needs appropriate protections in place to prevent improper disclosure or use. As noted in the NPRM, binding individuals in their personal capacities provides an avenue of recourse and is a common practice in model protective orders used in the analogous context of preventing confidential information produced through litigation discovery from being improperly disclosed or misused.[200] Also, the DLC's existing confidentiality policy with its members relates to information that would likely fall under the definition of ''DLC Internal Information,'' not information relating to the MLC's operations.[201] Accordingly, the Office again declines the DLC's proposal that confidentiality obligations for the MLC and DLC operate at an organization-to-organization level for both ''confidential information'' and ''MLC Internal Information.'' [202] The Office does not, however, intend to interfere with the DLC and its members having agreements at an organization-to-organization level to allow sharing of ''DLC Internal Information'' and consulting as needed regarding such information within their organization companies without having each individual signing an agreement in his or her personal capacity.

In response to commenters' concern about the MLC requiring additionally restrictive NDAs for its board and committee members,[203] the proposed rule prevented the MLC and DLC from imposing additional restrictions relating to the use or disclosure of confidential information, beyond those imposed by the Office's regulations, as a condition for participation on a board or committee.[204] The proposed rule stated that ''[t]he use of confidentiality agreements by the MLC and DLC shall be subject to the other provisions'' of the Office's confidentiality regulations, and ''shall not permit broader use or disclosure of Confidential Information than permitted under'' the regulations.[205] The proposed rule also stated that the MLC and DLC ''may not impose additional restrictions relating to the use or disclosure of Confidential Information, beyond those imposed by this provision, as a condition for participation on a board or committee.''[206]

The MLC objected to these provisions, contending that ''[l]imiting the scope of the 'appropriate written confidentiality agreements' to agreements that provide for no more and no less than what is already specified in the regulation renders meaningless the added qualifier that the use or disclosure shall be made subject to an 'appropriate written confidentiality agreement.' '' [207] The MLC suggests that additional appropriate restrictions not addressed in the regulations—such as ''provisions requiring that adequate notice be given prior to any disclosure in response to a subpoena or other legal process'' or ''provid[ing] for the return or destruction of confidential materials on demand or at the end of a service period''—would be ''imprudent'' not to include in confidentiality agreements, but ''could be considered additional restrictions on use'' beyond those in the Office's regulations.[208] By contrast, FMC supports the proposed rule, expressing its ''appreciat[ion] that the Office has made it clear that the MLC cannot create additional restrictions on the use and disclosure of confidential information beyond the Office's regulations,'' which ''will help writers and composers have an extra degree of confidence about the healthy internal functioning of the MLC and know that board and committee members who have concerns would feel free to speak freely to impacted copyright owners and writers.'' [209]

The Office acknowledges that its regulations may not address all appropriate use restrictions and that confidentiality agreements may need to fill in some gaps (*e.g.,* provisions regarding notice before disclosures in response to subpoenas or other legal processes, the return or destruction of confidential materials). The Office is

[195] MLC Reply NOI Comment at 41.

[196] MLC NPRM Comment at 22.

[197] *Id.* at 23.

[198] DLC NPRM Comment at 9.

[199] *Id.*

[200] 85 FR at 22566.

[201] *See* DLC NPRM Comment Ex. 1 (stating that information covered by the agreement ''includes, but is not limited to personnel issues; information that is proprietary to, or the intellectual property of, the DLC or the other Member Companies; unpublished data and manuscripts; draft standards and policies; deliberations; and other information that has not been authorized for disclosure, has not become public and that is obtained through a Member Company's or an individual's relationship with the DLC'').

[202] One commenter suggests that the MLC make its form confidentiality agreement public. Castle NPRM Comment at 4. The MLC advised that it ''does not know whether its confidentiality expectations for board and committee members will all be captured in a template agreement,'' but that ''as part of its ongoing and general informational activities, in addition to following the Office's regulations as to confidential information, the MLC intends to provide information to the public as to any additional confidentiality expectations that it has for its board and advisory committee members, whether through posting template or exemplar agreements or otherwise identifying such confidentiality expectations.'' MLC *Ex Parte* Letter #9 at 4.

[203] The DLC maintained that Office's regulations ''should be the ceiling on any confidentiality requirements'' by the MLC. DLC Reply NOI Comment at 28. NOIS, joined by individual stakeholders, contended that there ''must be a rejection of any incremental NDA put forth by the MLC to its board and/or committee members that requires anything not mandated by the MMA.'' NOIS et al. Initial NOI Comment at 16.

[204] 85 FR at 22566.

[205] *Id.* at 22568.

[206] *Id.*

[207] MLC NPRM Comment at 17.

[208] *Id.* at 17–18.

[209] FMC NPRM Comment at 2.

mindful, however, that the statute directs the Office to promulgate regulations to prevent the improper use or disclosure of confidential information and that any confidentiality agreements should not be inconsistent with the Office's regulations.[210] To accommodate the MLC's concerns in the context of the regulatory framework, the interim rule is adjusted so that rather than requiring confidentiality agreements to be in compliance with the Office's regulations, they must not be inconsistent with them. This should afford the MLC and DLC sufficient flexibility, while ensuring that any resulting confidentiality agreements do not circumvent the spirit of the Office's regulations. Also, because the interim rule prohibits the MLC and DLC from sharing ''confidential information'' with members of their boards of directors and committees, the interim rule removes the provision prohibiting the MLC and DLC from imposing additional restrictions relating to the use or disclosure of confidential information, beyond those imposed by the regulations, as a condition for participation on a board or committee. Should the Office learn of the MLC or DLC inappropriately conditioning disclosure of MLC Internal Information or DLC Internal Information, the Office will consider whether further adjustment is necessary.

List of Subjects in 37 CFR Part 210

Copyright, Phonorecords, Recordings.

Interim Regulations

For the reasons set forth in the preamble, the Copyright Office amends 37 CFR part 210 as follows:

PART 210—COMPULSORY LICENSE FOR MAKING AND DISTRIBUTING PHYSICAL AND DIGITAL PHONORECORDS OF NONDRAMATIC MUSICAL WORKS

■ 1. The authority citation for part 210 continues to read as follows:

Authority: 17 U.S.C. 115, 702.

Subpart B—Blanket Compulsory License for Digital Uses, Mechanical Licensing Collective, and Digital Licensee Coordinator

■ 2. Add § 210.34 to read as follows:

[210] The Office declines to expressly adopt the MLC's proposed language that ''[a]nyone receiving Confidential Information under this subsection may not further disclose such Confidential Information except as expressly authorized in their written confidentiality agreement.'' MLC NPRM Comment App. at iii.

§ 210.34 Treatment of confidential and other sensitive information.

(a) *General.* This section prescribes the rules under which the mechanical licensing collective and digital licensee coordinator shall ensure that confidential, private, proprietary, or privileged information received by the mechanical licensing collective or digital licensee coordinator or contained in their records is not improperly disclosed or used, in accordance with 17 U.S.C. 115(d)(12)(C), including with respect to disclosure or use by the board of directors, committee members, and personnel of the mechanical licensing collective or digital licensee coordinator.

(b) *Definitions.* For purposes of this section:

(1) ''Confidential Information'' means sensitive financial or business information, including trade secrets or information relating to financial or business terms that could cause competitive disadvantage or be used for commercial advantage, disclosed by digital music providers, significant non-blanket licensees, and copyright owners (or any of their authorized agents or vendors) to the mechanical licensing collective or digital licensee coordinator. ''Confidential Information'' also means sensitive personal information, including but not limited to, an individual's Social Security number, taxpayer identification number, financial account number(s), or date of birth.

(i) ''Confidential Information'' specifically includes usage data and other sensitive data used to compute market shares when distributing unclaimed accrued royalties, sensitive data provided by digital music providers related to royalty calculations, sensitive data shared between the mechanical licensing collective and digital licensee coordinator regarding any significant nonblanket licensee, sensitive data concerning voluntary licenses or individual download licenses administered by and/or disclosed to the mechanical licensing collective, and sensitive data concerning agreements between sound recording companies and digital music providers. ''Confidential information'' also includes sensitive financial or business information disclosed to the mechanical licensing collective or digital licensee coordinator by a third party that is reasonably designated as confidential by the party disclosing the information, subject to the other provisions of this section.

(ii) ''Confidential Information'' does not include:

(A) Information that is public or may be made public by law or regulation, including but not limited to information made publicly available through:

(*1*) Notices of license, excluding any addendum that provides a description of any applicable voluntary license or individual download license the digital music provider is, or expects to be, operating under concurrently with the blanket license.

(*2*) Notices of nonblanket activity, information in the public musical works database prescribed by 17 U.S.C. 115(d)(3)(E), and information disclosable through the mechanical licensing collective's bylaws, annual report, audit report, or the mechanical licensing collective's adherence to transparency and accountability with respect to the collective's policies or practices, including its anti-commingling policy, pursuant to 17 U.S.C. 115(d)(3)(D)(ii),(vii), and (ix).

(B) Information that at the time of delivery to the mechanical licensing collective or digital licensee coordinator is public knowledge, or is subsequently publicly disclosed by the party to whom the information would otherwise be considered confidential. The party seeking information from the mechanical licensing collective or digital licensee coordinator based on a claim that the information sought is a matter of public knowledge shall have the burden of proving that fact.

(C) Top-level compilation data presented in anonymized format that does not allow identification of such data as belonging to any specific digital music provider, significant nonblanket licensee, or copyright owner.

(2) ''MLC Internal Information'' means sensitive financial or business information created by or collected by the mechanical licensing collective for purposes of its internal operations, such as personnel, procurement, or technology information. ''MLC Internal Information'' does not include:

(i) Information that is public or may be made public by law or regulation, information in the public musical works database prescribed by 17 U.S.C. 115(d)(3)(E), and information in the mechanical licensing collective's bylaws, annual report, audit report, or the mechanical licensing collective's adherence to transparency and accountability with respect to the collective's policies or practices, including its anti-commingling policy, pursuant to 17 U.S.C. 115(d)(3)(D)(ii), (vii), and (ix); or

(ii) Information that at the time of delivery to the mechanical licensing collective is public knowledge, or is subsequently publicly disclosed by the party to whom the information would otherwise be considered confidential. The party seeking information from the mechanical licensing collective based on a claim that the information sought is a matter of public knowledge shall have the burden of proving that fact.

(3) ''DLC Internal Information'' means sensitive financial or business information created by or collected by the digital licensee coordinator for purposes of its internal operations, such as personnel, procurement, or technology information. ''DLC Internal Information'' does not include:

(i) Information that is public or may be made public by law or regulation, information in the public musical works database prescribed by 17 U.S.C. 115(d)(3)(E), and information disclosable through the digital licensee coordinator's bylaws; or

(ii) Information that at the time of delivery to the digital licensee coordinator is public knowledge, or is subsequently publicly disclosed by the party to whom the information would otherwise be considered confidential. The party seeking information from the digital licensee coordinator based on a claim that the information sought is a matter of public knowledge shall have the burden of proving that fact.

(c) *Disclosure of Confidential Information.* (1) The mechanical licensing collective shall limit disclosure of Confidential Information to employees, agents, consultants, vendors, and independent contractors of the mechanical licensing collective who are engaged in the collective's authorized functions under 17 U.S.C. 115(d) and activities related directly thereto and who require access to Confidential Information for the purpose of performing their duties during the ordinary course of their work for the mechanical licensing collective, subject to an appropriate written confidentiality agreement. The mechanical licensing collective shall not disclose Confidential Information to members of the mechanical licensing collective's board of directors and committees, including the collective's Unclaimed Royalties Oversight Committee, or the digital licensee coordinator's board of directors or committees.

(2) Notwithstanding paragraph (c)(1) of this section, the mechanical licensing collective shall be permitted to fulfill its disclosure obligations under section 115 including, but not limited to:

(i) Providing monthly reports to the digital licensee coordinator setting forth any significant nonblanket licensees of which the collective is aware that have failed to comply with the Office's regulations regarding submission of a notice of nonblanket activity for purposes of notifying the mechanical licensing collective that the licensee has been engaging in covered activities, or regarding the delivery of reports of usage for the making and distribution of phonorecords of nondramatic musical works; and

(ii) Preparing and delivering royalty statements to musical work copyright owners that include the minimum information required in accordance with 37 CFR 210.29(c), but without including additional Confidential Information that does not relate to the recipient copyright owner or relevant songwriter. Once a copyright owner receives a royalty statement from the mechanical licensing collective, there are no restrictions on the copyright owner's ability to use the statement or disclose its contents.

(A) Members of the mechanical licensing collective's board of directors and committees shall not have access to musical work copyright owners' royalty statements, except where a copyright owner discloses their own royalty statement to the members of the mechanical licensing collective's board of directors or committees. Notwithstanding this paragraph, members of the mechanical licensing collective's board and committees are not restricted in accessing their own royalty statements from the mechanical licensing collective.

(B) The digital licensee coordinator, including members of the digital licensee coordinator's board of directors and committees, shall not have access to musical work copyright owners' royalty statements, except where a copyright owner discloses their own royalty statement to the mechanical licensing collective's board of directors or committees.

(3) The digital licensee coordinator shall limit disclosure of Confidential Information to employees, agents, consultants, vendors, and independent contractors of the digital licensee coordinator who are engaged in the digital licensee coordinator's authorized functions under 17 U.S.C. 115(d)(5)(C) and activities related directly thereto and require access to Confidential Information for the purpose of performing their duties during the ordinary course of their work for the digital licensee coordinator, subject to an appropriate written confidentiality agreement. The digital licensee coordinator shall not disclose Confidential Information to members of the digital licensee coordinator's board of directors and committees, or the mechanical licensing collective's board of directors or committees.

(4) In addition to the permitted disclosure of Confidential Information in this paragraph (c), the mechanical licensing collective and digital licensee coordinator may disclose Confidential Information to:

(i) A qualified auditor or outside counsel, pursuant to 17 U.S.C. 115(d)(4)(D), who is authorized to act on behalf of the mechanical licensing collective with respect to verification of royalty payments by a digital music provider operating under the blanket license, subject to an appropriate written confidentiality agreement;

(ii) A qualified auditor or outside counsel, pursuant to 17 U.S.C. 115(d)(3)(L), who is authorized to act on behalf of a copyright owner or group of copyright owners with respect to verification of royalty payments by the mechanical licensing collective, subject to an appropriate written confidentiality agreement; and

(iii) Attorneys and other authorized agents of parties to proceedings before federal courts, the Copyright Office, or the Copyright Royalty Judges, or when such disclosure is required by court order or subpoena, subject to an appropriate protective order or agreement.

(5) With the exception of persons receiving information pursuant to paragraph (c)(4) of this section, anyone to whom the mechanical licensing collective or digital licensee coordinator discloses Confidential Information as permitted in section shall not disclose such Confidential Information to anyone else except as expressly permitted in this section.

(d) *Use of Confidential Information.* (1) The mechanical licensing collective shall not use any Confidential Information for any purpose other than the collective's authorized functions under 17 U.S.C. 115(d) and activities related directly thereto. Anyone to whom the mechanical licensing collective discloses Confidential Information as permitted in this section shall not use any Confidential Information for any purpose other than in performing their duties during the ordinary course of their work for the mechanical licensing collective or as otherwise permitted under paragraph (c)(4) of this section.

(2) The digital licensee coordinator shall not use any Confidential Information for any purpose other than its authorized functions under 17 U.S.C. 115(d)(5)(C) and activities related directly thereto. Anyone to whom the digital licensee coordinator discloses Confidential Information as permitted in this section shall not use any Confidential Information for any

purpose other than in performing their duties during the ordinary course of their work for the digital licensee coordinator or as otherwise permitted under paragraph (c)(4) of this section.

(e) *Disclosure and Use of MLC Internal Information and DLC Internal Information.* (1) The mechanical licensing collective may disclose MLC Internal Information to members of the mechanical licensing collective's board of directors and committees, including representatives of the digital licensee coordinator who serve on the board of directors or committees of the mechanical licensing collective, subject to an appropriate written confidentiality agreement. The MLC may also disclose MLC Internal Information to other individuals in its discretion, subject to the adoption of reasonable confidentiality policies.

(2) Representatives of the digital licensee coordinator who serve on the board of directors or committees of the mechanical licensing collective and receive MLC Internal Information may share such MLC Internal Information with the following persons:

(i) Employees, agents, consultants, vendors, and independent contractors of the digital licensing coordinator who require access to MLC Internal Information for the purpose of performing their duties during the ordinary course of their work for the digital licensee coordinator, subject to an appropriate written confidentiality agreement;

(ii) Individuals serving on the board of directors and committees of the digital licensee coordinator or mechanical licensing collective who require access to MLC Internal Information for the purpose of performing their duties during the ordinary course of their work for the digital licensee coordinator or mechanical licensing collective, subject to an appropriate written confidentiality agreement;

(iii) Individuals otherwise employed by members of the digital licensee coordinator who require access to MLC Internal Information for the purpose of performing their duties during the ordinary course of their work for the digital licensee coordinator, subject to an appropriate written confidentiality agreement.

(3) The digital licensee coordinator may disclose DLC Internal Information to the following persons:

(i) Members of the digital licensee coordinator's board of directors and committees, subject to an appropriate written confidentiality agreement; and

(ii) Members of the mechanical licensing collective's board of directors and committees, including music publisher representatives, songwriters, and representatives of the digital licensee coordinator who serve on the board of directors or committees of the mechanical licensing collective, subject to an appropriate written confidentiality agreement.

(iii) The DLC may also disclose DLC Internal Information to other individuals in its discretion, subject to the adoption of reasonable confidentiality policies.

(f) *Safeguarding Confidential Information.* The mechanical licensing collective, digital licensee coordinator, and any person or entity authorized to access Confidential Information from either of those entities as permitted in this section, must implement procedures to safeguard against unauthorized access to or dissemination of Confidential Information using a reasonable standard of care, but no less than the same degree of security that the recipient uses to protect its own Confidential Information or similarly sensitive information. The mechanical licensing collective and digital licensee coordinator shall each implement and enforce reasonable policies governing the confidentiality of their records, subject to the other provisions of this section.

(g) *Maintenance of records.* Any written confidentiality agreements relating to the use or disclosure of Confidential Information must be maintained and stored by the relevant parties until at least seven years after disclosures cease to be made pursuant to them.

(h) *Confidentiality agreements.* The use of confidentiality agreements by the mechanical licensing collective and digital licensee coordinator shall not be inconsistent with the other provisions of this section.

Dated: February 8, 2021.

Shira Perlmutter,

Register of Copyrights and Director of the U.S. Copyright Office.

Approved by:

Carla D. Hayden,

Librarian of Congress.

[FR Doc. 2021–02913 Filed 2–9–21; 4:15 pm]

BILLING CODE 1410–30–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R01–OAR–2020–0593; FRL–10017–79–Region 1]

Approval and Promulgation of State Plans (Negative Declarations) for Designated Facilities and Pollutants: Maine and Rhode Island

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking a direct final action to approve negative declarations submitted in lieu of State plans to satisfy the requirements of the Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills for the State of Maine and the State of Rhode Island. The negative declarations certify that there are no existing facilities in the States that must comply with this rule.

DATES: This direct final rule will be effective April 12, 2021 without further notice, unless the EPA receives adverse comments by March 15, 2021. If the EPA receives adverse comments, we will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–OAR–2020–0593 at *https://www.regulations.gov,* or via email to *kilpatrick.jessica@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, the EPA may publish any comments received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* Publicly available docket materials are available at *https://www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID–19.

FOR FURTHER INFORMATION CONTACT:

Jessica Kilpatrick, Air Permits, Toxics, & Indoor Programs Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Mail Code: 05–2, Boston, MA 02109–0287. Telephone: 617–918–1652. Fax: 617–918–0652 Email: *kilpatrick.jessica@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. Background

Section 111(d) of the Clean Air Act (CAA) establishes standards of performance for existing sources, specifically pertaining to the remaining useful life of a source. Air pollutants included under this section are those which have not already been established as air quality criteria pollutants via 42 U.S.C. 7408(a) or hazardous air pollutants via 42 U.S.C. 7412. Section 111(d)(1) requires states to submit to the EPA for approval a plan that establishes standards of performance. The plan must provide that the state will implement and enforce the standards of performance. A Federal plan is prescribed if a state does not submit a state-specific plan or the submitted plan is disapproved. If a state has no designated facilities for a standards of performance source category, it may submit a negative declaration in lieu of a state plan for that source category according to 40 CFR 60.23a(b) and 62.06.

II. Municipal Solid Waste Landfill Regulations

A municipal solid waste (MSW) landfill is defined in 40 CFR 60.41(f) as, ''an entire disposal facility in a contiguous geographical space where household waste is placed in or on land.'' Other substances may be placed in the landfill which are regulated under Subtitle D of the Resource Conservation and Recovery Act (RCRA), 40 CFR 257.2. MSW landfills emit gases generated by the decomposition of organic compounds or evolution of new organic compounds from the deposited waste. The EPA regulations specifically delineate measures to control methane and nonmethane organic compound (NMOC) emissions, which can adversely impact public health.

Standards of Performance for *new* MSW landfills, as codified at 40 CFR part 60, subpart XXX (subpart XXX), set standards for air emissions, operating standards for collection and control systems, test methods and procedures, compliance provisions, monitoring of operations, reporting requirements, recordkeeping requirements, and specifications for active collection systems. Subpart XXX applies to facilities that commenced construction, reconstruction, or modification *after* July 17, 2014. The Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills, as codified at 40 CFR part 60, subpart Cf (subpart Cf, or Emission Guidelines), apply to states with MSW landfills that accepted waste after November 8, 1987 and commenced construction, reconstruction, or modification *before* July 17, 2014. Such landfills are considered to be ''existing'' landfills. In states with facilities meeting the applicability criteria of an existing MSW landfill, the Administrator of an air quality program must submit a state plan to the EPA that implements the Emission Guidelines. According to 40 CFR 60.33f(d)(1), if the design capacity increase of a facility subject to subpart Cf is the result of a modification, as defined in subpart Cf, that was commenced after July 17, 2014, then the landfill becomes subject to subpart XXX instead of subpart Cf.

The Maine Department of Environmental Protection (ME DEP) submitted a negative declaration to the EPA on March 11, 2020 pursuant to the requirements at 40 CFR 60.23a(b) and 62.06, certifying that there are no existing source MSW landfills in the state subject to the requirements of 40 CFR part 60, subpart Cf. ME DEP stated that its three landfills potentially subject to subpart Cf have made operational or physical changes such that the state is no longer required to develop a state plan to regulate these landfills as existing sources. One landfill closed in late 2009 and pre-control emissions of NMOC are less than 34 megagrams per year, meeting removal criteria via 40 CFR 60.33f(f). The other two landfills have recently expanded their capacity and satisfy the definition of modification by commencing construction after July 17, 2014 and are therefore subject to Federal CAA landfill regulations pursuant to subpart XXX.

The Rhode Island Department of Environmental Management (RI DEM) submitted a negative declaration to the EPA on July 28, 2020 pursuant to the requirements at 40 CFR 60.23a(b) and 62.06, certifying that there are no existing source MSW landfills in the state subject to the requirements of 40 CFR part 60, subpart Cf. RI DEM stated it only has one operating landfill, which expanded its capacity and commenced construction on the new phase in September 2014. The landfill satisfies the definition of modification by commencing construction after July 17, 2014 and is therefore subject to Federal CAA landfill regulations pursuant to subpart XXX.

III. Final Action

The EPA is approving the Maine and Rhode Island negative declarations. These negative declarations satisfy the requirements of 40 CFR 60.23a(b) and 62.06, serving in lieu of a CAA 111(d) state plan for existing source MSW landfills.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the Proposed Rules section of this **Federal Register** publication, the EPA is publishing a separate document that will serve as the proposal to approve the negative declarations should relevant adverse comments be filed. This rule will be effective April 12, 2021 without further notice unless the Agency receives relevant adverse comments by March 15, 2021.

If the EPA receives such comments, we will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. All parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on April 12, 2021 and no further action will be taken on the proposed rule. Please note that if the EPA receives adverse comments on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, the EPA may adopt as final those provisions of the rule that are not the subject of adverse comments.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a 111(d) plan submission that complies with the provisions of the CAA and applicable Federal regulations (40 CFR 62.04). Thus, in reviewing 111(d) plan submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 12, 2021. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2)).

Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the Proposed Rules section of this **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that the EPA can withdraw this direct final rule and address comment(s) in the final rulemaking.

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: February 3, 2021.

Deborah Szaro,

Acting Regional Administrator, EPA Region 1.

Part 62 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 62—APPROVAL AND PROMULGATION OF STATE PLAN FOR DESIGNATED FACILITIES AND POLLUTANTS

■ 1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart U—Maine

■ 2. Add an undesignated center heading and § 62.4995 to read as follows:

Emissions From Existing Solid Waste Landfills

§ 62.4995 Identification of plan—negative declaration.

On March 11, 2020, the Maine Department of Environmental Protection submitted a letter certifying no existing source Municipal Solid Waste Landfills subject to 40 CFR part 60, subpart Cf, operate within the State's jurisdiction.

Subpart OO—Rhode Island

■ 3. Revise § 62.9985 to read as follows:

§ 62.9985 Identification of plan—negative declaration.

On July 28, 2020, the Rhode Island Department of Environmental Management submitted a letter certifying no existing source Municipal Solid Waste Landfills subject to 40 CFR part 60, subpart Cf, operate within the State's jurisdiction.

[FR Doc. 2021–02543 Filed 2–10–21; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2021–0003; Internal Agency Docket No. FEMA–8665]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities where the sale of flood

insurance has been authorized under the National Flood Insurance Program (NFIP) that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur. Information identifying the current participation status of a community can be obtained from FEMA's CSB available at *www.fema.gov/flood-insurance/work-with-nfip/community-status-book.* Please note that per Revisions to Publication Requirements for Community Eligibility Status Information Under the National Flood Insurance Program, notices such as this one for scheduled suspension will no longer be published in the **Federal Register** as of June 2021 but will be available at National Flood Insurance Community Status and Public Notification | *FEMA.gov*. Individuals without internet access will be able to contact their local floodplain management official and/or State NFIP Coordinating Office directly for assistance.

DATES: The effective date of each community's scheduled suspension is the third date (''Susp.'') listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact Adrienne L. Sheldon, PE, CFM, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 400 C Street SW, Washington, DC 20472, (202) 674–1087. Details regarding updated publication requirements of community eligibility status information under the NFIP can be found on the CSB section at *www.fema.gov.*

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase Federal flood insurance that is not otherwise generally available from private insurers. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives, new and substantially improved construction, and development in general from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits the sale of NFIP flood insurance unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with NFIP regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date listed in the third column. As of that date, flood insurance will no longer be available in the community. FEMA recognizes communities may adopt and submit the required documentation after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue to be eligible for the sale of NFIP flood insurance. Their current NFIP participation status can be verified at anytime on the CSB section at *fema.gov*.

In addition, FEMA publishes a Flood Insurance Rate Map (FIRM) that identifies the Special Flood Hazard Areas (SFHAs) in these communities. The date of the published FIRM is indicated in the fourth column of the table. No direct federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year on FEMA's initial FIRM for the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment procedures under 5 U.S.C. 553(b), are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. FEMA has determined that the community suspension(s) included in this rule is a non-discretionary action and therefore the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) does not apply.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, Section 1315, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in SFHAs
Region V				
Minnesota:				
Elko New Market, City of, Scott County.	270643	June 21, 2013, Emerg; October 24, 2014, Reg; February 12, 2021, Susp.	February 12, 2021 ..	February 12, 2021.
Jordan, City of, Scott County	270430	April 15, 1974, Emerg; January 6, 1982, Reg; February 12, 2021, Susp.	......do *	Do.
Prior Lake, City of, Scott County	270432	February 6, 1974, Emerg; September 29, 1978, Reg; February 12, 2021, Susp.	......do	Do.
Savage, City of, Scott County	270433	April 24, 1974, Emerg; June 18, 1980, Reg; February 12, 2021, Susp.	......do	Do.
Scott County, Unincorporated Areas	270428	April 14, 1972, Emerg; April 3, 1978, Reg; February 12, 2021, Susp.	......do	Do.
Shakopee, City of, Scott County	270434	May 7, 1974, Emerg; September 29, 1978, Reg; February 12, 2021, Susp.	......do	Do.
Region VI				
Texas:				
Archer City, City of, Archer County ...	480698	April 30, 1976, Emerg; October 16, 1979, Reg; February 12, 2021, Susp.	......do	Do.
Archer County, Unincorporated Areas.	481078	September 8, 1982, Emerg; January 6, 1988, Reg; February 12, 2021, Susp.	......do	Do.
Holliday, City of, Archer County	480699	July 8, 1985, Emerg; November 1, 1989, Reg; February 12, 2021, Susp.	......do	Do.
Jack County, Unincorporated Areas	480377	June 30, 1998, Emerg; February 11, 2009, Reg; February 12, 2021, Susp.	......do	Do.
Jacksboro, City of, Jack County	480378	May 29, 1975, Emerg; January 15, 1988, Reg; February 12, 2021, Susp.	......do	Do.
Lakeside City, City of, Archer and Wichita Counties.	481496	October 23, 1990, Emerg; April 1, 1991, Reg; February 12, 2021, Susp.	......do	Do.
Scotland, City of, Archer County	481280	June 9, 2010, Emerg; N/A, Reg; February 12, 2021, Susp.	......do	Do.

* do = Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Katherine B. Fox,

Assistant Administrator for Mitigation, Federal Insurance and Mitigation Administration—FEMA Resilience, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2021–02832 Filed 2–10–21; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No 13–184; FCC 20–178; FRS 17362]

Modernizing the E-Rate Program for Schools and Libraries

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission (Commission) amends E-Rate invoicing rules to enhance the efficient administration of the program while ensuring that program participants have sufficient time to complete the invoice payment process.

DATES: Effective February 11, 2021.

FOR FURTHER INFORMATION CONTACT: James Bachtell, Wireline Competition Bureau, 202–418–7400 or TTY: 202–418–0484.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Modernizing the E-Rate Program for Schools and Libraries (Order) in WC Docket No. 13–184; FCC 20–178, adopted December 9, 2020 and released December 10, 2020. Due to the COVID–19 pandemic, the Commission's headquarters will be closed to the general public until further notice. The full text of this document is available at the following internet address: *https://docs.fcc.gov/public/attachments/FCC-20-178A1.pdf.*

I. Introduction

1. The efficient administration of the E-Rate program depends on providing program participants flexibility to procure needed services and equipment in a timely and cost-effective manner, while ensuring that safeguards are in place to administer the program effectively and protect against waste, fraud and abuse. Since the program's inception, the Commission and the program's administrator, the Universal Service Administrative Company (USAC), have continuously worked to achieve the appropriate balance in meeting these goals. This Order builds on those efforts by amending the invoicing rules to enhance the efficient administration of the program while ensuring that program participants have sufficient time to complete the invoice payment process.

2. Specifically, the Commission permits applicants and service providers up to 120 days to submit invoices after USAC issues a Revised Funding Commitment Decision Letter approving a post-commitment request or granting an appeal of a previously denied or reduced funding request. In so doing, the Commission facilitates program participants' ability to meet evolving needs—by changing service providers or submitting service substitutions, for example—without jeopardizing their ability to obtain reimbursement or necessitating a Commission waiver proceeding. Consistent with this change, the Commission grants relief to certain program participants that were excluded from an earlier invoicing relief order and provides a one-time waiver opportunity for program participants that were unable to timely submit an invoice because they were awaiting a post-commitment decision.

3. In taking these actions, the Commission promotes the goals of the E-Rate program by ensuring that its

subsidies continue to assist students and library patrons in getting access to essential communication and broadband services without applicants and service providers facing unfair obstacles when submitting claims for reimbursement.

II. Discussion

4. The Commission amends the rules to provide greater flexibility to applicants and service providers by providing them 120 days to submit an invoice after USAC issues a Revised Funding Commitment Decision Letter approving a post-commitment request or granting an appeal regarding a previously denied or reduced funding request. The Commission also extends the relief provided in the *2018 Invoicing Relief Order* (DA 18–188) to applicants and service providers that were unable to invoice while awaiting a post-commitment decision from USAC and timely filed a request for waiver, regardless of whether they requested and received a one-time, 120-day invoice deadline extension. Finally, the Commission provides a one-time opportunity for program participants to seek a waiver if they have not previously done so if they can demonstrate that were unable to timely submit an invoice because they were awaiting a post-commitment decision. These filings must demonstrate good cause to waive the 60-day waiver filing deadline.

5. *Post-Commitment Invoice Period.* The Commission amends the E-Rate program rules to allow applicants and service providers to submit invoices for payment up to 120 days after USAC issues a Revised Funding Commitment Decision Letter approving a post-commitment request or granting an appeal of a previously denied or reduced funding request. The Commission did not fully consider all of the potential scenarios that might affect an applicant or service provider's ability to invoice when it codified the invoicing deadline in 2014. Such delays could be caused by technical issues or involve requests that include particularly complicated appeals or investigations. The Commission finds that providing applicants and service providers 120 days to invoice under these circumstances will not greatly delay the ability of the Commission or USAC to efficiently administer the program. Several members of the E-Rate community have requested the Commission take action, including the State E-Rate Coordinators Alliance (SECA).

6. The Commission amends the rule now without notice and comment in accordance with the exception to the Administrative Procedure Act (APA) for procedural rules. This change in the rules will be effective February 11, 2021. Upon effectiveness, if USAC grants an appeal or approves other post-commitment requests submitted by an applicant or service provider, it must provide applicants and service providers 120 days from the date of the resulting Revised Funding Commitment Decision Letter to complete invoicing.

7. The Commission limits the rule change to post-commitment requests or appeal decisions that result in a Revised Funding Commitment Decision Letter approving the request. Therefore, applicants or service providers appealing partially approved funding requests should submit invoices for the partial funding before the original invoice deadline expires because USAC will not provide additional time to invoice if the appeal is denied.

8. *Relief for Program Participants Outside the Scope of the 2018 Invoicing Relief Order.* The Commission waives the existing invoicing rule for any applicant or service provider that was unable to invoice while awaiting a post-commitment decision and filed a pending request for waiver of this rule with the Wireline Competition Bureau (Bureau) for funding year 2016, regardless of whether the applicant or service provider requested and received a one-time, 120-day invoice deadline extension. The Commission's rules may be waived for good cause shown. The Commission finds, as in the *2018 Invoicing Relief Order,* that the circumstances here require a waiver of the invoicing rules because the applicants and service providers made nearly every attempt to comply with the invoice deadline rules, but were blocked from timely completing the invoicing process because a predicate request or function had not been completed (or could not be completed) by USAC's systems.

9. The Commission also directs the Bureau to extend this relief to any applicant or service provider that similarly faced this issue and filed a pending request for waiver of this rule due to a post-commitment request approval or a successful appeal decision received after the invoice deadline for funding years 2014–2015 and funding year 2017 or later. Because all of these applicants and service providers had approved funding commitments and were unable to take the last step to file invoices due to circumstances outside of their control, there are no concerns about waste, fraud, or abuse. The Commission therefore directs the Bureau to evaluate and grant these pending waiver requests on a case-by-case basis consistent with the Order. For program participants that receive a waiver, the Commission directs USAC to issue a Revised Funding Commitment Decision Letter and provide 120 days from the issuance of that letter for applicants or service providers to submit or resubmit invoices.

10. Finally, the Commission recognizes that there may be other applicants and service providers that faced the same circumstances as the others granted relief in the Order but did not file a waiver request with the Commission. To ensure that similar facts lead to similar outcomes, other applicants or service providers facing similar circumstances may request within 60 days from February 11, 2021, a waiver demonstrating that they were unable to timely invoice due to a delay in the processing of a post-commitment change or resolution of a successful appeal decision for funding years 2014 or later. The Commission finds that 60 days is an appropriate length of time to give applicants and service providers to file their waiver requests. The Commission's current rules require that appeals and waiver requests be submitted within this time frame, which provides petitioners an adequate opportunity to respond meaningfully to adverse decisions. Because these filings are likely being submitted beyond the 60-day time period for waiver requests, each pleading must contain an explanation of the reason they did not previously file a timely waiver request and, if the Bureau finds good cause, it should waive the filing deadline in § 54.720(a) of the Commission's rules. The Bureau is directed to evaluate and grant these waiver requests to the extent affected parties demonstrate that they were unable to submit timely invoices under the circumstances discussed in the Order and demonstrate good cause to waive the deadline to timely file a waiver request.

III. Procedural Matters

A. Paperwork Reduction Act Analysis

11. This document does not contain any new or modified information collection requirements subject to PRA. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

B. Congressional Review Act

12. The Commission will not send a copy of the Order to Congress and the

Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because the adopted rules are rules of agency organization, procedure, or practice that do not ''substantially affect the rights or obligations of non-agency parties.'' This is a procedural rule establishing a deadline for filing invoices.

IV. Ordering Clauses

13. Accordingly, *it is ordered* that, pursuant to the authority found in sections 1 through 4, 201–202, 254, 303(r) and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151 through 154, 201 through 202, 254, 303(r), and 403, the *Order is adopted*.

14. *It is further ordered*, pursuant to the authority contained in sections 1–4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154 and 254, and § 1.3 of the Commission's rules, 47 CFR 1.3, that §§ 54.514 and 54.720(a) of the Commission's rules, 47 CFR 54.514 and 54.720(a), ARE WAIVED to the extent provided herein.

15. *It is further ordered*, pursuant to the authority contained in sections 1–4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154 and 254, and §§ 0.91 and 1.3 of the Commission's rules, 47 CFR 0.91, 1.3, the Commission directs the Wireline Competition Bureau to *grant relief* to similarly situated applicants to the extent described herein.

16. The rule changes adopted in the Order constitute either a rules of agency organization, procedure and practice and are not subject to the notice and comment and effective date provisions of the Administrative Procedure Act. Accordingly, these rule changes are *effective* February 11, 2021.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Editorial Note: This document was received for publication by the Office of the Federal Register on January 5, 2021.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 54 as follows:

PART 54—UNIVERSAL SERVICE

■ 1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 229, 254, 303(r), 403, 1004, and 1302 unless otherwise noted.

■ 2. Amend § 54.514 by revising paragraph (a) to read as follows:

§ 54.514 Payment for discounted services.

(a) *Invoice filing deadline.* Invoices must be submitted to the Administrator:

(1) 120 days after the last day to receive service;

(2) 120 days after the date of the FCC Form 486 Notification Letter; or

(3) 120 days after the date of the Revised Funding Commitment Decision Letter approving a post-commitment request made by the applicant or service provider or a successful appeal of a previously denied or reduced funding request, whichever is latest.

* * * * *

[FR Doc. 2021–00190 Filed 2–10–21; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register

Vol. 86, No. 27

Thursday, February 11, 2021

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 390

RIN 3064–AF30

Removal of Transferred OTS Regulations Regarding Definitions of Terms

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of proposed rulemaking.

SUMMARY: In order to streamline FDIC regulations, the FDIC proposes to rescind and remove from the Code of Federal Regulations rules entitled *Definitions for Regulations Affecting All State Savings Associations* that were transferred to the FDIC from the Office of Thrift Supervision (OTS) on July 21, 2011, in connection with the implementation of Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). The effective date of rescinding and removing these regulations would be coordinated with the rescission and removal of the other remaining subparts.

DATES: Comments must be received on or before March 15, 2021.

ADDRESSES: You may submit comments, identified by RIN 3064–AF30, by any of the following methods:

- *FDIC Website: https://www.fdic.gov/regulations/laws/federal/.* Follow instructions for submitting comments on the agency website.
- *Email: Comments@fdic.gov.* Include RIN 3064–AF30 on the subject line of the message.
- *Mail:* James P. Sheesley, Assistant Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery to FDIC:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street NW building (located on F Street) on business days between 7 a.m. and 5 p.m.

Please include your name, affiliation, address, email address, and telephone number(s) in your comment. All statements received, including attachments and other supporting materials, are part of the public record and are subject to public disclosure. You should submit only information that you wish to make publicly available.

Please note: all comments received will be posted generally without change to *https://www.fdic.gov/regulations/laws/federal/,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Thomas Hearn, Counsel, Legal Division, *thohearn@fdic.gov,* 202–898–6967; or Kathryn Marks, Counsel, Legal Division, *kmarks@fdic.gov,* 202–898–3896.

SUPPLEMENTARY INFORMATION:

I. Policy Objectives

The policy objective of the proposed rule is to rescind and remove unnecessary and duplicative regulations in order to simplify them and improve the public's understanding of them. Subpart Q of part 390 is composed entirely of definitions of terms used in other subparts of parts 390 and 391. When completed, the ongoing rescission and removal of all other subparts of parts 390 and 391 mean the definitions in subpart Q will no longer apply to any current regulation, rendering it unnecessary. Therefore, the proposed rescission and removal of subpart Q may contribute to minimizing potential misunderstanding of the subpart by readers and help keep federal regulations current.

II. Background

Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the Dodd-Frank Act or the Act) provided for the functions, powers, and duties of the Office of Thrift Supervision (OTS) relating to State savings associations to transfer to the FDIC effective one year after July 21, 2010, the date that the Dodd-Frank Act was enacted.[1] In connection with this transfer, effective July 22, 2011, the FDIC caused to be published in the **Federal Register** the transferred OTS regulations related to State savings associations reissued as parts 390 and 391 of the FDIC's regulations.[2]

When the FDIC reissued OTS regulations as parts 390 and 391 of the FDIC's regulations, it specifically noted that its staff would evaluate the reissued regulations and may later recommend incorporating them into other FDIC regulations, amending them, or rescinding them, as appropriate.[3] The

[1] Section 311 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010) (codified at 12 U.S.C. 5411). The Act also amended section 3 of the Federal Deposit Insurance Act (FDI Act) to designate the FDIC as the ''appropriate Federal banking agency'' for State savings associations.

[2] 76 FR 47652 (Aug. 5, 2011).

[3] 76 FR at 47653.

FDIC has since rescinded and removed all subparts of part 391.[4] At present, the FDIC has rescinded and removed 24 of the 26 subparts of part 390 and a notice of proposed rulemaking with respect to subpart W (Securities Offerings), is expected to be considered at the same Board meeting.[5] Subpart Q, the subject of this Notice, is the final of the 26 subparts to be considered by the Board for rescission.

III. Proposed Regulation Changes

Part 390, subpart Q, contains definitions of terms used in subparts 390 and 391,[6] and is derived from definitions contained in 12 CFR part 561 of the OTS regulations. As noted above, all of part 391 has been rescinded and removed from the FDIC's regulations. For part 390, 24 of the 26 subparts have been rescinded and removed and the other remaining subpart, subpart W, is expected to be considered at the January 2021 Board meeting. Once this other remaining subpart of part 390 is rescinded and removed, no regulations will remain to which the definitions in subpart Q will apply. For this reason, the FDIC is proposing to rescind and remove subpart Q, the last of the 26 subparts, and will coordinate the final rule's effective date with effective dates for the rescission and removal of the remaining other subparts of part 390.

IV. Expected Effects

As of the quarter ending June 30, 2020, the FDIC supervised 3,270 depository institutions, of which 35 (1.1 percent) are State savings associations.[7] The proposed rule primarily would affect regulations that govern State savings associations. Therefore, the FDIC estimates that the proposed rule will affect 35 FDIC-supervised State savings associations. As previously discussed, the proposed rule, if adopted, would rescind and remove part 390, subpart Q. Since the proposed rescission and removal of subpart Q is being coordinated with the rescission and removal of the five remaining subparts of part 390, it will no longer apply to any regulation and will, therefore, be unnecessary. Based on the forgoing, the proposed rule is not expected to have any substantive effects on FDIC-supervised State savings associations.

The proposed rule could have a broad effect on the public by simplifying the Code of Federal Regulations, and thereby, benefit the public by promoting ease of understanding and reference. Assessing the magnitude of this potential effect appears infeasible given the absence of direct studies demonstrating the potential connection between outdated federal regulations and compliance outcomes.

The FDIC does not believe that the proposed rule will have direct substantive effects on financial market activity or the U.S. economy.

The FDIC invites comments on all aspects of this analysis. In particular, would the proposed rule have any costs or benefits to covered entities that the FDIC has not identified?

V. Alternatives Considered

The FDIC has considered alternatives to the proposed rule, but believes the proposed rule represents the most appropriate option for covered institutions. As discussed previously, the Dodd-Frank Act transferred to the FDIC certain powers, duties, and functions formerly performed by the

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4 The list below reflects the relevant **Federal Register** citations and effective dates for the rescission and removal of the subparts of part 391.

Subpart A—Security Procedures, final rule, 83 FR 13839 (Apr. 2, 2018) *https://www.govinfo.gov/content/pkg/FR-2018-04-02/pdf/2018-06161.pdf,* effective May 2, 2018; Subpart B—Safety and Soundness Guidelines and Compliance Procedures, final rule, 80 FR 65904 (Oct. 28, 2015) *https://www.govinfo.gov/content/pkg/FR-2015-10-28/pdf/2015-27293.pdf,* effective November 27, 2015; Subpart C—Fair Credit Reporting, final rule, 80 FR 65913 (Oct. 28, 2015) *https://www.govinfo.gov/content/pkg/FR-2015-10-28/pdf/2015-27291.pdf,* effective November 27, 2015; Subpart D—Loans in Areas Having Special Flood Hazards, final rule, 79 FR 75742 (Dec. 19, 2014) *https://www.govinfo.gov/content/pkg/FR-2014-12-19/pdf/2014-29761.pdf,* effective January 20, 2015; and Subpart E—Acquisitions of Control of State Savings Associations, final rule, 80 FR 65889 (Oct. 28, 2015) *https://www.govinfo.gov/content/pkg/FR-2015-10-28/pdf/2015-27289.pdf,* effective January 1, 2016.

5 The list below reflects the relevant **Federal Register** citations and effective dates for the 24 subparts of part 390 that have been rescinded and removed. The FDIC is also expected to propose rescinding and removing Subpart W at the same Board meeting on January 19, 2021.

Subpart A—Restrictions on Post-Employment Activities of Senior Examiners, final rule, 79 FR 42181 (July 21, 2014) *https://www.govinfo.gov/content/pkg/FR-2014-07-21/pdf/2014-16974.pdf,* effective August 20, 2014; Subpart B—Removals, Suspensions, and Prohibitions Where a Crime is Charged or Proven, final rule, 80 FR 5009 (Jan. 30 2015) *https://www.govinfo.gov/content/pkg/FR-2015-01-30/pdf/2015-01327.pdf,* effective March 2, 2015; Subpart C—Rules of Practice and Procedure in Adjudicatory Proceedings, final rule, 80 FR 5009 (Jan. 30 2015) *https://www.govinfo.gov/content/pkg/FR-2015-01-30/pdf/2015-01327.pdf,* effective March, 2, 2015; Subpart D—Rules for Investigations and Formal Examination Proceedings, final rule, 80 FR 5009 (Jan. 30 2015) *https://www.govinfo.gov/content/pkg/FR-2015-01-30/pdf/2015-01327.pdf,* effective March 2, 2015; Subpart E—Rules of Practice Before the FDIC, final rule, 80 FR 5009 (Jan. 30 2015) *https://www.govinfo.gov/content/pkg/FR-2015-01-30/pdf/2015-01327.pdf,* effective March 2, 2015; Subpart F—Application Process Procedures, final rule approved by the FDIC Board on December 15, 2020, *https://www.govinfo.gov/content/pkg/FR-2020-10-15/pdf/2020-21000.pdf;* Subpart G—Nondiscrimination Requirements, final rule approved by the FDIC Board on December 15, 2020, *https://www.fdic.gov/news/board/2020/2020-12-15-notice-sum-f-mem.pdf;* Subpart H—Disclosure and Reporting of CRA-Related Agreements, final rule, 79 FR 42183 (July 21, 2014) *https://www.govinfo.gov/content/pkg/FR-2014-07-21/pdf/2014-16973.pdf,* effective August 20, 2014; Correction 80 FR 23692 (Apr. 29, 2015); *https://www.govinfo.gov/content/pkg/FR-2015-04-29/pdf/2015-09894.pdf,* effective April 29, 2015; Subpart I—Consumer Protection in Sales of Insurance, final rule, 83 FR 13843 (April 2, 2018) *https://www.govinfo.gov/content/pkg/FR-2018-04-02/pdf/2018-06163.pdf,* effective May 2, 2018; Subpart J—Fiduciary Powers of State Savings Associations, final rule, 83 FR 60333 (Nov. 26, 2018) *https://www.govinfo.gov/content/pkg/FR-2018-11-26/pdf/2018-25659.pdf,* effective January 1, 2019; Subpart K—Recordkeeping and Confirmation Requirements for Securities Transactions, final rule, 78 FR 76721 (Dec. 19, 2013) *https://www.govinfo.gov/content/pkg/FR-2013-12-19/pdf/2013-29786.pdf,* effective January 24, 2014; Subpart L—Electronic Operations, final rule, 80 FR 65612 (Oct. 27, 2015) *https://www.govinfo.gov/content/pkg/FR-2015-10-27/pdf/2015-27292.pdf,* effective November 27, 2015; Subpart M—Deposits, final rule, 84 FR 65276 (Nov. 27, 2019) *https://www.govinfo.gov/content/pkg/FR-2019-11-27/pdf/2019-25697.pdf,* effective December 27, 2019; Subpart N—Possession by Conservators or Receivers of Federal and State Savings Associations, final rule, 80 FR 5015 (Jan. 30, 2015) *https://www.govinfo.gov/content/pkg/FR-2015-01-30/pdf/2015-01326.pdf,* effective March 2, 2015; Subpart O—Subordinate Organizations, final rule approved by the FDIC Board on December 15, 2020, *https://www.fdic.gov/news/board/2020/2020-12-15-notice-sum-g-fr.pdf;* Subpart P—Lending and Investment, final rule, 84 FR 31171 (July 1, 2019) *https://www.govinfo.gov/content/pkg/FR-2019-07-01/pdf/2019-13449.pdf,* effective July 31, 2019; Subpart R—Regulatory Reporting Standards, final rule, 85 FR 3247 (Jan. 21, 2020) *https://www.govinfo.gov/content/pkg/FR-2020-01-21/pdf/2019-27577.pdf,* effective February 20, 2020; Subpart S—State Savings Associations—Operations, final rule, 85 FR 3232 (Jan. 21, 2020) *https://www.govinfo.gov/content/pkg/FR-2020-01-21/pdf/2019-27580.pdf,* effective February 20, 2020; Subpart T—Accounting Requirements, final rule, 85 FR 3250 (Jan. 21, 2020) *https://www.govinfo.gov/content/pkg/FR-2020-01-21/pdf/2019-27579.pdf,* effective February 20, 2020; Subpart U—Securities of State Savings Associations, final rule, 79 FR 63498 (Oct. 24, 2014) *https://www.govinfo.gov/content/pkg/FR-2014-10-24/pdf/2014-25336.pdf,* effective November 24, 2014; Subpart V—Management Officials Interlock, final rule, 80 FR 79250 (Dec. 21. 2015) *https://www.govinfo.gov/content/pkg/FR-2015-12-21/pdf/2015-31940.pdf,* effective January 20, 2016; Subpart W—Securities Offerings, Subpart W is expected to be considered at the January 19, 2021, Board meeting.; Subpart X—Appraisals, final rule, 80 FR 33658 (June 9, 2015) *https://www.govinfo.gov/content/pkg/FR-2015-06-09/pdf/2015-12719.pdf,* effective August 10, 2015; Subpart Y—Prompt Corrective Action, final rule, §§ 390.450 through 390.455 rescinded and removed, 83 FR 17737 (April 24, 2018) *https://www.govinfo.gov/content/pkg/FR-2018-04-24/pdf/2018-06881.pdf,* effective April 24, 2018; for rescinding and removing the remaining sections of subpart Y, §§ 390.456 through 390.459, a final rule was approved by the FDIC Board on December 15, 2020, *https://www.fdic.gov/news/board/2020/2020-12-15-notice-sum-h-fr.pdf. https://www.fdic.gov/news/board/2020/2020-12-15-notice-sum-h-fr-.pdf*; Subpart Z—Capital, final rule, 83 FR 17737 (Apr. 24, 2018) *https://www.govinfo.gov/content/pkg/FR-2018-04-24/pdf/2018-06881.pdf,* (effective April 24, 2018).

6 Subpart Q is derived from part 561 of the OTS regulations.

7 CALL Report data, June 2020.

OTS. The FDIC's Board reissued and redesignated certain transferred regulations from the OTS, but noted that it would evaluate and might later, as appropriate, rescind, amend, or incorporate the regulations into other FDIC regulations.

The FDIC has evaluated the existing regulations regarding definitions of terms used in parts 390 and 391. The FDIC considered the status quo alternative of retaining the current regulations, but believes it would be unnecessary for FDIC-supervised institutions to continue to refer to these regulations when they will not apply to remaining regulations. If subpart Q remained in the Federal Code while all the subparts to which it applied were rescinded and removed, some members of the public could incur modest but unnecessary costs associated with the time and effort to comprehend the meaning of the presence of subpart Q. Therefore, the FDIC is proposing to rescind and remove the regulations.

VI. Request for Comments

The FDIC invites comments on all aspects of this proposed rulemaking. In particular, the FDIC requests comments on what negative impacts, if any, can you foresee in the FDIC's proposal to rescind and remove part 390, subpart Q from the Code of Federal Regulation and to coordinate this action with the effective dates of the rescission and removal of the other remaining subparts of part 390. Please provide any other comments you have on the proposal.

VII. Administrative Law Matters

A. The Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA),[8] the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The proposed rule would rescind and remove from FDIC regulations part 390, subpart Q. The proposed rule will not create any new or revise any existing collections of information under the PRA. Therefore, no information collection request will be submitted to the OMB for review.

B. The Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), requires that, in connection with a notice of proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of the proposed rule on small entities.[9] However, a regulatory flexibility analysis is not required if the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities, and publishes its certification and a short explanatory statement in the **Federal Register**, together with the proposed rule. The Small Business Administration (SBA) has defined "small entities" to include banking organizations with total assets of less than or equal to $600 million.[10] Generally, the FDIC considers a significant effect to be a quantified effect in excess of 5 percent of total annual salaries and benefits per institution, or 2.5 percent of total noninterest expenses. The FDIC believes that effects in excess of these thresholds typically represent significant effects for FDIC-supervised institutions.

As of the quarter ending June 30, 2020, the FDIC supervised 3,270 depository institutions,[11] of which 2,492 were considered small entities for the purposes of RFA.[12] There are 33 (1.0 percent of FDIC-supervised depository institutions) State savings associations that are small entities for the purposes of RFA.[13] As discussed previously, the proposed rule would rescind and remove 12 CFR part 390, subpart Q, which contains definitions of terms used in parts 390 and 391 of the FDIC's regulations. Because all of part 391 has been rescinded and removed and all other remaining subparts of part 390 will be rescinded and removed upon finalization of this proposed rulemaking, the FDIC does not expect the rescission and removal of the definitions in subpart Q to significantly affect any small FDIC-supervised State savings associations.

Based on the information above, the FDIC certifies that the proposed rule, if enacted, would not have a significant economic impact on a substantial number of small entities.

The FDIC invites comments on all aspects of the supporting information provided in this section, and in particular, whether the proposed rule would have any significant effects on small entities that the FDIC has not identified.

C. Plain Language

Section 722 of the Gramm-Leach-Bliley Act[14] requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The FDIC has sought to present the proposed rule in a simple and straightforward manner. The FDIC invites comments on whether the proposal is clearly stated and effectively organized and how the FDIC might make the proposal easier to understand.

D. The Economic Growth and Regulatory Paperwork Reduction Act

Under section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA), the FDIC is required to review all of its regulations at least once every 10 years in order to identify any outdated or otherwise unnecessary regulations imposed on insured institutions.[15] The FDIC, along with the other Federal banking agencies, submitted a Joint Report to Congress on March 21, 2017 (EGRPRA Report) discussing how the review was conducted, what has been done to date to address regulatory burden, and further measures the FDIC will take to address issues that were identified.[16] As noted in the EGRPRA Report, the FDIC is continuing to streamline and clarify its regulations through the OTS rule integration process. By rescinding and removing outdated or unnecessary regulations such as part 390, subpart Q, this proposed rule complements other actions that the FDIC has taken, separately and with the other Federal banking agencies, to further the EGRPRA mandate.

E. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),[17] in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions (IDIs), each

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[8] 44 U.S.C. 3501–3521.

[9] 5 U.S.C. 601, *et seq.*

[10] The SBA defines a small banking organization as having $600 million or less in assets, where "a financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year." See 13 CFR 121.201 (as amended by 84 FR 34261, effective August 19, 2019). "SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates." See 13 CFR 121.103. Following these regulations, the FDIC uses a covered entity's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the FDIC-supervised institution is "small" for the purposes of RFA.

[11] FDIC-supervised institutions are set forth in 12 U.S.C. 1813(q)(2).

[12] FDIC CALL Report data, June 30, 2020.

[13] *Id.*

[14] Public Law 106–102, section 722, 113 Stat. 1338, 1471 (codified at 12 U.S.C. 4809)).

[15] Public Law 104–208, 110 Stat. 3009 (1996).

[16] 82 FR 15900 (March 31, 2017).

[17] 12 U.S.C. 4802(a).

Federal banking agency must consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.[18] The FDIC invites comments that further will inform its consideration of RCDRIA.

List of Subjects in 12 CFR Part 390

Administrative practice and procedure, Advertising, Aged, Civil rights, Conflict of interests, Credit, Crime, Equal employment opportunity, Fair housing, Government employees, Individuals with disabilities, Reporting and recordkeeping requirements, Savings associations.

PART 390—REGULATIONS TRANSFERRED FROM THE OFFICE OF THRIFT SUPERVISION

Authority and Issuance

For the reasons stated in the preamble, the Federal Deposit Insurance Corporation proposes to amend part 390 of title 12 of the Code of Federal Regulations as follows:

■ 1. The authority citation for part 390 is revised to read as follows:

Authority: 12 U.S.C. 1819.

Subpart Q—[Removed and Reserved]

■ 2. Remove and reserve subpart Q, consisting of §§ 390.280 through 390.316.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on January 19, 2021.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2021–01536 Filed 2–10–21; 8:45 am]

BILLING CODE 6714–01–P

[18] *Id.*

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2020–0597; FRL–10019–43–Region 3]

Approval and Promulgation of Air Quality Plans; Pennsylvania; Reasonably Available Control Technology (RACT) Determinations for Case-by-Case Sources Under the 1997 and 2008 8-Hour Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve multiple state implementation plan (SIP) revisions submitted by the Commonwealth of Pennsylvania. These revisions were submitted by the Pennsylvania Department of Environmental Protection (PADEP) to establish and require reasonably available control technology (RACT) for nine major sources of volatile organic compounds (VOC) and/or nitrogen oxides (NO_X) pursuant to the Commonwealth of Pennsylvania's conditionally approved RACT regulations. In this rulemaking action, EPA is only proposing to approve source-specific (also referred to as ''case-by-case'') RACT determinations for eight of the nine major sources submitted by PADEP. These RACT evaluations were submitted to meet RACT requirements for the 1997 and 2008 8-hour ozone national ambient air quality standards (NAAQS). This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before March 15, 2021.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2020–0597 at *https://www.regulations.gov,* or via email to *opila.marycate@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Ms. Emily Bertram, Permits Branch (3AD10), Air and Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–5273. Ms. Bertram can also be reached via electronic mail at *bertram.emily@epa.gov.*

SUPPLEMENTARY INFORMATION: On March 9, 2020, PADEP submitted a revision to its SIP to address case-by-case NO_X and/or VOC RACT for nine major facilities. This SIP revision is intended to address the NO_X and/or VOC RACT requirements under sections 182 and 184 of the CAA for the 1997 and 2008 8-hour ozone NAAQS. Table 1 of this document lists the SIP submittal date and the facilities included in PADEP's submittal. Although submitted in one SIP revision by PADEP, EPA views each facility as a separable SIP revision and may take separate final action on one or more facilities. In this rulemaking action, EPA is only proposing to approve case-by-case RACT determinations for eight of the nine sources submitted to EPA by PADEP. The remaining major source, Montour LLC, will be acted on in a future rulemaking action.

For additional background information on Pennsylvania's ''presumptive'' RACT II SIP see 84 FR 20274 (May 9, 2019) and on Pennsylvania's source-specific or ''case-by-case'' RACT determinations see the appropriate technical support document (TSD) which is available online at *https://www.regulations.gov,* Docket No. EPA–R03–OAR–2020–0597.

TABLE 1—PADEP SIP SUBMITTALS FOR MAJOR NO_X AND/OR VOC SOURCES IN PENNSYLVANIA SUBJECT TO SOURCE-SPECIFIC RACT UNDER THE 1997 AND 2008 8-HOUR OZONE STANDARD

SIP submittal date	Major source (county)
3/9/2020	Volvo Construction Equipment North America (Franklin). National Fuel Gas Supply Corporation—Roystone Compressor Station (Warren). Montour, LLC (Montour).[a] E.I DuPont de Nemours and Co. (Bradford). Carmeuse Lime Inc. (Lebanon). Kovatch Mobile Equipment Corp. (Carbon). Merck, Sharpe & Dohme Corp. (formerly Merck and Co., Inc.—West Point Facility) (Montgomery). Letterkenny Army Depot (formerly Department of the Army) (Franklin). Fairless Energy, LLC (Bucks).

[a] EPA will be taking action on this source in a future rulemaking action.

I. Background

A. 1997 and 2008 8-Hour Ozone NAAQS

Ground level ozone is not emitted directly into the air but is created by chemical reactions between NO_X and VOC in the presence of sunlight. Emissions from industrial facilities, electric utilities, motor vehicle exhaust, gasoline vapors, and chemical solvents are some of the major sources of NO_X and VOC. Breathing ozone can trigger a variety of health problems, particularly for children, the elderly, and people of all ages who have lung diseases such as asthma. Ground level ozone can also have harmful effects on sensitive vegetation and ecosystems.

On July 18, 1997, EPA promulgated a standard for ground level ozone based on 8-hour average concentrations. 62 FR 38856. The 8-hour averaging period replaced the previous 1-hour averaging period, and the level of the NAAQS was changed from 0.12 parts per million (ppm) to 0.08 ppm. EPA has designated two moderate nonattainment areas in Pennsylvania under the 1997 8-hour ozone NAAQS, namely Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE (the Philadelphia Area) and Pittsburgh-Beaver Valley (the Pittsburgh Area). See 40 CFR 81.339.

On March 12, 2008, EPA strengthened the 8-hour ozone standards, by revising its level to 0.075 ppm averaged over an 8-hour period (2008 8-hour ozone NAAQS). On May 21, 2012, EPA designated five marginal nonattainment areas in Pennsylvania for the 2008 8-hour ozone NAAQS: Allentown-Bethlehem-Easton, Lancaster, Reading, the Philadelphia Area, and the Pittsburgh Area. 77 FR 30088; see also 40 CFR 81.339.

On March 6, 2015, EPA announced its revocation of the 1997 8-hour ozone NAAQS for all purposes and for all areas in the country, effective on April 6, 2015. 80 FR 12264. EPA has determined that certain nonattainment planning requirements continue to be in effect under the revoked standard for nonattainment areas under the 1997 8-hour ozone NAAQS, including RACT.

B. RACT Requirements for Ozone

The CAA regulates emissions of NO_X and VOC to prevent photochemical reactions that result in ozone formation. RACT is an important strategy for reducing NO_X and VOC emissions from major stationary sources within areas not meeting the ozone NAAQS.

Areas designated nonattainment for the ozone NAAQS are subject to the general nonattainment planning requirements of CAA section 172. Section 172(c)(1) of the CAA provides that SIPs for nonattainment areas must include reasonably available control measures (RACM) for demonstrating attainment of all NAAQS, including emissions reductions from existing sources through the adoption of RACT. Further, section 182(b)(2) of the CAA sets forth additional RACT requirements for ozone nonattainment areas classified as moderate or higher. Section 182(b)(2) of the CAA sets forth requirements regarding RACT for the ozone NAAQS for VOC sources. Section 182(f) subjects major stationary sources of NO_X to the same RACT requirements applicable to major stationary sources of VOC.[1]

Section 184(b)(1)(B) of the CAA applies the RACT requirements in section 182(b)(2) to nonattainment areas classified as marginal and to attainment areas located within ozone transport regions established pursuant to section 184 of the CAA. Section 184(a) of the CAA established by law the current Ozone Transport Region (OTR) comprised of 12 eastern states, including Pennsylvania. This requirement is referred to as OTR RACT. As noted previously, a ''major source'' is defined based on the source's PTE of NO_X, VOC, or both pollutants, and the applicable thresholds differ based on the classification of the nonattainment area in which the source is located. See sections 182(c)–(f) and 302 of the CAA.

Since the 1970's, EPA has consistently defined ''RACT'' as the lowest emission limit that a particular source is capable of meeting by the application of the control technology that is reasonably available considering technological and economic feasibility.[2]

EPA has provided more substantive RACT requirements through implementation rules for each ozone NAAQS as well as through guidance. In 2004 and 2005, EPA promulgated an implementation rule for the 1997 8-hour ozone NAAQS in two phases (''Phase 1 of the 1997 Ozone Implementation Rule'' and ''Phase 2 of the 1997 Ozone Implementation Rule''). 69 FR 23951 (April 30, 2004) and 70 FR 71612 (November 29, 2005), respectively. Particularly, the Phase 2 Ozone Implementation Rule addressed RACT statutory requirements under the 1997 8-hour ozone NAAQS. See 70 FR 71652 (November 29, 2005).

On March 6, 2015, EPA issued its final rule for implementing the 2008 8-hour ozone NAAQS (''the 2008 Ozone SIP Requirements Rule''). 80 FR 12264. At the same time, EPA revoked the 1997 8-hour ozone NAAQS, effective on April 6, 2015.[3] The 2008 Ozone SIP

[1] A ''major source'' is defined based on the source's potential to emit (PTE) of NO_X or VOC, and the applicable thresholds for RACT differs based on the classification of the nonattainment area in which the source is located. See sections 182(c)–(f) and 302 of the CAA.

[2] See December 9, 1976 memorandum from Roger Strelow, Assistant Administrator for Air and Waste Management, to Regional Administrators, ''Guidance for Determining Acceptability of SIP Regulations in Non-Attainment Areas,'' and also 44 FR 53762 (September 17, 1979).

[3] On February 16, 2018, the United States Court of Appeals for the District of Columbia Circuit (D.C. Cir. Court) issued an opinion on the 2008 Ozone SIP Requirements Rule. *South Coast Air Quality Mgmt. Dist.* v. *EPA,* No. 15–1115 (D.C. Cir. February 16, 2018). The D.C. Cir. Court found certain parts reasonable and denied the petition for appeal on those. In particular, the D.C. Cir. Court upheld the use of NO_X averaging to meet RACT requirements for 2008 8-hour ozone NAAQS. However, the Court also found certain other provisions unreasonable.

Requirements Rule provided comprehensive requirements to transition from the revoked 1997 8-hour ozone NAAQS to the 2008 8-hour ozone NAAQS, as codified in 40 CFR part 51, subpart AA, following revocation. Consistent with previous policy, EPA determined that areas designated nonattainment for both the 1997 and 2008 8-hour ozone NAAQS at the time of revocation, must retain implementation of certain nonattainment area requirements (*i.e.,* anti-backsliding requirements) for the 1997 8-hour ozone NAAQS as specified under section 182 of the CAA, including RACT. See 40 CFR 51.1100(o). An area remains subject to the anti-backsliding requirements for a revoked NAAQS until EPA approves a redesignation to attainment for the area for the 2008 8-hour ozone NAAQS. There are no effects on applicable requirements for areas within the OTR, as a result of the revocation of the 1997 8-hour ozone NAAQS. Thus, Pennsylvania, as a state within the OTR, remains subject to RACT requirements for both the 1997 8-hour ozone NAAQS and the 2008 8-hour ozone NAAQS.

In addressing RACT, the 2008 Ozone SIP Requirements Rule is consistent with existing policy and Phase 2 of the 1997 Ozone Implementation Rule. In the 2008 Ozone SIP Requirements Rule, EPA requires RACT measures to be implemented by January 1, 2017 for areas classified as moderate nonattainment or above and all areas of the OTR. EPA also provided in the 2008 Ozone SIP Requirements Rule that RACT SIPs must contain adopted RACT regulations, certifications where appropriate that existing provisions are RACT, and/or negative declarations stating that there are no sources in the nonattainment area covered by a specific control technique guidelines (CTG) source category. In the preamble to the 2008 Ozone SIP Requirements Rule, EPA clarified that states must provide notice and opportunity for public comment on their RACT SIP submissions, even when submitting a certification that the existing provisions remain RACT or a negative declaration. States must submit appropriate supporting information for their RACT submissions, in accordance with the Phase 2 of the 1997 Ozone Implementation Rule. Adequate documentation must support that states have considered control technology that is economically and technologically feasible in determining RACT, based on information that is current as of the time of development of the RACT SIP.

In addition, in the 2008 Ozone SIP Requirements Rule, EPA clarified that states can use weighted average NO_X emissions rates from sources in the nonattainment area for meeting the major NO_X RACT requirement under the CAA, as consistent with existing policy.[4] EPA also recognized that states may conclude in some cases that sources already addressed by RACT determinations for the 1979 1-hour and/or 1997 8-hour ozone NAAQS may not need to implement additional controls to meet the 2008 8-hour ozone NAAQS RACT requirement. See 80 FR 12278–12279 (March 6, 2015).

C. Applicability of RACT Requirements in Pennsylvania

As indicated earlier, RACT requirements apply to any ozone nonattainment areas classified as moderate or higher (serious, severe or extreme) under CAA sections 182(b)(2) and 182(f). Pennsylvania has outstanding ozone RACT requirements for both the 1997 and 2008 8-hour ozone NAAQS. The entire Commonwealth of Pennsylvania is part of the OTR established under section 184 of the CAA and thus is subject statewide to the RACT requirements of CAA sections 182(b)(2) and 182(f), pursuant to section 184(b).

At the time of revocation of the 1997 8-hour ozone NAAQS (effective April 6, 2015), only two moderate nonattainment areas remained in the Commonwealth of Pennsylvania for this standard, the Philadelphia and the Pittsburgh Areas. As required under EPA's anti-backsliding provisions, these two moderate nonattainment areas continue to be subject to RACT under the 1997 8-hour ozone NAAQS. Given its location in the OTR, the remainder of the Commonwealth is also treated as moderate nonattainment area under the 1997 8-hour ozone NAAQS for any planning requirements under the revoked standard, including RACT. The OTR RACT requirement is also in effect under the 2008 8-hour ozone NAAQS throughout the Commonwealth, since EPA did not designate any nonattainment areas above marginal for this standard in Pennsylvania. Thus, in practice, the same RACT requirements continue to be applicable in Pennsylvania for both the 1997 and 2008 8-hour ozone NAAQS. RACT must be evaluated and satisfied as separate requirements under each applicable standard.

RACT applies to major sources of NO_X and VOC under each ozone NAAQS or any VOC sources subject to CTG RACT. Which NO_X and VOC sources in Pennsylvania are considered ''major'' and are therefore subject to RACT is dependent on the location of each source within the Commonwealth. Sources located in nonattainment areas would be subject to the ''major source'' definitions established under the CAA. In the case of Pennsylvania, sources located in any areas outside of moderate or above nonattainment areas, as part of the OTR, shall be treated as if these areas were moderate.

In Pennsylvania, the SIP program is implemented primarily by the PADEP, but also by local air agencies in Philadelphia County (the City of Philadelphia's Air Management Services [AMS]) and Allegheny County, (the Allegheny County Health Department [ACHD]). These agencies have implemented numerous RACT regulations and source-specific measures in Pennsylvania to meet the applicable ozone RACT requirements. Historically, statewide RACT controls have been promulgated by PADEP in Pennsylvania Code Title 25—Environmental Resources, Part I—Department of Environmental Protection, Subpart C—Protection of Natural Resources, Article III—Air Resources, (25 Pa. Code) Chapter 129. AMS and ACHD have incorporated by reference Pennsylvania regulations, but have also promulgated regulations adopting RACT controls for their own jurisdictions. In addition, AMS and ACHD have submitted, through PADEP, separate source-specific RACT determinations as SIP revisions for sources within their respective jurisdictions, which have been approved by EPA. See 40 CFR 52.2020(d)(1).

States were required to make RACT SIP submissions for the 1997 8-hour ozone NAAQS by September 15, 2006. PADEP submitted a SIP revision on September 25, 2006, certifying that a number of previously approved VOC RACT rules continued to satisfy RACT under the 1997 8-hour ozone NAAQS

The D.C. Cir. Court vacated the provisions it found unreasonable.

[4] EPA's NO_X RACT guidance ''Nitrogen Oxides Supplement to the General Preamble'' (57 FR 55625; November 25, 1992) encouraged states to develop RACT programs that are based on ''area wide average emission rates.'' Additional guidance on area-wide RACT provisions is provided by EPA's January 2001 economic incentive program guidance titled ''Improving Air Quality with Economic Incentive Programs,'' available at *http://www.epa.gov/ttn/oarpg/t1/memoranda/eipfin.pdf.* In addition, as mentioned previously, the D.C. Cir. Court recently upheld the use of NO_X averaging to meet RACT requirements for 2008 8-hour ozone NAAQS. *South Coast Air Quality Mgmt. Dist.* v. *EPA,* No. 15–1115 (D.C. Cir. February 16, 2018).

for the remainder of Pennsylvania.[5] PADEP has met its obligations under the 1997 8-hour ozone NAAQS for its CTG and non-CTG VOC sources. See 82 FR 31464 (July 7, 2017). RACT control measures addressing all applicable CAA RACT requirements under the 1997 8-hour ozone NAAQS have been implemented and fully approved in the jurisdictions of ACHD and AMS. See 78 FR 34584 (June 10, 2013) and 81 FR 69687 (October 7, 2016). For the 2008 8-hour ozone NAAQS, states were required to submit RACT SIP revisions by July 20, 2014. On May 16, 2016, PADEP submitted a SIP revision addressing RACT under both the 1997 and 2008 8-hour ozone NAAQS in Pennsylvania. Specifically, the May 16, 2016 SIP submittal intended to satisfy sections 182(b)(2)(C), 182(f), and 184 of the CAA for both the 1997 and 2008 8-hour ozone NAAQS for Pennsylvania's major NO_X and VOC non-CTG sources, except ethylene production plants, surface active agents manufacturing, and mobile equipment repair and refinishing.[6]

D. EPA's Conditional Approval for Pennsylvania's RACT Requirements Under the 1997 and 2008 8-Hour Ozone NAAQS

On May 16, 2016, PADEP submitted a SIP revision addressing RACT under both the 1997 and 2008 8-hour ozone NAAQS in Pennsylvania. PADEP's May 16, 2016 SIP revision intended to address certain outstanding non-CTG VOC RACT, VOC CTG RACT, and major NO_X RACT requirements under the CAA for both standards. The SIP revision requested approval of Pennsylvania's 25 Pa. Code 129.96–100, *Additional RACT Requirements for Major Sources of NO_X and VOCs* (the ''presumptive'' RACT II rule). Prior to the adoption of the RACT II rule, Pennsylvania relied on the NO_X and VOC control measures in 25 Pa. Code 129.92–95, *Stationary Sources of NO_X and VOCs,* (the RACT I rule) to meet RACT for non-CTG major VOC sources and major NO_X sources. The requirements of the RACT I rule remain in effect and continue to be implemented as RACT.[7] On September 26, 2017, PADEP submitted a supplemental SIP revision which committed to address various deficiencies identified by EPA in their May 16, 2016 ''presumptive'' RACT II rule SIP revision.

On May 9, 2019, EPA conditionally approved the RACT II rule based on PADEP's September 26, 2017 commitment letter.[8] See 84 FR 20274. In EPA's final conditional approval, EPA noted that PADEP would be required to submit, for EPA's approval, SIP revisions to address any facility-wide or system-wide averaging plan approved under 25 Pa. Code 129.98 and any case-by-case RACT determinations under 25 Pa. Code 129.99. PADEP committed to submitting these additional SIP revisions within 12 months of EPA's final conditional approval, specifically May 9, 2020.

Therefore, as authorized in CAA section 110(k)(3) and (k)(4), Pennsylvania was required to submit the following as case-by-case SIP revisions, by May 9, 2020, for EPA's approval as a condition of approval of 25 Pa. Code 128 and 129 in the May 16, 2016 SIP revision: (1) All facility-wide or system-wide averaging plans approved by PADEP under 25 Pa. Code 129.98 including, but not limited to, any terms and conditions that ensure the enforceability of the averaging plan as a practical matter (*i.e.,* any monitoring, reporting, recordkeeping, or testing requirements); and (2) all source-specific RACT determinations approved by PADEP under 25 Pa. Code 129.99, including any alternative compliance schedules approved under 25 Pa. Code 129.97(k) and 129.99(i); the case-by-case RACT determinations submitted to EPA for approval into the SIP should include any terms and conditions that ensure the enforceability of the case-by-case or source-specific RACT emission limitation as a practical matter (*i.e.,* any monitoring, reporting, recordkeeping, or testing requirements). See May 9, 2019 (84 FR 20274). Through multiple submissions between 2017 and 2020, PADEP has submitted to EPA for approval various SIP submissions to implement its RACT II case-by-case determinations and averaging plans. This proposed rulemaking is based on EPA's review of one of these SIP revisions.

II. Summary of SIP Revisions

In order to satisfy a requirement from EPA's May 9, 2019 conditional approval, PADEP has submitted to EPA, SIP revisions addressing case-by-case RACT requirements for major sources in Pennsylvania subject to 25 Pa. Code 129.99. As noted in Table 1 of this document, on March 9, 2020, PADEP submitted to EPA, a SIP revision pertaining to Pennsylvania's case-by-case NO_X and/or VOC RACT determinations for nine major sources located in the Commonwealth. PADEP provided documentation in its SIP revisions to support its case-by-case RACT determinations for affected emission units at each major source subject to 25 Pa. Code 129.99. Specifically, in this SIP submittal, PADEP evaluated a total of nine major NO_X and/or VOC sources in Pennsylvania for case-by-case RACT.[9]

In the Pennsylvania RACT SIP revision, PADEP included a case-by-case RACT determination for the existing emissions units at each of these major sources of NO_X and/or VOC that required a source specific RACT determination. In PADEP's RACT determinations an evaluation was completed to determine if previously SIP-approved, case-by-case RACT requirements (herein referred to as RACT I) were more stringent and required to be retained in the sources Title V air quality permit and subsequently, the Federally-approved SIP, or if the new case-by-case RACT requirements are more stringent and supersede the previous Federally-approved provisions.

In this rulemaking action, EPA is taking action on eight major sources of NO_X and/or VOC in Pennsylvania, subject to Pennsylvania's case-by-case RACT requirements, as summarized in Table 2.

[5] The September 15, 2006 SIP submittal initially included Pennsylvania's certification of NO_X RACT regulations; however, NO_X RACT portions were withdrawn by PADEP on June 27, 2016.

[6] EPA's conditional approval of PADEP's May 16, 2016 SIP revision covered relevant sources located in both Philadelphia and Allegheny County, Pennsylvania.

[7] These requirements were initially approved as RACT for Pennsylvania under the 1979 1-hour ozone NAAQS.

[8] On August 27, 2020, the Third Circuit Court of Appeals vacated three provisions of Pennsylvania's presumptive RACT II rule applicable to certain coal-fired power plants. *Sierra Club* v. *EPA,* No. 19–2562 (3rd Cir. August 27, 2020). None of the sources in this proposed rulemaking are subject to the presumptive RACT II provisions at issue in the *Sierra Club* decision.

[9] As noted previously, EPA, in this action, is proposing approval for eight of the nine case-by-case RACT determinations submitted by PADEP in the applicable SIP revision. See Table 1 of this document for more detailed information.

TABLE 2—EIGHT MAJOR NO_X AND/OR VOC SOURCES IN PENNSYLVANIA SUBJECT TO CASE-BY-CASE RACT II UNDER THE 1997 AND 2008 8-HOUR OZONE NAAQS

Major source (county)	1-Hour ozone RACT source? (RACT I)	Major source pollutant (NO_X and/or VOC)	RACT II permit (effective date)
Volvo Construction Equipment North America (Franklin)	No	VOC	28–05012 (6/1/2019).
National Fuel Gas Supply Corporation—Roystone Compressor Station (Warren).	Yes	NO_X and VOC	62–141H (1/16/2018).
E.I DuPont de Nemours and Co. (Bradford)	Yes	NO_X and VOC	08–00002 (9/28/2018).
Carmeuse Lime Inc. (Lebanon)	Yes	NO_X	38–05003 (3/6/2019).
Kovatch Mobile Equipment Corp. (Carbon)	No	VOC	13–00008 (10/27/2017).
Merck, Sharpe & Dohme Corp. (formerly Merck and Co., Inc.—West Point Facility) (Montgomery).	Yes	NO_X and VOC	46–00005 (1/5/2017).
Letterkenny Army Depot (formerly Department of the Army) (Franklin).	Yes	VOC	28–05002 (6/1/2018).
Fairless Energy, LLC (Bucks)	No	NO_X and VOC	09–00124 (12/6/2016).

The case-by-case RACT determinations submitted by PADEP consist of an evaluation of all reasonably available controls at the time of evaluation for each affected emissions unit, resulting in a PADEP determination of what specific control requirements, if any, satisfy RACT for that particular unit. The adoption of new or additional controls or the revisions to existing controls as RACT were specified as requirements in new or revised Federally enforceable permits (hereafter RACT II permits) issued by PADEP to the source. The RACT II permits, which revise or adopt additional source-specific controls, have been submitted as part of the Pennsylvania RACT SIP revisions for EPA's approval in the Pennsylvania SIP under 40 CFR 52.2020(d)(1). The RACT II permits submitted by PADEP are listed in the last column of Table 2 of this document, along with the permit effective date, and are part of the docket for this rulemaking, which is available online at *https://www.regulations.gov,* Docket No. EPA–R03–OAR–2020–0597.[10] EPA is proposing to incorporate by reference in the Pennsylvania SIP, via the RACT II permits, source-specific RACT determinations under the 1997 and 2008 8-hour ozone NAAQS for certain major sources of NO_X and VOC emissions.

III. EPA's Evaluation of SIP Revisions

After thorough review and evaluation of the information provided by PADEP for eight major sources of NO_X and/or VOC in Pennsylvania in its SIP revision submittal, EPA finds that PADEP's case-by-case RACT determinations and conclusions provided are reasonable and appropriately considered technically and economically feasible controls, while setting lowest achievable limits. EPA finds that the proposed source-specific RACT controls for the sources subject to this rulemaking action adequately meet the CAA RACT requirements for the 1997 and 2008 8-hour ozone NAAQS for the major sources of NO_X and/or VOC in Pennsylvania, as they are not covered by or cannot meet Pennsylvania's presumptive RACT regulation.

EPA also finds that all the proposed revisions to previously SIP approved RACT requirements, under the 1979 1-hour ozone standard (RACT I), as discussed in PADEP's SIP revisions, will result in equivalent or additional reductions of NO_X and/or VOC emissions and should not interfere with any applicable requirement concerning attainment or reasonable further progress with the NAAQS or interfere with other applicable CAA requirement in section 110(l) of the CAA.

EPA's complete analysis of PADEP's case-by-case RACT SIP revisions is included in the TSD available in the docket for this rulemaking action and available online at *https://www.regulations.gov,* Docket number EPA–R03–OAR–2020–0597.

IV. Proposed Action

Based on EPA's review, EPA is proposing to approve the Pennsylvania SIP revisions for the eight case-by-case RACT facilities listed in Table 2 of this document and incorporate by reference in the Pennsylvania SIP, via the RACT II permits, source specific RACT determinations under the 1997 and 2008 8-hour ozone NAAQS for certain major sources of NO_X and VOC emissions. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action. As EPA views each facility as a separable SIP revision, should EPA receive comment on one facility but not others, EPA may take separate, final action on the remaining facilities.

V. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference source specific RACT determinations via the RACT II permits as described in Sections II and III of this document—Summary of SIP Revisions and EPA's Evaluation of SIP Revisions. EPA has made, and will continue to make, these materials generally available through *https://www.regulations.gov* and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because it is not a significant

[10] The RACT II permits are redacted versions of a facility's Federally enforceable permits and reflect the specific RACT requirements being approved into the Pennsylvania SIP.

regulatory action under Executive Order 12866.

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rulemaking, addressing Pennsylvania's NO_X and VOC RACT requirements for eight case-by-case facilities for the 1997 and 2008 8-hour ozone NAAQS, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: February 3, 2021.

Diana Esher,

Acting Regional Administrator, Region III.

[FR Doc. 2021–02587 Filed 2–10–21; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2020–0387; FRL 10017–05–Region 5]

Air Plan Approval; Indiana; Emissions Reporting Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the Indiana State Implementation Plan (SIP) submitted on July 16, 2020, by the Indiana Department of Environmental Management (IDEM). The revision incorporates changes to Indiana's existing emission reporting rule to be consistent with the emissions statement requirements in the Clean Air Act (CAA). The CAA requires stationary sources in ozone nonattainment areas to submit annual emissions statements. The revision to the rule extends the requirements in Indiana's emission reporting rule to Clark and Floyd counties, which were designated nonattainment under the 2015 ozone National Ambient Air Quality Standard (NAAQS) in 2018, and removes the requirement for Lawrenceburg Township in Dearborn County and to LaPorte County, because these areas are currently designated attainment for the 1997, 2008 and 2015 ozone standards.

DATES: Comments must be received on or before March 15, 2021.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2020–0387 at *http://www.regulations.gov* or via email to *blakley.pamela@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Charles Hatten, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR 18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6031, *hatten.charles@epa.gov.* The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding federal holidays and facility closures due to COVID–19.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

I. Emissions Statement Rule Requirements

Section 182(a)(3)(B) of the CAA requires states with ozone nonattainment areas to submit revisions to their SIPs to require the owner or operator of each stationary source of volatile organic compounds (VOC) or oxides of nitrogen (NO_X) to provide the state with an annual statement documenting the actual emissions of VOC and NO_X from their source. This requirement applies to each stationary source emitting greater than or equal to 25 tons per year of VOC or NO_X in an ozone nonattainment area.

As EPA has promulgated more stringent NAAQS for ozone in 1997, 2008, and 2015, additional areas in Indiana have been designated as nonattainment. On March 29, 2007 (72 FR 14681), EPA determined that Indiana regulation 326 Indiana Administrative Code (IAC) 2–6, Emission Reporting, satisfied the requirements of CAA Section 182(a)(3)(B) for nonattainment areas under the 1997 ozone NAAQS. The requirement to submit annual emissions statements affected stationary sources located in Lake, Porter, and LaPorte Counties. On April 7, 2017 (82 FR 16926), EPA approved into Indiana's SIP a revised version of 326 IAC 2–6 that extended the emissions reporting requirements to Lawrenceburg Township, Dearborn County, which had been designated nonattainment under the 2008 ozone NAAQS. In a separate action, on April 7, 2017 (82 FR 16934), EPA approved Indiana's emissions reporting requirements for Lake and Porter counties designated nonattainment under the 2008 ozone NAAQS.

On October 26, 2015 (80 FR 65292), EPA promulgated a revised ozone NAAQS of 0.070 parts per million (ppm). Clark and Floyd Counties, Indiana were designated nonattainment for the 2015 ozone NAAQS on August 3, 2018 (83 FR 25776).

Under the existing federally approved SIP for Indiana, the emission statement requirements apply to Lake, Porter, LaPorte, and Dearborn (Lawrenceburg Township) Counties. On July 16, 2020, IDEM submitted a request that EPA approve the revisions to the existing emission reporting rule, 326 IAC 2–6, to be consistent with the current emissions statement requirements for stationary sources in section 182(a)(3)(B) of the CAA.

II. What changes is Indiana requesting?

The changes to the SIP revise the applicability of the emission reporting rule, 326 IAC 2–6–1. IDEM is adding Clark and Floyd Counties, designated nonattainment for the 2015 ozone NAAQS, to the list of areas for which stationary sources that emit 25 tons or more per year of VOC or NO_X must submit annual emissions statement to IDEM. In addition, IDEM is removing the applicability of the emission reporting rule to Lawrenceburg Township in Dearborn County and to LaPorte County. Once an area meets the ozone standard and is redesignated to attainment, sources in the area are no longer subject to the emissions statement requirements of the CAA. LaPorte County and Lawrenceburg Township in Dearborn County have both been redesignated to attainment of the ozone standard. LaPorte County was redesignated to attainment of the 1997 ozone standard on July 19, 2007 (72 FR 39574); and designated as attainment of the 2008 ozone standard on May 21, 2012 (77 FR 30088). Lawrenceburg Township in Dearborn County was redesignated to attainment of the 2008 ozone standard on April 7, 2017 (82 FR 16943). Also, these two areas were designated as attainment of the 2015 ozone standard on June 4, 2018 (83 FR 25776) and therefore, they are attaining all ozone standards. Thus, IDEM has revised the applicability of regulation 326 IAC 2–6–1 to discontinue the emission reporting requirement for stationary sources the areas of Lawrenceburg Township in Dearborn County and LaPorte County to submit annual emissions statements.

III. EPA's Analysis of Indiana's Submittal

Indiana's revised version of 326 IAC 2–6–1 appropriately extends the emissions statement requirements to Clark and Floyd Counties, and removes the requirement for Lawrenceburg Township in Dearborn County and LaPorte County. Indiana's emissions reporting rule correctly reflects areas for which the CAA requires stationary sources to submit annual emissions statements.

IV. What action is EPA taking?

As discussed above, EPA is proposing to approve the revisions to the emission reporting rule, 326 IAC 2–6–1, into Indiana's SIP, as submitted on July 16, 2020, to address the CAA emission statement requirement in section 182(a)(3)(B).

V. Incorporation by Reference

In this rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference Indiana rule 326 IAC 2–6–1 ''Applicability'', effective on April 4, 2020. EPA has made, and will continue to make, these documents generally available through *www.regulations.gov* and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because it is not a significant regulatory action under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: February 4, 2021.

Cheryl Newton,

Acting Regional Administrator, Region 5.

[FR Doc. 2021–02742 Filed 2–10–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2020–0369; FRL–10016–82–Region 5]

Air Plan Approval; Indiana; Two Revised Sulfur Dioxide Rules for Lake County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the Indiana sulfur dioxide (SO_2) State Implementation Plan (SIP). The State of Indiana has requested these SIP revisions in order to satisfy the requirements of a Federal consent decree. If approved, these revisions would limit annual bypass venting limits in the sulfur-containing waste gas emissions from a coking and power generating facility in Lake County, Indiana which is owned and operated by Indiana Harbor Coke Company (IHCC) and Cokenergy LLC (Cokenergy). The revisions would also require Cokenergy to operate and maintain a permanent SO_2 flow rate monitor and improve the percent control capture efficiency of the facility. The rulemaking also includes technical corrections and clarifications that do not have a substantive effect of the application of the rule.

DATES: Comments must be received on or before March 15, 2021.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2020–0369 at *http://www.regulations.gov,* or via email to *aburano.douglas@epa.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Andrew Lee, Physical Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–7645, *lee.andrew.c@epa.gov.* The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID–19.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

I. Background

On July 10, 2020, the Indiana Department of Environmental Management (IDEM) submitted a request for revisions of the Indiana SO_2 SIP for IHCC and Cokenergy, which operate a coking and power generating facility in East Chicago, Indiana. IHCC operates four coke oven batteries, and Cokenergy uses the coke oven gases to generate steam and electricity. The electricity and coke are used by the neighboring steel mill operated by ArcelorMittal. Under the terms of a consent decree entered on October 25, 2018, the two companies requested that Indiana revise 326 Indiana Administrative Code (IAC) 7–4.1–7 (Cokenergy) and 326 IAC 7–4.1–8 (IHCC) to address emissions of sulfur-containing waste gases. See *United States and the State of Indiana* v. *Indiana Harbor Coke Company and Suncoke Energy, Inc. and Coke Energy, LLC,* Civil Action No. 18–cv–35 (N.D.Ind. 2018). Indiana's adoption and submittal of these revised rules to EPA for approval into the SIP satisfy part of the consent decree's requirements.

II. Changes for the Facility

IHCC's coke batteries produce coke as their main product. Hot coke oven gas is generated from heating coal in coke ovens to approximately 2,000 °F. The volatile products from the coal, produced by the high heat, are then combusted with oxygen to provide heat from above and gas flues in the bottom of the chamber collect the combustion gases and provide heat from below. This recycling of gases is the fuel used for the ovens during normal operations. Once almost all the coke oven gases are combusted, the gas passes from the different ovens in a battery into a common tunnel and passes into an afterburner which oxidizes any gases that are not fully combusted. The gas stream is then directed to one of the sixteen heat recovery steam generators (HRSGs) operated by Cokenergy, where this heat is used to make steam to generate electricity. The coke oven gas cools as it passes through the HRSG, allowing the gas to be routed through air pollution control devices, including a flue gas desulfurization (FGD) unit and a baghouse, before venting through the main stack. When a HRSG is offline because of maintenance, malfunction or process concerns, or for any other reason, some of the gases must be vented through the common tunnel afterburner to a bypass vent stack because the extreme temperature of the gases would damage the pollution control equipment downstream. IHCC has sixteen bypass vent stacks, one associated with each HRSG.

The revised SIP decreases the amount of coke oven gas which can be allowed to vent to the atmosphere through the bypass vent stacks. Previously, the facility was permitted to vent fourteen percent (14%) of the coke oven waste gas through the common tunnel on an annual basis. Now, during normal operation of the HRSG, the revised rule limits venting gases out through the bypass vent stacks to a maximum of thirteen percent (13%) of the coke oven waste gases leaving the common tunnel, as determined on an annual basis. However, if Cokenergy undertakes HRSG ''retubing,'' as defined in 326 IAC 7–4.1–7(e), then venting gases out through the bypass vent stacks is allowed up to a maximum of fourteen percent (14%) of the coke oven waste gases leaving the common tunnel, as determined on an annual basis for the calendar year that Cokenergy undertakes the HRSG retubing. The rule requires the facility to verify that the fourteen percent venting limit in 326 IAC 7–4.1–7(d)(1) is warranted by the retubing activities. If less than 3.25% of the annual venting is due to the retubing activities, then the facility may only vent 13% of their annual emissions via the bypass vent stacks. Overall, this action would increase the control capture efficiency of the facility by increasing the percentage of the exhaust gas stream routed to control devices.

Rule 326 IAC 7–4.1–7 retains the combined SO_2 limit for Cokenergy's heat recovery coke carbonization waste gas stack and the 16-bypass vent stacks operated by IHCC for a 24-hour average SO_2 emission limit of 1,656 pounds per hour. The revised rule adds a requirement that Cokenergy install, operate, and maintain a permanent SO_2 flow rate monitor to continuously measure the flow rate in the heat recovery coke carbonization waste gas stack.

The revised proposed rule 326 IAC 7–4.1–8 continues to require that IHCC comply with the following requirements: The coke ovens must recycle the gases emitted during the coking process in such a way that the recycled gases must be the only fuel source used for the ovens during normal operations, the gases must not be routed directly to the atmosphere unless they first pass through the common tunnel afterburner, and a maximum of 19% of the coke oven waste gases leaving the common tunnel may be vented to the atmosphere on a 24-hour basis. The sulfur dioxide limits on IHCC's coke oven battery operations in 326 IAC 7–4.1–8(a) are unchanged. 326 IAC 7–4.1–8 includes the same new limitations on bypass vent stack usage as in 326 IAC 7–4.1–7, as discussed above. The rulemaking also includes technical corrections and clarifications that do not have a substantive effect of the application of the rules.

III. Compliance With the Clean Air Act (CAA)

CAA section 110(l) states that SIP revisions cannot be approved if they interfere with applicable requirements concerning attainment and reasonable further progress. EPA proposes to find that this proposed action is consistent with CAA section 110(l) because the proposed changes retain and/or tighten the existing SO_2 limits. EPA is therefore proposing to approve Indiana's revised rules 326 IAC 7–4.1–7 and 326 IAC 7–4.1–8.

IV. What action is EPA taking?

EPA is proposing to approve Indiana's July 10, 2020 request to revise 326 IAC 7–4.1–7 and 326 IAC 7–4.1–8. The proposed SO_2 SIP revisions are expected to strengthen the SIP and will also fulfill the requirements of the Federal consent decree with Cokenergy LLC and IHCC.

V. Incorporation by Reference

In this proposed rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference Indiana rules 326 IAC 7–4.1–7 ''Cokenergy LLC sulfur dioxide emission limitations'' and 326 IAC 7–4.1–8 ''Indiana Harbor Coke Company sulfur dioxide emission limitations'', effective on April 24, 2020. EPA has made, and will continue to make, these documents generally available through *www.regulations.gov* and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because it is not a significant regulatory action under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: February 3, 2021.

Cheryl Newton,

Acting Regional Administrator, Region 5.

[FR Doc. 2021–02741 Filed 2–10–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2020–0559; FRL–10019–84–Region 5]

Air Plan Approval; Ohio; Ohio NSR Permit Timing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revised paragraph of the Ohio Revised Code (ORC) into Ohio's state implementation plan (SIP) under the Clean Air Act (CAA). This revision will allow for the extension of an installation permit which is the subject of an appeal by a party other than the owner or operator of the air contaminant source. The extension will allow the date of termination of the permit to be no later than eighteen months after the effective date of the permit plus the number of days between the date in which the permit was appealed and the date the appeal was resolved.

DATES: Comments must be received on or before March 15, 2021.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2020–0559 at *http://www.regulations.gov,* or via email to *damico.genevieve@epa.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Charmagne Ackerman, Environmental Engineer, Air Permits Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–0448, *ackerman.charmagne@epa.gov.* The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID–19.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

I. What action is EPA taking?

EPA is proposing to approve paragraph (F)(2)(b)(iv) of ORC 3740.03 into the Ohio SIP. On October 27, 2020, EPA received a submittal from the Ohio Environmental Protection Agency (OEPA) requesting the approval of the ORC Permit Expiration Provision at ORC 3740.03 (F)(2)(b)(iv) into Ohio's SIP. In 2009, the Ohio General Assembly modified portions of ORC 3704.03 to update the requirements for the expiration of air pollution installation permits. Specifically, the modification included paragraph (F)(2)(b), which prescribes that installation permits are initially effective for 18 months, but the 18-month time period can be modified for cause as described in the law. This portion of the ORC became effective October 16, 2009.

The majority of the provisions in ORC 3704.03 paragraph (F)(2)(b) are contained in Ohio Administrative Code (OAC) rule 3745–31–07, which was most recently approved into the SIP on August 24, 2015 (80 FR 36477). However, paragraph (F)(2)(b)(iv) is not part of OAC 3745–31–07, and OEPA has requested that the paragraph be approved into the SIP.

On January 12, 2021, OEPA submitted a letter to further clarify several implementation aspects of the submittal, as discussed below.

Paragraph (F)(2)(b)(iv) allows for an installation permit to be extended beyond 18 months if the installation permit is subject to appeal by a party other than the owner or operator of the air contaminant source that is subject of the installation permit. In the case as described, the termination date of the installation permit will not be later than 18 months after the effective date of the permit plus the number of days between the date in which the permit was appealed and the date on which all appeals concerning the permit have been resolved. The Federal Prevention of Significant Deterioration (PSD) rules at 40 CFR 52.21(r)(2) describes the timing that the owner/operator must begin construction of a PSD source including the requirement that the construction must start within 18 months after receipt of approval. Subparagraph (r)(2) also stated that the EPA Administrator may extend the 18-month time period upon a satisfactory showing that an extension is justified. EPA finds that the language in paragraph (F)(2)(b)(iv) is consistent with the Federal PSD regulations.

The January 12, 2021, letter from OEPA provided assurance that in the instance of a lengthy appeal process, OEPA fully maintains its discretion to re-assess the permit to ensure that it is consistent with Federal regulations and guidance. Additionally, OEPA is able to utilize existing mechanisms on its website to notify the public of the extended permit. These clarifications ensure that the provisions are consistent with Federal regulations, and thus, approvable. Since it only affects the timing associated with an affected installation permit's termination date, the requested SIP revision does not impact the amount of emissions associated with any law, rule, or permit. Thus, the revision does not interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in CAA Section 171), or any other applicable requirements of the CAA. Therefore, a detailed CAA Section 110(l) analysis is not necessary.

II. Incorporation by Reference

In this action, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference Ohio Revised Code section 3704.03(F)(2)(b)(iv), effective October 16, 2009, discussed in Section I of this action. EPA has made, and will continue to make, these documents generally available through *www.regulations.gov* and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

III. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because it is not a significant regulatory action under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or

safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: February 4, 2021.

Cheryl Newton,

Acting Regional Administrator, Region 5.

[FR Doc. 2021–02746 Filed 2–10–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2020–0166; FRL–10017–19–Region 6]

Air Plan Approval; Texas; Clean Air Act Requirements for Nonattainment New Source Review and Emission Statements for the 2015 Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is proposing to approve the portions of a State Implementation Plan (SIP) revision submitted by the State of Texas that describes how CAA requirements for Nonattainment New Source Review (NNSR) and emission statements are met in the Dallas-Fort Worth (DFW), Houston-Galveston-Brazoria (HGB), and Bexar County ozone nonattainment areas for the 2015 ozone National Ambient Air Quality Standards (NAAQS).

DATES: Written comments must be received on or before March 15, 2021.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2020–0166, at *https://www.regulations.gov* or via email to *young.carl@epa.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact Carl Young, 214–665–6645, *young.carl@epa.gov.* For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

Docket: The index to the docket for this action is available electronically at *www.regulations.gov.* While all documents in the docket are listed in the index, some information may not be publicly available due to docket file size restrictions or content (*e.g.,* CBI).

FOR FURTHER INFORMATION CONTACT: Carl Young, EPA Region 6 Office, Infrastructure and Ozone Section, 214–665–6645, *young.carl@epa.gov.* Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office will be closed to the public to reduce the risk of transmitting COVID–19. We encourage the public to submit comments via *https://www.regulations.gov,* as there will be a delay in processing mail and no courier or hand deliveries will be accepted. Please call or email the contact listed above if you need alternative access to material indexed but not provided in the docket.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us," or "our" is used, we mean the EPA.

I. Background

Ground-level ozone is a gas that is formed by the reaction of Volatile Organic Compounds (VOC) and Oxides of Nitrogen (NO_X) in the atmosphere in the presence of sunlight. These precursors (VOC and NO_X) are emitted by many types of pollution sources, including point sources such as power plants and industrial emissions sources; on-road and off-road mobile sources (motor vehicles and engines); and smaller residential and commercial sources, such as dry cleaners, auto body shops, and household paints, collectively referred to as area sources. Ozone is predominately a summertime air pollutant (83 FR 25777, June 4, 2018).

On October 1, 2015, we revised the ozone NAAQS to a level of 0.070 parts per million (ppm) (annual fourth-highest daily maximum 8-hour average concentration, averaged over 3 years). *See* 80 FR 65296, October 26, 2015; and 40 CFR 50, appendix U for more information on the revised 2015 ozone NAAQS, including a detailed explanation of the calculation of the 3-year 8-hour average. The revised 2015 ozone NAAQS provide greater protection of public health and the environment than the previous ozone NAAQS of 0.075 ppm, set in 2008. Although the 2015 ozone NAAQS retain the same general form and averaging time as the NAAQS set in 2008, the lower level is more protective.

The DFW and HGB areas were classified as Marginal ozone nonattainment areas for the 2015 ozone NAAQS with an attainment deadline of August 3, 2021 (83 FR 25776, June 4, 2018). Bexar County (which includes the City of San Antonio) was also classified as a Marginal ozone nonattainment area with an attainment deadline of September 24, 2021 (83 FR 35136, July 25, 2018). The DFW area consists of Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Tarrant, and Wise Counties. The HGB area consists of Brazoria, Chambers, Fort Bend, Galveston, Harris, and Montgomery Counties.

On June 24, 2020, Texas submitted a SIP revision for the DFW, HGB and Bexar County areas. The SIP revision included a description of how provisions previously approved by EPA meet the 2015 ozone NAAQS Marginal area CAA requirements for (1) NNSR and (2) Emission Statements from stationary point sources. A copy of the SIP revision is available online at *www.regulations.gov,* Docket number EPA–R06–OAR–2020–0166. In the SIP revision submittal, Texas determined that the NNSR SIP requirements of CAA section 182(a)(2)(C) are met for the 2015 NAAQS as the Texas SIP already includes 30 TAC Section 116.12 (Nonattainment and Prevention of Significant Deterioration Review Definitions) and 30 TAC Section 116.150 (New Major Source or Major Modification in Ozone Nonattainment Area). Texas also determined that 30 TAC Section 101.10 (Emissions Inventory Requirements) of the Texas SIP, which requires that stationary sources report NO_X and VOC emissions, continues to address the emissions statements requirement of CAA section 182(a)(3)(B) for the 2015 ozone NAAQS.

II. The EPA's Evaluation

A. CAA Requirements for NNSR

A NNSR permitting program for ozone nonattainment areas is required by the CAA section 182(a)(2)(C). The NNSR requirements are further defined in 40 CFR 51 Subpart I (Review of New Sources and Modifications). NNSR permits for ozone authorize construction of new major sources or major modifications of existing sources of NO_X or VOC in an area that is designated nonattainment for the ozone NAAQS. Emissions thresholds and pollutant offset requirements under the NNSR program are based on the nonattainment area's classification. Under these requirements new major sources or major modifications at existing sources in an ozone nonattainment area must comply with the lowest achievable emission rate and obtain sufficient emission offsets for emissions of NO_X or VOC. For Marginal ozone nonattainment areas, major sources are any stationary source or group of sources located within a contiguous area and under common control that emits, or has the potential to emit, at least 100 tons per year of NO_X or VOC (CAA sections 182(c) and 182(f)). The NNSR offset ratio for Marginal ozone nonattainment areas must be at least 1.1 to 1 (CAA section 182(a)(4)). As noted by the State, the Texas SIP already includes 30 TAC Section 116.12 (Nonattainment and Prevention of Significant Deterioration Review Definitions) and 30 TAC Section 116.150 (New Major Source or Major Modification in Ozone Nonattainment Area). For the Bexar County area these provisions require new major sources or major modifications at existing sources, that emit or has the potential to emit, at least 100 tons per year of NO_X or VOC, to comply with the lowest achievable emission rate (LAER) and obtain emission offsets at the Marginal classification ratio of 1.1 to 1.

More stringent NNSR requirements apply to the counties in the DFW and HGB areas as they are also classified as Serious nonattainment for the 2008 ozone standard of 0.075 ppm (40 CFR 81.344). For the DFW and HGB areas, these provisions require new major sources or major modifications at existing sources, that emit or has the potential to emit, at least 50 tons per year of NO_X or VOC, to comply with the LAER and obtain emission offsets at the Serious classification ratio of 1.2 to 1. In 1995, we approved Texas' NNSR program for ozone, which includes Marginal and Serious classification requirements under CAA section 182 (60 FR 49781, September 27, 1995). Most recently, we approved revisions to the Texas SIP to address NNSR requirements in 2012 (77 FR 65119, October 25, 2012) and 2014 (79 FR 66626, November 10, 2014). Therefore, since the Texas SIP includes approved provisions addressing the CAA NNSR requirements for ozone nonattainment areas classified as Marginal, we are proposing to approve this portion of the SIP revision.

B. CAA Requirements for Emissions Statements

CAA section 182(a)(3)(B) calls for SIPs for all ozone nonattainment areas to require that the owner or operator of each stationary source of NO_X or VOC provide the State with an annual statement of emissions along with a certification that the information is accurate to the best knowledge of the individual certifying the statement. As noted by the State, the Texas SIP includes 30 TAC Section 101.10 (Emissions Inventory Requirements). The certification for emission statements is found at 30 TAC Section 101.10(d) (Certifying statement). We initially approved this certification as meeting the CAA emission statement requirement in 1994 (59 FR 44036, August 26, 1994). Most recently we approved revisions to 30 TAC Section 101.10 in 2017 (82 FR 26598, June 8, 2017). The most recently EPA-approved Texas regulation continues to include appropriate provisions so that the owner or operator of each stationary source must provide the State with a statement with each emissions inventory attesting that the information contained in the inventory is true and accurate to the best knowledge of the certifying official (30 TAC Section 101.10(d)(1)). Therefore, since the Texas SIP includes approved provisions addressing the CAA emission statement requirement, we are proposing to approve this portion of the SIP revision.

III. Proposed Action

We are proposing to approve portions of a SIP revision submitted by the State of Texas on June 24, 2020, that describes how CAA requirements for NNSR and emission statements are met in the DFW, HGB, and Bexar County ozone nonattainment areas for the 2015 ozone NAAQS.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and record keeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: February 5, 2021.

David Gray,

Acting Regional Administrator, Region 6.

[FR Doc. 2021–02759 Filed 2–10–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R01–OAR–2020–0593; FRL–10017–80–Region 1]

Approval and Promulgation of State Plans (Negative Declarations) for Designated Facilities and Pollutants: Maine and Rhode Island

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve negative declarations in lieu of state plans to satisfy the requirements in the Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills for the State of Maine and the State of Rhode Island. The negative declarations certify that there are no existing facilities in the States that must comply with this rule.

DATES: Written comments must be received on or before March 15, 2021.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–OAR–2020–0593 at *https://www.regulations.gov,* or via email to *kilpatrick.jessica@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Jessica Kilpatrick, Air Permits, Toxics, & Indoor Programs Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Mail Code: 05–2, Boston, MA, 02109–0287. Telephone: 617–918–1652. Fax: 617–918–0652 Email: *kilpatrick.jessica@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Rules and Regulations section of this **Federal Register**, the EPA is approving the State of Maine and the State of Rhode Island's negative declarations submitted in accordance with 40 CFR 60.23a(b) and 62.06, to satisfy the requirements in the Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills (MSW Landfills Emission Guidelines) as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. *See* MSW Landfills Emission Guidelines, 81 FR 59276 (August 29, 2016), as amended by 84 FR 32520 (July 8, 2019) (revising Emission Guidelines Implementing Regulations) and 84 FR 44547 (Aug. 26, 2019) (adopting Requirements in Emission Guidelines for MSW Landfills). A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If the EPA receives adverse comments, the direct final rule will be withdrawn, and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if the EPA receives adverse comment on an amendment, paragraph, or section of the rule and if that provision may be severed from the remainder of the rule, the EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule which is located in the Rules and Regulations section in this issue of the **Federal Register**.

Dated: February 3, 2021.

Deborah Szaro,

Acting Regional Administrator, EPA Region 1.

[FR Doc. 2021–02544 Filed 2–10–21; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 86, No. 27

Thursday, February 11, 2021

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

February 8, 2021.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding: Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by March 15, 2021 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

National Institute of Food and Agriculture

Title: Research Education Extension Project Online Reporting Tool (REEPORT).

OMB Control Number: 0524–0048.

Summary of Collection: The United States Department of Agriculture (USDA), National Institute of Food and Agriculture (NIFA) administer several competitive, peer-reviewed research, education, and extension programs, under which awards of high-priority are made. These programs are authorized pursuant to the authorities contained in the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3101), the Smith-Lever Act of 1914, as amended (Pub. L. 107–293, 2002) and other legislative authorities. NIFA also administers several formula funded research programs. The programs are authorized pursuant to the authorities contained in the McIntire-Stennis Cooperative Forestry Research Act of October 10, 1962 (16 U.S.C. 582a–582a–7) (McIntire-Stennis Act); the Hatch Act of 1887, as amended (7 U.S.C. 361a–i) (Hatch Act); Section 1445 of Public Law 95–113, the Food and Agriculture Act of 1977, as amended (7 U.S.C. 3222) (Pub. L. 95–113); Section 1433 of Subtitle E (Sections 1429–1439); Title XIV of Public Law 95–113, as amended (7 U.S.C. 3191–3201) (Pub. L. 95–113); the Smith-Lever Act; and the Renewable Resources Extension Act. Each formula funded program is also subject to requirements, which were revised in March 2000, and set forth in the Administrative Manual for the McIntire-Stennis Cooperative Forestry Research Program, the Administrative Manual for the Hatch Research Program, the Administrative Manual for the Evans-Allen Cooperative Agricultural Research Program, and the Administrative Manual for the Continuing Animal Health and Disease Research Program.

Need and Use of the Information: The collection of information is necessary in order to provide descriptive information regarding individual research, education, and integrated activities, to document expenditures and staff support for the activities, and to monitor the progress and impact of such activities. The information is collected primarily via the internet through a website that may be accessed via the NIFS Reporting Portal. The information provided helps users to keep abreast of the latest developments in utilization in specific target areas, plan for future activities; plan for resource allocation to research and education programs; avoid costly duplication of effort; aid in coordination of research and education efforts addressing similar problems in different location; and aid researchers and project directors in establishing valuable contacts with the agricultural community.

Description of Respondents: Not-for-profit institutions; Business or other for-profit; Individuals or household; Federal Government; State, Local or Tribal Government.

Number of Respondents: 23,900.

Frequency of Responses: Reporting: Once per request.

Total Burden Hours: 72,900.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2021–02818 Filed 2–10–21; 8:45 am]

BILLING CODE 3410–09–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2021–0002]

Notice of Request for Renewal of an Approved Information Collection (Mechanically Tenderized Beef Products)

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and the Office of Management and Budget (OMB) regulations, the Food Safety and Inspection Service (FSIS) is announcing its intention to renew an approved information collection regarding the labeling requirements for mechanically tenderized beef products. There are no changes to the existing information collection. The approval for this information collection will expire on July 31, 2021.

DATES: Submit comments on or before April 12, 2021.

ADDRESSES: FSIS invites interested persons to submit comments on this

Federal Register notice. Comments may be submitted by one of the following methods:

• *Federal eRulemaking Portal:* This website provides commenters the ability to type short comments directly into the comment field on the web page or to attach a file for lengthier comments. Go to *http://www.regulations.gov.* Follow the on-line instructions at that site for submitting comments.

• *Mail, including CD–ROMs, etc.:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue SW, Mailstop 3758, Washington, DC 20250–3700.

• *Hand- or courier-delivered submittals:* Deliver to 1400 Independence Avenue SW, Washington, DC 20250–3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2021–0002. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov.*

Docket: For access to background documents or comments received, call (202)205–0495 to schedule a time to visit the FSIS Docket Room at 1400 Independence Avenue SW, Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT: Gina Kouba, Office of Policy and Program Development, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW, Mailstop 3758, South Building, Washington, DC 20250–3700; (202) 720–5627.

SUPPLEMENTARY INFORMATION:

Title: Mechanically Tenderized Beef Products.

OMB Number: 0583–0160.

Expiration Date of Approval: 7/31/2021.

Type of Request: Renewal of an approved information collection.

Abstract: FSIS has been delegated the authority to exercise the functions of the Secretary (7 CFR 2.18, 2.53), as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*), and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*). These statutes mandate that FSIS protect the public by verifying that meat and poultry products are safe, wholesome, unadulterated, and properly labeled and packaged.

FSIS is requesting renewal of an approved information collection regarding the labeling requirements for mechanically tenderized beef products. There are no changes to the existing information collection. The approval for this information collection will expire on July 31, 2021.

FSIS regulations require the use of the descriptive designation ''mechanically tenderized'' on the labels of raw or partially cooked needle—or blade—tenderized beef products, including beef products injected with marinade or solution, unless these products are to be fully cooked at an official establishment. The Agency also requires that the product name for the beef products include the descriptive designation ''mechanically tenderized'' and an accurate description of the beef component (9 CFR 317.2(e)(3)). Establishments that use these labels on product do not have to submit them to FSIS for approval prior to use provided such labels comply with 9 CFR 412.2. Retail facilities that use these labels on product do not have to submit them to FSIS for approval prior to use.

FSIS has made the following estimates based upon an information collection assessment:

Estimate of burden: The public reporting burden for this collection of information is estimated to average .5833 hours per response.

Estimated annual number of respondents: 555.

Estimated average number of responses per respondent: 60.908.

Estimated annual number of responses: 33,804.

Estimated Total Annual Burden on Respondents: 19,719 hours. Copies of this information collection assessment can be obtained from Gina Kouba, Office of Policy and Program Development, Food Safety and Inspection Service, USDA, 1400 Independence SW, Mailstop 3758, South Building, Washington, DC 20250; (202)720–5627.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record. Copies of this information collection assessment can be obtained from Gina Kouba, Office of Policy and Program Development, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW, Mailstop 3758, South Building, Washington, DC 20250–3700; (202) 720–5627.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of FSIS's functions, including whether the information will have practical utility; (b) the accuracy of FSIS's estimate of the burden of the proposed collection of information, including the validity of the method and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology. Comments may be sent to both FSIS, at the addresses provided above, and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20253.

Responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication on-line through the FSIS web page located at: *http://www.fsis.usda.gov/federal-register.*

FSIS will also announce and provide a link to this **Federal Register** publication through the FSIS *Constituent Update,* which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The *Constituent Update* is available on the FSIS web page. Through the web page, FSIS can provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: *http://www.fsis.usda.gov/subscribe.* Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves and have the option to password protect their accounts.

USDA Non-Discrimination Statement

No agency, officer, or employee of the USDA shall, on the grounds of race, color, national origin, religion, sex, gender identity, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, or political beliefs, exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States under any program or activity conducted by the USDA.

How To File a Complaint of Discrimination

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at *http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf,* or write a letter signed by you or your authorized representative.

Send your completed complaint form or letter to USDA by mail, fax, or email:

Mail: U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW, Washington, DC 20250–9410
Fax: (202) 690–7442
Email: program.intake@usda.gov

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.), should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Terri Nintemann,
Acting Administrator.

[FR Doc. 2021–02810 Filed 2–10–21; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) Farmers' Market Nutrition Program (FMNP) Program Regulations—Reporting and Record-Keeping Burden

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection. This collection is a revision of a currently approved information collection for the WIC Farmers' Market Nutrition Program (FMNP) Regulations for the reporting and record-keeping burden associated with the WIC FMNP Program regulations.

DATES: Written comments must be received on or before April 12, 2021.

ADDRESSES: Comments may be sent to: Sara Olson, Chief, Policy Branch, Supplemental Food Programs Division, Food and Nutrition Service, U.S. Department of Agriculture, Braddock Metro Center II, 1320 Braddock Place, Room 328, Alexandria, VA 22314. Comments may also be submitted via fax to the attention of Sara Olson at 703–305–2086 or via email to *Sara.Olson@.usda.gov.* Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Sara Olson at 703–305–2085 or via email to *sara.olson@usda.gov.*

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Title: Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) Farmers' Market Nutrition Program (FMNP) Regulations—Reporting and Record-keeping Burden.

Form Number: FNS–683B (under OMB Control Number 0584–0594) is associated with this collection.

OMB Number: 0584–0447.

Expiration Date: May 31, 2021.

Type of Request: Revision of a currently approved collection.

Abstract: The WIC Farmers' Market Nutrition Program (FMNP) is associated with the Special Supplemental Nutrition Program for Women, Infants, and Children, also known as WIC. The WIC Program provides supplemental foods, health care referrals, and nutrition education at no cost to low-income pregnant, breastfeeding and non-breastfeeding post-partum women, and to infants and children up to 5 years of age, who are found to be at nutritional risk. The purpose of the WIC Farmers' Market Nutrition Program (FMNP) is to provide fresh, nutritious, unprepared, locally grown fruits and vegetables through farmers' markets and roadside stands to WIC participants, and to expand awareness and use of, and sales at, farmers' markets and roadside stands. Currently, FMNP operates through State health departments in 39 States, 6 Indian Tribal Organizations, District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

Section 17(m)(8) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(m)(8)), and the WIC Farmers' Market Nutrition Program (FMNP) regulations at 7 CFR part 248 require that certain program-related information be collected and that full and complete records concerning FMNP operations are maintained. The information reporting and record-keeping burdens are necessary to ensure appropriate and efficient management of the FMNP. These burden activities are covered by this Information Collection Request (ICR) which include requirements that involve the authorization and monitoring of State agencies; the certification of FMNP participants; the nutrition education that is provided to participants; farmer and market authorization, monitoring, and management; and financial and participation data (using WIC Farmers Market Nutrition Program (FMNP) Annual Financial and Program Data Report (FNS 683B), which is approved (both the form and its associated reporting burden) under OMB Control Number: 0584–0594 Food Programs Reporting System (FPRS), Expiration Date: 07/31/2023). Recordkeeping burden associated with this form is not approved under OMB Control Number 0584–0594. State agencies must maintain records in order to support data reported in FPRS, and the recordkeeping burden for such record maintenance is captured in this ICR, OMB Control Number: 0584–0447. State plans are the principal source of information about how each State agency operates its FMNP. Information from participants and local agencies is collected through State-developed forms or Management Information Systems. The information collected is used by the Department of Agriculture/Food and Nutrition Service to manage, plan, evaluate, make decisions and report on FMNP program operations. Along with the State Plans, State agencies also submit the Federal-State Supplemental Nutrition Programs Agreements (FNS–339) whose reporting and recordkeeping burden is associated and approved under OMB Control Number: 0584–0332, Expiration Date: 04/30/2022.

This information collection is requesting a revision in the burden hours due to program changes and adjustments that primarily reflect the inclusion of programmatic requirements that are being included in this ICR for the first time, and expected changes in the number of FMNP participants; FMNP authorized outlets; and WIC FMNP local agencies.

The currently approved burden for this collection is 929,211 hours. FNS estimates the new burden at 1,640,801 burden hours, which is an increase of 711,591. The currently approved total annual responses are 4,968,338; we are requesting 4,908,769, which is a decrease of 59,569 total annual responses. The currently approved reporting burden is 515,260 hours; for this revision, FNS estimates 1,247,271 hours, which is an increase of 732,011 hours. The currently approved recordkeeping burden is 413,950 hours; for this revision, we estimate 393,530 hours, which is a decrease of 20,420 hours. The total approved reporting and record-keeping burden increased by 711,591 hours.

Affected Public: State, Local, and Tribal Government, Individual/Households, and Businesses (both for-profit and non-profit). Respondents include State agencies and local agencies (including Indian Tribal Organizations, District of Columbia, and Territories), participants, and authorized FMNP outlets (farmers, farmers' markets, roadside stands).

Estimated Number of Respondents: The total estimated number of respondents is 1,581,402. This includes: State agencies (49), local agencies (696), Individuals/Households (1,560,475 participants), businesses (298) and authorized FMNP outlets (farmers, farmers' markets, roadside stands) (19,884).

Estimated Number of Responses per Respondent: The total estimated number of responses per respondent for this collection is 3.10.

Estimated Total Annual Responses: The total estimated number of annual responses for this collection is 4,908,769.

Estimated Time per Response: The estimated time per response averages approximately 20 minutes (0.33 hours) for all participants. For the reporting burden, the estimated time of response varies from approximately 3 minutes to 40 hours, while the estimated time of response for the record-keeping burden varies from 15 minutes to 40 hours, depending on the respondent group.

Estimated Total Annual Burden on Respondents: The estimated total annual burden on respondents for this collection is 1,640,801 hours. The reporting and record-keeping burden is 1,247,271 and 393,530 hours, respectively.

See the table below for the estimated total annual burden for each type of respondent.

ESTIMATE OF THE FMNP COLLECTION OF INFORMATION BURDEN TABLE

Regulatory section	Information collected	Form(s)	Estimated number of respondents	Annual responses per respondent	Total annual responses	Hours per response	Total annual burden hours
REPORTING BURDEN ESTIMATES							
Affected Public: STATE & LOCAL AGENCIES (Including Indian Tribal Organizations and U.S. Territories)							
248.3(e), 246.5	Local Agency Applications		695.80	0.50	347.90	2.00	695.80
248.4	State Plan		49.00	1.00	49.00	40.00	1,960.00
248.6, 246.7(c)	Certification Data for Participants		49.00	31,846.43	1,560,475.00	0.25	390,118.75
248.10(a)(2), (3), (b)(c).	Authorization—Review of Outlet Applications (Farmers, Farmers' Market, Roadside Stand).		49.00	202.90	9,942.00	1.00	9,942.00
248.10(a)(4)	Face-to-Face Training Development		49.00	1.00	49.00	8.00	392.00
248.10(a)(4)	Face-to-Face Training		49.00	15.00	735.00	2.00	1,470.00
248.10(b)(5)	Disqualification of Authorized Outlets		5.00	1.00	5.00	0.08	0.42
248.10(d)	Annual Training for Authorized Outlets Development.		49.00	1.00	49.00	8.00	392.00
248.10(d)	Annual Training for Authorized Outlets		49.00	15.00	735.00	2.00	1,470.00
248.10(e)(2), (3); 248.17(c)(1)(i).	Monitoring/Review of Authorized Outlets		49.00	40.58	1,988.40	1.50	2,982.60
248.10(e)(4); 248.17(c)(1)(ii).	Monitoring/Review of Local Agencies		49.00	10.14	497.00	2.00	994.00
248.10(f)	Coupon Management System		49.00	1.00	49.00	5.00	245.00
248.10(h)	Coupon Reconciliation		49.00	1.00	49.00	3.00	147.00
248.10(j)	Recipients and Authorized Outlet Complaints.		49.00	10.20	500.00	1.00	500.00
248.10(k)	Farmer/farmers' Market Sanctions		49.00	8.12	397.68	0.08	33.21
248.11(a)	Disclosure of Financial Expenditures		49.00	1.00	49.00	10.00	490.00
248.17(b)(2)(ii)	State Agency Corrective Action Plan		7.00	1.00	7.00	10.00	70.00
248.17(a)	Establishment of ME System		1.00	1.00	1.00	24.00	24.00
248.17(c)(2)	Special Reports		2.00	1.00	2.00	10.00	20.00
248.18(b)	Audit Responses		1.00	1.00	1.00	15.00	15.00
Subtotal Reporting: State and Local Agencies (Including Indian Tribal Organizations and U.S. Territories.			744.80	2,115.91	1,575,927.98	0.26	411,961.77
Affected Public: INDIVIDUALS/HOUSEHOLDS (Applicants for Program Benefits)							
248.6, 246.6	Certification Data for Participants		1,560,475.00	1.00	1,560,475.00	0.05	78,179.80
Subtotal Reporting: Individuals/Households			1,560,475.00	1.00	1,560,475.00	0.05	78,179.798
Affected Public: AUTHORIZED OUTLETS (Farmers/Markets/Roadside Stands)/BUSINESSES							
248.3(e), 246.5	Non-profit businesses Applications		298.20	0.50	149	2.0000	298.20
248.10(a)(4)	Face-to-Face Training		1,988.40	1.00	1,988.40	2.00	3,976.80
248.10(b)(xi)	Farmer/farmers' market complaints		500.00	1.00	500.00	0.50	250.00
248.10(b)(c)	Authorized outlet Agreements		9,942	1.00	9,942	0.0835	830.16
248.10(b)(5)	Appeal of Denial		79.54	1.00	80	2.0000	159.07
248.10(d)	Annual Training for Authorized Outlets		17,895.60	1.00	17,896	2.0000	35,791.20

ESTIMATE OF THE FMNP COLLECTION OF INFORMATION BURDEN TABLE—Continued

Regulatory section	Information collected	Form(s)	Estimated number of respondents	Annual responses per respondent	Total annual responses	Hours per response	Total annual burden hours
248.10(e)(1)	Coupon Reimbursement		19,884	9.00	178,956	4.0000	715,824.00
Subtotal Reporting: Authorized Outlets			20,182.20	10.38	209,510.64	3.61	757,129.43
GRAND SUBTOTAL: REPORTING			1,581,402.00	2.12	3,345,913.62	0.37	1,247,271.00
RECORD-KEEPING BURDEN ESTIMATES							
Affected Public: STATE & LOCAL AGENCIES (Including Indian Tribal Organizations and U.S. Territories)							
248.4(c)	State Plan Record Maintenance		49.00	1.00	49.00	0.17	8.18
248.9	Nutrition Education		49.00	31,846.43	1,560,475.00	0.25	390,118.75
248.10(a)(4)(d)	Authorized Outlet Training Content		49.00	1.00	49.00	2.00	98.00
248.10(b)(c)	Authorized Outlet Agreements		49.00	1.00	49.00	2.00	98.00
248.10(b)(5)	Maintenance of Disqualification and Sanction Records.		49.00	1.00	49.00	0.17	8.18
248.10(e)(2),(3); 248.17(c)(1)(i).	Monitoring and Review of Authorized Outlets.		49.00	40.58	1,988.40	0.50	994.20
248.11(c)	Record of Financial Expenditures	FNS–683B	49.00	1.00	49.00	2.00	98.00
248.17(a)	Maintenance of Management Evaluations.		49.00	1.00	49.00	2.00	98.00
248.16(a)	Fair Hearings		49.00	1.00	49.00	1.00	49.00
248.23(a)	Record of Program Operations		49.00	1.00	49.00	40.00	1.960.00
GRAND SUBTOTAL: RECORD-KEEPING			49.00	31,895.008	1,562,855.40	0.25	393,530.316
GRAND TOTAL: REPORTING AND RECORD-KEEPING.			1,581,402.00	3.10	4,908,769.02	0.33	1,640,801.32

Note: FNS–683B, OMB Control Number: 0584–0594 Food Programs Reporting System (FPRS), Expiration Date: 07/31/2023.

Cindy Long,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 2021–02829 Filed 2–10–21; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Forest Service Manual 2200, Chapters Zero, 10, 20, 30, 40, 50 and 70; Forest Service Handbook 2209.13, Chapters 10, 20, 30, 40, 50, 60, 70, 80 and 90; and Forest Service Handbook 2209.16, Chapter 10; Extension of Comment Period for Rangeland Management; Public Notice and Comment for Changes to Forest Service Directives

AGENCY: Forest Service, USDA.

ACTION: Issuance of proposed directives; notice of availability for public comment; extension of comment period.

SUMMARY: The Forest Service published a notice in the **Federal Register** on December 18, 2020, 85 FR 82432, initiating a 60-day comment period on the Proposed Directives for Rangeland Management; Forest Service Manual 2200, Chapters Zero, 10, 20, 30, 40, 50 and 70; Forest Service Handbook 2209.13, Chapters 10, 20, 30, 40, 50, 60, 70, 80 and 90; and Forest Service Handbook 2209.16, Chapter 10. The closing date of the original notice is scheduled for February 16, 2021. The Agency is extending the comment period for an additional 60 days from the previous closing date.

DATES: Comments must be received in writing by April 17, 2021.

ADDRESSES: Comments may be submitted electronically to *https://cara.ecosystem-management.org/Public/CommentInput?project=ORMS-2514.* Written comments may be mailed to U.S. Forest Service, Director, Forest Management, Range Management and Vegetation Ecology, 201 14th Street SW, Washington, DC 20250–1124. All timely received comments, including names and addresses, will be placed in the record and will be available for public inspection and copying. The public may inspect comments received at *https://cara.ecosystem-management.org/Public/CommentInput?Project=ORMS-2514.*

FOR FURTHER INFORMATION CONTACT: Myra Black, Program Manager, Forest Management, Range Management and Vegetation Ecology, at 202–650–7365, or by electronic mail to *myra.black@usda.gov.* Individuals using telecommunication devices for the deaf may call the Federal Information Relay Service at 800–877–8339 between 8 a.m. and 8 p.m. Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Forest Service Rangeland Management proposed directives were drafted in a good faith effort to provide greater management flexibility and enhance the clarity of policies and procedures applicable to the rangeland management program. To ensure that all members of the public who have an interest in rangeland management have the opportunity to provide comment, we are extending the comment period on the proposed directive to April 17, 2021.

The proposed directives and additional information on the proposed directives can be found at *https://www.fs.fed.us/rangeland-management/directives.shtml.* The additional information describes the purpose of the directives and why they are being updated and includes documents that will assist with review of the proposed directives and a schedule of informational webinars on the proposed directives.

After the public comment period closes, the Forest Service will consider timely and relevant comments in the development of the final directives. A notice of the final directives, including a response to timely and relevant comments, will be posted on the Forest Service's web page at *https://www.fs.fed.us/about-agency/regulations-policies/comment-on-directives.*

Tina Johna Terrell,

Associate Deputy Chief, National Forest System.

[FR Doc. 2021–02833 Filed 2–10–21; 8:45 am]

BILLING CODE 3411–15–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the Maryland Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meetings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that meetings of the Maryland Advisory Committee to the Commission will convene by conference call at 12:00 p.m. (ET) on the following Tuesdays: March 2, April 6, and May 4, 2021. The purpose of the meetings is to conclude its work on health disparities and COVID–19 in Maryland and begin project planning for a new examination of civil rights issues in Maryland.

DATES: Tuesdays: March 2, April 6, and May 4, 2021, at 12:00 p.m. (ET).

Public Web Conference Link (video and audio): Link: *https://bit.ly/3jg6Pff.*

Phone Only: 1–800–360–9505; Access code: 199 459 9800.

FOR FURTHER INFORMATION CONTACT: Barbara Delaviez at *ero@usccr.gov* or by phone at 202–539–8246.

SUPPLEMENTARY INFORMATION: The meeting is available to the public through the web link above. If joining only via phone, callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Individuals who are deaf, deafblind and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with conference details found through registering at the web link above. To request additional accommodations, please email *bdelaviez@usccr.gov* at least 7 days prior to the meeting.

Members of the public are invited to make statements during the open comment period of the meeting or submit written comments. The comments must be received in the regional office approximately 30 days after each scheduled meeting. Written comments may be emailed to Barbara Delaviez at *ero@usccr.gov.* Persons who desire additional information may contact Barbara Delaviez at 202–539–8246.

Records and documents discussed during the meeting will be available for public viewing as they become available at *www.facadatabase.gov.* Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Eastern Regional Office at the above phone number or email address.

Agenda: Tuesdays: March 2, April 6 and May 4, 2021; at 12:00 p.m. (ET)

- Rollcall
- Conclude Work on COVID–19 Health Disparities
- Next Steps and Other Business
- Open Comment
- Adjournment

Dated: February 5, 2021.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2021–02798 Filed 2–10–21; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meetings of the New Jersey Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meetings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that planning meetings of the New Jersey Advisory Committee to the Commission will convene by conference call on the 3rd Fridays of each month as follows: March 19, April 16, May 21, June 18, July 16, August 20, and September 1, 2021; all meetings will begin at 1:00 p.m. (ET). The purpose of the meetings is continued project planning and preparation of the report on the committee's civil rights project on the civil rights impacts of criminal asset forfeitures and the impacts that a criminal record has on access to employment and occupational licensing in New Jersey. There may be votes taken at one or more meeting, as needed.

DATES: 3rd Fridays at 1:00 p.m.: March 19, April 16, May 21, June 18, July 16, August 20, and September 1, 2021.

Public Call-In Information: Conference call number: 1–800–667–5617 and conference call ID number: 7386659.

FOR FURTHER INFORMATION CONTACT: Ivy L. Davis, at *ero@usccr.gov* or by phone at 202–376–7533.

SUPPLEMENTARY INFORMATION: Interested members of the public may listen to the discussion by calling the following toll-free conference call number: 1–800–667–5617 and conference call ID number: 7386659. Please be advised that before placing them into the conference call, the conference call operator may ask callers to provide their names, their organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number herein.

Individuals who are deaf, deafblind and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Federal Relay Service operator with the conference call-in numbers: 1–800–667–5617 and conference call ID number: 7386659.

Members of the public are invited to make statements during the Public Comment section of the meeting or to submit written comments. The comments must be received in the regional office approximately 30 days after each scheduled meeting. Written comments may be emailed to the Eastern Regional Office, Ivy Davis at *ero@usccr.gov.*

Records and documents discussed during the meeting will be available for public viewing, as they become available at *www.facadatabase.gov.* Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or contact the Eastern Regional Office at the above email address.

Agenda: 3rd Fridays at 1:00 p.m. ET: March 19, April 16, May 21, June 18, July 16, August 20, and September 1, 2021

I. Welcome and Roll Call
II. Approval—Meeting Minutes
III. Project Planning
IV. Other Business
V. Next Meeting
VI. Public Comments
VII. Adjourn

Dated: February 5, 2021.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2021–02797 Filed 2–10–21; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meetings of the Delaware Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meetings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that monthly planning

meetings of the Delaware Advisory Committee to the Commission will convene by conference call on the 1st Wednesdays of each month as follows: March 3, April 7, May 5, June 2, July 7, August 4, and September 1, 2021; all meetings will begin at 1:00 p.m. ET. The purpose of the meetings is for project planning and possible panel briefings.

DATES: 1st Wednesdays at 1:00 p.m.: March 3, April 7, May 5, June 2, July 7, August 4, and September 1, 2021.

Public Call-In Information: Conference call number: 1–800–367–2403 and conference call ID: 4195799.

FOR FURTHER INFORMATION CONTACT: Ivy L. Davis, at *ero@usccr.gov* or by phone at 202–376–7533.

SUPPLEMENTARY INFORMATION: Interested members of the public may listen to the discussion by calling the following toll-free conference call number: 1–800–367–2403 and conference call ID: 4195799. Please be advised that before placing them into the conference calls, the conference call operator may ask callers to provide their names, their organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number herein.

Individuals who are deaf, deafblind and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Federal Relay Service operator with the conference call-in numbers: 1–800–822–2024 and conference call ID: 4195799.

Members of the public are invited to make brief statements during the Public Comment section of each meeting or to submit written comments. The comments must be received in the regional office approximately 30 days after each scheduled meeting via email to Ivy Davis at *ero@usccr.gov.* Persons who desire additional information may contact the Eastern Regional Office at (202) 376–7533.

Records and documents discussed during the meeting will be available for public viewing, as they become available, at *www.facadatabase.gov.* Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Eastern Regional Office at the above phone number or email address.

Agenda: 1st Wednesdays at 1:00 p.m. (ET): March 3, April 7, May 5, June 2, July 7, August 4, and September 1, 2021.

I. Welcome and Roll Call
II. Approval—Meeting Minutes
III. Project Planning and Possible Panel Briefings
IV. Other Business
V. Next Planning Meeting
VI. Public Comments
VII. Adjourn

Dated: February 5, 2021.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2021–02795 Filed 2–10–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, U.S. Department of Commerce.

ACTION: Notice and opportunity for public comment.

SUMMARY: The Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of the firms contributed importantly to the total or partial separation of the firms' workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

SUPPLEMENTARY INFORMATION:

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[1/27/2021 through 2/5/2021]

Firm name	Firm address	Date accepted for investigation	Product(s)
Ronile, Inc	701 Orchard Avenue, Rocky Mount, VA 24151.	1/29/2021	The firm manufactures nylon, polyester, acrylic, and other synthetic yarns.
Ash/Tec, Inc., d/b/a Ashland Technologies, Inc.	218 Dell Road, Hegins, PA 17938	2/1/2021	The firm manufactures miscellaneous metal parts.
Profol Americas, Inc	4333 C Street Southwest, Cedar Rapids, IA 52404.	2/2/2021	The firm manufactures plastic films and sheets.
Beamlight, LLC, d/b/a Strong Lighting	10533 Chandler Road, La Vista, NE 68128.	2/5/2021	The firm manufactures lighting equipment.
Winslow Automatics, Inc	23 Saint Clair Avenue, New Britain, CT 06051.	2/5/2021	The firm manufactures aerospace parts.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance Division, Room 71030, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice. These petitions are received pursuant to section 251 of the Trade Act of 1974, as amended.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Bryan Borlik,

Director.

[FR Doc. 2021–02811 Filed 2–10–21; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–60–2020]

Foreign-Trade Zone (FTZ) 90—Syracuse, New York, Authorization of Limited Production Activity, PPC Broadband, Inc. (Fiber Optic Cables); Dewitt, New York

On October 8, 2020, PPC Broadband, Inc., (PPC Broadband) submitted a notification of proposed production activity to the FTZ Board for its facility within FTZ 90, in Dewitt, New York.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (85 FR 65790–65791, October 16, 2020). On February 5, 2021, the applicant was notified of the FTZ Board's decision that further review of part of the proposed activity is warranted. The FTZ Board authorized the production activity described in the notification on a limited basis, subject to the FTZ Act and the Board's regulations, including Section 400.14, and further subject to restrictions requiring that foreign-status tight buffered fiber be admitted to the zone in privileged foreign status (19 CFR 146.41) and that aramid yarn, swellcoat blockers or equivalent be admitted to the zone in domestic/duty paid status (19 CFR 146.43).

Dated: February 5, 2021.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2021–02822 Filed 2–10–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 2110]

Approval of Subzone Status, Port Arthur LNG, LLC, Port Arthur and Jefferson County, Texas

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones (FTZ) Act provides for ''. . . the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of subzones for specific uses;

Whereas, the Foreign-Trade Zone of Southeast Texas, Inc., grantee of Foreign-Trade Zone 116, has made application to the Board for the establishment of a subzone at the facilities of Port Arthur LNG, LLC, located in Port Arthur and Jefferson County, Texas (FTZ Docket B–66–2020, docketed November 2, 2020);

Whereas, notice inviting public comment has been given in the **Federal Register** (85 FR 71048–71049, November 6, 2020) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's memorandum, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

Now, therefore, the Board hereby approves subzone status at the facilities of Port Arthur LNG, LLC, located in Port Arthur and Jefferson County, Texas (Subzone 116F), as described in the application and **Federal Register** notice, subject to the FTZ Act and the Board's regulations, including Section 400.13.

Dated: February 5, 2021.

Christian B. Marsh,

Acting Assistant Secretary for Enforcement and Compliance, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 2021–02820 Filed 2–10–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–133]

Certain Metal Lockers and Parts Thereof From the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Extension of Provisional Measures

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that certain metal lockers and parts thereof (metal lockers) from the People's Republic of China (China) are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation is January 1, 2020, through June 30, 2020. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable February 11, 2021.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita or Patrick Barton, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4243 or (202) 482–0012, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on August 5, 2020.[1] On December 1, 2020, Commerce postponed the preliminary determination of this investigation, and the revised deadline is now February 4, 2021.[2] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The products covered by this investigation are metal lockers from China. For a complete description of the scope of this investigation, *see* Appendix I.

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[1] *See Certain Metal Lockers and Parts Thereof from the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation,* 85 FR 47343 (August 5, 2020) (*Initiation Notice*).

[2] *See Certain Metal Lockers and Parts Thereof from the People's Republic of China: Postponement of Preliminary Determination in the Less-Than-Fair-Value Investigation,* 85 FR 77157 (December 1, 2020).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Certain Metal Lockers and Parts Thereof from the People's Republic of China,'' dated concurrently with this notice (Preliminary Decision Memorandum).

Scope Comments

In accordance with the preamble to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (scope).[5] Certain interested parties provided comments on the scope of the investigation, as it appeared in the *Initiation Notice.* For a summary of all scope related comments submitted to the record for this investigation and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[6] Commerce is preliminarily modifying the scope language as it appeared in the *Initiation Notice. See* the revised scope in Appendix I to this notice.

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce has calculated export prices in accordance with section 772(a) of the Act. Because China is a non-market economy, within the meaning of section 771(18) of the Act, Commerce has calculated normal value in accordance with section 773(c) of the Act. In addition, pursuant to section 776(a) and (b) of the Act, Commerce preliminarily has relied upon facts otherwise available, with adverse inferences, for the China-wide entity. For a full description of the methodology underlying Commerce's preliminary determination, *see* the Preliminary Decision Memorandum.

Combination Rates

In the *Initiation Notice,*[7] Commerce stated that it would calculate producer/exporter combination rates for the respondents that are eligible for a separate rate in this investigation. Policy Bulletin 05.1 describes this practice.[8] In this investigation, we calculated producer/exporter combination rates for respondents eligible for separate rates.

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

Exporter	Producer	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offsets) (percent)
Hangzhou Xline Machinery & Equipment Co., Ltd. (Hangzhou Xline).	Hangzhou Jusheng Metal Products Co., Ltd	46.58	36.04
Zhejiang Xingyi Metal Products Co., Ltd./Xingyi Metalworking Technology (Zhejiang) Co., Ltd.	Zhejiang Xingyi Metal Products Co., Ltd./Xingyi Metalworking Technology (Zhejiang) Co., Ltd.	23.09	12.55
Geelong Sales (Macao Commercial Offshore) Limited (a.k.a. Geelong Sales (MCO) Limited, Geelong Sales (Macao Commercial) Limited, and Geelong Sales (MC) Limited).	Zhongshan Geelong Manufacturing Co. Ltd	26.87	16.33
Hangzhou Evernew Machinery & Equipment Company Limited.	Zhejiang Yinghong Metalworks Co., Ltd	26.87	16.33
Hangzhou Zhuoxu Trading Co., Ltd	Shanghai Asi Building Materials Co., Ltd	26.87	16.33
Hangzhou Zhuoxu Trading Co., Ltd	Luoyang Mingxiu Office Furniture Co., Ltd	26.87	16.33
Hangzhou Zhuoxu Trading Co., Ltd	Luoyang Wandefu Import and Export Trading Co. Ltd.	26.87	16.33
Hangzhou Zhuoxu Trading Co., Ltd	Zhejiang Xingyi Metal Products Co., Ltd	26.87	16.33
Jiaxing Haihong Mechanical and Electrical Technology Co. Ltd.	Zhejiang Steelrix Office Furniture Co., Ltd	26.87	16.33
Kunshan Dongchu Precision Machinery Co., Ltd	Kunshan Dongchu Precision Machinery Co., Ltd	26.87	16.33
Luoyang Hynow Import and Export Co., Ltd	Luoyang Jiudu Golden Cabinet Co., Ltd	26.87	16.33
Luoyang Shidiu Import and Export Co., Ltd	Luoyang Yuabo Office Machinery Co., Ltd.	26.87	16.33
Luoyang Steelart Office Furniture Co., Ltd	Luoyang Yongwei Office Furniture Co., Ltd	26.87	16.33
Luoyang Steelart Office Furniture Co., Ltd	Luoyang Zhuofan Steel Product Factory	26.87	16.33
Luoyang Steelart Office Furniture Co., Ltd	Luoyang Flyer Office Furniture Co., Ltd	26.87	16.33
Pinghu Chenda Storage Office Co., Ltd	Pinghu Chenda Storage Office Co., Ltd. (Pinghu Chenda).	26.87	16.33
Tianjin Jia Mei Metal Furniture Ltd	Tianjin Jia Mei Metal Furniture Ltd. (Tianjin Jia Mei).	26.87	16.33
China-wide Entity		322.25	311.71

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of subject merchandise as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, as discussed below. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the weighted average amount by which normal value exceeds U.S. price, as indicated in the chart above as follows: (1) For the producer/exporter combinations listed in the table above, the cash deposit rate is equal to the estimated weighted-average dumping margin listed for that combination in the table; (2) for all combinations of Chinese producers/exporters of subject merchandise that have not established eligibility for their own separate rates, the cash deposit rate will be equal to the estimated weighted-average dumping margin established for the China-wide entity; and (3) for all

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notice*, 85 FR at 47344.

[6] *See* Memorandum, ''Antidumping Duty and Countervailing Duty Investigations of Certain Metal Lockers and Parts Thereof from the People's Republic of China: Preliminary Scope Decision Memorandum,'' dated February 2, 2021 (Preliminary Scope Decision Memorandum).

[7] *See Initiation Notice,* 85 FR at 47346–47347.

[8] *See* Enforcement and Compliance's Policy Bulletin No. 05.1, regarding, ''Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries,'' (April 5, 2005) (Policy Bulletin 05.1), available on Commerce's website at *http://enforcement.trade.gov/policy/bull05-1.pdf.*

third-county exporters of subject merchandise not listed in the table above, the cash deposit rate is the cash deposit rate applicable to the Chinese producer/exporter combination (or the China-wide entity) that supplied that third-country exporter.

To determine the cash deposit rate, Commerce normally adjusts the estimated weighted-average dumping margin by the amount of domestic subsidy pass-through and export subsidies determined in a companion CVD proceeding when CVD provisional measures are in effect. Accordingly, where Commerce has made a preliminary affirmative determination for domestic subsidy pass-through or export subsidies, Commerce has offset the calculated estimated weighted-average dumping margin by the appropriate rate(s). Any such adjusted rates may be found in the chart of estimated weighted-average dumping margins in the ''Preliminary Determination'' section.

Should provisional measures in the companion CVD investigation expire prior to the expiration of provisional measures in this LTFV investigation, Commerce will direct CBP to begin collecting cash deposits at a rate equal to the estimated weighted-average dumping margins calculated in this preliminary determination unadjusted for the passed-through domestic subsidies or for export subsidies at the time the CVD provisional measures expire.

These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Commerce intends to disclose to interested parties the calculations performed in connection with this preliminary determination within five days of its public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination. Normally, Commerce verifies information using standard procedures, including an on-site examination of original accounting, financial, and sales documentation. However, due to current travel restrictions in response to the global COVID–19 pandemic, Commerce is unable to conduct on-site verification in this investigation. Accordingly, we intend to verify the information relied upon in making the final determination through alternative means in lieu of an on-site verification.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance. Commerce will notify interested parties of the timeline for the submission of case briefs and written comments at a later date. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs.[9] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[10] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioners. Pursuant to 19 CFR 351.210(e)(2), Commerce requires that requests by respondents for postponement of a final antidumping determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On January 19, 2021, pursuant to 19 CFR 351.210(e), Zhejiang Xingyi requested that Commerce postpone the final determination and that provisional measures be extended to a period not to exceed six months.[11] On January 20, 2021, pursuant to 19 CFR 351.210(e), Hangzhou Xline requested that Commerce postpone the final determination and that provisional measures be extended to a period not to exceed six months.[12] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because (1) the preliminary determination is affirmative; (2) the requesting exporters account for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce's final determination will publish no later than 135 days after the date of publication of this preliminary determination.

International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its preliminary determination of sales at LTFV. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of the subject merchandise are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

[9] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements); *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006 (March 26, 2020), and *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020) (collectively, *Temporary Rule*).

[10] *See Temporary Rule.*

[11] *See* Zhejiang Xingyi's Letter, ''Certain Metal Lockers and Parts Thereof from China, Case Nos. A–570–133: Request to Postpone Final Determination,'' dated January 19, 2021.

[12] *See* Hangzhou Xline's Letter, ''Metal Lockers and Parts Thereof from the People's Republic of China: Request to Postpone the Final Determination,'' dated January 20, 2021.

Dated: February 4, 2021.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

Appendix I

Scope of the Investigation

The scope of the investigation covers certain metal lockers, with or without doors, and parts thereof (metal lockers). The subject metal lockers are secure metal storage devices less than 27 inches wide and less than 27 inches deep, whether floor standing, installed onto a base or wall-mounted. In a multiple locker assembly (whether a welded locker unit, otherwise assembled locker unit or knocked down unit or kit), the width measurement shall be based on the width of an individual locker not the overall unit dimensions. All measurements in this scope are based on actual measurements taken on the outside dimensions of the single-locker unit. The height is the vertical measurement from the bottom to the top of the unit. The width is the horizontal (side to side) measurement of the front of the unit, and the front of the unit is the face with the door or doors or the opening for internal access of the unit if configured without a door. The depth is the measurement from the front to the back of the unit. The subject certain metal lockers typically include the bodies (back, side, shelf, top and bottom panels), door frames with or without doors which can be integrated into the sides or made separately, and doors.

The subject metal lockers typically are made of flat-rolled metal, metal mesh and/or expanded metal, which includes but is not limited to alloy or non-alloy steel (whether or not galvanized or otherwise metallically coated for corrosion resistance), stainless steel, or aluminum, but the doors may also include transparent polycarbonate, Plexiglas or similar transparent material or any combination thereof. Metal mesh refers to both wire mesh and expanded metal mesh. Wire mesh is a wire product in which the horizontal and transverse wires are welded at the cross-section in a grid pattern. Expanded metal mesh is made by slitting and stretching metal sheets to make a screen of diamond or other shaped openings.

Where the product has doors, the doors are typically configured with or for a handle or other device or other means that permit the use of a mechanical or electronic lock or locking mechanism, including, but not limited to: A combination lock, a padlock, a key lock (including cylinder locks) lever or knob lock, electronic key pad, or other electronic or wireless lock. The handle and locking mechanism, if included, need not be integrated into one another. The subject locker may or may not also enter with the lock or locking device included or installed. The doors or body panels may also include vents (including wire mesh or expanded metal mesh vents) or perforations. The bodies, body components and doors are typically powder coated, otherwise painted or epoxy coated or may be unpainted. The subject merchandise includes metal lockers imported either as welded or otherwise assembled units (ready for installation or use) or as knocked down units or kits (requiring assembly prior to installation or use).

The subject lockers may be shipped as individual or multiple locker units preassembled, welded, or combined into banks or tiers for ease of installation or as sets of component parts, bulk packed (*i.e.,* all backs in one package, crate, rack, carton or container and sides in another package, crate, rack, carton or container) or any combination thereof. The knocked down lockers are shipped unassembled requiring a supplier, contractor or end-user to assemble the individual lockers and locker banks prior to installation.

The scope also includes all parts and components of lockers made from flat-rolled metal or expanded metal (*e.g.,* doors, frames, shelves, tops, bottoms, backs, side panels, etc.) as well as accessories that are attached to the lockers when installed (including, but not limited to, slope tops, bases, expansion filler panels, dividers, recess trim, decorative end panels, and end caps) that may be imported together with lockers or other locker components or on their own. The particular accessories listed for illustrative purposes are defined as follows:

a. Slope tops: Slope tops are slanted metal panels or units that fit on the tops of the lockers and that slope from back to front to prevent the accumulation of dust and debris on top of the locker and to discourage the use of the tops of lockers as storage areas. Slope tops come in various configurations including, but not limited to, unit slope tops (in place of flat tops), slope hoods made of a back, top and end pieces which fit over multiple units and convert flat tops to a sloping tops, and slope top kits that convert flat tops to sloping tops and include tops, backs and ends.

b. Bases: Locker bases are panels made from flat-rolled metal that either conceal the legs of the locker unit, or for lockers without legs, provide a toe space in the front of the locker and conceal the flanges for floor anchoring.

c. Expansion filler panel: Expansion filler panels or fillers are metal panels that attach to locker units to cover columns, pipes or other obstacles in a row of lockers or fill in gaps between the locker and the wall. Fillers may also include metal panels that are used on the sides or the top of the lockers to fill gaps.

d. Dividers: Dividers are metal panels that divide the space within a locker unit into different storage areas.

e. Recess trim: Recess trim is a narrow metal trim that bridges the gap between lockers and walls or soffits when lockers are recessed into a wall.

f. Decorative end panels: End panels fit onto the exposed ends of locker units to cover holes, bolts, nuts, screws and other fasteners. They typically are painted to match the lockers.

g. End caps: End caps fit onto the exposed ends of locker units to cover holes, bolts, nuts, screws and other fasteners.

The scope also includes all hardware for assembly and installation of the lockers and locker banks that are imported with or shipped, invoiced, or sold with the imported locker or locker system except the lock.

Excluded from the scope are wire mesh lockers. Wire mesh lockers are those with each of the following characteristics:

(1) At least three sides, including the door, made from wire mesh;

(2) the width and depth each exceed 25 inches; and

(3) the height exceeds 90 inches.

Also excluded are lockers with bodies made entirely of plastic, wood, or any nonmetallic material.

Also excluded are exchange lockers with multiple individual locking doors mounted on one master locking door to access multiple units. Excluded exchange lockers have multiple individual storage spaces, typically arranged in tiers, with access doors for each of the multiple individual storage space mounted on a single frame that can be swung open to allow access to all of the individual storage spaces at once. For example, uniform or garment exchange lockers are designed for the distinct function of securely and hygienically exchanging clean and soiled uniforms. Thus, excluded exchange lockers are a multi-access point locker whereas covered lockers are a single access point locker for personal storage. The excluded exchange lockers include assembled exchange lockers and those that enter in 'knock down' form in which all of the parts and components to assemble a completed exchange locker unit are packaged together. Parts for exchange lockers that are imported separately from the exchange lockers in 'knock down' form are not excluded.

Also excluded are metal lockers that are imported with an installed electronic, internet-enabled locking device that permits communication or connection between the locker's locking device and other internet connected devices.

Also excluded are locks and hardware and accessories for assembly and installation of the lockers, locker banks and storage systems that are separately imported in bulk and are not incorporated into a locker, locker system or knocked down kit at the time of importation. Such excluded hardware and accessories include but are not limited to locks and bulk imported rivets, nuts, bolts, hinges, door handles, door/frame latching components, and coat hooks. Accessories of sheet metal, including but not limited to end panels, bases, dividers and sloping tops, are not excluded accessories.

Mobile tool chest attachments that meet the physical description above are covered by the scope of the investigation, unless such attachments are covered by the scope of the orders on certain tool chests and cabinets from China. If the orders on certain tool chests and cabinets from China are revoked, the mobile tool chest attachments from China will be covered by the scope of the investigation.

The scope also excludes metal safes with each of the following characteristics: (1) Pry resistant, concealed hinges; (2) body walls and doors of steel that are at least 17 gauge (0.05625 inch or 1.42874 mm thick); and (3) an integrated locking mechanism that includes at least two round steel bolts 0.75 inch (19 mm) or larger in diameter; or three bolts 0.70 inch (17.78 mm) or more in diameter; or four or more bolts at least 0.60 inch (15.24 mm) or more in diameter, that project from the door into the body or frame of the safe when in the locked position.

The scope also excludes gun safes meeting each of the following requirements:

(1) Shall be able to fully contain firearms and provide for their secure storage.

(2) Shall have a locking system consisting of at minimum a mechanical or electronic combination lock. The mechanical or electronic combination lock utilized by the safe shall have at least 10,000 possible combinations consisting of a minimum three numbers, letters, or symbols. The lock shall be protected by a casehardened (Rc 60+) drill-resistant steel plate, or drill-resistant material of equivalent strength.

(3) Boltwork shall consist of a minimum of three steel locking bolts of at least ½ inch thickness that intrude from the door of the safe into the body of the safe or from the body of the safe into the door of the safe, which are operated by a separate handle and secured by the lock.

(4) The exterior walls shall be constructed of a minimum 12-gauge thick steel for a single-walled safe, or the sum of the steel walls shall add up to at least 0.100 inches for safes with walls made from two pieces of flat-rolled steel.

(5) Doors shall be constructed of a minimum one layer of 7-gauge steel plate reinforced construction or at least two layers of a minimum 12-gauge steel compound construction.

(6) Door hinges shall be protected to prevent the removal of the door. Protective features include, but are not limited to: hinges not exposed to the outside, interlocking door designs, dead bars, jeweler's lugs and active or inactive locking bolts.

The scope also excludes metal storage devices that (1) have two or more exterior exposed drawers regardless of the height of the unit, or (2) are no more than 30 inches tall and have at least one exterior exposed drawer.

Also excluded from the scope are free standing metal cabinets less than 30 inches tall with a single opening, single door and an installed tabletop.

The scope also excludes metal storage devices less than 27 inches wide and deep that (1) have two doors hinged on the right and left side of the door frame respectively covering a single opening and that open from the middle toward the outer frame; or (2) are free standing or wall-mounted, single-opening units 20 inches or less high with a single door.

The subject certain metal lockers are classified under Harmonized Tariff Schedule of the United States (HTSUS) subheading 9403.20.0078. Parts of subject certain metal lockers are classified under HTS subheading 9403.90.8041. In addition, subject certain metal lockers may also enter under HTS subheading 9403.20.0050. While HTSUS subheadings are provided for convenience and Customs purposes, the written description of the scope of the investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Postponement of Final Determination and Extension of Provisional Measures
V. Scope of Investigation
VI. Scope Comments
VII. Single Entity Analysis
VIII. Discussion of the Methodology
IX. Currency Conversion
X. Adjustment for Countervailable Export Subsidies
XI. Adjustment Under Section 777(A)(f) of the Act
XII. Recommendation

[FR Doc. 2021–02824 Filed 2–10–21; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–833]

Citric Acid and Certain Citrate Salts From Thailand: Final Results of Antidumping Duty Administrative Review; 2018–2019

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) finds that sales of citric acid and certain citrate salts (citric acid) from Thailand were made by COFCO Biochemical (Thailand) Co., Ltd. (COFCO) and Niran (Thailand) Co., Ltd. (Niran) at less than normal value (NV) during the period of review (POR) January 8, 2018, through June 30, 2019. We also find that Sunshine Biotech International Co., Ltd. (Sunshine) did not sell citric acid at less than NV during the POR.

DATES: Applicable February 11, 2021.

FOR FURTHER INFORMATION CONTACT: Joy Zhang (COFCO), Katherine Sliney (Niran), or Jolanta Lawska (Sunshine), AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1168, (202) 482–2437, or (202) 482–8362, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 12, 2020, we published the *Preliminary Results* of this administrative review.[1] We invited interested parties to comment on the *Preliminary Results.* We received case briefs from COFCO and Niran.[2] We received a rebuttal brief from Archer Daniels Midland Company, Cargill Incorporated, and Tate & Lyle Ingredients Americas LLC (collectively, the petitioners).[3]

On July 21, 2020, Commerce tolled all deadlines in administrative reviews by 60 days, thereby extending the deadline for these final results until January 19, 2021.[4] On January 7, 2021, we extended the deadline for the final results of this review to February 16, 2021.[5] A complete summary of the events that occurred since publication of the *Preliminary Results* may be found in the Issues and Decision Memorandum.[6] Commerce conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The merchandise covered by this order includes all grades and granulation sizes of citric acid, sodium citrate, and potassium citrate in their unblended forms, whether dry or in solution, and regardless of packaging type. The scope also includes blends of citric acid, sodium citrate, and potassium citrate; as well as blends with other ingredients, such as sugar, where the unblended form(s) of citric acid, sodium citrate, and potassium citrate constitute 40 percent or more, by weight, of the blend.

Citric acid and sodium citrate are classifiable under 2918.14.0000 and 2918.15.1000 of the Harmonized Tariff Schedule of the United States (HTSUS), respectively. Potassium citrate and crude calcium citrate are classifiable under 2918.15.5000 and, if included in a mixture or blend, 3824.99.9295 of the HTSUS. Blends that include citric acid, sodium citrate, and potassium citrate

[1] *See Citric Acid and Certain Citrate Salts from Thailand: Preliminary Results of Antidumping Duty Administrative Review; 2018–2019,* 85 FR 48672 (August 12, 2020) (*Preliminary Results*).

[2] *See* COFCO's Letter, "Citric Acid and Certain Citrate Salts from Thailand: Case Brief," dated September 11, 2020; *see also* Niran's Letter, "Citric Acid and Certain Citrate Salts from Thailand: Case Brief," dated September 11, 2020.

[3] *See* Petitioners' Letter, "Citric Acid and Certain Citrate Salts from Thailand: Petitioners' Rebuttal Brief," dated September 18, 2020.

[4] *See* Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews," dated July 21, 2020.

[5] *See* Memorandum, "Extension of Deadline for Final Results of Antidumping Duty Administrative Review—Citric Acid and Certain Citrate Salts from Thailand," dated January 7, 2021.

[6] *See* Memorandum, "Decision Memorandum for the Final Results of 2018–2019 Administrative Review of the Antidumping Duty Order on Citric Acid and Certain Citrate Salts from Thailand," dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

are classifiable under 3824.99.9295 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive. For a full description of the scope of the Order, *see* the Preliminary Decision Memorandum.

Analysis of Comments Received

All issues raised by the parties in their case and rebuttal briefs are listed in the appendix to this notice and are addressed in the Issues and Decision Memorandum. The Issues and Decision Memorandum is a public document and is on-file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users *at https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

We made no changes to the *Preliminary Results.*

Final Results of the Review

The weighted-average dumping margins for the final results of this administrative review are as follows:

Exporter/producer	Weighted-average dumping margin (percent)
COFCO Biochemical (Thailand) Co., Ltd. (COFCO).	0.76.
Niran (Thailand) Co., Ltd. (Niran)	54.11.
Sunshine Biotech International Co., Ltd. (Sunshine).	0.00 (*de minimis*).

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b)(1), Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review.

Since COFCO and Niran have weighted-average dumping margins above *de minimis* (*i.e.,* greater than 0.5 percent), Commerce has calculated importer-specific *ad valorem* antidumping duty assessment rates. We calculated importer-specific antidumping duty assessment rates by aggregating the total amount of dumping calculated for the examined sales of each importer and dividing each of these amounts by the total sales value associated with those sales. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review where an importer-specific assessment rate is not zero or *de minimis.* Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the importer-specific assessment rate is zero or *de minimis.*

In accordance with our practice, for entries of subject merchandise during the POR for which a respondent did not know that the merchandise was destined for the United States, we will instruct CBP to liquidate such entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

Consistent with its recent notice,[7] Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of citric acid from Thailand entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results, as provided by section 751(a)(2) of the Act: (1) The cash deposit rate for the firms listed above will be equal to the dumping margins established in the final results of this review, except if the ultimate rates are *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rates will be zero; (2) for merchandise exported by producers or exporters not covered in this administrative review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the producer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value investigation but the producer is, then the cash deposit rate will be the rate established for the most recently completed segment of the proceeding for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 11.25 percent, the all-others rate established in the antidumping duty investigation.[8] These cash deposit requirements, when imposed, shall remain in effect until further notice.

[7] *See Notice of Discontinuation of Policy to Issue Liquidation Instructions After 15 Days in Applicable Antidumping and Countervailing Duty Administrative Proceedings,* 86 FR 3995 (January 15, 2021).

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(h)(1).

Dated: February 5, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Final Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Discussion of the Issues
Comment 1: Whether to Depart From the Standard Differences in Merchandise Test
Comment 2: Whether Costs to Further Manufacture Byproducts Should Continue To Be Captured
Comment 3: Whether to Depart From the Standard Differential Pricing Methodology

[8] *See Citric Acid and Certain Citrate Salts From Belgium, Colombia and Thailand: Antidumping Duty Orders,* 83 FR 35214 (July 25, 2018).

Comment 4: Whether Compelling Reasons Exist To Make Modifications to the Existing Model-Match Criteria
Comment 5: Whether To Make Adjustments To Exclude Shutdown Periods From Reported Costs
V. Recommendation

[FR Doc. 2021–02821 Filed 2–10–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA854]

Caribbean Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The Caribbean Fishery Management Council's (Council) Outreach and Education Advisory Panel (OEAP) will hold a 2-day public virtual meeting in March to discuss the items contained in the agenda in the **SUPPLEMENTARY INFORMATION**.

DATES: The OEAP virtual meeting will be held on March 17, 2021, from 12 p.m. to 3 p.m. and on March 18, 2021, from 12 p.m. to 3 p.m.

ADDRESSES: You may join the OEAP public virtual meeting (via Zoom) from a computer, tablet or smartphone by entering the following address:

Join OEAP Zoom Meeting *https://us02web.zoom.us/j/84039986774?pwd=SUhDc1hXeFloQWF3ajVtL2ZHRGN3Zz09*
Meeting ID: 840 3998 6774
Passcode: 179728
One tap mobile
+17879667727,,84039986774#,,,,*179728# Puerto Rico
+19399450244,,84039986774#,,,,*179728# Puerto Rico
Dial by your location
+1 787 966 7727 Puerto Rico
+1 939 945 0244 Puerto Rico
+1 787 945 1488 Puerto Rico
+1 669 900 6833 US (San Jose)
+1 929 205 6099 US (New York)
+1 253 215 8782 US (Tacoma)
+1 301 715 8592 US (Washington DC)
+1 312 626 6799 US (Chicago)
+1 346 248 7799 US (Houston)
Meeting ID: 840 3998 6774
Passcode: 179728

FOR FURTHER INFORMATION CONTACT: Diana Martino (787) 226–8849, Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico 00918–1903.

SUPPLEMENTARY INFORMATION:

March 17, 2021

12:p.m.–1 p.m.

—Call to Order
—Adoption of Agenda
—OEAP Chairperson's Report
—Updates:
—CFMC Arrangements for Virtual Meetings
—Status of Fisher's Communities COVID–19
—Posters Produced
—Issues/Activities in U.S.V.I. and PR

1 p.m.–1:10 p.m.

—Break

1:10 p.m.–3 p.m.

—Responsible Seafood Consumption Campaign
—Recipe Cookbook for Puerto Rico and the U.S. Virgin Islands
—St. Thomas/St. John, U.S.V.I. MPA Project
—UPRSG–CFMC

March 18, 2021

12 p.m.–1 p.m.

—Fishery Ecosystem Based Management Plan (FEBMP)

1 p.m.–1:10 p.m.

—Break

1:10 p.m.–3 p.m.

—2022 Calendar
—CFMC Facebook, Instagram and YouTube Communications with Stakeholders
—Other Business

The order of business may be adjusted as necessary to accommodate the completion of agenda items. The meeting will begin on March 17, 2021 at 12 p.m. and will end on March 18, 2021, at 3 p.m. Other than the start time, interested parties should be aware that discussions may start earlier or later than indicated. In addition, the meeting may be extended from, or completed prior to the date established in this notice.

Special Accommodations

For any additional information on this public virtual meeting, please contact Diana Martino, Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico, 00918–1903; telephone: (787) 226–8849.

(Authority: 16 U.S.C. 1801 *et seq.*)

Dated: February 8, 2021.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2021–02826 Filed 2–10–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA865]

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will hold a meeting via webinar of its Law Enforcement Technical Committee (LETC), in conjunction with the Gulf States Marine Fisheries Commission's Law Enforcement Committee (LEC).

DATES: The webinar will convene on Tuesday, March 9, 2021; beginning at 10 a.m. and ending at 3 p.m., EST.

ADDRESSES: The meeting will be held via webinar. Please visit the Gulf Council website (*www.gulfcouncil.org*) for meeting materials and webinar registration information.

Council address: Gulf of Mexico Fishery Management Council, 4107 W. Spruce Street, Suite 200, Tampa, FL 33607; telephone: (813) 348–1630.

FOR FURTHER INFORMATION CONTACT: Dr. Ava Lasseter, Anthropologist, Gulf of Mexico Fishery Management Council; *ava.lasseter@gulfcouncil.org,* telephone: (813) 348–1630, and Mr. Steve VanderKooy, Inter-jurisdictional Fisheries (IJF) Coordinator, Gulf States Marine Fisheries Commission; *svanderkooy@gsmfc.org,* telephone: (228) 875–5912.

SUPPLEMENTARY INFORMATION: The following items of discussion are on the agenda, though agenda items may be addressed out of order and any changes will be noted on the Council's website when possible.

Joint Gulf Council's Law Enforcement Technical Committee (LETC) and Gulf States Marine Fisheries Commission's Law Enforcement Committee (LEC) Meeting Agenda, Tuesday, March 9, 2021; beginning at 10 a.m.–3 p.m., EST.

The joint meeting will begin in a *CLOSED SESSION* from 10 a.m. to 11:30 a.m. with introductions, Enforcement of Recreational Red Snapper Case

Handling, and review of nominations for the 2020 Officer/Team of the Year Award.

General session will begin with introductions and adoption of agenda, and approval of minutes from the Joint LEC/LETC Meeting on March 11, 2020.

The Gulf Council LETC will receive an update on the Southeast For-hire Electronic Reporting Program, review Cobia Management (Amendment 32), discuss Lane Snapper and changes to accountability measures, and illegal charters.

The GSMFC LEC will approve strategic and operations plans, review the IJF Program Activity for the status of the Red Drum Profile, and Commission Pubs.

The committee will present the State Report Highlights from Florida, Alabama, Mississippi, Louisiana, Texas, USCG, NOAA OLE, and USFWS; and will discuss any Other Business items.

—Meeting Adjourns

The Agenda is subject to change, and the latest version along with other meeting materials will be posted on *www.gulfcouncil.org.*

The Law Enforcement Technical Committee consists of principal law enforcement officers in each of the Gulf States, as well as the NOAA Office of Law Enforcement, U.S. Fish and Wildlife Service, the U.S. Coast Guard, and the NOAA Office of General Counsel for Law Enforcement.

Although other non-emergency issues not on the agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 8, 2021.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2021–02827 Filed 2–10–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA864]

Fisheries of the South Atlantic; South Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The South Atlantic Fishery Management Council's (Council) Citizen Science Program will hold two town hall meetings to assist in the development of a customizable citizen science mobile application via webinar March 9 and March 11, 2021.

DATES: The meetings via webinar will be held on Tuesday, March 9, 2021, from 5 p.m. until 7 p.m. and on Thursday, March 11, 2021, from 10 a.m. until 12 p.m.

ADDRESSES:

Meeting address: The meetings will be held via webinar. The webinars are open to members of the public. Those interested in participating should contact Julia Byrd (see **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julia Byrd, Citizen Science Program Manager, SAFMC; phone: (843) 302–8433 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *julia.byrd@safmc.net.*

SUPPLEMENTARY INFORMATION: The role of citizen science is an evolving and potentially powerful tool to better understand marine fish populations. With that in mind, the South Atlantic Fishery Management Council's Citizen Science Program has partnered with the Atlantic Coastal Cooperative Statistics Program and the North Carolina Division of Marine Fisheries to develop a mobile application that encourages and supports the capture and sharing of information about Atlantic coast fish. The town hall meetings will be interactive to gain insights from stakeholders including fishermen, fisheries scientists, and fisheries managers. Interested participants will only need to attend one of the two meetings.

Items of discussion at the town hall meetings are as follows:

1. Project introduction
2. Brainstorm and discuss insights from participants to identify what they consider to be the most useful information that could be captured and generated by a citizen science mobile application.

The meeting end times are subject to change depending on attendance and discussions.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 5 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 8, 2021.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2021–02828 Filed 2–10–21; 8:45 am]

BILLING CODE 3510–22–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Meetings

AGENCY: U.S. Election Assistance Commission.

ACTION: Notice; corrections.

SUMMARY: The U.S. Election Assistance Commission published a document in the **Federal Register** regarding the scheduled Accessibility Survey and Lessons Learned Roundtable Discussion. The Notice appeared in the **Federal Register** of February 2, 2021 in FR Doc. 2021–02197, on page 7863 in the second column. The **DATES** section should be corrected to read:

DATES: Wednesday, February 17, 2021, 11:30 a.m.–1:00 p.m. Eastern.

FOR FURTHER INFORMATION CONTACT: Kristen Muthig, Telephone: (202) 897–9285, Email: *kmuthig@eac.gov.*

Amanda Joiner,

Associate Counsel, U.S. Election Assistance Commission.

[FR Doc. 2021–02891 Filed 2–9–21; 11:15 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10020–15–OAR]

Allocations of Cross-State Air Pollution Rule Allowances From New Unit Set-Asides for 2020 Control Periods

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability.

SUMMARY: The Environmental Protection Agency (EPA) is providing notice of the availability of data on emission allowance allocations to certain units under the Cross-State Air Pollution Rule (CSAPR) trading programs. EPA has completed final calculations for the second round of allocations of allowances from the CSAPR new unit set-asides (NUSAs) for the 2020 control periods and has posted spreadsheets containing the calculations on EPA's website. EPA has also completed calculations for allocations of the remaining 2020 NUSA allowances to existing units and has posted spreadsheets containing those calculations on EPA's website as well.

DATES: February 11, 2021.

FOR FURTHER INFORMATION CONTACT: Questions concerning this action should be addressed to Jason Kuhns at (202) 564–3236 or *kuhns.jason@epa.gov* or Andrew Reighart at (202) 564–0418 or *reighart.andrew@epa.gov.*

SUPPLEMENTARY INFORMATION: Under each CSAPR trading program where EPA is responsible for determining emission allowance allocations, a portion of each state's emissions budget for the program for each control period is reserved in a NUSA (and in an additional Indian country NUSA in the case of states with Indian country within their borders) for allocation to certain units that would not otherwise receive allowance allocations. The procedures for identifying the eligible units for each control period and for allocating allowances from the NUSAs and Indian country NUSAs to these units are set forth in the CSAPR trading program regulations at 40 CFR 97.411(b) and 97.412 (NO_X Annual), 97.511(b) and 97.512 (NO_X Ozone Season Group 1), 97.611(b) and 97.612 (SO_2 Group 1), 97.711(b) and 97.712 (SO_2 Group 2), and 97.811(b) and 97.812 (NO_X Ozone Season Group 2). Each NUSA allowance allocation process involves up to two rounds of allocations to eligible units, termed ''new'' units, followed by the allocation to ''existing'' units of any allowances not allocated to new units.

In a notice of data availability (NODA) published in the **Federal Register** on December 21, 2020 (85 FR 83078), EPA provided notice of the preliminary identification of units eligible to receive second-round NUSA allocations for the 2020 control periods and described the process for submitting any objections. EPA received no objections in response to the December 21, 2020 NODA. This NODA provides notice of EPA's calculations of the amounts of the second-round 2020 NUSA allocations to the previously identified eligible new units and the allocations of the remaining allowances to existing units.

The detailed unit-by-unit data and final allowance allocation calculations are set forth in Excel spreadsheets titled ''CSAPR_NUSA_2020_NO_X_Annual_2nd_Round_Final_Data_New_Units,'' ''CSAPR_NUSA_2020_NO_x_OS_2nd_Round_Final_Data_New_Units,'' ''CSAPR_NUSA_2020_SO_2_2nd_Round_Final_Data_New_Units,'' ''CSAPR_NUSA_2020_NO_X_Annual_2nd_Round_Final_Data_Existing_Units,'' ''CSAPR_NUSA_2020_NO_X_OS_2nd_Round_Final_Data_Existing_Units,'' and ''CSAPR_NUSA_2020_SO_2_2nd_Round_Final_Data_Existing_Units'', available on EPA's website at *https://www.epa.gov/csapr/csapr-compliance-year-2020-nusa-nodas.*

EPA notes that an allocation or lack of allocation of allowances to a given unit does not constitute a determination that CSAPR does or does not apply to the unit. EPA also notes that under 40 CFR 97.411(c), 97.511(c), 97.611(c), 97.711(c), and 97.811(c), allocations are subject to potential correction if a unit to which allowances have been allocated for a given control period is not actually an affected unit as of the start of that control period.

Authority: 40 CFR 97.411(b), 97.511(b), 97.611(b), 97.711(b), and 97.811(b).

Dated: February 2, 2021.

Reid P. Harvey,

Director, Clean Air Markets Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 2021–02773 Filed 2–10–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2021–0044; FRL–10020–30–OAR]

Notice of Data Availability Relevant to the United States Hydrofluorocarbon Baselines and Mandatory Allocations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability.

SUMMARY: This Notice of Data Availability is to alert stakeholders of information from the Environmental Protection Agency regarding hydrofluorocarbon consumption and production in the United States for the years 2011, 2012, and 2013 and solicit stakeholder input. The Agency is providing this information in preparation for upcoming regulatory actions under the American Innovation and Manufacturing Act of 2020, included in the Consolidated Appropriations Act, 2021. Among other provisions, the Act directs the Environmental Protection Agency to develop production and consumption baselines and to phase down hydrofluorocarbon production and consumption relative to those baselines. This notice provides information related to total annual hydrofluorocarbon production and consumption between 2011 and 2013 reported to the Environmental Protection Agency's Greenhouse Gas Reporting Program as of March 30, 2020, which was the last reporting deadline for reporting year 2019 data. The notice identifies possible data gaps and requests comment on areas where additional information could improve the Agency's data on hydrofluorocarbon consumption and production in the United States for those three years. This notice also provides the Agency's initial information on hydrofluorocarbon use in applications that would receive mandatory allocations under the Act.

DATES: The Environmental Protection Agency (EPA) is interested in receiving comments on the data in this notice of data availability (NODA) to inform the Agency's regulatory process. To ensure that comments can be accounted for in an upcoming EPA proposed rule, please submit comments to the Agency by February 25, 2021.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–HQ–OAR–2021–0044, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov/* (our preferred method). Follow the online instructions for submitting comments.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Air and Radiation Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand Delivery or Courier (by scheduled appointment only):* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30

a.m.–4:30 p.m., Monday–Friday (except Federal Holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided. Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are closed to the public, with limited exceptions, to reduce the risk of transmitting COVID–19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via *https://www.regulations.gov/* or email, as there may be a delay in processing mail and faxes. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Andy Chang, U.S. Environmental Protection Agency, Stratospheric Protection Division, telephone number: 202–564–6658; or email address: *chang.andy@epa.gov.* You may also visit EPA's website at *www.epa.gov/ozone-layer-protection* for further information.

SUPPLEMENTARY INFORMATION:

I. What should I consider as I prepare my comments?

You may find the following suggestions helpful for preparing your comments: Explain your views as clearly as possible; describe any assumptions that you used; provide any technical information or data you used that support your views; provide specific examples to illustrate your concerns; offer alternatives; and make sure to submit your comments by the comment period deadline identified. Please provide any published studies or raw data supporting your position. Confidential Business Information (CBI) should not be submitted through *www.regulations.gov.* Please work with the person listed in the **FOR FURTHER INFORMATION CONTACT** section if submitting a comment containing CBI.

II. Background

The Agency is providing information in preparation for upcoming regulatory actions under the American Innovation and Manufacturing Act of 2020 (AIM Act or Act), included in the Consolidated Appropriations Act, 2021. Among other provisions, the Act directs EPA to develop a U.S. production baseline and a U.S. consumption baseline and to phase down hydrofluorocarbon (HFC) production and consumption relative to those baselines.[1] The legislation specifies that the production and consumption baselines are equal to the sum of (1) the average annual quantity of all HFCs regulated under the Act that were produced or consumed, respectively, in the United States during the period beginning on January 1, 2011 and ending on December 31, 2013; (2) the quantity equal to the sum of 15 percent of the production or consumption, respectively, of hydrochlorofluorocarbons (HCFCs) in calendar year 1989; and (3) 0.42 percent of the production or consumption, respectively, of chlorofluorocarbons (CFCs) in calendar year 1989.

EPA is seeking comment on the accuracy of the data and analyses presented in this notice and the draft reports in the docket to this notice and welcomes input on those data and potential data gaps. Data is available in this notice and will be available in the docket, and additional data will be added to the docket on February 8, 2021. Data from 2011 through 2013 will be helpful in developing the U.S. HFC baselines for production and consumption. Readers should note that EPA will only consider comments about the data presented in this notice and the draft reports provided in the docket and is not soliciting comments on any other topic through this notice. The Agency is also not seeking comment on the historic HCFC and CFC consumption and production values as the Agency already has those data and no further information is needed. Based on feedback provided through this NODA process and other stakeholder engagement, EPA intends to revise and release updated numbers for 2011–2013 at the same time the Agency issues a proposed rule to establish baselines and an HFC allocation system consistent with the AIM Act.

EPA is also providing separate documents in the docket related to the applications for which section (e)(4)(B)(iv) of the AIM Act directs the Administrator to allocate the full quantity of allowances necessary, based on projected, current, and historical trends. Similar to the data being provided related to the consumption and production baselines, EPA is providing the public with reports related to the applications listed for these mandatory allocations so that the public can view what data EPA currently has, comment on currently available information, and provide information on potential data gaps. The docket to this NODA contains documents for the following statutorily-established applications: (1) Propellants in metered dose inhalers (MDIs); (2) defense sprays; (3) structural composite preformed polyurethane foam for marine use and trailer use; (4) the etching of semiconductor material or wafers and the cleaning of chemical vapor deposition (CVD) chambers within the semiconductor manufacturing sector; and (5) on board aerospace fire suppression. These reports describe EPA's current awareness of the use of HFCs and provide information on EPA's current knowledge on projected, current, and historical trends of HFC related to these statutorily identified applications. EPA requests comment on the data and analysis in these documents.

As stated throughout this notice, EPA plans to undergo a future notice and comment rulemaking process, which will be a separate action, that will outline the Agency's approach to calculating HFC production and consumption baselines, allocating allowances in furtherance of the HFC phasedown, and defining applications for mandatory allocations. EPA will solicit public feedback on these issues through that separate notice and comment process, and therefore is not accepting public comment on these matters through this NODA. Public comments that pertain to issues beyond the scope of this NODA will not be considered. To the extent such comments are relevant to the previously referenced future and separate rulemaking, those comments should be resubmitted through that future rulemaking process in order to ensure that they are duly considered by the Agency. The list of companies in Table 2 is provided solely as an illustration of the sources of the net supply data currently in the Greenhouse Gas Reporting Program (GHGRP) for the years 2011, 2012, and 2013. The list should not be interpreted as any indication concerning future Agency decisions about the companies that will be allocated allowances pursuant to AIM Act regulations, since those are the three years defined in the AIM Act for calculating the baseline numbers. Use of AIM Act terminology in this NODA is for communication purposes only and should not be viewed as indications of how EPA will define these terms in future rulemaking actions.

The AIM Act will be implemented over time. EPA intends to provide more

[1] The AIM Act defines consumption as the quantity produced and imported in the United States minus the quantity exported from the United States.

information on the status of rulemakings and stakeholder interaction, including opportunities for submitting public comment, on the Agency's website.

III. What data are available?

EPA is announcing the availability of data related to the U.S. HFC production and consumption baselines as defined in the AIM Act. Data contained in this NODA and the associated docket is derived from EPA's GHGRP for the years 2011–2013. Some data will be provided in this notice and posted in the docket as of the date of publication of this NODA. Additional data that is denoted with an asterisk in tables provided later in this notice will be uploaded to the docket on February 8, 2021.

Under 40 CFR part 98, the GHGRP requires reporting of greenhouse gas (GHG) data and other relevant information from large GHG emission sources, fuel and industrial gas suppliers, and suppliers of carbon dioxide (CO_2). The GHGRP also requires producers of HFCs and importers or exporters that supply a total of 25,000 metric tons carbon dioxide equivalent (CO_2e) or more of fluorinated GHGs (including HFCs), nitrous oxide, and carbon dioxide to report their supplies to EPA annually. Suppliers include producers, importers, exporters, and destroyers of HFCs (who report under 40 CFR part 98, subpart OO) and importers and exporters of pre-charged equipment (*e.g.,* window air conditioners) and closed-cell foams that contain HFCs (who report under 40 CFR part 98, subpart QQ). Under subpart OO, producers are required to report the quantities that they produce, transform (unless the transformed feedstock is produced onsite), destroy, or send off-site for transformation or destruction. Importers of bulk HFCs are required to report the quantities that they import, destroy, or send off-site for transformation or destruction.[2] Exporters of bulk HFCs are required to report the quantities that they export.

For the years 2011–2013, 42 companies reported HFC supply data under Subpart OO via the GHGRP (some of which owned multiple facilities). EPA anticipates at this time that the GHGRP data that will be used the most to inform the U.S. production and consumption baselines are the supplies of HFCs listed as regulated substances in the AIM Act that are reported under Subpart OO of the GHGRP.

The AIM Act states that for purposes of establishing the baselines and in implementing the statutorily required HFC phasedown, EPA shall use the statutorily provided exchange values for each regulated substance (*i.e.,* HFCs), HCFCs, and CFCs. These exchange values are numerically identical to the global warming potentials (GWPs) for those substances provided in the Fourth Assessment Report of the Intergovernmental Panel on Climate Change.[3] Because the GHGRP collects and reports information using GWPs, for the purposes of this notice and the reports provided in the docket, the terms ''exchange values'' and ''GWP'' have equivalent meaning and the terms are used interchangeably. The HFCs listed as regulated substances in the AIM Act, and the exchange values that are assigned to them, are listed in Table 1.

TABLE 1—HFCS LISTED AS REGULATED SUBSTANCES IN THE AIM ACT

HFC	Chemical formula	Exchange value
HFC–134	CHF_2CHF_2	1,100
HFC–134a	CH_2FCF_3	1,430
HFC–143	CH_2FCHF_2	353
HFC–245fa	$CHF_2CH_2CF_3$	1,030
HFC–365mfc	$CF_3CH_2CF_2CH_3$	794
HFC–227ea	CF_3CHFCF_3	3,220
HFC–236cb	$CH_2FCF_2CF_3$	1,340
HFC–236ea	CHF_2CHFCF_3	1,370
HFC–236fa	CF_3CH2CF_3	9,810
HFC–245ca	$CH_2FCF_2CHF_2$	693
HFC–43–10mee	$CF_3CHFCHFCF_2CF_3$	1,640
HFC–32	CH_2F_2	675
HFC–125	CHF_2CF_3	3,500
HFC–143a	CH_3CF_3	4,470
HFC–41	CH_3F	92
HFC–152	CH_2FCH_2F	53
HFC–152a	CH_3CHF_2	124
HFC–23	CHF_3	14,800

EPA is providing as much data as possible while respecting confidentiality determinations finalized through previous GHGRP rulemakings. Many of the data elements reported to subpart OO of the GHGRP were determined to be, and are treated as, confidential by EPA. The data presented in Tables 3 and 4, collected under subpart OO from producers, importers, and exporters of HFCs, are aggregations that shield the underlying CBI from public disclosure. On June 9, 2014, EPA issued a **Federal Register** notice (79 FR 32948) describing the criteria used to confirm that an aggregation protects underlying CBI data. Combined, the criteria ensure that publishing aggregated values that meet the criteria would not inadvertently disclose facility- or supplier-level CBI. The June 9, 2014 FR notice also describes the circumstances and procedures used to notify individual reporters of EPA's intent to aggregate confidential data based on Agency's CBI regulations found in 40 CFR part 2.

EPA's CBI regulations require us to offer the opportunity to make a CBI claim to ''any business which, although it has not asserted a [CBI] claim, might be expected to assert a claim if it knew EPA proposed to disclose the

[2] Under the GHGRP, bulk with respect to industrial GHG suppliers and CO_2 suppliers, means the transfer of a product inside containers, including but not limited to tanks, cylinders, drums, and pressure vessels.

[3] IPCC, 2007. Climate Change 2007: The Physical Science Basis. Contribution of Working Group I to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change.

information.'' (40 CFR 2.204(c)(2)). For the GHGRP, EPA considers aggregations for which a reporter might be expected to make a claim that the aggregated value discloses CBI, and are therefore notified of the opportunity to do so, as ''small-scale aggregations.'' Generally, small-scale aggregations will include data from fewer than 20 unique corporate owners, but the cut-off may be higher or lower depending on whether a business might be expected to assert a CBI claim for the individual aggregation under particular circumstances. In contrast, ''large-scale aggregations'' of GHGRP data are those for which a business is not expected to make a CBI claim due to the larger number of unique corporate owners (generally 20 or more), and reporters therefore are not typically notified of the opportunity to assert a claim through the notification procedures described in the June 9, 2014 FR notice. GHGRP data presented in Tables 3 and 4 in this notice are from large-scale aggregations.

In notifying GHGRP reporters of small-scale aggregations and per the June 9, 2014 FR notice, reporters are given 10 days to file for judicial review, per 40 CFR 2.205(f)(2). EPA's practice typically allows 10 business days for response or action by reporters upon notification. However, because the June 9, 2014 FR notice did not specify ''business days'' or ''calendar days'' and due to the expeditious nature of this NODA and the desire to include as much data as possible either within this notice or in the accompanying record, EPA notified reporters to respond or take action in 10 calendar days. Further, this release is similar to aggregated data released by the Agency from this business sector in the past, to which EPA has never received any concerns from submitters. Data aggregations that are currently going through the above outlined notification process are denoted with an asterisk in Tables 3 and 4 in this notice. EPA intends to add them to the docket for this NODA on February 8, 2021 after allowing reporters adequate time to review and respond to the aggregation notification.

TABLE 2—LIST OF COMPANIES THAT REPORTED PRODUCTION, IMPORT, EXPORT, OR DESTRUCTION TO THE GHGRP FOR ANY AIM-LISTED HFC DURING 2011–2013

Company name	Imported	Exported	Produced and/or destroyed
3M Company	X	X	X
Advanced Specialty Gases	X		
A-Gas	X		X
Air Liquide	X	X	
Airgas Refrigerants, Inc	X	X	
Airgas Specialty Gases	X	X	
Altair Partners LP	X		
Arkema Inc	X	X	X
Automart Dist	X		
AutoZone Parts, Inc	X		
BMP International Inc	X		
Brooks Automation, Inc		X	
Chemours	X	X	X
Combs Gas, Inc	X		
Covestro LLC		X	
Daikin America Inc./MDA Manufacturing	X		
Electronic Fluorocarbons	X	X	
First Continental International	X		
FSD Group LLC	X		
General Motors LLC	X		
GlaxoSmithKline LLC	X		
Honeywell International Inc	X	X	X
Hudson Technologies Company	X		
ICOR International Inc	X	X	
Kidde Fenwal, Inc		X	
Kivlan & Company, Inc	X		
Lenz Sales & Dist., Inc	X		
Linde Electronics & Specialty Gases	X	X	
Matheson Tri-Gas, Inc		X	
Mexichem Fluor Inc	X	X	X
Mondy Global, Inc	X	X	
National Refrigerants, Inc	X	X	
Ninhua Group Co Ltd	X		
Old World Industries, LLC	X		
Praxair Inc	X	X	
Refricenter of Miami Inc	X		
Solvay Fluorides, LLC	X		
Technical Chemical Co	X		
Tulstar Products, Inc	X	X	
USA Refrigerants	X		
Wal-Mart Stores, Inc	X		
Weitron, Inc	X		

A. Data Presented Related to HFC Production

As explained previously, the GHGRP collects and reports data related to the production of HFCs. Subpart OO defines ''produce'' as follows: ''To produce a fluorinated GHG means to manufacture a fluorinated GHG from any raw material or feedstock chemical. Producing a fluorinated GHG includes the manufacture of a fluorinated GHG as an isolated intermediate for use in a process that will result in its transformation either at or outside of the production facility. Producing a fluorinated GHG also includes the creation of a fluorinated GHG (with the exception of HFC–23) that is captured and shipped off site for any reason, including destruction. Producing a fluorinated GHG does not include the reuse or recycling of a fluorinated GHG, the creation of HFC–23 during the production of HCFC–22, the creation of intermediates that are created and transformed in a single process with no storage of the intermediates, or the creation of fluorinated GHGs that are released or destroyed at the production facility before the production measurement at § 98.414(a).'' 40 CFR 98.410(b).

This definition is similar to, but not identical to, the AIM Act definition of ''produce.'' The AIM Act defines the term *produce* as ''the manufacture of a regulated substance from a raw material or feedstock chemical (but not including the destruction of a regulated substance by a technology approved by the Administrator).'' The term produce ''does not include—(i) the manufacture of a regulated substance that is used and entirely consumed (except for trace quantities) in the manufacture of another chemical; or (ii) the reclamation, reuse, or recycling of a regulated substance.'' Although the definitions of ''produce'' under the GHGRP and the AIM Act are not identical, there is sufficient overlap between the terms that information collected and reported through the GHGRP can be helpful in developing the baseline figures used in future AIM Act regulations.

The GHGRP also collects data related to the destruction of HFCs. Destroyed HFCs are typically byproducts of a chemical process and are either destroyed on site or captured and shipped to a separate facility for destruction. Hazardous waste facilities also destroy HFCs that have been recovered from equipment or are otherwise used. The GHGRP has required facilities that produce or import HFCs to report the quantities that they destroy since 2010.[4] In 2018, the requirement to report the quantities destroyed was extended to facilities that destroy more than 25,000 metric tons CO_2e of fluorinated GHGs but that do not produce or import them.

Six companies have reported production and/or destruction of HFCs listed in the AIM Act to the GHGRP in 2011, 2012, and 2013. The companies are listed in Table 2. EPA requests comment on whether this is the complete listing of companies who produced or destroyed HFCs in those years. The docket also contains data on the quantity equal to production minus destruction minus transformation of the AIM HFCs (other than HFC–23) on a GWP-weighted basis for 2011, 2012, and 2013. EPA is presenting aggregated information from producers and destruction facilities given the approach to releasing CBI under the GHGRP.[5]

Data Gaps

EPA has identified possible data gaps for HFC production and destruction in the United States for 2011, 2012, and 2013. First, the GHGRP does not collect data on the production of HFC–23 that is used, for example, in very low temperature refrigeration, blast chillers, semiconductor etching, and as a fire suppression agent.

Second, as discussed above, the GHGRP data on the destruction of HFCs during 2011, 2012, and 2013 may be incomplete, because facilities that destroyed but that did not produce or import fluorinated GHGs were not required to report the quantities destroyed in those years.

EPA specifically encourages comment and submission of data on these potential data gaps and whether there are other gaps that the Agency has not considered.

B. Data Presented Related to HFC Consumption

The AIM Act defines consumption as ''a quantity equal to the difference between (A) a quantity equal to the sum of—(i) the quantity of that regulated substance produced in the United States; and (ii) the quantity of the regulated substance imported into the United States; and (B) the quantity of the regulated substance exported from the United States.'' In more general terms, the net supply of a substance to the United States, as that term is understood under the GHGRP, may be helpful in developing consumption baselines under the AIM Act.

Under the GHGRP, each importer and exporter of HFCs must submit an annual report that includes total mass in metric tons of each HFC imported and exported, including each HFC in a product that makes up more than 0.5 percent of the product by mass. Each importer of HFCs must also report the total mass sold or transferred for use in processes resulting in the transformation or destruction of the HFC. HFCs are also imported and exported in equipment such as pre-charged air conditioners or in foams. Subpart QQ of the GHGRP collects data on these imports and exports.

Thirty-eight companies have reported importing and nineteen companies have reported exporting HFCs to the GHGRP in the years 2011, 2012, and 2013. These companies are listed in Table 2. EPA requests comment on whether this is the complete listing of companies to have imported and exported HFCs in those years.

The data presented in Tables 3 and 4 are large-scale aggregations of data. Data aggregations not included in the tables are denoted with an asterisk. EPA intends to provide updated data in the docket for this NODA on February 8, 2021, after providing reporters time to review and respond to the aggregation notification.

[4] Subpart OO of the GHGRP covers neither production nor destruction of HFC–23.

[5] EPA notes that the data presented in this NODA may differ from the data provided on the Agency's website. This is because (1) some reporters have provided updated data, and (2) the GHGRP website displays the net supply of ''saturated HFCs, except HFC–23'' which does not completely align with the list of regulated substances under the AIM Act. For purposes of this NODA, and its associated docket, EPA is presenting GHGRP data that may be relevant to future AIM Act regulatory actions.

TABLE 3—NET SUPPLY OF AIM-LISTED HFCS (EXCLUDING HFC–23) REPORTED TO GHGRP IN YEARS 2011–2013

[Million Metric Tons CO_{2e}]

Reporting year	Net supply[a]	Production minus Destruction minus Transformation	Imports (98.416(c)(1))	Exports (98.416(d)(1))
2011	244	(*)	(*)	(*)
2012	235	(*)	(*)	(*)
2013	288	(*)	(*)	(*)

[a] Net supply means Production minus Destruction minus Transformation plus Imports minus Exports. "Production," "Transformation," and "Destruction" are used as defined in the GHGRP. See 40 CFR 98.416(a)(1), 98.416(a)(3), (c)(8), and 98.416(c)(8), respectively.

TABLE 4—IMPORTS OF AIM-LISTED HFCS REPORTED TO GHGRP IN YEARS 2011–2013

[Million Metric Tons CO_{2e}]

Reporting year	HFC–134a	HFC–125	HFC–32	All other AIM-listed HFCs, excluding HFC–23
2011	16.7	(*)	(*)	(*)
2012	19.1	17.1	2.63	(*)
2013	17.3	31.3	5.33	(*)

EPA has also reviewed some of the publicly available import and export data that are available for purchase. EPA is not relying on such sources for this analysis. However, EPA is interested in understanding the extent to which trade data is publicly available. EPA encourages commenters to provide information concerning any additional publicly available data sources on imports of which they are aware.

Data Gaps

EPA has identified at least two possible data gaps with respect to HFC imports and exports into the United States for 2011, 2012, and 2013. First, companies that import or export less than 25,000 metric tons CO_2e of HFCs annually are not required to report to the GHGRP. Second, there appear to be companies that imported or exported more than 25,000 metric tons CO_2e of HFCs annually that have failed to report their imports or exports to the GHGRP. If these data gaps remain, it could adversely impact EPA's awareness on the amount of historic HFC imports and exports and thus could affect the U.S. consumption baseline being established in future AIM Act regulatory processes. EPA specifically encourages submission of data and comments related to how to fill these data gaps and whether there are other gaps that the Agency has not identified.

C. Data Presented Related to Sectors Identified for AIM Act Mandatory Allocations

EPA is also seeking comment on documents in the docket related to the applications for which section (e)(4)(B)(iv) of the AIM Act directs the Administrator to allocate the full quantity of allowances necessary, based on projected, current, and historical trends. The docket to this NODA contains documents presenting data related to the following applications: (1) Propellants in MDIs; (2) defense sprays; (3) structural composite preformed polyurethane foam for marine use and trailer use; (4) the etching of semiconductor material or wafers and the cleaning of CVD chambers within the semiconductor manufacturing sector; and (5) on board aerospace fire suppression. The descriptions below reflect EPA's current understanding of these applications, but EPA intends to further consider how to define these applications in its future proposal under the AIM Act.

- MDIs are handheld pressurized inhalation systems that deliver small, precisely measured therapeutic doses of medication directly to the airways of a patient, such as when a patient requires medication to relieve exacerbations of asthma. The pharmaceutical industry historically used CFCs as the propellant for MDIs before introducing HFC[6] propellants, specifically HFC–134a and HFC–227ea, along with not-in-kind medical treatments.
- Defense sprays are aerosol sprays intended for self-defense, including pepper spray and animal deterrent sprays (*e.g.,* bear and dog sprays). They contain a chemical irritant and a propellant. Defense sprays utilize four different delivery methods, including streaming, foam, fog, and vapor sprays. The defense spray industry historically used ozone-depleting substances, such as CFCs, as a propellant before transitioning to HFCs, specifically HFC–134a.
- Structural composite preformed polyurethane foam uses a process that fills a precast fabric into shape with expanding foam and provides reinforcement with fibers and resin to make composite materials in building equipment such as boats and on-road trailers. The foam blowing agent used in this process historically was HCFC–22 and more recently has been HFC–134a.
- Semiconductor manufacturers utilize HFCs, primarily HFC–23, in two critical processes: To create intricate circuitry patterns on silicon wafers (dry etching) and to rapidly clean CVD chambers.
- For onboard aerospace fire suppression, EPA is providing information on HFCs used in onboard civil aviation fire suppression systems, including on mainline and regional passenger and freighter aircraft. These systems have historically used ozone-depleting halons, although HFCs, specifically HFC–236fa and HFC–227ea, are used in lavatory trash receptable systems in new aircraft. EPA encourages comments specifically on other relevant onboard aerospace fire suppression applications that the Agency has not identified.

The reports in the docket describe EPA's current awareness of the use of HFCs and provide information on EPA's current knowledge on projected, current, and historical trends of HFC related to these statutorily identified applications. EPA requests comment on

[6] HFC propellants used in MDIs are often referred to as HFAs (hydrofluoroalkanes).

the data and analysis in these documents.

Hans Christopher Grundler,

Director, Office of Atmospheric Programs.

[FR Doc. 2021–02774 Filed 2–10–21; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

[Public Notice: 2021–0001]

Privacy Act of 1974; System of Records

AGENCY: Export-Import Bank of the United States.

ACTION: Notice of new system of records.

SUMMARY: The Export-Import Bank of the United States (EXIM) proposes to add a new electronic System of Records, EXIM CRM (Customer Relationship Management), subject to the Privacy Act of 1974, as amended. This notice is necessary to meet the requirements of the Privacy Act which is to publish in the **Federal Register** a notice of the existence and character of records maintained by the agency. Included in this notice is the System of Records Notice (SORN) for EXIM CRM.

DATES: Comments must be received on or before March 15, 2021 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on *www.regulations.gov* or by mail to Tomeka Wray, Export-Import Bank of the United States, 811 Vermont Ave. NW, Washington, DC 20571.

FOR FURTHER INFORMATION CONTACT: Tomeka Wray, Export-Import Bank of the United States, 811 Vermont Ave. NW, Washington, DC 20571. Telephone number: 202.565.3996.

SUPPLEMENTARY INFORMATION: The EXIM CRM system is used to manage relationships with potential or current customers, partners, and other organizations and agencies involved in EXIM deals or whom EXIM works with in supporting U.S. exporters. EXIM CRM is comprised of a cloud-based Salesforce application and a cloud-based HubSpot module connection integrating the HubSpot database to the Salesforce API.

SYSTEM OF RECORDS NOTICE

EIB 21–01 EXIM CRM

SYSTEM NAME AND NUMBER:

EIB 21–01 EXIM CRM, EXIM CRM

SECURITY CLASSIFICATION:

Unclassified

SYSTEM LOCATION:

EXIM CRM's Salesforce application is hosted in the Salesforce Government Cloud. The physical location and technical operation of the system is at the Salesforce Government Cloud's Chicago (Elk Grove Village, IL) and Washington (Ashburn, VA) data centers. The HubSpot application uses cloud storage and computes services from Amazon Web Services (AWS) and Google Cloud Platform (GCP). HubSpot's production infrastructure is centralized in AWS and GCP cloud hosting facilities, and is managed by the HubSpot engineering team.

SYSTEM MANAGER(S):

Senior Vice President, Office of Small Business, Export-Import Bank of the United States, 811 Vermont Ave. NW, Washington, DC 20571.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Export-Import Bank requests the information in this application under the following authorizations:

Authority of the Export-Import Bank Act of 1945, as amended (12 U.S.C. 635 *et seq.*), Executive Order 9397 as Amended by Executive Order 13478 signed by President George W. Bush on November 18, 2008, Relating to Federal Agency Use of Social Security Numbers.

PURPOSE(S) OF THE SYSTEM:

The purpose of this system is to allow EXIM staff to manage relationships and track interactions with potential and existing customers, partners (*e.g.,* registered brokers, lenders, and Regional Export Promotion Program (REPP) member organizations), and other organizations and agencies involved in EXIM deals or whom EXIM works with in supporting U.S. exporters. Additionally, EXIM CRM allows designated personnel from specific partner organizations to log in through Salesforce's Partner Portal to access resources and limited customer information that helps them support EXIM's customers.

EXIM CRM is comprised of the following functional modules:

- Salesforce Customer Relationship Management
- Salesforce Partner Relationship Management
- HubSpot Marketing module, Enterprise version

EXIM utilizes HubSpot Marketing Hub, integrated with Salesforce, for email automation and to host landing pages and contact forms used by the public when requesting information or follow up from EXIM.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The EXIM CRM system will contain current or potential customer information; partner organization information; EXIM employee and contractor information.

CATEGORIES OF RECORDS IN THE SYSTEM:

EXIM CRM contains information related to individuals and corporate entities that are potential, current, or former customers, partners, or other organizations and agencies involved in EXIM transactions or whom EXIM works with in supporting U.S. exporters. The EXIM CRM system contains information on EXIM employees and contractors who are users of the system.

For customer, partner, and other organization or agency information—company name, individual contact names, email address, race, ethnicity, business address, phone number, company website, number of employees, annual revenue, DUNS Number, TINS, IBANs, NAICS Code, industry, products exported, EXIM transaction number, EXIM Master Guarantee Agreement Number, EXIM Delegated Authority Lender Agreement Number.

For EXIM employees and contractors—individual name, work email address, phone number.

RECORD SOURCE CATEGORIES:

The record information contained in EXIM CRM is obtained using one of three methods: Manual entry, direct database connection to supply the required information, or through importing source flat files to the EXIM CRM database.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures that are generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed to authorized entities, as is determined to be relevant and necessary, outside EXIM as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

a. For EXIM employees to support current or potential customers.

b. For EXIM employees to support current or potential partners.

c. To lenders for the purposes of applying for and servicing an EXIM loan guarantee.

d. To registered insurance brokers for the purpose of applying for and servicing an EXIM export credit insurance policy.

e. To provide information to a Federal agency partner including the Department of Commerce (DOC), Small Business Administrations (SBA), U.S. Trade & Development Agency (USTDA), and Development Finance Corporation (DFC) based on customer need for the purpose of linking U.S. businesses to available government business resources.

f. To provide information to partner state governments, local governments, non-profit business development and assistance organizations based on customer need for the purpose of linking U.S. businesses to exporting and other business resources.

g. To provide information to a Congressional Office from the record of an individual in response to an inquiry from that Office.

h. To disclose information to EXIM contractors supporting EXIM authorized activities.

i. For investigations of potential violations of law.

j. For litigation.

k. By National Archives and Records Administration for record management inspections in its role as Archivist.

l. For data breach and mitigation response.

m. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation or another purpose, when the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulations.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

On electronic digital media in encrypted format within the Salesforce Government Cloud controlled environment and accessed only by authorized personnel.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Information may be retrieved by business entity name, individual name, or email address.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

All records shall be retained and disposed of in accordance with EXIM directives, EXIM's Record Schedule DAA–GRS2017–0002–0002, and General Records Schedule GRS 6.5 Item 020.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Information will be stored in electronic format within EXIM CRM. EXIM CRM has configurable, layered data sharing and permissions features to ensure users have proper access. Access to Salesforce and HubSpot is restricted to EXIM personnel who need it for their job. Authorized users have access only to the data and functions required to perform their job functions. Designated personnel at specific lender, insurance broker, and Regional Export Promotion Program (REPP) partner organizations are granted limited access to EXIM CRM through Salesforce's Partner Portal. This access is managed via Salesforce's and HubSpot's System Administration, User, and security functions.

Salesforce Government Cloud is compliant with the Federal Risk and Authorization Management Program (FedRAMP). The PII information in EXIM CRM will be encrypted and stored in place, and HTTPS protocol will be employed in accessing Salesforce.

HubSpot is hosted in AWS and GCP environments that are FedRAMP compliant, and ISO 27001 certified. The PII information in EXIM CRM will be encrypted and stored in place, and HTTPS protocol will be employed in accessing HubSpot.

RECORD ACCESS PROCEDURES:

Individuals wishing to make an amendment of records about them should write to: Senior Vice President, Office of Small Business, Export-Import Bank of the United States, 811 Vermont Ave. NW, Washington, DC 20571.

And provide the following information:

1. Name.
2. Employer Identification Number (EIN) or Social Security Number, as applicable.
3. Type of information requested.
4. Signature.

CONTESTING RECORD PROCEDURES:

Individuals wishing to contest records about them should write to: Senior Vice President, Office of Small Business, Export-Import Bank of the United States, 811 Vermont Ave. NW, Washington, DC 20571.

And provide the following information:

1. Name.
2. Employer Identification Number (EIN) or Social Security Number, as applicable.
3. Signature.
4. Precise identification of the information to be amended.

NOTIFICATION PROCEDURES:

Individuals wishing to determine whether this system of records contains information about them may do so by writing to: Senior Vice President, Office of Small Business, Export-Import Bank of the United States, 811 Vermont Ave. NW, Washington, DC 20571.

And provide the following information:

1. Name.
2. Employer Identification Number (EIN) or Social Security Number, as applicable.
3. Type of information requested.
4. Address to which the information should be sent.
5. Signature.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

Bassam Doughman,

IT Specialist.

[FR Doc. 2021–02802 Filed 2–10–21; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1189; FRS 17460]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control

number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before April 12, 2021. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1189.

Title: Signal Boosters, Sections 1.1307(b)(1), 20.3, 20.21(a)(2), 20.21(a)(5), 20.21(e)(2), 20.21(e)(8)(I)(G), 20.21(e)(9)(I)(H), 20.21(f), 20.21(h), 22.9, 24.9, 27.9. 90.203, 90.219(b)(l)(I), 90.219(d)(5), and 90.219(e)(5).

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities, Not for profit institutions and Individuals or household.

Number of Respondents and Responses: 632,534 respondents and 635,214 responses.

Estimated Time per Response: .5 hours–40 hours.

Frequency of Response: Recordkeeping requirement, On occasion reporting requirement and Third-party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in 47 U.S.C. 154(i), 303(g), 303(r) and 332.

Total Annual Burden: 324,465 hours.

Total Annual Cost: No cost.

Privacy Impact Assessment: This information collection affects individuals or households; thus, there are impacts under the Privacy Act. However, the government is not directly collecting this information and the R&O directs carriers to protect the information to the extent it is considered Customer Proprietary Network Information (CPNI).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: The Commission is seeking approval from the Office of Management and Budget (OMB) approval for a three-year time period for this information collection requirements approved under this collection. The following information collection requirements are approved under this collection:

Labeling Requirements: Sections 20.21(a)(5), 20.21(f), 90.219(e)(5)—In order to avoid consumer confusion and provide consumers with needed information, the Commission adopted labeling requirements for Consumer and Industrial Signal Boosters. Consumer Signal Boosters must be labeled to identify the device as a ''consumer'' device and make the consumer aware that the device must be registered; may only be operated with the consent of the consumer's wireless provider; may only be operated with approved antennas and cables; and that E911 communications may be affected for calls served by using the device. Industrial Signal Boosters must include a label stating that the device is not a consumer device, is designed for installation by FCC licensees or a qualified installer, and the operator must have a FCC license or consent of a FCC licensee to operate the device. Accordingly, all signal boosters marketed on or after March 1, 2014, must include the advisories (1) in on-line point-of-sale marketing materials; (2) in any print or on-line owner's manual and installation instructions; (3) on the outside packaging of the device; and (4) on a label affixed to the device. Part 90 signal boosters marketed or sold on or after March 1, 2014, must include a label stating that the device is not a consumer device; the operator must have a FCC license or consent of a FCC licensee to operate the device; the operator must register Class B signal boosters; and unauthorized use may result in significant forfeitures.

Section 20.21(f)(1)(iv)(A)(2)—In order to ensure that consumers are properly informed about which devices are suitable for their use and how to comply with our rules, the Commission required that all Consumer Signal Boosters certified for fixed, in-building operation include a label directing consumers that the device may only be operated in a fixed, in-building location. The Verizon Petitioners state that this additional labeling requirement is necessary to inform purchasers of fixed Consumer Signal Boosters that they may not lawfully be installed and operated in a moving vehicle or outdoor location. We recognize that our labeling requirement imposes additional costs on entities that manufacture Consumer Signal Boosters; however, on balance, we find that such costs are outweighed by the benefits of ensuring that consumers purchase appropriate devices. Accordingly, all fixed Consumer Signal Boosters, both Provider-Specific and Wideband, manufactured or imported on or after one year from the effective date of the rule change must include the following advisory (1) in on-line point-of-sale marketing materials, (2) in any print or on-line owner's manual and installation instructions, (3) on the outside packaging of the device, and (4) on a label affixed to the device: ''This device may be operated ONLY in a fixed location for in-building use.''

Section 1.1307(b)(1)—Radiofrequency (RF). This rule requires that a label is affixed to the transmitting antenna that provides adequate notice regarding potential RF safety hazards and references the applicable FCC-adopted limits for RF exposure. Provider Reporting Requirement: In order to facilitate review of wireless providers' behavior regarding Consumer Signal Boosters, the R&O requires that on March 1, 2015, and March 1, 2016, all nationwide wireless providers publicly indicate their status regarding consent for each Consumer Signal Booster that has received FCC certification as listed in a Public Notice to be released by the Wireless Telecommunications Bureau 30 days prior to each reporting date. For each listed Consumer Signal Booster, wireless providers should publicly indicate whether they (1) consent to use of the device; (2) do not consent to use of the device; or (3) are still considering whether or not they will consent to the use of the device.

Registration Requirements: Section 20.21(a)(2)—The rules require signal booster operators to register Consumer Signal Boosters, existing and new, with their serving wireless providers prior to operation. This is a mandatory requirement to continue or begin operation of a Consumer Signal Booster. The registration requirement will aid in interference resolution and facilitate provider control over Consumer Signal Boosters. The information collection contained in Section 20.21(a)(2) affects individuals or households; thus, there are impacts under the Privacy Act. However, the government is not directly collecting this information and the R&O directs carriers to protect the information to the extent it is considered Customer Proprietary Network Information (CPNI).

Section 20.21(h)—By March 1, 2014, all providers who voluntarily consent to the use of Consumer Signal Boosters on their networks must establish a free registration system for their subscribers. At a minimum, providers must collect (1) the name of the Consumer Signal Booster owner and/or operator, if different individuals; (2) the make, model, and serial number of the device;

(3) the location of the device; and (4) the date of initial operation. Otherwise, the Commission permits providers to develop their own registration systems to facilitate provider control and interference resolution, providers should collect only such information that is reasonably related to achieving these dual goals. Wireless providers may determine how to collect such information and how to keep it up-to-date. Section 90.219(d)(5)—This rule requires operators of Part 90 Class B signal boosters to register these devices in a searchable on-line database that will be maintained and operated by the Wireless Telecommunications Bureau via delegated authority from the Commission. The Commission believes this will be a valuable tool to resolve interference should it occur.

Certification Requirements: Sections 20.3, 20.21(e)(2), 20.21(e)(8)(i)(G), 20.21(e)(9)(i)(H), 90.203—These rules, in conjunction with the R&O, require that signal booster manufacturers demonstrate that they meet the new technical specifications using the existing and unchanged equipment authorization application, including submitting a technical document with the application for FCC equipment authorization that shows compliance of all antennas, cables and/or coupling devices with the requirements of § 20.21(e). The R&O further provides that manufacturers must make certain certifications when applying for device certification. Manufacturers must provide an explanation of all measures taken to ensure that the technical safeguards designed to inhibit harmful interference and protect wireless networks cannot be deactivated by the user. The R&O requires that manufacturers of Provider-Specific Consumer Signal Boosters may only be certificated with the consent of the licensee so the manufacturer must certify that it has obtained such consent as part of the equipment certification process. The R&O also requires that if a manufacturer claims that a device will not affect E911 communications, the manufacturer must certify this claim during the equipment certification process. Note: The ''application for equipment'' certification requirements are met under OMB Control Number 3060–0057, FCC Form 731.

Antenna Kitting Documentation Requirement: Sections 20.21(e)(8)(i)(G), 20.21(e)(9)(i)(H)—The rules require that all consumer boosters must be sold with user manuals specifying all antennas and cables that meet the requirements of this section. Part 90 Licensee Consent Documentation Requirement: Section 90.219(b)(1)(i)—This rule requires that non-licensees seeking to operate part 90 signal boosters must obtain the express consent of the licensee(s) of the frequencies for which the device or system is intended to amplify. The rules further require that such consent must be maintained in a recordable format that can be presented to a FCC representative or other relevant licensee investigating interference.

Cross-reference to Other Rule Parts: Sections 22.9, 24.9, and 27.9—Operation of a consumer signal booster under Parts 22, 24, and 27 of the Commission's rules must also comply with section 20.21 of the Commission's rules, including all relevant information collections.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2021–02771 Filed 2–10–21; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of the FDIC's Response to Exception Requests Pursuant to Recordkeeping for Timely Deposit Insurance Determination

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of the FDIC's response to exception requests pursuant to the Recordkeeping for Timely Deposit Insurance Determination rule.

SUMMARY: In accordance with its rule regarding recordkeeping for timely deposit insurance determination, the FDIC is providing notice that it has granted time-limited exception relief to covered institutions from: The information technology system and recordkeeping requirements applicable to certain formal revocable and irrevocable trust accounts; the information technology system requirements, general recordkeeping requirements, and alternative recordkeeping requirements applicable to certain deposit accounts for which the covered institution must perform data clean up to assign an appropriate ownership right and capacity code to the subject accounts and related system updates; the information technology system requirements and general recordkeeping requirements to certain internal (work-in-process) deposit accounts for which the covered institution's information technology system is not yet capable of calculating deposit insurance within 24 hours after the appointment of the FDIC as receiver; and the information technology system requirements, general recordkeeping requirements, and alternative recordkeeping requirements for a limited number of deposit accounts held in the covered institution's trust department, which acts in an agency or fiduciary capacity.

DATES: The FDIC's grants of exception relief were effective as of February 3, 2021.

FOR FURTHER INFORMATION CONTACT: Benjamin Schneider, Section Chief, Division of Complex Institution Supervision and Resolution; *beschneider@fdic.gov;* 917–320–2534.

SUPPLEMENTARY INFORMATION: The FDIC granted two time-limited exception requests to multiple covered institutions and three time-limited exception requests to a covered institution pursuant to the FDIC's rule entitled ''Recordkeeping for Timely Deposit Insurance Determination,'' codified at 12 CFR part 370 (part 370).[1] Part 370 generally requires covered institutions to implement the information technology system and recordkeeping capabilities needed to quickly calculate the amount of deposit insurance coverage available for each deposit account in the event of failure. Pursuant to § 370.8(b)(1), one or more covered institutions may submit a request in the form of a letter to the FDIC for an exception from one or more of the requirements of part 370 if circumstances exist that would make it impracticable or overly burdensome to meet those requirements. Pursuant to § 370.8(b)(3), a covered institution may rely upon another covered institution's exception request which the FDIC has previously granted by notifying the FDIC that it will invoke relief from certain part 370 requirements and demonstrating that the covered institution has substantially similar facts and circumstances to those of the covered institution that has already received the FDIC's approval. The notification letter must also include the information required under § 370.8(b)(1) and cite the applicable notice published pursuant to § 370.8(b)(2). Unless informed otherwise by the FDIC within 120 days after the FDIC's receipt of a complete notification for exception, the exception will be deemed granted subject to the same conditions set forth in the FDIC's published notice.

These grants of relief will be subject to ongoing FDIC review, analysis, and verification during the FDIC's routine part 370 compliance tests. The FDIC presumes each covered institution is

[1] 12 CFR part 370.

meeting all the requirements set forth in the Rule unless relief has otherwise been granted. These grants of relief may be rescinded or modified upon: Discovery of misrepresentation; material change of circumstances or conditions related to the subject accounts; or failure to satisfy conditions applicable to each. The following exceptions were granted by the FDIC as of February 3, 2021.

I. Certain Formal Revocable and Irrevocable Trust Accounts With Transactional Features for Which the Covered Institution Must Maintain a Unique Identifier for a Grantor in its Deposit Account Records

The FDIC granted time-limited exception relief from the information technology system requirements set forth in § 370.3 and certain recordkeeping requirements set forth in § 370.4(b)(2) of the rule to two covered institutions for up to 18 months from their compliance date. These covered institutions requested exception relief in order to review records, perform customer outreach where necessary, and update recordkeeping and information technology systems in order to maintain a unique identifier of a grantor in the deposit account records for a limited number of deposit accounts held in connection with a formal revocable or irrevocable trust that would be insured as described in 12 CFR 330.10 or 12 CFR 330.13.

These covered institutions represented that they had not maintained a unique identifier (which may be, but is not required to be, a government issued identification number such as a social security number or tax identification number) for a grantor of a formal trust with transactional features in its records for the subject accounts. The covered institutions believe that they can obtain the information needed to maintain a unique identifier for such a grantor through a review of trust-related documents and customer outreach, but that information technology system updates are also necessary to ensure a unique identifier for each grantor can be maintained in deposit account records.

In connection with the FDIC's grants of relief, these covered institutions have represented that they will maintain the capability to place holds on the deposit accounts subject to the exception in the event of failure until a deposit insurance determination can be made and place all such accounts into the pending file of its part 370 output files during the relief period. As conditions of relief, these covered institutions must submit a status report to *part370@fdic.gov* at the midpoint of the exception relief period and immediately bring to the FDIC's attention any change of circumstances or conditions.

II. Certain Deposit Accounts for Which the Covered Institution's Information Technology System Is Not Capable of Completing Deposit Insurance Calculation Process Because Additional Time Is Required for Data Cleanup To Assign an Ownership, Right and Capacity Code and for Related System Updates

The FDIC granted time-limited exception relief from the information technology system requirements set forth in § 370.3, general recordkeeping requirements set forth in § 370.4(a), and alternative recordkeeping requirements set forth in § 370.4(b) of the rule to a covered institution for up to 12 months from the granted relief date. The covered institution requested exception relief to perform data cleanup of account records, make system updates, and assign ownership, right and capacity codes to a limited number of various deposit accounts. These data cleanup and system update efforts are needed so that the covered institution's deposit account records and part 370-compliant information technology system capabilities can be used to calculate deposit insurance for the subject accounts.

The covered institution has identified data quality issues that led to inappropriate ownership, right and capacity codes being assigned to various deposit accounts. Data quality issues included inappropriate ownership, right and capacity codes being assigned to the subject accounts due to system logic misidentifying keywords in account titles. For example, a single account opened by 'James Bond' might be assigned the public bond account ownership right and capacity code of PBA. In other instances, a limited number of accounts were not assigned an ownership right and capacity code due to unclear account titling, insufficient records, and general data quality issues.

The covered institution requested time-limited relief to review records, assign the appropriate ownership right and capacity code, and ensure its systems can calculate deposit insurance for the subject accounts. In addition, the covered institution represented that it will be able to identify the applicable ownership right and capacity code upon the completion of remediation efforts for the majority of accounts.

In connection with the FDIC's grant of relief, the covered institution will investigate the reason accounts were placed into the pending file of the covered institution's part 370 output files, review account records, write new system logic to ensure the applicable ownership right and capacity code is applied to the subject accounts, and, in the event of its failure, ensure that holds can be placed on all deposit accounts subject to this time-limited exception relief until sufficient information is obtained to enable calculation of deposit insurance coverage. As conditions of relief, the covered institution must submit a status report to *part370@fdic.gov* at the midpoint of the exception relief period and immediately bring to the FDIC's attention any change of circumstances or conditions.

III. A Limited Number of Internal (Work-in-Process) Deposit Accounts for Which the Covered Institution's Information Technology System Is Not Capable of Completing Deposit Insurance Calculation Process Within 24 Hours of Failure

The FDIC granted time-limited exception relief from the information technology requirements set forth in § 370.3 and general recordkeeping requirements set forth in § 370.4(a) of the rule to a covered institution for up to 18 months from its compliance date for certain internal (work-in-process) accounts that the covered institution's information technology system cannot calculate deposit insurance within 24 hours of failure. The covered institution identified these internal accounts as accounts utilized for functions such as clearing, settlement, suspense or work-in-process. Such accounts do not qualify for alternative recordkeeping.

In connection with the FDIC's grant of relief, the covered institution described the internal (work-in-process) accounts in detail, including, account titling, the number of accounts, account balances, data and trends regarding transaction settlement cycles, business-as-usual processes in place, and zero-balance accounts. The covered institution has represented that it will place all such accounts into the pending file of the covered institution's part 370 output files; document procedures and processes to upload the data into the covered institution's deposit insurance calculation engine; and certify that the covered institution can obtain information from internal business lines necessary to make a deposit insurance determination as soon as possible after appointment of the FDIC as receiver.

As conditions of relief, the covered institution must submit a status report to *part370@fdic.gov* at the midpoint of the exception relief period setting forth progress made towards rule compliance for the subject accounts; provide annually data regarding the number of and amount of deposits held in the internal accounts covered by this exception; provide a final copy of the documentation that describes the processes put in place to obtain beneficial ownership information necessary to make an insurance determination for the subject accounts as quickly as possible; confirm that the covered institution currently has the capability to restrict access to any or all of the subject accounts if required; make reasonable efforts, in the ordinary course of upgrading its information technology systems, to implement an information technology solution that would permit a deposit insurance determination for the subject accounts within 24 hours; and immediately bring to the FDIC's attention any change of circumstances or conditions.

IV. A Limited Number of Deposit Accounts for Which the Covered Institution's Trust Department Acts in an Agency or Fiduciary Capacity

The FDIC granted time-limited exception relief from the information technology requirements set forth in § 370.3, general recordkeeping requirements set forth in § 370.4(a), and alternative recordkeeping requirements set forth in § 370.4(b) of the rule for up to 18 months from its compliance date for a limited number of deposit accounts for which its trust department acts in an agency or fiduciary capacity. The covered institution's trust department [2] provides fiduciary and agency services to corporations, retirement plans, and individuals. These services include safeguarding assets, making investment decisions, or facilitating clients' complex business transactions.

In performing such services, the trust department opens deposit accounts that hold funds from uninvested cash, sweeps, or other transactions on behalf of its customers. The account records for the subject accounts, which the trust department maintains on a separate system of record, reflect that funds are held by the covered institution's trust department as an agent or fiduciary for its clients.

The covered institution must perform system enhancements to assign an ownership, right and capacity code to the subject accounts and up the trust department's systems of record in order to calculate deposit insurance. The covered institution represented that it must review account records to assign an ownership, right and capacity code to the subject accounts; input missing information or data into the trust department's systems of record; enhance information technology system logic; develop new account opening procedures at account onboarding; and if necessary, amend trust agreements and provide notices to third-party recordkeepers for accounts that qualify for alternative recordkeeping treatment with transactional features.[3]

In connection with the FDIC's grant of relief, the covered institution will ensure that, in the event of its failure, holds can be placed on all deposit accounts subject to this time-limited exception relief until sufficient information is obtained to enable calculation of deposit insurance coverage. As conditions of relief, the covered institution must submit a status report to *part370@fdic.gov* at the midpoint of the exception relief period and immediately bring to the FDIC's attention any change of circumstances or conditions.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on February 5, 2021.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2021–02782 Filed 2–10–21; 8:45 am]

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[2] The covered institution's trust department is a separate department that segregates its client data from other parts of the Bank, uses a separate client accounting system of record, observes trust department rules that do not apply to banks, and follows other distinct processes.

[3] The requirements of § 370.4(b)(2)(ii) require the Bank obtain grantor unique identification information for accounts with transactional features.

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of the FDIC's Response to Exception Requests Pursuant to the Recordkeeping for Timely Deposit Insurance Determination Rule

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of the FDIC's response to exception requests pursuant to the Recordkeeping for Timely Deposit Insurance Determination rule.

SUMMARY: In accordance with its rule regarding recordkeeping for timely deposit insurance determination, the FDIC is providing notice that it has granted time-limited exception relief to covered institutions until March 31, 2022, from information technology system requirements and recordkeeping requirements for principal and interest payments held in mortgage servicing accounts for which the covered institutions act as servicers or sub-servicers. The recommended relief will provide the covered institutions additional time to remediate their servicing platforms and internal processing capabilities pending further direction from the FDIC.

DATES: The FDIC's grant of exception relief was effective as of February 4, 2021.

FOR FURTHER INFORMATION CONTACT: Benjamin Schneider, Section Chief, Division of Complex Institution Supervision and Resolution; *beschneider@fdic.gov;* 917–320–2534.

SUPPLEMENTARY INFORMATION: The FDIC granted time-limited exception relief to multiple covered institutions and pursuant to the FDIC's rule entitled "Recordkeeping for Timely Deposit Insurance Determination," codified at 12 CFR part 370 (part 370).[1] Part 370 generally requires covered institutions to implement the information technology system and recordkeeping capabilities needed to quickly calculate the amount of deposit insurance coverage available for each deposit account in the event of failure. Pursuant to § 370.8(b)(1), one or more covered institutions may submit a request in the form of a letter to the FDIC for an exception from one or more of the requirements of part 370 if circumstances exist that would make it impracticable or overly burdensome to meet those requirements. Pursuant to § 370.8(b)(3), a covered institution may rely upon another covered institution's exception request which the FDIC has previously granted by notifying the FDIC that it will invoke relief from certain part 370 requirements and demonstrating that the covered institution has substantially similar facts and circumstances to those of the covered institution that has already received the FDIC's approval. The notification letter must also include the information required under § 370.8(b)(1) and cite the applicable notice published pursuant to § 370.8(b)(2). Unless informed otherwise by the FDIC within 120 days after the FDIC's receipt of a complete notification for exception, the exception will be deemed granted subject to the same conditions set forth in the FDIC's published notice.

This grant of relief will be subject to ongoing FDIC review, analysis, and verification during the FDIC's routine part 370 compliance tests. The FDIC presumes each covered institution is meeting all the requirements set forth in the Rule unless relief has otherwise been granted. This grant of relief may be rescinded or modified upon: discovery of misrepresentation; material change of

[1] 12 CFR part 370.

circumstances or conditions related to the subject accounts; or failure to satisfy conditions applicable to each. The following exception was granted by the FDIC as of February 4, 2021.

I. Mortgage Servicing Accounts for Which the Covered Institution's System of Record Cannot Calculate Principal and Interest at an Account Level at a Given Point in Time

The FDIC granted time-limited exception relief to covered institutions up to March 31, 2022, from the information technology system requirements of 12 CFR 370.3 and the recordkeeping requirements of 12 CFR 370.4 for principal and interest payments held in mortgage servicing accounts for which the covered institutions act as servicers or sub-servicers. The recommended relief will provide the covered institutions additional time to remediate their servicing platforms and internal processing capabilities pending further direction from the FDIC.

Pursuant to 12 CFR 330.7(d), mortgage principal and interest payments are insured for the cumulative balance paid into the account by the mortgagors, up to the limit of the standard maximum deposit insurance amount per mortgagor. If a covered institution does not maintain deposit records that enable it to calculate deposit insurance, the covered institution must maintain, at a minimum, the following in its deposit account records: (i) The unique identifier of the account holder; and (ii) the corresponding ''pending reason'' code listed in pending file format set forth in Appendix B to Part 370.

The covered institutions service the mortgage loans using platforms hosted by third party vendors. Principal and interest payments from mortgagors are placed into the mortgage servicing accounts with the funds held in custody for the investors that own the underlying mortgages. Because the loans are tracked and managed as a group by pool, the servicing platforms do not have a mechanism to allocate the mortgage servicing accounts balances to specific mortgagors. As a result, the covered institutions do not have a process to input mortgagor principal and interest data into their information technology systems to calculate deposit insurance coverage for the mortgage servicing accounts.

Remediation efforts are underway and include the development of a business requirements document, system updates, implementation, and testing. However, a number of the covered institutions have asked the FDIC for additional clarification of the part 370 recordkeeping rule with respect to the mortgage servicing accounts to determine how to produce borrower account level principal and interest data on a date of failure. Given the complexities of payments to investors under the agreements with the covered institutions, additional information from the FDIC is needed to finalize programming logic and various business requirements documents between the Banks and their service providers.

The FDIC's grant of relief is subject to the condition that each covered institution must submit within 60 days, upon receipt of additional information from the FDIC with respect to the part 370 processing for the mortgage servicing account ownership right and capacity code, a status report setting forth the project plan and timeline for integrating the mortgage servicing account ownership right and capacity code processing capabilities into the covered institution's information technology system.

The FDIC reserves the right to rescind or modify the grant of relief upon any material change of circumstances or conditions related to the accounts subject to this request.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on February 5, 2021.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2021–02781 Filed 2–10–21; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Termination of Receiverships

The Federal Deposit Insurance Corporation (FDIC or Receiver), as Receiver for each of the following insured depository institutions, was charged with the duty of winding up the affairs of the former institutions and liquidating all related assets. The Receiver has fulfilled its obligations and made all dividend distributions required by law.

NOTICE OF TERMINATION OF RECEIVERSHIPS

Fund	Receivership name	City	State	Termination date
10152	The Buckhead Community Bank	Atlanta	GA	02/01/2021
10245	Sun West Bank	Las Vegas	NV	02/01/2021
10277	Palos Bank And Trust Company	Palos Heights	IL	02/01/2021
10280	Imperial Savings & Loan Association	Martinsville	VA	02/01/2021
10502	Valley Bank	Moline	IL	02/01/2021

The Receiver has further irrevocably authorized and appointed FDIC-Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary, including but not limited to releases, discharges, satisfactions, endorsements, assignments, and deeds. Effective on the termination dates listed above, the Receiverships have been terminated, the Receiver has been discharged, and the Receiverships have ceased to exist as legal entities.

(Authority: 12 U.S.C. 1819)

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on February 5, 2021.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2021–02783 Filed 2–10–21; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–N–0173]

Vaccines and Related Biological Products Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of a public docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA or Agency) announces a forthcoming public advisory committee meeting of the Vaccines and Related Biological Products Advisory Committee (the committee). The general function of the committee is to provide advice and recommendations to FDA on regulatory issues. The meeting will be open to the public. FDA is establishing a docket for public comment on this document. Consistent with FDA's regulations, this notice is being published with less than 15 days prior to the date of the meeting based on a determination that convening a meeting of the Vaccines and Related Biological Products Advisory Committee as soon as possible is warranted. This **Federal Register** notice could not be published 15 days prior to the date of the meeting due to a recent submission by Janssen Biotech Inc. of a request for emergency use authorization (EUA) for an investigational vaccine to prevent Coronavirus Disease 2019 (COVID–19) and the need for prompt discussion of such submission, given the COVID–19 pandemic.

DATES: The meeting will be held on February 26, 2021, from 9 a.m. Eastern Time to 5:30 p.m. Eastern Time.

ADDRESSES: Please note that due to the impact of this COVID–19 pandemic, all meeting participants will be joining this advisory committee meeting via an online teleconferencing platform. Answers to commonly asked questions including information regarding special accommodations due to a disability may be accessed at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.* The online web conference meeting will be available at the following link on the day of the meeting: *https://youtu.be/Qd7mlCD-rEA.*

FDA is establishing a docket for public comment on this meeting. The docket number is FDA–2021–N–0173. The docket will close on February 25, 2021. Submit either electronic or written comments on this public meeting by February 25, 2021. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before February 25, 2021. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of February 25, 2021. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Comments received on or before February 18, 2021, will be provided to the committee. Comments received after February 18, 2021, and by February 25, 2021, will be taken into consideration by FDA. In the event that the meeting is cancelled, FDA will continue to evaluate any relevant applications, submissions, or information, and consider any comments submitted to the docket, as appropriate.

You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2021–N–0173 for ''Vaccines and Related Biological Products; Notice of Meeting; Establishment of a Public Docket; Request for Comments.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' FDA will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify the information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Prabhakara Atreya or Kathleen Hayes, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 6306, Silver Spring, MD 20993–0002, *CBERVRBPAC@fda.hhs.gov;* or FDA Advisory Committee Information Line, 1–800–

741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's website at *https://www.fda.gov/advisory-committees* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before joining the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: The meeting presentations will be heard, viewed, captioned, and recorded through an online teleconferencing platform. The committee will meet in open session to discuss EUA of the Janssen Biotech Inc. COVID–19 Vaccine for active immunization to prevent COVID–19 caused by SARS–CoV–2 in individuals 18 years and older. EUA authority allows FDA to help strengthen the nation's public health protections against chemical, biological, radiological, nuclear (CBRN) threats by facilitating the availability and use of Medical Countermeasures (MCMs) needed during public health emergencies. Under section 564 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360bbb–3), FDA may allow unapproved medical products or unapproved uses of approved medical products to be used in an emergency to diagnose, treat, or prevent serious or life-threatening diseases or conditions caused by CBRN threat agents when certain statutory criteria have been met, including that there are no adequate, approved, and available alternatives. Additional information about EUAs can be found at *https://www.fda.gov/emergency-preparedness-and-response/mcm-legal-regulatory-and-policy-framework/emergency-use-authorization.*

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, background material will be made publicly available on FDA's website at the time of the advisory committee meeting. Background material and the link to the online teleconference meeting room will be available at *https://www.fda.gov/advisory-committees/advisory-committee-calendar.* Scroll down to the appropriate advisory committee meeting link. The meeting will include slide presentations with audio components to allow the presentation of materials in a manner that most closely resembles an in-person advisory committee meeting.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. All electronic and written submissions submitted to the Docket (see **ADDRESSES**) on or before February 18, 2021, will be provided to the committee. Comments received after February 18, 2021, and by February 25, 2021, will be taken into consideration by FDA. Oral presentations from the public will be scheduled between approximately 1:25 p.m. Eastern Time and 2:25 p.m. Eastern Time. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before February 17, 2021. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by February 18, 2021.

For press inquiries, please contact the Office of Media Affairs at *fdaoma@fda.hhs.gov* or 301–796–4540.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Prabhakara Atreya or Kathleen Hayes (*CBERVRBPAC@fda.hhs.gov*) at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at: *https://www.fda.gov/advisory-committees/about-advisory-committees/public-conduct-during-fda-advisory-committee-meetings* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 8, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–02845 Filed 2–10–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Public Comment Request; Information Collection Request Title: Health Professions Student Loan Program, Loans for Disadvantaged Students, Primary Care Loan Program, and Nursing Student Loan Program Administrative Requirements. OMB No. 0915–0047—Revision

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, HRSA submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period. OMB may act on HRSA's ICR only after the 30 day comment period for this notice has closed.

DATES: Comments on this ICR should be received no later than March 15, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email Lisa Wright-Solomon, the HRSA Information Collection Clearance Officer at *paperwork@hrsa.gov* or call (301) 443–1984.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: Health Professions Student Loan (HPSL) Program, Loans for Disadvantaged Students, Primary Care Loan Program (PCL), and Nursing Student Loan Program Administrative Requirements.

OMB No. 0915–0047—Revision

Abstract: This clearance request is for approval of the Health Professions Student Loan (HPSL) Program, Loans for Disadvantaged Students (LDS), Primary Care Loan Program (PCL), and Nursing Student Loan (NSL) Program

Administrative Requirements. The form was previously titled as the HPSL Program and NSL Program Administrative Requirements (Regulations and Policy). This request seeks to add LDS and PCL as the forms discussed in this notice are also used for these programs.

The HPSL Program, as authorized by Public Health Service (PHS) Act sections 721–722 and 725–735, provides long-term, low-interest loans to students attending schools of medicine, osteopathic medicine, dentistry, veterinary medicine, optometry, podiatric medicine, and pharmacy. The LDS Program, as authorized by PHS Act sections 721–722 and 724–735, provides long-term, low interest loans to students attending schools of allopathic medicine, osteopathic medicine, podiatric medicine, dentistry, optometry, pharmacy, and veterinary medicine. The PCL Program, as authorized by PHS Act sections 721–723 and 725–735, provides long-term, low interest loans to students attending schools of allopathic medicine and osteopathic medicine to practice primary health care. The NSL Program, as authorized by PHS Act sections 835–842, provides long-term, low-interest loans to students who attend eligible schools of nursing in programs leading to a diploma degree, an associate degree, a baccalaureate degree, or a graduate degree in nursing. These programs also have a number of recordkeeping and reporting requirements for academic institutions and loan applicants. The applicable requirements for these programs are outlined in 42 CFR 57.201–218 and 57.301–318. HRSA proposes revisions to the Annual Operating Report (AOR)-HRSA Form 501 completed by institutions participating in the HPSL, LDS, PCL, and NSL programs to obtain additional information about those institutions and their student borrowers.

A 60-day notice published in the **Federal Register** on December 14, 2020, vol. 85, No. 240; pp. 80791–93. There were no public comments.

Need and Proposed Use of the Information: Participating HPSL, LDS, PCL, and NSL schools are responsible for determining eligibility of applicants, making loans, and collecting monies owed by borrowers on their outstanding loans. Participating schools include schools that are no longer disbursing loans but are required to report and maintain program records, student records, and repayment records until all student loans are repaid in full and all monies due to the federal government are returned. The Deferment Form—HRSA Form 519, provides the schools with documentation of a borrower's deferment status, as detailed for the HPSL program under 42 CFR 57.210 and for NSL under 42 CFR 57.310, and is included without revision.

The AOR–HRSA Form 501 provides HHS with information from participating schools relating to HPSL, LDS, PCL and NSL program operations and financial activities. The proposed revisions to the AOR include the addition of a part-time option to select questions to allow institutions to report data on their part-time students, who are eligible to receive funding through the NSL program.

Specifically, the ''part-time'' option will be added to the following questions for the NHL program:

- Question 3, page 1A of the non-PCL section of the AOR (total full-time enrollment for the Nursing discipline for the academic year – NSL loan recipients),
- Question 13 (total number of full time graduates – NSL loan recipients) at the school during the current reporting period),
- Question 14 (total number of full time NSL graduates – NSL loan recipients) during the current reporting period who indicate intent to serve in a rural area),
- Question 15b (of the total graduates reported in question 15a, the number of full-time NSL graduates – NSL loan recipients in academic year 20XX–20XX serving in medically underserved communities),
- Question 15c (of the total graduates reported in question 15a, the number of Full-Time NSL graduates—NSL loan recipients in academic year 20XX—20XX serving in primary care), and
- Question 15d (of the total graduates in question 15a, the number of full-time NSL graduates – NSL loan recipients in Academic Year 20XX–20XX who entered the field for which they received their degree).

HRSA also proposes to revise the AOR–HRSA Form 501 form to include four additional questions at the bottom of Page 1A of all AORs:

- 16a. Are you a Community College?
- 16b. Are you a Historically Black College or University?
- 16c. Are you a Tribal college or university? and
- 16d. Are you an institution located in a rural area?

In addition, HRSA proposes to revise Page 4 (the excess cash worksheet) of the AOR–HRSA Form 501 form to limit the grantees' ability to make projections to 1 year. This proposed revision will allow HRSA to improve the overall management of funding.

Likely Respondents: Institutions participating in the HPSL, LDS, PCL, and/or NSL Programs.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Instrument (HPSL, LDS, PCL, & NSL)	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Deferment—HRSA Form 519	2060	1	2060	.5	1,030
AOR–HRSA—Form 501	726	1	726	12	8,712
Total	2786		2786		9,742
Grand Total (instruments and recordkeeping requirements)					327,979

RECORDKEEPING REQUIREMENTS

Data required to be submitted	Number of record keepers	Hours per year	Total burden hours
HPSL, LDS, and PCL Program:			
Documentation of Cost of Attendance	432	1.05	454
Promissory Note	432	1.25	540
Documentation of Entrance Interview	432	1.25	540
Documentation of Exit Interview	*475	0.37	176
Program Records	*475	10.00	4,750
Student Records	*475	10.00	4,750
Repayment Records	*475	19.55	9,286
HPSL/LDS/PCL Subtotal	475		20,496
NSL Program:			
Documentation of Cost of Attendance	304	0.25	76
Promissory Note	304	0.50	152
Documentation of Entrance Interview	304	0.50	152
Documentation of Exit Interview	*486	0.14	68
Program Records	*486	5.00	2,430
Student Records	*486	1.00	486
Repayment Records	*486	2.51	1,220
NSL Subtotal	486		4,584

*Includes active and closing schools.

REPORTING REQUIREMENTS

	Number of respondents	Responses per respondent	Total annual responses	Hours per response	Total burden hours
HPSL, LDS, and PCL:					
Student Financial Aid Transcript	4,600	1	4,600	0.25	1,150
Loan Information Disclosure	325	299.5	97,338	0.63	61,323
Entrance Interview	325	139.5	45,338	0.50	22,669
Exit Interview	*334	113.5	37,909	1.00	37,909
Notification of Repayment	*334	862.5	288,075	0.38	109,469
Notification During Deferment	*333	17	5,661	0.63	3,566
Notification of Delinquent Accounts	334	172.5	57,615	1.25	72,019
Credit Bureau Notification	334	6	2,004	0.50	1,002
Write-off of Uncollectable Loans	520	1	520	3.00	1560
Disability Cancellation	3	1	3	1.00	3
Administrative Hearings record retention	0	0	0	0.00	0
Administrative Hearings reporting requirements	0	0	0	0.00	0
HPSL Subtotal					310,670
NSL:					
Student Financial Aid Transcript	4,100	1	4,100	0.25	1,025
Entrance Interview	282	17.5	4,935	0.42	2,073
Exit Interview	348	9	3,132	0.42	1,315
Notification of Repayment	348	9	3,132	0.27	846
Notification During Deferment	348	1.5	522	0.29	151
Notification of Delinquent Accounts	348	42.5	14,790	0.04	592
Credit Bureau Notification	348	709	246,732	0.06	1,480
Write-off of Uncollectable Loans	23	1	23	3.00	69
Disability Cancellation	16	1	16	1.00	16
Administrative Hearings	0	0	0	0.00	0
NSL Subtotal					7,567

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2021–02807 Filed 2–10–21; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Request for Information (RFI): Accelerating Innovation in Diagnostic Testing for Lyme Disease

AGENCY: Office of the Assistant Secretary for Health (OASH), Office of the Secretary, Department of Health and Human Services (HHS).

ACTION: Request for information.

SUMMARY: The Office of the Assistant Secretary for Health (OASH) in the Department of Health and Human Services seeks to obtain information regarding the current state of the science and technology to accelerate the pace of innovative solutions for the diagnosis of Lyme disease. A set of questions is available in the **SUPPLEMENTARY INFORMATION** section below.

DATES: To be considered, comments must be received electronically at the email address provided below, no later than 5:00 p.m. Eastern Time (ET) March 15, 2021.

ADDRESSES: Individuals are encouraged to submit responses electronically to Dr. Kristen Honey, Senior Advisor to the Assistant Secretary for Health, 200 Independence Avenue SW, Washington, DC 20201, *LymeInnovation@hhs.gov,* (202) 853–7680. Please indicate ''RFI RESPONSE'' in the subject line of your email. Submissions received after the deadline will not be reviewed. Responses to this notice are not offers and cannot be accepted by the government to form a binding contract or issue a grant. Respond concisely and in plain language. You may use any structure or layout that presents the information well. You may respond to some or all of our questions, and you can suggest other factors or relevant questions. You may also include links to online material or interactive presentations. Clearly mark any proprietary information, and place it in its own section or file. Your response will become government property, and we may publish some of its non-proprietary content.

SUPPLEMENTARY INFORMATION: The HHS Lyme Innovation initiative is a patient-centered, data-driven approach to the threat of Lyme disease and tick-borne diseases. Lyme disease affects more than 300,000 people in the U.S. each year and accounts for more than 70% of all vector-borne diseases in our country. Lyme and other tick-borne diseases cost the U.S. economy billions of dollars annually.

The HHS Lyme Innovation initiative uses strategic public-private partnerships to accelerate advancements in Lyme disease and other tick-borne diseases. The Lyme Innovation initiative aims to build commitment to patient-centered innovations, identify ways to collect and share data while raising awareness, accelerate the discovery of next-generation diagnostic tools and technologies, and lower barriers across all phases of development, testing, and implementation. The recommendations of the Tick-Borne Disease Working Group to HHS inform the Lyme Innovation initiative. The Lyme Innovation initiative represents one way that HHS is executing the strategies described in ''A National Public Health Framework for the Prevention and Control of Vector-Borne Diseases in Humans.''

HHS has entered into a public-private partnership with the Steven and Alexandra Cohen Foundation to form the LymeX Innovation Accelerator (LymeX). LymeX will accelerate the Lyme Innovation initiative's progress and strategically advance tick-borne-disease solutions in direct collaboration with Lyme disease patients, patient advocates, and diverse stakeholders. A primary goal of the LymeX partnership and the Framework is the development of new diagnostic technologies for Lyme disease.

The Centers for Disease Control and Prevention (CDC) website (*https://www.cdc.gov/lyme/index.html*) summarizes information about the stages of Lyme disease, current diagnostic testing recommendations, and treatment options. CDC currently recommends the use of FDA cleared serologic tests in a two-step testing process that detects the presence of antibodies to *Borrelia burgdorferi,* the bacterium responsible for Lyme disease.

Serologic tests for diagnosis of Lyme disease have technical limitations. Antibodies may not be produced by the immune system early enough or in high enough quantities to meet the detection limit of these tests (*https://www.hhs.gov/sites/default/files/tbdwg-report-to-congress-2018.pdf*). As an antibody response in infected persons requires time to develop, serologic tests for Lyme disease may produce false negative results during early infection. In areas where Lyme disease is highly endemic, the infection may be diagnosed without laboratory testing if patients develop a diagnostic skin lesion at the site of the tick bite, which is known as erythema migrans (EM) or a ''bullseye rash.'' However, 20% of patients may not develop this specific rash, and sometimes the rash is not seen or recognized. The rash also might not display the stereotypical presentation. Therefore, these newly infected patients may not be diagnosed in the absence of a sensitive diagnostic test and may not receive prompt or proper treatment for a disease with the potential to cause disabling illness.

Serology tests are also not capable of determining if there is an active infection. As antibodies normally persist for months or even years after the infection is gone, serologic testing cannot be used to determine a cure. Additionally, cross-reactions between serologic tests for Lyme disease and those for other infectious diseases can also yield false positive results.

These limitations of serological testing compound the scientific challenges in identifying specific etiologies for Post-Treatment Lyme Disease Syndrome (PTLDS), which is characterized by persistence of symptoms for more than 6 months following treatment with oral antibiotics. Improvements in Lyme disease diagnostics would enable better clinical management of PTLDS patients as well.

HHS has identified an area of known need in developing more advanced diagnostic tests that diagnose infection at all stages of Lyme disease. Therefore, the LymeX partnership is embarking on a series of initiatives, including prize challenges to develop new diagnostic tests for Lyme disease. This RFI is intended to gather information on the current state of the science and development landscape for new diagnostic tests from the entrepreneurs, scientists, and physicians who will develop and use them.

We encourage responders to answer the following questions:

• What challenges/barriers exist for the development and validation of innovative diagnostic tests for Lyme disease?

• What types of diagnostic technologies are being developed (or could be developed or adapted) to detect Lyme disease, including technologies and breakthroughs adapted from COVID–19 diagnostics with potential applications for Lyme disease (*e.g.,* highly sensitive nucleic acid amplification testing [NAAT])?

• What emerging technologies (*e.g.,* epigenetic mapping, inflammatory markers, gene arrays, NAAT, or others) might be developed or adapted to characterize different stages of Lyme disease, including Post-Treatment Lyme Disease Syndrome (PTLDS), etc.?

• What analyte (*e.g.,* DNA, RNA, protein, metabolite) does existing or developing Lyme disease diagnostic tests detect?

• What is the optimal sample type (*e.g.,* whole blood, plasma) for the detection of a test analyte in patients with Lyme disease? The optimal sample type can be generally defined as the one where the analyte can be best detected.

• What challenges exist in the implementation and use of Lyme disease diagnostic testing in clinical practice?

• What role can or should public-private partnerships play in accelerating development, validation, or appropriate use of innovative Lyme disease diagnostic tests, and what factors are most critical to ensure their success?

This information will inform the development of the HHS Lyme Innovation initiative and the LymeX public-private partnership to create meaningful incentives to develop or validate new diagnostic tests for Lyme disease.

Kristen Honey,

Senior Advisor to the Assistant Secretary for Health (ASH), Office of the Assistant Secretary for Health, U.S. Department of Health and Human Service.

[FR Doc. 2021–02796 Filed 2–10–21; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier OS–0990–xxxx]

Agency Information Collection Request. 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before April 12, 2021.

ADDRESSES: Submit your comments to *Sherrette.Funn@hhs.gov* or by calling (202) 795–7714.

FOR FURTHER INFORMATION CONTACT: When submitting comments or requesting information, please include the document identifier 0990-New-60D, and project title for reference, to Sherrette Funn, Reports Clearance Officer, *Sherrette.funn@hhs.gov,* 202–795–7714.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collection: Family Planning Annual Report 2.0.

Type of Collection: New.

Abstract: The Office of Population Affairs (OPA), within the Office of the Assistant Secretary for Health, seeks approval for a new encounter level data collection for the Family Planning Annual Report (FPAR). Currently collected in aggregate under OMB No. 0990–0221, this new data collection, ''FPAR 2.0'', will collect information at the encounter level and build on the existing data collection and reporting system. This annual reporting requirement is for competitively awarded grants authorized and funded by the Title X Family Planning Program.

Need and Proposed Use of the Information: The Office of Population Affairs' (OPA) Title X Family Planning Program is the only federal grant program dedicated solely to providing comprehensive family planning and related preventive health services.

Annual submission of the FPAR is required of all Title X family planning services grantees for purposes of monitoring and reporting program performance (45 CFR part 74 and 45 CFR part 92). The FPAR is the only source of annual, uniform reporting by all grantees funded under Section 1001 of the Title X Public Health Service Act. Similar to the previous FPAR, FPAR 2.0 will provide consistent, national-level data on the Title X Family Planning program and its users. OPA will be able to assemble and analyze comparable and relevant program data to answer questions about the characteristics of the population served, the provision and use of services, and the impact of the program on certain family planning outcomes. FPAR 2.0 will also collect a standard set of data elements pertaining to users and encounters, such as user demographics, service delivery, family planning intentions and methods, and other indicators, which allow for comparisons over time at all levels of the program (*e.g.,* national, regional, state, and grantee). Encounter level data collected through FPAR 2.0 will ultimately improve the quality of data reported to OPA and reduce reporting burden by grantees. Additionally, the more granular data collected with FPAR 2.0 will help contribute to a learning healthcare environment by greatly expanding the options for data analysis and reporting—for example, through interactive data dashboards and visualizations, customized tabulations and reports, and application of analytics and statistical analyses on the encounter-level data files.

Information from FPAR 2.0 is important to OPA for many reasons, and will be used to:

(1) Monitor compliance with statutory requirements, regulations, and operational guidance.

(2) Comply with accountability and federal performance requirements for Title X family planning funds.

(3) Guide strategic and financial planning, to monitor performance, to respond to inquiries from policymakers and Congress about the program, and to estimate program impact.

Type of respondent: Annual reporting; respondents are all grantees that receive Title X funding from OPA.

ANNUALIZED BURDEN HOUR TABLE

Forms (if necessary)	Respondents (if necessary)	Number of respondents	Number of responses per respondents	Average burden per response	Total burden hours
FPAR 2.0	Grantees	74	1	36	2,664
Total			1		2,664

Sherrette A. Funn,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2021–02825 Filed 2–10–21; 8:45 am]

BILLING CODE 4150–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Board of Scientific Counselors, National Cancer Institute.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Cancer Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Cancer Institute.

Date: March 9, 2021.

Time: 11:00 a.m. to 5:40 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Cancer Institute, Shady Grove, 9609 Medical Center Drive, Rockville, MD 20850, (Virtual Meeting).

Contact Person: Brian E. Wojcik, Ph.D., Executive Secretary, Institute Review Office, Office of the Director, National Cancer Institute, National Institutes of Health, 9609 Medical Center Drive, Room 3W414, Rockville, MD 20850, 240–276–5660,*wojcikb@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 5, 2021.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–02791 Filed 2–10–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Initial Review Group; Genome Research Review Committee GNOM.

Date: March 11, 2021.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Greider Conference Room 3189, Bethesda, MD 20892, Telephone: 301–594–4280, Fax: 301–435–1580, (Virtual Meeting).

Contact Person: Keith McKenney, Ph.D. Scientific Review Officer, National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817, 301–594–4280 *mckenneyk@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: February 5, 2021.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–02784 Filed 2–10–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel; Single Cell Mapping Centers and Data Coordinating Center.

Date: March 18, 2021.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Greider Conference Room 3189, Bethesda, MD 20892, Telephone: 301–594–4280, Fax: 301–435–1580 (Virtual Meeting).

Contact Person: Keith McKenney, Ph.D., Scientific Review Officer, National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817 301–594–4280, *mckenneyk@mail.nih.gov*.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel; Predictive Modeling—SEP.

Date: March 23, 2021.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Greider Conference Room 3189, Bethesda, MD 20892, Telephone: 301–594–4280, Fax: 301–435–1580 (Virtual Meeting).

Contact Person: Keith McKenney, Ph.D., Scientific Review Officer, National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817 301–594–4280 *mckenneyk@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: February 5, 2021.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–02787 Filed 2–10–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Inherited Disease Research Access Committee CIDR Member Conflict.

Date: March 5, 2021.

Time: 12:15 p.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 3100, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Rudy Pozzatti, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 3184, Bethesda, MD 20817, 301–402–8739, *pozzattr@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: February 5, 2021.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–02788 Filed 2–10–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Social Sciences and Population Studies: Dissertation Award Review.

Date: March 5, 2021.

Time: 10:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Suzanne Ryan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3139, MSC 7770, Bethesda, MD 20892, (301) 435–1712, *ryansj@csr.nih.gov*.

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Clinical Informatics and Digital Health Study Section.

Date: March 8–9, 2021.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Leonie Misquitta, Ph.D., Scientific Review Officer Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 10F09, Bethesda, MD 20892, (301) 594–6904 *misquitt@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Interventions and Mechanisms for Addiction.

Date: March 8, 2021.

Time: 10:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Mark P. Rubert, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–806–6596 *rubertm@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR19–362–Planning Global Infectious Disease Research Training Programs.

Date: March 8, 2021.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Richard G. Kostriken, Ph.D., AB, BA, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3192, MSC 7808, Bethesda, MD 20892, (240) 519–7808, *kostrikr@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 5, 2021.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

Office of Federal Advisory Committee Policy.

[FR Doc. 2021–02786 Filed 2–10–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel; GENOMIC INNOVATOR—SEP.

Date: March 18, 2021.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 300, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ken D. Nakamura, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 300, Bethesda, MD 20892, Telephone: 301–594–4280, Fax: 301–435–1580, *nakamurk@mail.nih.gov*.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel; eCEGS.

Date: March 29, 2021.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 300, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ken D. Nakamura, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 300,Bethesda, MD 20892, Telephone: 301–594–4280, Fax: 301–435–1580, *nakamurk@mail.nih.gov*.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel; Gene Network Regulation—SEP.

Date: April 2, 2021.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 300, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ken D. Nakamura, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20892, Telephone: 301–594–4280, Fax: 301–435–1580, *nakamurk@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: February 5, 2021.

David W Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–02785 Filed 2–10–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Genes, Genomics and Genetics.

Date: March 3, 2021.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Alexander Gubin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4196, MSC 7812, Bethesda, MD 20892, (301) 435–2902, *gubina@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Cell Biology, Developmental Biology, and Bioengineering.

Date: March 9–10, 2021.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Alexander Gubin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4196, MSC 7812, Bethesda, MD 20892, (301) 435–2902, *gubina@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Neural Injury and Cerebrovascular Disorders.

Date: March 9, 2021.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Paula Elyse Schauwecker, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Room 5211, Bethesda, MD 20892, (301) 760–8207, *schauweckerpe@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Neuroscience Assays, Diagnostics, Instrumentation and Interventions.

Date: March 10–11, 2021.

Time: 8:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Joseph G. Rudolph, Ph.D., Chief and Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7844, Bethesda, MD 20892, (301) 408–9098, *josephru@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Risk Prevention and Social Development.

Date: March 10, 2021.

Time: 9:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Weijia Ni, Ph.D., Chief/Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3100, MSC 7808, Bethesda, MD 20892, (301) 594–3292, *niw@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–20–117: Maximizing Investigators' Research Award (MIRA) for Early Stage Investigators (R35—Clinical Trial Optional).

Date: March 10–11, 2021.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Anita Szajek, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4187, Bethesda, MD 20892, (301) 827–6276, *anita.szajek@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR 19–232: NIGMS Mature Synchrotron Resources for Structural Biology (P30).

Date: March 10, 2021.

Time: 9:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Nuria E. Assa-Munt, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4164, MSC 7806, Bethesda, MD 20892, (301) 451–1323, *assamunu@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Bioengineering, Surgery, Anesthesiology, and Trauma.

Date: March 10, 2021.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Donald Scott Wright, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7854, Bethesda, MD 20892, (301) 435–8363, *wrightds@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR20–117: Maximizing Investigators' Research Award (MIRA) for Early Stage Investigators (R35—Clinical Trial Optional).

Date: March 10–11, 2021.

Time: 10:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jonathan Arias, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7840, Bethesda, MD 20892, (301) 435–2406, *ariasj@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–20–117: Maximizing Investigators' Research Award (MIRA) for Early Stage Investigators (R35—Clinical Trial Optional).

Date: March 10, 2021.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Michael Eissenstat, Ph.D., Scientific Review Officer, BCMB IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4166, MSC 7806, Bethesda, MD 20892, (301) 435–1722, *eissenstatma@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Alcohol and Motivated Behavior.

Date: March 10, 2021.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Michael Selmanoff, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5164, MSC 7844, Bethesda, MD 20892, (301) 435–1119, *selmanom@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; R15 AREA and REAP: Musculoskeletal, Oral, Skin, Rheumatology and Rehabilitation Sciences.

Date: March 10, 2021.

Time: 12:30 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Chi-Wing Chow, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4110, Bethesda, MD 20892, (301) 402–3912, *chowc2@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 5, 2021.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–02790 Filed 2–10–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; PAR 18–578: Investigational New Drug (IND)-enabling Development of Medications to Treat Alcohol Use disorder and Alcohol-related disorders (U44—Clinical Trial Optional).

Date: February 26, 2021.

Time: 11:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, National Institute on Alcohol Abuse and Alcoholism, 6700 B Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ranga Srinivas, Ph.D., Chief, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 6700 B Rockledge Drive, Room 2114, MSC 6902, Bethesda, MD 20892, (301) 451–2067, *srinivar@mail.nih.gov*.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; NIAAA Review Subcommittee Member Conflict Review.

Date: March 15, 2021.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, National Institute on Alcohol Abuse and Alcoholism, 6700 B Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Beata Buzas, Ph.D., Scientific Review Officer, Extramural Project Review Branch, Office of Extramural Activities, National Institute on Alcohol Abuse and Alcoholism, 6700 B Rockledge Drive, Room 2116, MSC 6902 Bethesda, MD 20892, (301) 443–0800, *bbuzas@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards., National Institutes of Health, HHS)

Dated: February 5, 2021.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–02792 Filed 2–10–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Inherited Disease Research Access Committee.

Date: March 5, 2021.

Time: 11:30 a.m. to 12:15 p.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 3100, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Barbara J. Thomas, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 3185, Bethesda, MD 20892, 301–402–8837, *barbara.thomas@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: February 5, 2021.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–02789 Filed 2–10–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0067]

Documentation Requirements for Articles Entered Under Various Special Tariff Treatment Provisions

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 30-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in

the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than March 15, 2021) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (Volume 85 FR Page 73495) on November 18, 2020, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Documentation Requirements for Articles Entered Under Various Special Tariff Treatment Provisions.

OMB Number: 1651–0067.

Current Actions: Extension.

Type of Review: Extension (without change).

Affected Public: Businesses.

Abstract: U.S. Customs and Border Protection (CBP) is responsible for determining whether imported articles that are classified under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 9801.00.10, 9802.00.20, 9802.00.40, 9802.00.50, 9802.00.60 and 9817.00.40 are entitled to duty-free or reduced duty treatment. In order to file under these HTSUS provisions, importers, or their agents, must have the declarations that are provided for in 19 CFR 10.1(a), 10.8(a), 10.9(a) and 10.121 in their possession at the time of entry and submit them to CBP upon request. These declarations enable CBP to ascertain whether the requirements of these HTSUS provisions have been satisfied.

These requirements apply to the trade community who are familiar with CBP regulations and the tariff schedules.

Type of Information Collection: Declarations under Chapter 98.

Estimated Number of Respondents: 19,445.

Estimated Number of Annual Responses per Respondent: 3.

Estimated Number of Total Annual Responses: 58,335.

Estimated Time per Response: 1 minute (.016 hours).

Estimated Total Annual Burden Hours: 933.

Dated: February 8, 2021.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2021–02813 Filed 2–10–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0048]

Declaration of Person Who Performed Repairs or Alterations

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 30-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than March 15, 2021) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or the CBP website at *https://www.cbp.gov/.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (Volume 85 FR

Page 74741) on November 23, 2020, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Declaration of Person Who Performed Repairs or Alterations.

OMB Number: 1651–0048.

Current Actions: Extension.

Type of Review: Extension (without change).

Affected Public: Businesses.

Abstract: The ''Declaration of Person Who Performed Repairs or Alterations,'' as required by 19 CFR 10.8, is used in connection with the entry of articles entered under subheadings 9802.00.40 and 9802.00.50, Harmonized Tariff Schedule of the United States (HTSUS, *https://hts.usitc.gov/current*). Articles entered under these HTSUS provisions are articles that were temporarily exported from the United States for repairs and alterations, and are returned to the United States. Upon their return, duty is only assessed on the cost or value of the repairs or alterations performed abroad and not on the full value of the article. The declaration under 19 CFR 10.8 includes information, such as (1) a description of the article and the repairs or alterations; (2) the value of the article and the repairs or alterations; and (3) a declaration by the owner, importer, consignee, or agent having knowledge of the pertinent facts. The information in this declaration is used by CBP to determine the value of the repairs or alterations, and to assess duty only on the value of those repairs or alterations.

These requirements apply to the trade community who are required by law to provide this declaration.

Type of Information Collection:

Estimated Number of Respondents: 10,236.

Estimated Number of Annual Responses per Respondent: 2.

Estimated Number of Total Annual Responses: 20,472.

Estimated Time per Response: 30 minutes (0.5 hours).

Estimated Total Annual Burden Hours: 10,236.

Dated: February 8, 2021.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2021–02817 Filed 2–10–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Revision of Agency Information Collection Activity Under OMB Review: Sensitive Security Information Threat Assessment Application

AGENCY: Transportation Security Administration, DHS.

ACTION: 30-Day notice.

SUMMARY: This notice announces that the Transportation Security Administration (TSA) has forwarded the Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0042, abstracted below to OMB for review and approval of a revision of the currently approved collection under the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. The collection involves TSA determining whether individuals seeking access to sensitive security information (SSI) may be granted access to the SSI.

DATES: Send your comments by March 15, 2021. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, OMB. Comments should be identified by Docket ID: TSA–2013–0001 and sent to the Federal eRulemaking Portal, *https://www.regulations.gov.* Please follow the portal instructions for submitting comments. This process is conducted in accordance with 5 CFR 1320.1.

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh, TSA PRA Officer, Information Technology (IT), TSA–11, Transportation Security Administration, 6595 Springfield Center Drive, Springfield, VA 20598–6011; telephone (571) 227–2062; email *TSAPRA@tsa.dhs.gov.*

SUPPLEMENTARY INFORMATION: TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on May 5, 2020, 85 FR 26709.

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation is available at *http://www.reginfo.gov* upon its submission to OMB. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Title: Sensitive Security Information Threat Assessment Application.

Type of Request: Revision of a currently approved collection.

OMB Control Number: 1652–0042.

Forms(s): TSA 2211.

Affected Public: Individuals seeking access to SSI Information.

Abstract: TSA is required to prohibit the disclosure of information that would be detrimental to transportation safety or security. *See* 49 U.S.C. 114(r) and 44912(d). *See also* TSA's regulations stipulating requirements for the protection of security sensitive information at 49 CFR part 1520. The regulations restrict access to SSI to ''covered individuals'' with a ''need to know''.

Pursuant to the requirements in Section 525(d) of the DHS Appropriations Act, 2007, Public Law 109–295, 120 Stat 1355, 1382, Oct. 4, 2006, as reenacted,[1] TSA established a process allowing access to SSI in a civil proceeding in federal district court for party or party's counsel that demonstrates a substantial need for relevant SSI in preparation of the party's case.[2] In such cases, TSA may grant court reporters and experts access to the SSI under similar terms and conditions.

Under 49 CFR 1520.11 and 1520.15, TSA has also extended the use for security background checks to include other individuals, including a prospective bidder who is seeking to submit a proposal in response to a request for proposal issued by TSA; an individual involved in the performance of contractual agreements (*e.g.,* bailments) or other transaction agreements, or an individual receiving access to SSI as a conditional disclosure under 49 CFR 1520.15(e).

Under 49 CFR 1520.11(c), TSA may make an individual's access to SSI contingent upon satisfactory completion of a security threat assessment (STA), including evaluation of a criminal history records check (CHRC); and/or a name-based check against federal law enforcement, terrorism, and immigration databases; and/or other procedures and requirements for safeguarding SSI that are satisfactory to TSA. *See also* 49 U.S.C. 114(f)(4). To conduct this security background check, TSA collects identifying information, an explanation supporting the individuals' need for the information, and other information related to safeguarding SSI to conduct the STAs. For individuals who have received a comparable STA from TSA (such as being a member of the TSA PreCheck® Application Program), TSA may also use the known traveler number issued by TSA to inform an individual's eligibility to access SSI, or otherwise honor the comparable STA. TSA uses the results of the STA to make a final determination on whether the individual may be granted access to SSI. TSA also uses the information as part of its determination as to whether provision of access to specific SSI would present a risk of harm to the nation.

To address program needs, TSA is revising the information collection. In particular, TSA is revising TSA Form 2211. The form entitled *SSI Access Threat Assessment Questionnaire* will now become two forms: TSA Form 2817A for court proceedings and TSA Form 2817B for standard use. The data points now consist of identifying information, including, but not limited to, full name (including any aliases), date of birth, place of birth, gender, Social Security Number (optional), employer name (optional); country of citizenship, Known Traveler Number, level of clearance and date granted and information regarding the need for the information (litigant, bidder, *etc.*).

In addition to the information required for conducting background checks, TSA requires contract bidders to provide a certification from each company/entity that its employees/personnel who are provided access to SSI are properly trained; a Non-Disclosure Agreement for each individual who is granted access to SSI; and an affirmation that each company/entity will designate a Senior Official who can certify that all appropriate protections will be followed, only authorized individuals will have access to the sensitive information, and that those individuals adequately understand their responsibilities to protect the information. TSA may also require these features for other contractual agreements (*e.g.,* bailments), participants other transaction agreements, or those who receive other conditional SSI disclosures on a case-by-case basis.

In the case of a party seeking access to SSI in a civil proceeding in federal court, TSA will gather the information required for individual vetting, including fingerprinting to conduct a CHRC and also require these individuals to respond to questions to verify individuals' history in safeguarding sensitive information, including good standing with bar membership or sanctions; and to agree to abide by TSA instructions concerning the handling of SSI in connection with the court proceeding.

TSA is also revising the collection to allow individuals who have recently (*i.e.,* within 2 years or as determined appropriate by the program office) successfully undergone a federal background investigation (*i.e.,* Tier 1) or hold an active security clearance granting access to classified national security information to facilitate the STA. TSA will use this information as part of its determination as to whether provision of access to specific SSI would be detrimental to transportation security.

Number of Respondents: 263.

Estimated Annual Burden Hours: An estimated 104.53 hours annually.[3]

Dated: February 5, 2021.

Christina A. Walsh,

TSA Paperwork Reduction Act Officer, Information Technology.

[FR Doc. 2021–02806 Filed 2–10–21; 8:45 am]

BILLING CODE 9110–05–P

[1] Consolidated and Further Continuing Appropriations Act, 2013, Public Law 113–6, Div. D., Title V., sec. 510 (March 26, 2013).

[2] That in civil proceedings in the United States District Courts, where a party seeking access to SSI demonstrates that the party has substantial need of relevant SSI in the preparation of the party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the information by other means, the party or party's counsel shall be designated as a covered person under 49 CFR part 1520.7 in order to have access to the SSI at issue in the case, provided that the overseeing judge enters an order that protects the SSI from unauthorized or unnecessary disclosure and specifies the terms and conditions of access, unless upon completion of a criminal history check and terrorist assessment like that done for aviation workers on the persons seeking access to SSI, or based on the sensitivity of the information, the Transportation Security Administration or DHS demonstrates that such access to the information for the proceeding presents a risk of harm to the nation: Provided, That notwithstanding any other provision of law, an order granting access to SSI under this section shall be immediately appealable to the United States Courts of Appeals, which shall have plenary review over both the evidentiary finding and the sufficiency of the order specifying the terms and conditions of access to the SSI in question: Provided further, That notwithstanding any other provision of law, the Secretary may assess a civil penalty of up to $50,000 for each violation of 49 CFR part 1520 by persons provided access to SSI under this provision.

[3] In the 60-day notice, the estimated annual burden was listed as 275 hours. TSA is now adjusting the estimate to 104.53 annual hours through the use of actual data.

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–522 and 731–TA–1258 (Review)]

Passenger Vehicle and Light Truck Tires From China; Determinations

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that revocation of the antidumping and countervailing duty orders on passenger vehicle and light truck tires from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[2]

Background

The Commission instituted these reviews on July 1, 2020 (85 FR 39581)

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner David S. Johanson dissenting.

and determined on October 5, 2020 that it would conduct expedited reviews (86 FR 2456, January 12, 2021).

The Commission made these determinations pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). It completed and filed its determinations in these reviews on February 5, 2021. The views of the Commission are contained in USITC Publication 5158 (February 2021), entitled *Passenger Vehicle and Light Truck Tires from China: Investigation Nos. 701–TA–522 and 731–TA–1258 (Review).*

By order of the Commission.

Issued: February 5, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–02801 Filed 2–10–21; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1190]

Certain Wearable Monitoring Devices, Systems, and Components Thereof; Notice of Request for Submissions on the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that on February 4, 2021, the presiding administrative law judge (''ALJ'') issued an Initial Determination on Violation of Section 337. The ALJ also issued a Recommended Determination on remedy and bonding should a violation be found in the above-captioned investigation. The Commission is soliciting submissions on public interest issues raised by the recommended relief should the Commission find a violation. This notice is soliciting comments from the public only.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202)708–2310. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: Parties are to file public interest submissions pursuant to 19 CFR 210.50(a)(4). Section 337 of the Tariff Act of 1930 provides that, if the Commission finds a violation, it shall exclude the articles concerned from the United States:

> unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry.

19 U.S.C. 1337(d)(1). A similar provision applies to cease and desist orders. 19 U.S.C. 1337(f)(1).

The Commission is soliciting submissions on public interest issues raised by the recommended relief should the Commission find a violation, specifically: A limited exclusion order directed to certain wearable monitoring devices, systems, and components thereof imported, sold for importation, and/or sold after importation by respondents Fitbit, Inc. (''Fitbit'') of San Francisco, California; Garmin International, Inc. and Garmin USA, Inc. (''the domestic Garmin Respondents''), both of Olathe, Kansas; Garmin Ltd. d/b/a Garmin Switzerland GmbH of Schaffhausen, Switzerland; Ingram Micro Inc. of Irvine, California; Maintek Computer (Suzhou) Co., Ltd. of Jiangsu Province, China; and Inventec Appliances (Pudong) of Shanghai, China; and cease and desist orders issue directed to the domestic Garmin Respondents and Fitbit.

The Commission is interested in further development of the record on the public interest in this investigation. Accordingly, members of the public are invited to file submissions of no more than five (5) pages, inclusive of attachments, concerning the public interest in light of the ALJ's Recommended Determination on Remedy and Bonding issued in this investigation on February 4, 2021. Comments should address whether issuance of the recommended remedial orders in this investigation, should the Commission find a violation, would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the recommended remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the recommended orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third-party suppliers have the capacity to replace the volume of articles potentially subject to the recommended orders within a commercially reasonable time; and

(v) explain how the recommended orders would impact consumers in the United States.

Written submissions must be filed by the close of business on March 8, 2021.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (March 19, 2020). Submissions should refer to the investigation number (''Inv. No. 337–TA–1190'') in a prominent place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures, https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: February 5, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–02800 Filed 2–10–21; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Information Collection Activities, Comment Request

AGENCY: Bureau of Labor Statistics, Department of Labor.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the ''The Consumer Expenditure Surveys: The Quarterly Interview and the Diary.'' A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the Addresses section of this notice on or before April 12, 2021.

ADDRESSES: Send comments to Nora Kincaid, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue NE, Washington, DC 20212. Written comments also may be transmitted by email to *BLS_PRA_Public@bls.gov.*

FOR FURTHER INFORMATION CONTACT: Nora Kincaid, BLS Clearance Officer, at 202–691–7628 (this is not a toll free number). (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The Consumer Expenditure (CE) Surveys collect data on consumer expenditures, demographic information, and related data needed by the Consumer Price Index (CPI) and other public and private data users. The continuing surveys provide a constant measurement of changes in consumer expenditure patterns for economic analysis and to obtain data for future CPI revisions. The CE Surveys have been ongoing since 1979.

The data from the CE Surveys are used (1) for CPI revisions, (2) to provide a continuous flow of data on income and expenditure patterns for use in economic analysis and policy formulation, and (3) to provide a flexible consumer survey vehicle that is available for use by other Federal government agencies. Public and private users of price statistics, including Congress and the economic policymaking agencies of the Executive branch, rely on data collected in the CPI in their day-to-day activities. Hence, data users and policymakers widely accept the need to improve the process used for revising the CPI. If the CE Surveys were not conducted on a continuing basis, current information necessary for more timely, as well as more accurate, updating of the CPI would not be available. In addition, data would not be available to respond to the continuing demand from the public and private sectors for current information on consumer spending.

In the Quarterly Interview Survey, each consumer unit (CU) in the sample is interviewed every three months over four calendar quarters. The sample for each quarter is divided into three panels, with CUs being interviewed every three months in the same panel of every quarter. The Quarterly Interview Survey is designed to collect data on the types of expenditures that respondents can be expected to recall for a period of three months or longer. In general the expenses reported in the Interview Survey are either relatively large, such as property, automobiles, or major appliances, or are expenses which occur on a fairly regular basis, such as rent, utility bills, or insurance premiums.

The Diary (or recordkeeping) Survey is completed at home by the respondent family for two consecutive one-week periods. The primary objective of the Diary Survey is to obtain expenditure data on small, frequently purchased items which normally are difficult to recall over longer periods of time.

II. Current Action

Office of Management and Budget approval is being sought for the proposed revision of the Consumer Expenditure Surveys: The Quarterly Interview (CEQ) and the Diary (CED).

The purpose of this request is to obtain clearance for modifications to the Consumer Expenditure (CE) Surveys and to test a self-administered Diary.

CE requests clearance to remove several point of purchase questions from the CEQ Computer Assisted Personal Interview (CAPI) instrument that are no longer needed by CPI and to add point of purchase questions for gasoline on trips including the name of the gas station or store and the location (city and state) where gasoline on a trip was purchased.

CE is also seeking clearance to add a 'consent request' question to the CEQ. The consent request question will ask respondents for permission to record the interview for quality control purposes. This question will be added to test the impact of the consent request question on respondent behavior, as well as rates of consent, and overall interview duration. The question will be administered to half of the CUs in their fourth wave production interview between October and December 2021. Respondents in this test group will be asked the consent request question. However, no recordings of the interview will actually take place. The results of this Consent Request test will inform CE regarding plans to incorporate Computer Assisted Recording Instrument (CARI) technology into CE for quality control and research purposes.

CE is requesting clearance to test a self-administered Diary. In lieu of the production procedures for an in-person interview in which FRs place the diaries and train respondents on how to record the household's daily expenditures, the Self-Administered Diary test will entail Diary placement and collection of sample unit, demographics, income, and select expenditure data through the Household Screener survey. Additionally, instead of the CED paper Diary, respondents will use the Online Diary with slight modifications.

The purpose of the Self-Administered Diary test is to determine the sampling and measurement error by comparing the sample composition of those that complete an online diary to that of the BLS CE diary production sample to determine the differences in representativeness for various population subgroups. Additionally, response and cooperation rates, as well as deviations in data quality will be evaluated. The test will be administered from October through December of 2021.

As part of the self-administered Diary test, respondents will receive survey points redeemable for cash, merchandise, gift cards or game entries worth the equivalent of $2 cash for completing the Household Characteristics Survey and survey points redeemable for cash, merchandise, gift cards or game entries worth the equivalent of $50 cash for successfully completing each day of the fourteen-day diary period.

The Household Characteristics Survey and Consumer Expenditure Online Diary will be administered to a nationally representative sample of 2,000 persons (age 18 and older), with surveys conducted in English. Weighting the entire population to U.S. Census Bureau benchmarks secured from the latest American Community Survey (ACS) and the most recent March supplement of the Current Population Survey (CPS) along several dimensions including gender, age, race/ Hispanic origin, education, Census Region, income, home ownership status, household size, and metropolitan area.

III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Activity	Total respondents	Frequency	Total responses	Average time per response (minutes)	Total burden (hours)
Quarterly	4,925	4.48	22,064	60.89195	22,392
Diary	9,366	3.93	36,816	42.77542	26,247
	14,291		58,880		48,639

Title of Collection: The Consumer Expenditure Surveys: The Quarterly Interview and the Diary.

OMB Number: 1220–0050.

Type of Review: Revision, of a currently approved collection.

Affected Public: Individuals or Households.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 5th day of February 2021.

Mark Staniorski,

Division Chief, Division of Management Systems.

[FR Doc. 2021–02808 Filed 2–10–21; 8:45 am]

BILLING CODE 4510–24–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–334; NRC–2021–0046]

Energy Harbor Nuclear Corp.; Beaver Valley Power Station, Unit 1

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment application; opportunity to comment, request a hearing, and petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Renewed Facility Operating License No. DPR–66, issued to Energy Harbor Nuclear Corp., for operation of the Beaver Valley Power Station, Unit 1. The proposed amendment would revise Technical Specification (TS) 5.5.5.1, ''Unit 1 SG [Steam Generator] Program,'' paragraph d.2 to defer the spring of 2021 refueling outage (1R27) steam generator inspections to the fall of 2022 refueling outage (1R28).

DATES: Submit comments by March 15, 2021. Requests for a hearing or petition for leave to intervene must be filed by April 12, 2021.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal Rulemaking Website:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0046. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Jennifer C. Tobin, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2328, email: *Jennifer.Tobin@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2021–0046 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0046.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR)

reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The License Amendment Request for One-time Deferral of Steam Generator Inspections is available in ADAMS under Accession No. ML21027A228.

• *Attention:* The PDR, where you may examine and order copies of public documents, is currently closed. You may submit your request to the PDR via email at *pdr.resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (EST), Monday through Friday, except Federal holidays.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal Rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2021–0046 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Introduction

The NRC is considering issuance of an amendment to Renewed Facility Operating License No. DPR–66, issued to Energy Harbor Nuclear Corp., for operation of the Beaver Valley Power Station, Unit 1, located in Beaver County, Pennsylvania.

The proposed amendment would revise TS 5.5.5.1, ''Unit 1 SG Program,'' paragraph d.2 to defer the spring of 2021 refueling outage (1R27) SG inspections to the fall of 2022 refueling outage (1R28).

Before any issuance of the proposed license amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and NRC's regulations.

The NRC has made a proposed determination that the license amendment request involves no significant hazards consideration. Under the NRC's regulations in § 50.92 of title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change adds a note to TS 5.5.5.1.d.2 to permit a one-time deferral of the SG inspections from the spring of 2021 (1R27) refueling outage to the fall of 2022 (1R28) refueling outage. An operational assessment has been performed that concludes the SGs will continue to meet the structural and leakage integrity performance criteria throughout the proposed operating period, ensuring there is no significant increase in the probability of a previously evaluated accident. The existing TS limit for addressing potential primary-to-secondary leakage is not altered, ensuring accident analysis initial assumptions are met and that there should be no significant increase in the consequences of a previously evaluated accident.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change adds a note to TS 5.5.5.1.d.2 to permit a one-time deferral of the SG inspections from the spring of 2021 (1R27) refueling outage to the fall of 2022 (1R28) refueling outage. An operational assessment has been performed that concludes the SGs will continue to meet the structural and leakage integrity performance criteria throughout the proposed operating period. Furthermore, there are no physical system, structure, or component changes that could create the possibility of a new or different kind of accident.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change adds a note to TS 5.5.5.1.d.2 to permit a one-time deferral of the SG inspections from the spring of 2021 (1R27) refueling outage to the fall of 2022 (1R28) refueling outage. An operational assessment has been performed that concludes the SGs will continue to meet the structural and leakage integrity performance criteria throughout the proposed operating period. Since the proposed inspection deferral does not exceed or alter a design basis or safety limit, it does not significantly reduce the margin of safety.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the license amendment request involves a no significant hazards consideration.

The NRC is seeking public comments on this proposed determination that the license amendment request involves no significant hazards consideration. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day notice period if the Commission concludes the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. If the Commission makes a final no significant hazards consideration determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

III. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's

''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at *https://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

IV. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC website at *https://www.nrc.gov/site-help/e-submittals.html.* Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click ''cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as Social Security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

For further details with respect to this action, see the application for license amendment dated January 27, 2021.

Attorney for licensee: Rick Giannantonio, General Counsel, Energy Harbor Corp., Mail Stop A–WAC–B3, 341 White Pont Drive, Akron, OH 44320.

NRC Branch Chief: James G. Danna.

Dated: February 8, 2021.

For the Nuclear Regulatory Commission.

Jennifer C. Tobin,

Project Manager, Licensing Project Branch I, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2021–02805 Filed 2–10–21; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2021–0037]

Service Contract Inventory

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is publishing this notice to advise the public of the availability of its Fiscal Year (FY) 2018 Service Contract Inventory and FY 2017 Service Contract Inventory Analysis. The NRC's FY 2018 Service Contract Inventory is included as part of a Government-wide service contract inventory. The inventory includes covered service contracts that were awarded in FY 2018. The FY 2017 Inventory Analysis provides information on specific contract actions that were analyzed as part of the NRC's FY 2017 Service Contract Inventory.

DATES: February 11, 2021.

ADDRESSES: Please refer to Docket ID NRC–2021–0037 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0037. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov*. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209 or 301–415–4737, or by email to *pdr.resource@nrc.gov*. The FY 2017 Service Contract Inventory

Analysis can be accessed in ADAMS under Accession No. ML20168B041. The FY 2017 Service Contract Inventory Analysis was published on the NRC's website at the following location: *https://www.nrc.gov/about-nrc/contracting.html.*

• *Attention:* The PDR, where you may examine and order copies of public documents, is currently closed. You may submit your request to the PDR via email at *pdr.resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (EST), Monday through Friday, except Federal holidays.

• *Availability of the Service Contract Inventory:* The NRC's FY 2018 Service Contract Inventory data is included in a Government-wide service contract inventory that was published at the following location: *https://www.acquisition.gov/service-contract-inventory.*

FOR FURTHER INFORMATION CONTACT: Jill Daly, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–8079 or email: *Jill.Daly@nrc.gov*.

SUPPLEMENTARY INFORMATION: In accordance with Section 743 of Division C of the FY 2010 Consolidated Appropriations Act, Public Law 111–117, the NRC is publishing this notice to advise the public of the availability of its FY 2018 Service Contract Inventory and FY 2017 Service Contract Inventory Analysis.

The inventory provides information on service contracts with a value of $150,000.00 or more that were awarded in FY 2018. The inventory includes the following:

1. A description of the services purchased;
2. The role the contracted services played in achieving agency objectives;
3. The dollar amount obligated for the services under the contract, and the funding source for the contract;
4. The contract type and date of the award;
5. The name of the contractor and place of performance;
6. The dollar amount invoiced for services under the contract;
7. The number and work location of contractor and first-tier subcontractor employees, expressed as full-time equivalents for direct labor, compensated under the contract;
8. Whether the contract is a personal services contract; and
9. Whether the contract was awarded on a non-competitive basis.

The FY 2017 Inventory Analysis provides information on specific service contract actions that were analyzed as part of the NRC's FY 2017 Service Contract Inventory.

The purpose of the analysis is to determine if contract labor is being used in an effective and appropriate manner and if the mix of federal employees and contractors in the agency is effectively balanced.

Dated: February 5, 2021.

For the Nuclear Regulatory Commission.

James C. Corbett,

Deputy Director, Office of Administration.

[FR Doc. 2021–02794 Filed 2–10–21; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Solicitation of Nominations for Appointment to the Advisory Committee of the Pension Benefit Guaranty Corporation

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) is soliciting nominations for appointment to the Advisory Committee of the PBGC.

DATES: Nominations must be received on or before March 29, 2021. Please allow three weeks for regular mail delivery to PBGC.

ADDRESSES: Nominations must be submitted electronically to *OfficeOfTheDirector@pbgc.gov* as email attachments in Word or pdf format, or by mail to Office of the Director, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005–4026.

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation (PBGC or the Corporation) administers the pension plan termination insurance program under Title IV of the Employee Retirement Income Security Act of 1974 (ERISA). Section 4002(h) of ERISA provides for the establishment of an Advisory Committee to the Corporation. The Advisory Committee consists of seven members appointed by the President from among individuals recommended by the PBGC Board of Directors, which consists of the Secretaries of Labor, Treasury, and Commerce. The Advisory Committee members are as follows:

• Two representatives of employee organizations;
• two representatives of employers who maintain pension plans; and
• three representatives of the general public.

No more than four members of the Committee shall be members of the same political party. Anyone currently subject to federal registration requirements as a lobbyist is not eligible for appointment.

Advisory Committee members must have experience with employee organizations, employers who maintain defined benefit pension plans, the administration or advising of pension plans, or in related fields. Appointments are for 3-year terms. Reappointments are possible but are subject to the appointment process.

The Advisory Committee's prescribed duties include advising the Corporation as to its policies and procedures relating to investment of moneys, and other issues as the Corporation may request or as the Advisory Committee determines appropriate. The Advisory Committee meets at least six times each year. At least one meeting is a joint meeting with the PBGC Board of Directors.

By February 19, 2021, the term of one of the Advisory Committee members representing the general public will have expired. Therefore, PBGC is seeking nominations for one seat.

PBGC is committed to equal opportunity in the workplace and seeks a broad-based and diverse Advisory Committee.

If you or your organization wants to nominate one or more people for appointment to the Advisory Committee to represent the general public, you may submit nominations to PBGC. Nominations may be in the form of a letter, resolution or petition, signed by the person making the nomination. PBGC encourages you to include additional supporting letters of nomination. PBGC will not consider self-nominees who have no supporting letters. Please do not include any information that you do not want publicly disclosed.

Nominations, including supporting letters, should:

• State the person's qualifications to serve on the Advisory Committee (including any specialized knowledge or experience relevant to the nominee's proposed Advisory Committee position to represent the general public);
• state that the candidate will accept appointment to the Advisory Committee if offered;
• include the nominee's full name, work affiliation, mailing address, phone number, and email address;
• include the nominator's full name, mailing address, phone number, and email address; and
• include the nominator's signature, whether sent by email or otherwise.

PBGC will contact nominees for information on their political affiliation and their status as registered lobbyists. Nominees should be aware of the time commitment for attending meetings and actively participating in the work of the Advisory Committee. Historically, this has meant a commitment of at least 15 days per year. PBGC has a process for vetting nominees under consideration for appointment.

Issued in Washington, DC.

Gordon Hartogensis,

Director, Pension Benefit Guaranty Corporation.

[FR Doc. 2021–02830 Filed 2–10–21; 8:45 am]

BILLING CODE 7709–02–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91074; File No. SR–IEX–2021–02]

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Rule 11.600 Series, the Exchange's Compliance Rule Regarding the National Market System Plan Governing the Consolidated Audit Trail

February 5, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on January 27, 2021, the Investors Exchange LLC (''IEX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend to amend the Rule 11.600 Series, the Exchange's compliance rule (''Compliance Rule'') regarding the National Market System Plan Governing the Consolidated Audit Trail (the ''CAT NMS Plan'' or ''Plan'') [3] to be consistent with a conditional exemption granted by the Commission from certain allocation reporting requirements set forth in Sections 6.4(d)(ii)(A)(1) and (2) of the CAT NMS Plan (''Allocation Exemption'').[4]

The text of the proposed rule change is available at the Exchange's website at *www.iextrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statement may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend IEX Rule Series 11.600 to be consistent with the Allocation Exemption. The Commission granted the relief conditioned upon the Participants' adoption of Compliance Rules that implement the alternative approach to reporting allocations to the Central Repository described in the Allocation Exemption (referred to as the ''Allocation Alternative'').

(1) Request for Exemptive Relief

Pursuant to Section 6.4(d)(ii)(A) of the CAT NMS Plan, each Participant must, through its Compliance Rule, require its Industry Members to record and report to the Central Repository, if the order is executed, in whole or in part: (1) An Allocation Report; [5] (2) the SRO-Assigned Market Participant Identifier of the clearing broker or prime broker, if applicable; and the (3) CAT-Order-ID of any contra-side order(s). Accordingly, the Exchange and the other Participants implemented Compliance Rules that require their Industry Members that are executing brokers to submit to the Central Repository, among other things, Allocation Reports and the SRO-Assigned Market Participant Identifier of the clearing broker or prime broker, if applicable. On August 27, 2020, the Participants submitted to the Commission a request for an exemption from certain allocation reporting requirements set forth in Sections 6.4(d)(ii)(A)(1) and (2) of the CAT NMS Plan (''Exemption Request'').[6] In the Exemption Request, the Participants requested that they be permitted to implement the Allocation Alternative, which, as noted above, is an alternative approach to reporting allocations to the Central Repository. Under the Allocation Alternative, any Industry Member that performs an allocation to a client account would be required under the Compliance Rule to submit an Allocation Report to the Central Repository when shares/contracts are allocated to a client account regardless of whether the Industry Member was involved in executing the underlying order(s). Under the Allocation Alternative, a ''client account'' would be any account that is not owned or controlled by the Industry Member.

In addition, under the Allocation Alternative, an ''Allocation'' would be defined as: (1) The placement of shares/contracts into the same account for which an order was originally placed; or (2) the placement of shares/contracts into an account based on allocation instructions (*e.g.,* subaccount allocations, delivery versus payment (''DVP'') allocations). Pursuant to this definition and the proposed Allocation Alternative, an Industry Member that performs an Allocation to an account that is not a client account, such as proprietary accounts and events including step outs,[7] or correspondent flips,[8] would not be required to submit

[1] 15 U.S.C. 78a.

[2] 17 CFR 240.19b–4.

[3] Unless otherwise specified, capitalized terms used in this filing are defined as set forth in the Compliance Rule.

[4] *See* Securities Exchange Act Release No. 90223 (October 19, 2020), 85 FR 67576 (October 23, 2020) (''Allocation Exemptive Order'').

[5] Section 1.1 of the CAT NMS Plan defines an ''Allocation Report'' as ''a report made to the Central Repository by an Industry Member that identifies the Firm Designated ID for any account(s), including subaccount(s), to which executed shares are allocated and provides the security that has been allocated, the identifier of the firm reporting the allocation, the price per share of shares allocated, the side of shares allocated, the number of shares allocated to each account, and the time of the allocation; provided for the avoidance of doubt, any such Allocation Report shall not be required to be linked to particular orders or executions.''

[6] *See* letter from the Participants to Vanessa Countryman, Secretary, Commission, dated August 27, 2020 (the ''Exemption Request'').

[7] ''A step-out allows a broker-dealer to allocate all or part of a client's position from a previously executed trade to the client's account at another broker-dealer. In other words, a step-out functions as a client's position transfer, rather than a trade; there is no exchange of shares and funds and no change in beneficial ownership.'' *See* FINRA, Trade Reporting Frequently Asked Questions, at Section 301, available at: *https://www.finra.org/filing-reporting/market-transparencyreporting/trade-reporting-faq.*

[8] Correspondent clearing flips are the movement of a position from an executing broker's account to a different account for clearance and settlement, allowing a broker-dealer to execute a trade through another broker-dealer and settle the trade in its own account. *See, e.g.,* The Depository Trust & Clearing

an Allocation Report to the Central Repository for that allocation, but could do so on a voluntary basis. Industry Members would be allowed to report Allocations to accounts other than client accounts; in that instance, such Allocations must be marked as Allocations to accounts other than client accounts.

(A) Executing Brokers and Allocation Reports

To implement the Allocation Alternative, the Participants requested exemptive relief from Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan, to the extent that the provision requires each Participant to, through its Compliance Rule, require its Industry Members that are executing brokers, who do not perform Allocations, to record and report to the Central Repository, if the order is executed, in whole or in part, an Allocation Report. Under the Allocation Alternative, when an Industry Member other than an executing broker (*e.g.,* a prime broker or clearing broker) performs an Allocation, that Industry Member would be required to submit the Allocation Report to the Central Repository. When an executing broker performs an Allocation for an order that is executed, in whole or in part, the burden of submitting an Allocation Report to the Central Repository would remain with the executing broker under the Allocation Alternative. In certain circumstances this would result in multiple Allocation Reports—the executing broker (if self-clearing) or its clearing firm would report individual Allocation Reports identifying the specific prime broker to which shares/contracts were allocated and then each prime broker would itself report an Allocation Report identifying the specific customer accounts to which the shares/contracts were finally allocated.

The Participants stated that granting exemptive relief from submitting Allocation Reports for executing brokers who do not perform an Allocation, and requiring the Industry Member other than the executing broker that is performing the Allocation to submit such Allocation Reports, is consistent with the basic approach taken by the Commission in adopting Rule 613 under the Exchange Act. Specifically, the Participants stated that they believe that the Commission sought to require each broker-dealer and exchange that touches an order to record the required data with respect to actions it takes on the order.[9] Without the requested exemptive relief, executing brokers that do not perform Allocations would be required to submit Allocation Reports. In addition, the Participants stated that, because shares/contracts for every execution must be allocated to an account by the clearing broker in such circumstances, there would be no loss of information by shifting the reporting obligation from the executing broker to the clearing broker.

(B) Identity of Prime Broker

To implement the Allocation Alternative, the Participants also requested exemptive relief from Section 6.4(d)(ii)(A)(2) of the CAT NMS Plan, to the extent that the provision requires each Participant to, through its Compliance Rule, require its Industry Members to record and report to the Central Repository, if an order is executed, in whole or in part, the SRO-Assigned Market Participant Identifier of the prime broker, if applicable. Currently, under the CAT NMS Plan, an Industry Member is required to report the SRO-Assigned Market Participant Identifier of the clearing broker or prime broker in connection with the execution of an order, and such information would be part of the order's lifecycle, rather than in an Allocation Report that is not linked to the order's lifecycle.[10] Under the Allocation Alternative, the identity of the prime broker would be required to be reported by the clearing broker on the Allocation Report, and, in addition, the prime broker itself would be required to report the ultimate allocation, which the Participants believe would provide more complete information.

The Participants stated that associating a prime broker with a specific execution, as is currently required by the CAT NMS Plan, does not reflect how the allocation process works in practice as allocations to a prime broker are done post-trade and are performed by the clearing broker of the executing broker. The Participants also stated that with the implementation of the Allocation Alternative, it would be duplicative for the executing broker to separately identify the prime broker for allocation purposes.

The Participants stated that if a particular customer only has one prime broker, the identity of the prime broker can be obtained from the customer and account information through the DVP accounts for that customer that contain the identity of the prime broker. The Participants further stated that Allocation Reports related to those executions would reflect that shares/contracts were allocated to the single prime broker. The Participants believe that there is no loss of information through the implementation of the Allocation Alternative compared to what is required in the CAT NMS Plan and that this approach does not decrease the regulatory utility of the CAT for single prime broker circumstances.

In cases where a customer maintains relationships with multiple prime brokers, the Participants asserted that the executing broker will not have information at the time of the trade as to which particular prime broker may be allocated all or part of the execution. Under the Allocation Alternative, the executing broker (if self-clearing) or its clearing firm would report individual Allocation Reports identifying the specific prime broker to which shares/contracts were allocated and then each prime broker would itself report an Allocation Report identifying the specific customer accounts where the shares/contracts were ultimately allocated. To determine the prime broker for a customer, a regulatory user would query the customer and account database using the customer's CCID to obtain all DVP accounts for the CCID at broker-dealers. The Participants state that when a customer maintains relationships with multiple prime brokers, the customer typically has a separate DVP account with each prime broker, and the identities of those prime brokers can be obtained from the customer and account information.

(C) Additional Conditions to Exemptive Relief

In the Exemption Request, the Participants included certain additional conditions for the requested relief. Currently, the definition of Allocation Report in the CAT NMS Plan only refers to shares. To implement the Allocation Alternative, the Participants proposed to require that all required elements of Allocation Reports apply to both shares and contracts, as applicable, for all Eligible Securities. Specifically, Participants would require the reporting of the following in each Allocation Report: (1) The FDID for the account receiving the allocation, including subaccounts; (2) the security that has been allocated; (3) the identifier of the firm reporting the allocation; (3) the price per share/contracts of shares/contracts allocated; (4) the side of shares/contracts allocated; (4) the

Corporation, Correspondent Clearing, available at: *https://www.dtcc.com/clearingservices/equities-tradecapture/correspondent-clearing.*

[9] *See* Securities Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45722, 45748 (August 1, 2012).

[10] The Participants did not request exemptive relief relating to the reporting of the SRO-Assigned Market Participant Identifier of clearing brokers.

number of shares/contracts allocated; and (5) the time of the allocation.

Furthermore, to implement the Allocation Alternative, the Participants proposed to require the following information on all Allocation Reports: (1) Allocation ID, which is the internal allocation identifier assigned to the allocation event by the Industry Member; (2) trade date; (3) settlement date; (4) IB/correspondent CRD Number (if applicable); (5) FDID of new order(s) (if available in the booking system); [11] (6) allocation instruction time (optional); (7) if the account meets the definition of institution under FINRA Rule 4512(c); [12] (8) type of allocation (allocation to a custody account, allocation to a DVP account, step out, correspondent flip, allocation to a firm owned or controlled account, or other nonreportable transactions (*e.g.,* option exercises, conversions); (9) for DVP allocations, custody broker-dealer clearing number (prime broker) if the custodian is a U.S. broker-dealer, DTCC number if the custodian is a U.S. bank, or a foreign indicator, if the custodian is a foreign entity; and (10) if an allocation was cancelled, a cancel flag, which indicates that the allocation was cancelled, and a cancel timestamp, which represents the time at which the allocation was cancelled.

(2) Proposed Rule Changes To Implement Exemptive Relief

On October 29, 2020, the Commission granted the exemptive relief requested in the Exemption Request. The Commission granted the relief conditioned upon the adoption of Compliance Rules that implement the reporting requirements of the Allocation Alternative. Accordingly, the Exchange proposes the following changes to its Compliance Rule to implement the reporting requirements of the Allocation Alternative.

(A) Definition of Allocation

The Exchange proposes to add a definition of ''Allocation'' as new paragraph (c) to Rule 11.610.[13] Proposed paragraph (c) of Rule 11.610 would define an ''Allocation'' to mean ''(1) the placement of shares/contracts into the same account for which an order was originally placed; or (2) the placement of shares/contracts into an account based on allocation instructions (*e.g.,* subaccount allocations, delivery versus payment (''DVP'') allocations).'' The SEC stated in the Allocation Exemption that this definition of ''Allocation'' is reasonable.

(B) Definition of Allocation Report

The Exchange proposes to amend the definition of ''Allocation Report'' set forth in Exchange Rule 11.610(c) to reflect the requirements of the Allocation Exemption. Exchange Rule 11.610(c) defines the term ''Allocation Report'' to mean:

a report made to the Central Repository by an Industry Member that identifies the Firm Designated ID for any account(s), including subaccount(s), to which executed shares are allocated and provides the security that has been allocated, the identifier of the firm reporting the allocation, the price per share of shares allocated, the side of shares allocated, the number of shares allocated to each account, and the time of the allocation; provided, for the avoidance of doubt, any such Allocation Report shall not be required to be linked to particular orders or executions.

The Exchange proposes to amend this definition in two ways: (1) Applying the requirements for Allocation Reports to contracts in addition to shares; and (2) requiring the reporting of additional elements for the Allocation Report.

(i) Shares and Contracts

The requirements for Allocation Reports apply only to shares, as the definition of ''Allocation Report'' in Rule 11.610(c) refers to shares, not contracts. In the Allocation Exemption, the Commission stated that applying the requirements for Allocation Reports to contracts in addition to shares is appropriate because CAT reporting requirements apply to both options and equities. Accordingly, the SEC stated that the Participants would be required to modify their Compliance Rules such that all required elements of Allocation Reports apply to both shares and contracts, as applicable, for all Eligible Securities. Therefore, the Exchange proposes to amend Rule 11.610(c) (to be renumbered as Rule 11.610(d)) to apply to contracts, as well as shares. Specifically, the Exchange proposes to add references to contracts to the definition of ''Allocation Report'' to the following phrases: ''the Firm Designated ID for any account(s), including subaccount(s), to which executed shares/contracts are allocated;'' ''the price per share/contract of shares/contracts allocated;'' ''the side of shares/contracts allocated;'' and ''the number of shares/contracts allocated to each account.''

(ii) Additional Elements

The Commission also conditioned the Allocation Exemption on the Participants amending their Compliance Rules to require the ten additional elements in Allocation Reports described above. Accordingly, the Exchange proposes to require these additional elements in Allocation Reports. Specifically, the Exchange proposes to amend the definition of ''Allocation Report'' in Rule 11.610(c) (to be renumbered as Rule 11.610(d)) to include the following elements, in addition to those elements currently required under the CAT NMS Plan:

(6) the time of the allocation; (7) Allocation ID, which is the internal allocation identifier assigned to the allocation event by the Industry Member; (8) trade date; (9) settlement date; (10) IB/correspondent CRD Number (if applicable); (11) FDID of new order(s) (if available in the booking system); (12) allocation instruction time (optional); (12) if account meets the definition of institution under FINRA Rule 4512(c); (13) type of allocation (allocation to a custody account, allocation to a DVP account, step-out, correspondent flip, allocation to a firm owned or controlled account, or other non-reportable transactions (*e.g.,* option exercises, conversions); (14) for DVP allocations, custody broker-dealer clearing number (prime broker) if the custodian is a U.S. broker-dealer, DTCC number if the custodian is a U.S. bank, or a foreign indicator, if the custodian is a foreign entity; and (15) if an allocation was cancelled, a cancel flag indicating that the allocation was cancelled, and a cancel timestamp, which represents the time at which the allocation was cancelled.

(C) Allocation Reports

(i) Executing Brokers That Do Not Perform Allocations

The Commission granted the Participants an exemption from the requirement that the Participants, through their Compliance Rule, require executing brokers that do not perform Allocations to submit Allocation Reports. The Commission stated that it understands that executing brokers that are not self-clearing do not perform allocations themselves, and such

[11] The Participants propose that for scenarios where the Industry Member responsible for reporting the Allocation has the FDID of the related new order(s) available, such FDID must be reported. This would include scenarios in which: (1) The FDID structure of the top account and subaccounts is known to the Industry Member responsible for reporting the Allocation(s); and (2) the FDID structure used by the IB/Correspondent when reporting new orders is known to the clearing firm reporting the related Allocations.

[12] FINRA Rule 4512(c) states the for purposes of the rule, the term ''institutional account'' means the account of: (1) A bank, savings and loan association, insurance company or registered investment company; (2) an investment adviser registered either with the SEC under Section 203 of the Investment Advisers Act or with a state securities commission (or any agency or office performing like functions); or (3) any other person (whether a natural person, corporation, partnership, trust or otherwise) with total assets of at least $50 million.

[13] The Exchange proposes to renumber the definitions in Rule 11.610 to accommodate the addition of this new definition of ''Allocation'' and the new definition of ''Client Account'' discussed below.

allocations are handled by prime and/or clearing brokers, and these executing brokers therefore do not possess the requisite information to provide Allocation Reports. Accordingly, the Exchange proposes to eliminate Rule 11.630(a)(2)(i),[14] which requires an Industry Member to record and report to the Central Repository an Allocation Report if the order is executed, in whole or in part, and to replace this provision with proposed Rule 11.630(a)(2)(F) as discussed below.

(ii) Industry Members That Perform Allocations

The Allocation Exemption requires the Participants to amend their Compliance Rules to require Industry Members to provide Allocation Reports to the Central Repository any time they perform Allocations to a client account, whether or not the Industry Member was the executing broker for the trades. Accordingly, the Commission conditioned the Allocation Exemption on the Participants adopting Compliance Rules that require prime and/or clearing brokers to submit Allocation Reports when such brokers perform allocations, in addition to requiring executing brokers that perform allocations to submit Allocation Reports. The Commission determined that such exemptive relief would improve efficiency and reduce the costs and burdens of reporting allocations for Industry Members because the reporting obligation would belong to the Industry Member with the requisite information, and executing brokers that do not have the information required on an Allocation Report would not have to develop the infrastructure and processes required to obtain, store and report the information. The Commission stated that this exemptive relief should not reduce the regulatory utility of the CAT because an Allocation Report would still be submitted for each executed trade allocated to a client account, which in certain circumstances could still result in multiple Allocation Reports,[15] just not necessarily by the executing broker.

In accordance with the Allocation Exemption, the Exchange proposes to add proposed Rule 11.630(a)(2)(F) to the Compliance Rule. Proposed Rule 11.630(a)(2)(F) would require Industry Members to record and report to the Central Repository ''an Allocation Report any time the Industry Member performs an Allocation to a Client Account, whether or not the Industry Member was the executing broker for the trade.''

(iii) Client Accounts

In the Allocation Exemption, the Commission also exempted the Participants from the requirement that they amend their Compliance Rules to require Industry Members to report Allocations for accounts other than client accounts. The Commission believes that allocations to client accounts, and not allocations to proprietary accounts or events such as step-outs and correspondent flips, provide regulators the necessary information to detect abuses in the allocation process because it would provide regulators with detailed information regarding the fulfillment of orders submitted by clients, while reducing reporting burdens on broker-dealers. For example, Allocation Reports would be required for allocations to registered investment advisor and money manager accounts. The Commission further believes that the proposed approach should facilitate regulators' ability to distinguish Allocation Reports relating to allocations to client accounts from other Allocation Reports because Allocations to accounts other than client accounts would have to be identified as such. This approach could reduce the time CAT Reporters expend to comply with CAT reporting requirements and lower costs by allowing broker-dealers to use existing business practices.

To clarify that an Industry Member must report an Allocation Report solely for Allocations to a client account, proposed Rule 11.630(a)(2)(F) specifically references ''Client Accounts,'' as discussed above. In addition, the Exchange proposes to add a definition of ''Client Account'' as proposed Rule 11.610(l). Proposed Rule 11.610(l) would define a ''Client Account'' to mean ''for the purposes of an Allocation and Allocation Report, any account or subaccount that is not owned or controlled by the Industry Member.''

(D) Identity of Prime Broker

The Exchange also proposes to amend Rule 11.630(a)(2)(A) to eliminate the requirement for executing brokers to record and report the SRO-Assigned Market Participant Identifier of the prime broker. Rule 11.630(a)(2)(A) states that each Industry Member is required to record and report to the Central Repository, if the order is executed, in whole or in part, the ''SRO-Assigned Market Participant Identifier of the clearing broker or prime broker, if applicable.'' The Exchange proposes to delete the phrase ''or prime broker'' from this provision. Accordingly, each Industry Member that is an executing broker would no longer be required to report the SRO-Assigned Market Participant Identifier of the prime broker.

As the Commission noted in the Allocation Exemption, exempting the Participants from the requirement that they, through their Compliance Rules, require executing brokers to provide the SRO-Assigned Market Participant Identifier of the prime broker is appropriate because, as stated by the Participants, allocations are done on a post-trade basis and the executing broker will not have the requisite information at the time of the trade. Because an executing broker, in certain circumstances, does not have this information at the time of the trade, this relief relieves executing brokers of the burdens and costs of developing infrastructure and processes to obtain this information in order to meet the contemporaneous reporting requirements of the CAT NMS Plan.

As the Commission noted in the Allocation Exemption, although executing brokers would no longer be required to provide the prime broker information, regulators will still be able to determine the prime broker(s) associated with orders through querying the customer and account information database. If an executing broker has only one prime broker, the identity of the prime broker can be obtained from the customer and account information associated with the executing broker. For customers with multiple prime brokers, the identity of the prime brokers can be obtained from the customer and account information which will list the prime broker, if there is one, that is associated with each account.

2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6(b)(5) of the Act,[16] which requires, among other things, that the Exchange's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the

[14] The Exchange proposes to renumber Rule 11.630(a)(2)(A)(ii) and (iii) as Rule 11.630(a)(2)(i) and (ii) in light of the proposed deletion of Rule 11.630(a)(2)(A)(i).

[15] As noted above, under the Allocation Alternative, for certain executions, the executing broker (if self-clearing) or its clearing firm would report individual Allocation Reports identifying the specific prime broker to which shares/contracts were allocated and then each prime broker would itself report an Allocation Report identifying the specific customer accounts to which the shares/contracts were finally allocated.

[16] 15 U.S.C. 78f(b)(5).

public interest, and Section 6(b)(8) of the Act[17] which requires that the Exchange's rules not impose any burden on competition that is not necessary or appropriate.

IEX believes that this proposal is consistent with the Act because it is consistent with, and implements, the Allocation Exemption, and is designed to assist the Exchange and its Industry Members in meeting regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Plan ''is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.''[18] To the extent that this proposal implements the Plan, and applies specific requirements to Industry Members, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

IEX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed rule change is consistent with the Allocation Exemption, and is designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan. The Exchange also notes that the proposed rule change will apply equally to all Industry Members. In addition, all national securities exchanges and FINRA are proposing this amendment to their Compliance Rules. Therefore, this is not a competitive rule filing and does not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[19] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–IEX–2021–02 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–IEX–2021–02. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–IEX–2021–02, and should be submitted on or before March 4, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

J. Matthew DeLesDernier,

Assistant Secretary.

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[17] 15 U.S.C. 78f(b)(8).

[18] *See* Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696, 84697 (November 23, 2016).

[19] 15 U.S.C. 78s(b)(2)(B).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91073; File No. SR–PEARL–2021–02]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX PEARL Equities Fee Schedule To Adopt Connectivity Fees, Port Fees, a Technical Support Request Fee, and a Historical Market Data Fee

February 5, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 29, 2021, MIAX PEARL, LLC (''MIAX PEARL'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX PEARL Equities Fee Schedule (the ''Fee Schedule'') by adopting fees applicable to participants

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

trading equity securities on and/or using services provided by MIAX PEARL Equities.[3]

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/pearl* at MIAX PEARL's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On August 14, 2020, the Commission approved the Exchange's proposal to adopt rules governing the trading of equity securities, referred to as MIAX PEARL Equities.[4] The Exchange launched MIAX PEARL Equities on September 25, 2020. The Exchange proposes to adopt a Definitions section in the Fee Schedule, as well as the following fees: (1) Connectivity fees for Equity Members [5] and non-Members; (2) Port fees (together with the proposed connectivity fees, the ''Proposed Access Fees''); (3) a Technical Support Request fee; and (4) a fee for Historical Market Data (collectively, the ''Proposed Fees'').

The Exchange initially filed the proposal on September 24, 2020.[6] The Exchange withdrew the First Proposed Rule Change on October 5, 2020 and submitted SR–PEARL–2020–19 (''Second Proposed Rule Change'').[7] The Second Proposed Rule Change was published for comment in the **Federal Register** on October 20, 2020 [8] and no comment letters were received. The Exchange withdrew the Second Proposed Rule Change [9] and submitted SR–PEARL–2020–33 (''Third Proposed Rule Change'').[10] The Third Proposed Rule Change was published in the **Federal Register** on December 17, 2020 and no comment letters were received. The Exchange withdrew the Third Proposed Rule Change [11] and now replaces it with this filing to provide further clarification regarding the Exchange's cost justification analysis for the Proposed Fees.[12]

The Exchange believes that exchanges, in setting fees of all types, should meet very high standards of transparency to demonstrate why each new fee or fee increase meets the requirements of the Act that fees be reasonable, equitably allocated, not unfairly discriminatory, and not create an undue burden on competition among members and markets. The Exchange believes this high standard is especially important when an exchange imposes various access fees on market participants to access an exchange's marketplace, as well as other non-transaction fees. MIAX PEARL deems Port fees and Connectivity fees to be access fees, and that Ports and Connectivity are inextricably linked components of the Exchange's network. Accordingly, the Exchange believes that it is reasonable and appropriate that the costs and revenues for both should be considered together, as the services associated with connectivity and ports are linked pieces of the network's infrastructure, both of which are necessary for a market participant to access and use the trading System of the Exchange. Both Connectivity fee and Port fee revenue are consolidated into a single line item (Access Fees) on the Exchange's financial statements. The Exchange believes that it is important to demonstrate that the Proposed Fees are based on its costs to provide the services associated with the Proposed Fees and reasonable business needs. Accordingly, the Exchange believes the Proposed Fees, in general, and the Proposed Access Fees, in particular, will allow the Exchange to offset a portion of the expenses the Exchange has and will incur, and that the Exchange has provided sufficient transparency (as described below) into how the Exchange determined to charge such fees. Accordingly, the Exchange is providing an analysis of its revenues, costs, and profitability associated with the Proposed Access Fees. This analysis includes information regarding its methodology for determining the costs and revenues associated with the Proposed Access Fees.

Definitions

The Exchange proposes to include a Definitions section at the beginning of the Fee Schedule, before the General Notes section. The purpose of the Definitions section is to provide market participants greater clarity and transparency regarding the applicability of fees and rebates by defining terms used within the Fee Schedule in a single location. The Exchange notes that other equities exchanges include Definitions sections in their respective fee schedules,[13] and the Exchange believes that including a Definitions section in the front of the Fee Schedule makes the Fee Schedule more user-friendly and makes the Fee Schedule more comprehensive.

Unless included in the Definition section, capitalized terms used in the Fee Schedule are defined in the MIAX PEARL Equities Rules. Each of the definitions proposed to be included in the Fee Schedule are based on definitions included in the existing MIAX PEARL fee schedule applicable to options (''Options Fee Schedule'') [14] or those of another exchange. In particular, the Exchange propose to offer and define ports and interfaces that provide connectivity to MIAX PEARL Equities. The Exchange notes that each of these offerings are not novel or unique, are available on other equity exchanges, and are currently offered by the Exchange for options trading and provided for in

[3] *See* Exchange Rule 1901. The Exchange notes that it submitted a separate filing with the Commission pursuant to Section 19(b)(3)(A) of the Act to establish the Fee Schedule and adopt transaction fees. *See* Securities Exchange Act Release No. 90102 (October 6, 2020), 85 FR 64559 (October 13, 2020) (SR–PEARL–2020–17).

[4] *See* Securities Exchange Act Release No. 89563 (August 14, 2020), 85 FR 51510 (August 20, 2020) (SR–PEARL–2020–03) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, To Establish Rules Governing the Trading of Equity Securities) (''Approval Order'').

[5] The term ''Equity Member'' means a Member authorized by the Exchange to transact business on MIAX PEARL Equities. *See* Exchange Rule 1901.

[6] The Exchange initially filed the proposed fee changes on September 24, 2020 (SR–PEARL–2020–18). *See* SR–PEARL–2020–18 (the ''First Proposed Rule Change'').

[7] *See* Securities Exchange Act Release No. 90186 (October 14, 2020), 85 FR 66656 (October 20, 2020).

[8] *See id.*

[9] *See* letter from Chris Solgan, VP, Senior Counsel, the Exchange, dated November 20, 2020, notifying the Commission that the Exchange would withdraw SR–PEARL–2020–19.

[10] *See* Securities Exchange Act Release No. 90651 (December 11, 2020), 85 FR 81971 (December 17, 2020).

[11] *See* letter from Joseph W. Ferraro, SVP, Deputy General Counsel, the Exchange, dated January 15, 2021, notifying the Commission that the Exchange would withdraw SR–PEARL–2020–33.

[12] In this filing, the Exchange also corrects an error in the earlier filings by replacing references to the term ''Priority Purge Ports'' with simply ''Purge Ports.''

[13] *See* Cboe BZX Exchange, Inc. Fee Schedule, Definitions section; Cboe BYX Exchange, Inc., Definitions section; Cboe EDGA Exchange, Inc., Definitions section; Cboe EDGX Exchange, Inc., Definitions section.

[14] *See* the Options Fee Schedule *available at https://www.miaxoptions.com/sites/default/files/fee_schedule-files/MIAX_PEARL_Fee_Schedule_11052020.pdf.*

the Exchange's Options Fee Schedule. The Exchange proposes to define the following terms in the Fee Schedule:

• ''Cross-connect'' occurs when the affected third-party system is sited at the same data center where MIAX PEARL Equities systems are sited, and the third-party connects to MIAX PEARL Equities through the data center, rather than connecting directly to MIAX PEARL Equities outside of the data center.

• ''Exchange System Disruption'' means an outage of a Matching Engine or collective Matching Engines for a period of two consecutive hours or more, during trading hours.

• ''Extranet Provider'' means a technology provider that connects with MIAX PEARL Equities systems and in turn provides such connectivity to MIAX PEARL Equities participants that do not connect directly with MIAX PEARL Equities.

• ''FIX Order by Order'' means a type of FXD Port that sends all order activities other than reject message, including Execution Reports and Trade Cancel/Correct messages. FIX Order by Order is currently offered by the Exchange for options trading and provided for in the Exchange's Options Fee Schedule.

• ''FIX Order Interface'' or ''FOI'' means the Financial Information Exchange interface for certain order types as set forth in Exchange Rule 2614. FOI is currently offered by the Exchange for options trading and provided for in the Exchange's Options Fee Schedule.

• ''FIX Port'' means a FIX port that allows Equity Members to send orders and other messages using the FIX protocol. FIX is currently offered by the Exchange for options trading and provided for in the Exchange's Options Fee Schedule.

• ''Full Service Port'' or ''FSP'' means an MEO port that supports all MEO order input message types. FSP is currently offered by the Exchange for options trading and provided for in the Exchange's Options Fee Schedule.

• ''FIX Drop Port'' or ''FXD'' means a messaging interface that provides real-time order activities of firms' MEO and FOI orders. MIAX PEARL Equities offers two types of FXD ports: (1) Standard FIX Drop; and (2) FIX Order by Order Drop. FXD Ports may be used by Equities Market Makers, Order Entry Firms and clearing firms. FXD is currently offered by the Exchange for options trading and provided for in the Exchange's Options Fee Schedule.

• ''MENI'' means the MIAX Express Network Interconnect, which is a network infrastructure which provides Equity Members and non-Members network connectivity to the trading platforms, market data systems, test systems, and disaster recovery facilities of the Exchange. The MENI consists of the low latency and ultra-low latency (''ULL'') connectivity options set forth in the Exchange's Fee Schedule. MENI is currently offered by the Exchange for options trading and provided for in the Exchange's Options Fee Schedule.

• ''MEO Interface'' or ''MEO'' means a binary order interface for certain order types as set forth in Rule 516 into the MIAX PEARL System. See Exchange Rule 100.

• ''Service Bureau'' means a technology provider that offers and supplies technology and technology services to a trading firm that does not have its own proprietary system.

• ''Standard FIX Drop'' means an FXD Port that only sends trade information, including Execution Reports and Trade Cancel/Correct messages. Standard FIX Drop is currently offered by the Exchange for options trading and provided for in the Exchange's Options Fee Schedule.

• ''Third Party Vendor'' means a subscriber of MIAX PEARL Equities' market and other data feeds, which they in turn use for redistribution purposes.

• ''Waiver Period'' means, for each applicable fee, the period of time from the initial effective date of the MIAX PEARL Equities Fee Schedule until such time that MIAX PEARL has an effective fee filing establishing the applicable fee. MIAX PEARL Equities will issue a Regulatory Circular announcing the establishment of an applicable fee that was subject to a Waiver Period at least fifteen (15) days prior to the termination of the Waiver Period and effective date of any such applicable fee.

Proposed Access Fees

To provide market participants with a better understanding of how the Exchange has established the levels of the Proposed Access Fees, the Exchange is providing information in this proposal regarding the costs incurred by the Exchange to provide services associated with the Proposed Access Fees, including the Exchange's cost allocation methodology (information that explains the Exchange's rationale for determining that it was reasonable to allocate certain expenses described in this filing towards the total cost to the Exchange to provide the services associated with the Proposed Access Fees). The Exchange is also providing an analysis of its expected revenues and profitability for the services associated with the Proposed Access Fees.

In order to determine the Exchange's costs for providing the services associated with the Proposed Access Fees, the Exchange conducted an extensive review in which the Exchange analyzed every expense item in the Exchange's general expense ledger to determine whether each such expense relates to the services associated with the Proposed Access Fees, and, if such expense did so relate, what portion (or percentage) of such expense actually supports those services. The sum of all such portions of expenses represents the total cost of the Exchange to provide the services associated with the Proposed Access Fees. For the avoidance of doubt, no expense amount was allocated twice. The Exchange is also providing detailed information regarding the Exchange's cost allocation methodology—namely, information that explains the Exchange's rationale for determining that it was reasonable to allocate certain expenses described in this filing towards the total cost to the Exchange to provide the Proposed Access Fees.

Since MIAX PEARL Equities did not exist in 2019 (operations only just launched on September 25, 2020), the Exchange's most recent publicly available financial statement (2019 Audited Unconsolidated Financial Statement) is not an accurate reflection of the total annual costs associated with the development and operation of MIAX PEARL Equities. Accordingly, the Exchange believes it is more appropriate to justify its fees using cost figures that are isolated specifically for MIAX PEARL Equities on an annualized basis, and, utilizing a recent monthly billing cycle representative of 2020 monthly revenue, extrapolated annualized revenue on a going-forward basis. The Exchange does not believe it is appropriate to factor into its analysis future revenue growth or decline into its projections for purposes of these calculations, given the uncertainty of such projections due to the continually changing access needs of market participants, discounts that can be achieved through reaching certain tiers, uncertainty relating to the timing of the expiration of certain fee waivers, uncertainty relating to the actual fee amounts to be established upon expiration of said fee waivers, market participant consolidation, etc. Additionally, the Exchange similarly does not factor into its analysis future cost growth or decline. The purpose of presenting it in this manner is to provide greater transparency into the Exchange's actual and expected revenues, costs, and profitability associated with providing the services associated with the Proposed Access Fees. Based on this analysis, the Exchange believes that the Proposed Access Fees are fair and reasonable because they will permit recovery of less than all of the Exchange's costs for providing the services associated with the Proposed Access Fees and will not result in excessive pricing or supra-competitive profit when comparing the Exchange's total annual expense associated with providing the services associated with the Proposed Access Fees versus the total projected annual revenue the Exchange will collect for providing those services.

Connectivity Fees

Specifically, proposed Sections (2a) and (b) of the Fee Schedule describe network connectivity fees for the 1 Gigabit (''Gb'') ultra-low latency (''ULL'') fiber connection and the 10 Gb ULL fiber connection, which are to be charged to both Equity Members and non-Members of MIAX PEARL Equities for connectivity to the Exchange's primary/secondary facility. The Exchange also proposes to adopt network connectivity fees for the 1 Gb ULL and 10 Gb ULL fiber connections for connectivity to the Exchange's disaster recovery facility.

The Exchange will offer to both Equity Members and non-Members various bandwidth alternatives for connectivity to MIAX PEARL Equities, to its primary and secondary facilities, which consists of a 1 Gb ULL fiber connection and a 10 Gb ULL fiber connection. The Exchange also offers to both Equity Members and non-Members various bandwidth alternatives for connectivity to the disaster recovery facility of MIAX PEARL Equities, which consists of a 1 Gb ULL fiber connection and a 10 Gb ULL connection.

The Exchange proposes to establish the monthly network connectivity fees for such connections for both Equity Members and non-Members. The Exchange proposes to adopt the following fees for connectivity to MIAX PEARL Equities' primary/secondary facility for both Equity Members and non-Members: (a) $1,000 for the 1 Gb ULL connection; and (b) $3,500 for the 10 Gb ULL connection. The Exchange proposes to adopt the following fees for connectivity to MIAX PEARL Equities' disaster recovery facility for both Equity Members and non-Members: (a) $1,000 for the 1 Gb ULL connection; and (b) $3,000 for the 10 Gb ULL connection.

Monthly network connectivity fees for Equity Members and non-Members for connectivity with the primary/secondary facility will be assessed in any month the Equity Member or non-Members is credentialed to use any of the MIAX PEARL Equities Application Programming Interfaces (''APIs'') or market data feeds in the production environment and will be pro-rated when an Equity Member or non-Member makes a change to the connectivity (by adding or deleting connections) with such pro-rated fees based on the number of trading days that the Equity Member or non-Member has been credentialed to utilize any of the MIAX PEARL Equities' APIs or market data feeds in the production environment through such connection, divided by the total number of trading days in such month multiplied by the applicable monthly rate. Monthly network connectivity fees for Equity Members and non-Members for connectivity to the Disaster Recovery Facility will be assessed in each month during which the Equity Member or non-Member has established connectivity to the Disaster Recovery Facility.

Proposed Section (2)(c) of the Fee Schedule, Pass-Through of External Connectivity Fees, provides for the pass through of external connectivity fees (described below) to Equity Members and non-Members that establish connections with MIAX PEARL Equities through a third-party. Fees assessed to MIAX PEARL Equities by third-party external vendors on behalf of an Equity Member or non-Member connecting to MIAX PEARL Equities (including cross-connects), will be passed through to the Equity Member or non-Member. The external connectivity fees passed through can include one-time set-up fees, monthly charges, and other fees charged to MIAX PEARL Equities by a third-party for the benefit of an Equity Member or non-Member.

Port Fees

Proposed Section (2)(d), Port Fees, of the Fee Schedule describes fees for access and services used by Equity Members and non-Members. MIAX PEARL Equities provides three Port types: (i) The Financial Information Exchange Port (''FIX Port''), which allows Equity Members to send orders and other messages using the FIX protocol;[15] (ii) the MIAX Express Orders Interface (''MEO Port''), which allows Equity Members order entry capabilities to all MIAX PEARL Equities Matching Engines;[16] and (iii) the FIX Drop Port (''FXD Port''), which provides real-time order activities firms' MEO and FOI orders. MIAX PEARL Equities offers two types of FXD ports: (1) Standard FIX Drop;[17] and (2) FIX Order by Order.[18] FXD Ports may be used by Equities Market Makers,[19] Order Entry Firms[20] and clearing firms.

The Exchange proposes to assess monthly Port fees to Equity Members in each month the Equity Member is credentialed to use a Port in the production environment. MIAX PEARL Equities has primary and secondary data centers and a disaster recovery center. Each Port provides access to all Exchange data centers for a single fee. The Exchange notes that, unless otherwise specifically set forth in the Fee Schedule, the Port fees include the information communicated through the Port. That is, unless otherwise specifically set forth in the Fee Schedule, there is no additional charge for the information that is communicated through the Port apart from what the user is assessed for each Port. The Exchange proposes to assess Port Fees for FIX Ports, MEO Ports, and FXD Ports as set forth in the following table:

Type of port	Monthly port fees includes connectivity to the primary, secondary and disaster recovery data centers
FIX Port ^	Per Port: 1st–5th Fee Waived for the Waiver Period.

[15] ''FIX Order Interface'' or ''FOI'' means the Financial Information Exchange interface for certain order types as set forth in Exchange Rule 2614. *See* the Definitions section of the Fee Schedule.

[16] Each MEO interface will have one Full Service Port (''FSP'') and one Purge Port. ''Full Service Port'' or ''FSP'' means an MEO port that supports all MEO order input message types. *See* the Definitions section of the Fee Schedule. Purge Ports are described in Exchange Rule 2618(a)(7)(b).

[17] ''Standard FIX Drop'' means an FXD Port that only sends trade information, including Execution Reports and Trade Cancel/Correct messages. *See* the Definitions section of the Fee Schedule.

[18] ''FIX Order by Order'' means a type of FXD Port that sends all order activities other than reject message, including Execution Reports and Trade Cancel/Correct messages. *See* the Definitions section of the Fee Schedule.

[19] The term ''Equities Market Maker'' shall mean an Equity Member that acts as a Market Maker in equity securities, pursuant to Chapter XXVI. *See* Exchange Rule 1901.

[20] The term ''Equities Order Entry Firm'', ''Order Entry Firm'', or ''OEF'', shall mean those Equity Members representing orders as agent on MIAX PEARL Equities and those non-Equity Market Maker Members conducting proprietary trading. *See* Exchange Rule 1901.

Type of port	Monthly port fees includes connectivity to the primary, secondary and disaster recovery data centers
	6th–10th Fee Waived for the Waiver Period. 11th–25th Fee Waived for the Waiver Period. 26th–50th $450. 51st–75th $400. 76th–100th $350. 101st or more $300.
MEO Port ∧ *	Per Port: 1st–5th Fee Waived for the Waiver Period. 6th–10th Fee Waived for the Waiver Period. 11th–25th Fee Waived for the Waiver Period. 26th–50th $450. 51st–75th $400. 76th–100th $350. 101st or more $300.
FXD Port ∧	Fee Waived for the Waiver Period.

∧ Each port will have access to all Matching Engines.
* The rates set forth above for MEO Ports entitle an Equity Member to one (1) FSP and one (1) Purge Port[21] for all Matching Engines for a single port fee.

- MEO and FIX Portsare counted separately for the tiers in the table.

The Exchange proposes to waive the fee for the 1st through the 25th FIX Ports and MEO Ports that Equity Members are credentialed to use, as well as the fees for all FXD Ports, for the Waiver Period.[22] For all Port fees that the Exchange initially proposes to be subject to the Waiver Period, the Exchange will submit a rule filing to the Commission to establish the fee amount and any related requirements, and provide notice to terminate the applicable Waiver Period. Even though most of the Port fees are waived during the Waiver Period, the Exchange believes that is appropriate to provide market participants with the overall structure of the fee by outlining the structure on the Fee Schedule without setting forth a specific fee amount in certain areas, so that there is general awareness that the Exchange intends to assess such a fee in the future, should the Waiver Period terminate and the Exchange establish an applicable fee.

Equity Member and Non-Member Technical Support Request Fee

Proposed Section (2)(e), Member and Non-Member Technical Support Request Fee, of the Fee Schedule describes the technical support request fee to be charged to both Equity Members and non-Members that request technical support at any of the MIAX PEARL Equities data centers. MIAX PEARL Equities proposes to charge a fee of $200 per hour for requested technical support. The Exchange intends to provide Equity Members and non-Members access to the Exchange's on-site data center personnel for technical support as a convenience to the Equity Members and non-Members to test or otherwise assess their connectivity to the Exchange. Currently, the Exchange charges the same fee amount for the same services for options trading, as well as at its affiliate option exchanges, Miami International Securities Exchange, LLC (''MIAX'') and MIAX Emerald, LLC (''MIAX Emerald'').[23]

Market Data Fees

Proposed Sections (3)(a)–(c) describe the fee to be charged for the Exchange's proprietary market data products. MIAX PEARL Equities intends to offer the following three proprietary market data products: (a) Top of Market (''ToM'') feed; (b) Depth of Market (''DoM'') feed; and (c) the Historical Market Data feed.

The ToM feed is a data feed that contains the price and aggregate size of displayed top of book quotations, order execution information, and administrative messages for orders entered on MIAX PEARL Equities. The DoM feed is a data feed that contains the displayed price and size of each order entered on MIAX PEARL Equities, as well as order execution information, order cancellations, order modifications, order identification numbers, and administrative messages.

The Exchange proposes to provide under Sections (3)(a) and (3)(b) of the Fee Schedule that the ToM and DoM would be offered free of charge during the Waiver Period. Even though the fees for the ToM and DoM data feeds are waived during the Waiver Period, the Exchange believes that is appropriate to provide market participants with notice of these feeds on the Fee Schedule without setting forth a specific fee amount, so that there is general awareness that the Exchange intends to assess such a fee in the future, should the Waiver Period terminate and the Exchange establish an applicable fee.

The Exchange will also offer Historical Data for MIAX PEARL Equities, which is a data product that offers historical market data for orders entered on MIAX PEARL Equities upon request. The Exchange proposes to charge a fee for the Historical Data, which will be based on the cost incurred by the Exchange in providing that data. Proposed Section (3)(c) of the Fee Schedule describes the fee to be charged market participants that request Historical Data from MIAX PEARL Equities. Historical Data is intended to aid market participants in analyzing trade and volume data, evaluating historical trends in the trading activity of a particular security, and enabling those market participants to test trading models and analytical strategies. Specifically, Historical Data includes all data that is captured and disseminated on ToM and DoM feeds and is available on a T+1 basis.[24]

The Exchange will only assess the fee for Historical Data on a user (whether Equity Member or non-Member) that specifically requests such Historical Data. Historical Data will be uploaded

[21] Purge Ports are described in Exchange Rule 2618(a)(7)(b).

[22] ''Waiver Period'' means, for each applicable fee, the period of time from the initial effective date of the MIAX PEARL Equities Fee Schedule until such time that MIAX PEARL has an effective fee filing establishing the applicable fee. MIAX PEARL Equities will issue a Regulatory Circular announcing the establishment of an applicable fee that was subject to a Waiver Period at least fifteen (15) days prior to the termination of the Waiver Period and effective date of any such applicable fee. *See* the Definitions section of the Fee Schedule.

[23] *See* MIAX Fee Schedule, Section (5)(f), Member and non-Member Technical Support Request Fee; MIAX PEARL Fee Schedule, Section (5)(f), Member and non-Member Technical Support Request Fee; and MIAX Emerald Fee Schedule, Section (5)(f), Member and non-Member Technical Support Request Fee.

[24] *See* Fee Schedule, Section (3)(c).

onto an Exchange-provided device, which the Exchange will incur a cost to procure and provide to those that request the data.

The Exchange proposed to charge a flat fee of $500 per device requested. Each device shall have a maximum storage capacity of 8 terabytes. Users may request up to six months of Historical Data per device, subject to the device's storage capacity. Historical Data will be made available beginning from the time of launch of MIAX PEARL Equities on September 25, 2020 (always on a T+1 basis). However, only the most recent six months of Historical Data shall be available for purchase from the request date.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [25] in general, and furthers the objectives of Section 6(b)(4) of the Act [26] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among Exchange Members and issuers and other persons using any facility or system which the Exchange operates or controls. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act [27] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customer, issuers, brokers and dealers.

On March 29, 2019, the Commission issued its Order Disapproving Proposed Rule Changes to Amend the Fee Schedule on the BOX Market LLC Options Facility to Establish BOX Connectivity Fees for Participants and Non-Participants Who Connect to the BOX Network (the ''BOX Order'').[28] On May 21, 2019, the Commission issued the Staff Guidance on SRO Rule Filings Relating to Fees.[29]

The Exchange believes that the Proposed Fees are consistent with the Act because they (i) are reasonable, equitably allocated, not unfairly discriminatory, and not an undue burden on competition; (ii) comply with the BOX Order and the Guidance; (iii) are supported by evidence (including comprehensive revenue and cost data and analysis) that they are fair and reasonable because they do not result in excessive pricing or supra-competitive profit; and (iv) utilize a cost-based justification framework that is substantially similar to a framework previously used by the Exchange (and its affiliates) to establish comparable access fees, including connectivity fees and port fees, for its options market. Accordingly, the Exchange believes that the Commission should find that the Proposed Fees are consistent with the Act.

The Exchange is not aware of any reason why market participants could not simply drop their connections to an exchange (or not connect to an exchange) if an exchange were to establish prices for its non-transaction fees that, in the determination of such market participant, did not make business or economic sense for such market participant to connect to such exchange. No market participant is required by rule, regulation, or competitive forces to be a Member of the Exchange or MIAX PEARL Equities. As evidence of the fact that market participants can and do disconnect from exchanges based on non-transaction fee pricing, R2G Services LLC (''R2G'') filed a comment letter after BOX's proposed rule changes to increase its connectivity fees (SR–BOX–2018–24, SR–BOX–2018–37, and SR–BOX–2019–04).[30] The R2G Letter stated, ''[w]hen BOX instituted a $10,000/month price increase for connectivity; we had no choice but to terminate connectivity into them as well as terminate our market data relationship. The cost benefit analysis just didn't make any sense for us at those new levels.'' [31] As further evidence of the fact that market participants can and do disconnect from exchanges based on non-transaction fee pricing, a member of the Exchange's affiliate, MIAX Emerald, recently discontinued the use of MIAX Emerald's connectivity and port services as a result of MIAX Emerald increasing connectivity fees and establishing certain port fees. Accordingly, these examples show that if an exchange sets too high of a fee for connectivity and/or other non-transaction fees for its relevant marketplace, market participants can choose to disconnect from such exchange.

The Exchange believes its proposal to include a Definitions section in the Fee Schedule promotes just and equitable principles of trade, removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general protects investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers. The Exchange believes that the proposal to adopt a Definitions section in the beginning of the Fee Schedule will provide greater clarity to Equity Members, non-Members, market participants and the public regarding the Exchange's fees and rebates, and it is in the public interest for the Fee Schedule to be transparent, comprehensive and user-friendly so as to eliminate the potential for confusion.

The Exchange believes that its proposal is consistent with Section 6(b)(4) of the Act because the Proposed Access Fees will permit recovery (less than all) of the Exchange's costs and will not result in excessive or supra-competitive profit. The Proposed Access Fees will allow the Exchange to recover a portion (less than all) of the costs incurred by the Exchange associated with providing and maintaining the necessary hardware and other infrastructure as well as network monitoring and support services in order to provide the services associated with the Proposed Access Fees. The Exchange believes that it is reasonable and appropriate to establish its fees charged for the services associated with the Proposed Access Fees at levels that will partially offset the costs to the Exchange associated with maintaining and enhancing a state-of-the-art exchange network infrastructure in the U.S. equities industry.

The costs associated with building out and maintaining a state-of-the-art network infrastructure are extensive. This is due to several factors, including costs associated with maintaining and expanding a team of highly-skilled network engineers, fees charged by the Exchange's third-party data center operator, costs associated with projects and initiatives designed to improve overall network performance and stability through the Exchange's research and development (''R&D'') efforts, and costs associated with fully-supporting advances in infrastructure and expansion of network level services, including customer monitoring, alerting and reporting. The Exchange incurs significant technology expense related to establishing and maintaining

[25] 15 U.S.C. 78f(b).

[26] 15 U.S.C. 78f(b)(4).

[27] 15 U.S.C. 78f(b)(5).

[28] *See* Securities Exchange Act Release No. 85459 (March 29, 2019), 84 FR 13363 (April 4, 2019) (SR–BOX–2018–24, SR–BOX–2018–37, and SR–BOX–2019–04).

[29] *See* Staff Guidance on SRO Rule Filings Relating to Fees (May 21, 2019), at *https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees* (the ''Guidance'').

[30] *See* Letter from Stefano Durdic, R2G, to Vanessa Countryman, Acting Secretary, Commission, dated March 27, 2019 (the ''R2G Letter'').

[31] *See id.*

Information Security services, enhanced network monitoring and customer reporting, as well as Regulation SCI mandated processes, associated with its network technology. While some of the expense is fixed, much of the expense is not fixed, and thus increases as the number of connections and ports increase. For example, new 1Gb ULL and 10Gb ULL connections require the purchase of additional hardware to support those connections as well as enhanced monitoring and reporting of customer performance that the Exchange and its affiliates provide. Further, 10Gb ULL connections require the purchase of specialized, more costly hardware. As the total number of all connections increase, the Exchange needs to increase its data center footprint and consume more power, resulting in increased costs charged by its third-party data center providers. Accordingly, the cost to the Exchange to provide access to its network and trading infrastructure is not entirely fixed.

Further, because the costs of operating a data center are significant and not economically feasible for the Exchange, the Exchange does not operate its own data centers, and instead contracts with a third-party data center provider. The Exchange notes that larger, well-established exchange operators own/operate their data centers, which offers them greater control over their data center costs. Because those exchanges own and operate their data centers as profit centers, the Exchange is subject to additional costs. Fees for the services associated with the Proposed Access Fees, which are charged for accessing the Exchange's data center network infrastructure, are directly related to the network and offset such costs.

Further, the Exchange invests significant resources in network R&D to continuously improve the overall performance and stability of its network. For example, the Exchange has a number of network monitoring tools (some of which were developed in-house, and some of which are licensed from third-parties), that continually monitor, detect, and report network performance, many of which serve as significant value-adds to Equity Members and enable the Exchange to provide a high level of customer service. These tools detect and report performance issues, and thus enable the Exchange to proactively notify an Equity Member (and the SIPs) when the Exchange detects a problem with an Equity Member's connectivity. In fact, the Exchange's affiliate options exchanges, MIAX and MIAX Emerald, often receive inquiries from other industry participants regarding the status of networking issues outside of the Exchange's own network environment that are impacting the industry as a whole via the SIPs, including inquiries from regulators, because the Exchange has a superior, state-of-the-art network that, through its enhanced monitoring and reporting solutions, often detects and identifies industry-wide networking issues ahead of the SIPs. The Exchange also incurs costs associated with the maintenance and improvement of existing tools and the development of new tools.

Also, routine R&D projects to improve the performance of the network's hardware infrastructure result in additional cost. In sum, the costs associated with maintaining and enhancing a state-of-the-art exchange network in the U.S. equity securities industry is a significant expense for the Exchange that is projected to increase year-over-year, and thus the Exchange believes that it is reasonable to offset a portion of those costs through establishing the Proposed Access Fees, which are designed to recover those costs, as described herein. Overall, the Proposed Access Fees are projected to offset only a portion of the Exchange's services associated with the Proposed Access Fees. The Exchange invests in and offers a superior network infrastructure as part of its overall exchange services offering, resulting in significant costs associated with maintaining this network infrastructure, which are directly tied to the amount of the Proposed Access Fees that must be charged to access it, in order to recover those costs.

The Exchange believes it is reasonable to consider the expense and revenue for ports and connectivity alternatives together because ports and connectivity are inextricably linked components of the network infrastructure, and that both are necessary for a market participant to access the Exchange. The various types of connectivity and port alternatives that the Exchange offers provide a wide array of access alternatives necessary for a market participant to conduct its business using the Exchange, which is a business decision to be made by each particular type of market participant. The different types of connectivity and port alternatives allows Equity Members to conduct their different business strategies—some Equity Members put an emphasis on speed, while others emphasize other strategies, such as redundancy and certainty of execution. The Exchange does not require an Equity Member to have a certain framework for accessing the Exchange, but provides various connectivity and port alternatives for each Equity Member's distinct business lines.

The Exchange offers various types of ports with differing prices because each port accomplishes different tasks, are suited to different types of Equity Members, and consume varying capacity amounts of the network. For instance, MEO ports allow for a higher throughput and can handle much higher order rates than FIX ports. Equity Members that are Market Makers or high frequency trading firms utilize these ports (typically coupled with 10Gb ULL connectivity) because they transact in significantly higher amounts of messages being sent to and from the Exchange, versus FIX port users, who are traditionally customers sending only orders to the Exchange (typically coupled with 1Gb connectivity). The different types of ports cater to the different types of Exchange Memberships and different capabilities of the various Exchange Members. Market Makers have quoting and other obligations that traditional customers do not. Market Makers, therefore, need ports and connections that can handle using far more of the network's capacity for message throughput, risk protections, and the amount of information that has to be assessed. Market Makers account for the vast majority of network capacity utilization and volume executed on the Exchange.

The Exchange only has four primary sources of revenue: Transaction fees, access fees (of which the Proposed Access Fees constitute the majority), regulatory fees, and market data fees. Accordingly, the Exchange must cover all of its expenses from these four primary sources of revenue.

The Exchange believes that the Proposed Access Fees are fair and reasonable because they will not result in excessive pricing or supra-competitive profit, when comparing the total annual expense that the Exchange projects to incur in connection with providing the services associated with the Proposed Access Fees versus the total annual revenue of the Exchange projects to collect in connection with providing those services. For 2020,[32] the total annual expense[33] for providing the services associated with the Proposed Access Fees for MIAX PEARL Equities is projected to be approximately $8.4

[32] The Exchange has not yet finalized its 2020 year end results.

[33] The Exchange notes that the total expense figures for each of the external and internal expenses described herein relate only to the Exchange's equities market. No expense relating to the Exchange's options market is included in this filing.

million. The $8.4 million in expense includes expense associated with providing all ports and all connectivity alternatives. The Exchange is unable to separate out its expense by connectivity alternative, as all connectivity alternatives are intricately combined in a single network infrastructure. Nevertheless, the Exchange attributes the majority of connectivity expense to the 10Gb ULL connections because the majority of network capacity is used by 10Gb ULL purchasers. The $8.4 million in projected total annual expense is comprised of the following, all of which are directly related to the services associated with the Proposed Access Fees by MIAX PEARL Equities to its Equity Members and non-Members: (1) Third-party expense, relating to fees paid by MIAX PEARL Equities to third-parties for certain products and services; and (2) internal expense, relating to the internal costs of MIAX PEARL Equities to provide the services associated with the Proposed Access Fees. The $8.4 million in projected total annual expense is directly related to the services associated with the Proposed Access Fees and not any other product or service offered by the Exchange. It does not include general costs of operating matching systems and other trading technology, and no expense amount was allocated twice.

As discussed, the Exchange conducted an extensive review in which the Exchange analyzed every expense item in the Exchange's general expense ledger (this includes over 150 separate and distinct expense items) to determine whether each such expense relates to the services associated with the Proposed Access Fees, and, if such expense did so relate, what portion (or percentage) of such expense actually supports those services, and thus bears a relationship that is, ''in nature and closeness,'' directly related to those services. The sum of all such portions of expenses represents the total cost of the Exchange to provide the services associated with the Proposed Access Fees.

For 2020, total actual and projected third-party expense, relating to fees paid by the Exchange to third-parties for certain products and services for the Exchange to be able to provide the services associated with the Proposed Access Fees, was $1,492,112. This includes, but is not limited to, a portion of the fees paid to: (1) Equinix, for data center services, for the primary, secondary, and disaster recovery locations of the MIAX PEARL Equities trading system infrastructure; (2) Zayo Group Holdings, Inc. (''Zayo'') for connectivity services (fiber and bandwidth connectivity) linking MIAX PEARL Equities' office locations in Princeton, New Jersey and Miami, Florida to all data center locations; (3) Secure Financial Transaction Infrastructure (''SFTI''), which supports connectivity and feeds for the entire equity securities industry; (4) various other services providers (including Thompson Reuters, NYSE, Nasdaq, Internap, and Options IT), which provide content, connectivity services, infrastructure services, and market data services; and (5) various other hardware and software providers (including Dell and Cisco, which support the production environment).

For clarity, only a portion of all fees paid to such third-parties is included in the third-party expense herein (only the portions that actually support the services associated with the Proposed Access Fees), and no expense amount is allocated twice. Accordingly, the Exchange does not allocate its entire information technology and communication costs to the services associated with the Proposed Access Fees.

The Exchange believes it is reasonable to allocate such third-party expense described above towards the total cost to the Exchange to operate and support the network, including providing the services associated with the Proposed Access Fees.[34] In particular, the Exchange believes it is reasonable to allocate the identified portions of the Equinix expense because Equinix operates the data centers (primary, secondary, and disaster recovery) that host the Exchange's network infrastructure, which enables the services associated with the Proposed Access Fees. This includes, among other things, the necessary storage space, which continues to expand and increase in cost, power to operate the network infrastructure, and cooling apparatuses to ensure the Exchange's network infrastructure maintains stability. Without these services from Equinix, the Exchange would not be able to operate and support the network and provide the services associated with the Proposed Access Fees to Equity Members and non-Members and their customers. The Exchange did not allocate all of the Equinix expense toward the cost of providing the services associated with the Proposed Access Fees, only the portions which the Exchange identified as being specifically mapped to operating and supporting the network, approximately 73% of the total Equinix expense (68% allocated towards the cost of providing the provision of network connectivity and 5% allocated towards the cost of providing ports). The Exchange believes these allocations are reasonable because they represent the Exchange's actual cost to provide the services associated with the Proposed Access Fees, and not any other service, as supported by its cost review.

The Exchange believes it is reasonable to allocate the identified portions of the Zayo expense because Zayo provides the internet, fiber and bandwidth connections with respect to the network, linking MIAX PEARL Equities with the Exchange's affiliates, MIAX and MIAX Emerald, as well as the data center and disaster recovery locations. As such, all of the trade data flow through Zayo's infrastructure over the Exchange's network. Without these services from Zayo, the Exchange would not be able to operate and support the network and provide the services associated with the Proposed Access Fees to Equity Members and non-Members and their customers. The Exchange did not allocate all of the Zayo expense toward the cost of providing the services associated with the Proposed Access Fees, only the portions which the Exchange identified as being specifically mapped to providing the services associated with the Proposed Access Fees, approximately 66% of the total Zayo expense (62% allocated towards the cost of providing the provision of network connectivity and 4% allocated towards the cost of providing ports). The Exchange believes these allocations are reasonable because they represent the Exchange's actual cost to provide the services associated with the Proposed Access Fees, and not any other service, as supported by its cost review.

The Exchange believes it is reasonable to allocate the identified portions of the SFTI expense and various other service providers' (including Thompson Reuters, NYSE, Nasdaq, Internap, and Options IT) expense because those entities provide connectivity and feeds for the entire U.S. securities industry as well as the content, connectivity services, infrastructure services, and market data services for critical components of the network. Without these services from SFTI and various other service providers, the Exchange would not be able to operate and support the network and provide the services associated with the Proposed Access Fees to Equity Members and non-Members and their customers. The Exchange did not allocate all of the SFTI

[34] The Exchange notes the that the below allocation percentages are the percentage of the total cost incurred by MIAX PEARL Equities and not costs related to operating the Exchange's options trading platform. *See also* id.

and other service providers' expense toward the cost of providing the services associated with the Proposed Access Fees, only the portions which the Exchange identified as being specifically mapped to providing the services associated with the Proposed Access Fees, approximately 94% of the total SFTI and other service providers' expense (89% allocated towards the cost of providing the provision of network connectivity and 5% allocated towards the cost of providing ports). The Exchange believes these allocations are reasonable because they represent the Exchange's actual cost to provide the services associated with the Proposed Access Fees, and not any other service, as supported by its cost review.

The Exchange believes it is reasonable to allocate the identified portion of the other hardware and software provider expense because this includes costs for dedicated hardware licenses for switches and servers, as well as dedicated software licenses for security monitoring and reporting across the network. Without this hardware and software, the Exchange would not be able to operate and support the network and provide the services associated with the Proposed Access Fees to Equity Members and non-Members and their customers. The Exchange did not allocate all of the hardware and software provider expense toward the cost of providing the services associated with the Proposed Access Fees, only the portions which the Exchange identified as being specifically mapped to providing the services associated with the Proposed Access Fees, approximately 57% of the total hardware and software provider expense (54% allocated towards the cost of providing the provision of network connectivity and 3% allocated towards the cost of providing ports). The Exchange believes these allocations are reasonable because they represent the Exchange's actual cost to provide the services associated with the Proposed Access Fees, and not any other service, as supported by its cost review.

For 2020, total projected internal expense, relating to the internal costs of the Exchange to provide the services associated with the Proposed Access Fees, is projected to be $6,905,858. This includes, but is not limited to, costs associated with: (1) Employee compensation and benefits for full-time employees that support the services associated with the Proposed Access Fees, including staff in network operations, trading operations, development, system operations, business, etc., as well as staff in general corporate departments (such as legal, regulatory, and finance) that support those employees and functions; (2) depreciation and amortization of hardware and software used to provide the services associated with the Proposed Access Fees, including equipment, servers, cabling, purchased software and internally developed software used in the production environment to support those services for trading; and (3) occupancy costs for leased office space for staff that support the services associated with the Proposed Access Fees. The breakdown of these costs is more fully-described below.

For clarity, only a portion of all such internal expenses are included in the internal expense herein (only the portions that support the services associated with the Proposed Access Fees), and no expense amount is allocated twice. Accordingly, the Exchange does not allocate its entire costs contained in those line items to the services associated with the Proposed Access Fees.

The Exchange believes it is reasonable to allocate such internal expense described above towards the total cost to the Exchange to operate and support the network, including providing the services associated with the Proposed Access Fees. In particular, MIAX PEARL Equities' employee compensation and benefits expense relating to providing the services associated with the Proposed Access Fees is projected to be $4,317,667, which is only a portion of the $13,492,708 total projected expense for employee compensation and benefits. The Exchange believes it is reasonable to allocate the identified portions of each expense because they include the time spent by employees of several departments, including Technology, Back Office, Systems Operations, Networking, Business Strategy Development (who create the business requirement documents that the Technology staff use to develop network features and enhancements), Trade Operations, Finance (who provide billing and accounting services), and Legal (who provide legal services, such as rule filings and various license agreements and other contracts). As part of the extensive cost review conducted by the Exchange, the Exchange reviewed the amount of time spent by each employee on matters relating to the operation and support of the network, including the services associated with the Proposed Access Fees. Without these employees, the Exchange would not be able to operate and support the network and provide the services associated with the Proposed Access Fees to Equity Members and non-Members and their customers. The Exchange did not allocate all of the employee compensation and benefits expense toward the cost of providing the services associated with the Proposed Access Fees, only that portion which the Exchange identified as being specifically mapped to providing the services associated with Proposed Access Fees, approximately 32% of the total employee compensation and benefits expense (29% allocated towards the cost of providing the provision of network connectivity and 3% allocated towards the cost of providing ports). The Exchange believes these allocations are reasonable because they represent the Exchange's actual cost to provide the services associated with the Proposed Access Fees, and not any other service, as supported by its cost review.

MIAX PEARL Equities' depreciation and amortization expense relating to providing the services associated with the Proposed Access Fees is projected to be $2,131,411, which is only a portion of the $2,664,264 total projected expense for depreciation and amortization. The Exchange believes it is reasonable to allocate the identified portions of such projected expense because such expense includes the actual cost of the computer equipment, such as dedicated servers, computers, laptops, monitors, information security appliances and storage, and network switching infrastructure equipment, including switches and taps that were purchased to operate and support the network. Without this equipment, the Exchange would not be able to operate the network and provide the services associated with the Proposed Access Fees to Equity Members and non-Members and their customers. The Exchange did not allocate all of the projected depreciation and amortization expense toward the cost of providing the services associated with the Proposed Access Fees, only the portions which the Exchange identified as being specifically mapped to providing the services associated with the Proposed Access Fees, approximately 80% of the total depreciation and amortization expense (76% allocated towards the cost of providing the provision of network connectivity and 4% allocated towards the cost of providing ports). The services associated with the Proposed Access Fees would not be possible without relying on such equipment. The Exchange believes these allocations are reasonable because they represent the Exchange's actual cost to provide the services associated with the Proposed

Access Fees, and not any other service, as supported by its cost review.

MIAX PEARL Equities' occupancy expense relating to providing the services associated with the Proposed Access Fees is projected to be $456,780, which is only a portion of the $878,423 total projected expense for occupancy. The Exchange believes it is reasonable to allocate the identified portions of such projected expense because such expense represents the portion of the Exchange's cost to rent and maintain a physical location for the Exchange's staff who operate and support the network, including providing the services associated with the Proposed Access Fees. These amounts consist primarily of rent for the Exchange's Princeton, New Jersey office, as well as various related costs, such as physical security, property management fees, property taxes, and utilities. The Exchange operates its Network Operations Center (''NOC'') and Security Operations Center (''SOC'') from its Princeton, New Jersey office location. A centralized office space is required to house the staff that operates and supports the network. The Exchange currently has approximately 150 employees (and continues to increase its headcount to support the network as the Exchange, and its affiliates, grow the network). Approximately two-thirds of the Exchange's staff are in the Technology department, and the majority of those staff members have some role in the operation and performance of the network. Without this office space, the Exchange would not be able to operate and support the network and provide the services associated with the Proposed Access Fees to Equity Members and non-Members and their customers. Accordingly, the Exchange believes it is reasonable to allocate the identified portions of its occupancy expense because such amounts represent the Exchange's actual cost to house the equipment and personnel who operate and support the Exchange's network infrastructure for the services associated with the Proposed Access Fees. The Exchange did not allocate all of the projected occupancy expense toward the cost of providing the services associated with the Proposed Access Fees, only the portions which the Exchange identified as being specifically mapped to providing the services associated with the Proposed Access, approximately 52% of the total occupancy expense (48% allocated towards the cost of providing the provision of network connectivity and 4% allocated towards the cost of providing ports). The Exchange believes these allocations are reasonable because they represent the Exchange's actual cost to provide the services associated with the Proposed Access Fees, and not any other service, as supported by its cost review.

The Exchange notes that a material portion of its total overall expense is allocated to the provision of services associated with the Proposed Access Fees. The Exchange believes this is reasonable and in line, as the Exchange operates a technology-based business that differentiates itself from its competitors based on its trading systems that rely on its high performance network, resulting in significant technology expense. Over two-thirds of Exchange staff are technology-related employees. The majority of the Exchange's expense is technology-based. As described above, the Exchange has only four primary sources of fees in to recover its costs, thus the Exchange believes it is reasonable to allocate a material portion of its total overall expense towards the Proposed Access Fees.

The Exchange's monthly revenue for the Proposed Access Fees is based on the following purchases by Equity Members and non-Members during a recent billing cycle: (i) 12 1Gb ULL connections; (ii) 81 10Gb ULL connections; and (iii) 103 MEO Ports. The monthly revenue from Port fees is subject to change from month to month depending on the number of Ports purchased. Accordingly, the Exchange's total monthly Port revenue was $22,800 and total 1 Gb and 10Gb ULL connectivity revenue was $295,500. The Exchange notes that the port revenue projections are subject to change depending on market participant needs and the tiers achieved. As such, the projection of $295,500 per month is not a static number and may fluctuate from month to month.

Accordingly, based on the facts and circumstances presented, the Exchange believes that its provision of the services associated with the Proposed Access Fees will not result in excessive pricing or supra-competitive profit. To illustrate, on a going-forward, fully-annualized basis, the Exchange projects that its annualized revenue for providing the services associated with the Proposed Access Fees would be approximately $3,600,000 per annum, based on a recent billing cycle. The Exchange projects that its annualized expense for providing the services associated with the Proposed Access Fees would be approximately $8,400,000 per annum. Accordingly, on a fully-annualized basis, the Exchange believes its total projected revenue for the providing the services associated with the Proposed Access Fees will not result in excessive pricing or supra-competitive profit, as the Exchange will incur a loss of $4,800,000 on the Proposed Access Fees ($3.6 million − $8.4 million = ($4.8 million per annum)).

For the avoidance of doubt, none of the expenses included herein relating to the services associated with the Proposed Access Fees relate to any other services offered by MIAX PEARL Equities. Stated differently, no expense amount of the Exchange is allocated twice. The Exchange notes that, with respect to MIAX PEARL Equities expenses included herein, those expenses only cover the MIAX PEARL Equities market; expenses associated with the Exchange's options trading platform, its affiliate exchanges, MIAX and MIAX Emerald, are accounted for separately and are not included within the scope of this filing. Stated differently, no expense amount of the Exchange is also allocated to its options trading platform, MIAX or MIAX Emerald.

The Exchange believes it is reasonable, equitable and not unfairly discriminatory to allocate the respective percentages of each expense category described above towards the total cost to the Exchange of operating and supporting the network, including providing the services associated with the Proposed Access Fees, because the Exchange performed a line-by-line item analysis of all the expenses of the Exchange, and has determined the expenses that directly relate to operation and support of the network, including the services associated with the Proposed Access Fees. Further, the Exchange notes that, without the specific third-party and internal items listed above, the Exchange would not be able to operate and support the network, including the services associated with the Proposed Access Fees to Equity Members and non-Members and their customers. Each of these expense items, including physical hardware, software, employee compensation and benefits, occupancy costs, and the depreciation and amortization of equipment, have been identified through a line-by-line item analysis to be integral to the operation and support of the network. The Proposed Access Fees are intended to recover the Exchange's costs (less than all) of operating and supporting the network, including providing the services associated with the Proposed Access Fees.

Accordingly, the Proposed Access Fees are fair and reasonable because they do not result in excessive pricing or supra-competitive profit, when comparing the actual network operation and support costs to the Exchange versus the projected revenue for the services associated with the Proposed Access Fees.

The Exchange notes that other equities exchanges have similar connectivity alternatives for their participants, including similar low-latency connectivity. For example, the Nasdaq Stock Market LLC (''Nasdaq''), Nasdaq PHLX LLC (''Phlx''), and Nasdaq ISE, LLC (''ISE'') all offer a 1Gb, 10Gb and 10Gb low latency ethernet connectivity alternatives to each of their participants.[35] NYSE Arca, Inc. (''NYSE Arca''), NYSE American LLC (''NYSE American''), NYSE Chicago, Inc. (''NYSE Chicago'') and NYSE National, Inc. (''NYSE National'') all offer a 1Gb and 10Gb low latency ethernet connectivity alternatives to each of their participants.[36] The Exchange notes that all the other equities exchanges described above charge higher rates for such similar connectivity to primary and secondary facilities. While the Exchange's proposed connectivity fees are substantially lower than the fees charged by Nasdaq, Phlx, ISE, NYSE America, NYSE Arca, NYSE Chicago and NYSE National, the Exchange believes that it can offer significant value to Equity Members over other exchanges in terms of network monitoring and reporting, which the Exchange believes is a competitive advantage, and differentiates its access services versus access services at other exchanges. Additionally, the Exchange's proposed connectivity fees to its disaster recovery facility are within the range of the fees charged by other exchanges for similar connectivity alternatives.[37] The Exchange also notes that other equities exchanges have similar port alternatives for their participants, with similar or substantially higher fees.[38]

Historical Data

The Exchange believes the proposed fee for Historical Data is a reasonable allocation of its costs and expenses among its Equity Members and other persons using its facilities since it is recovering the costs associated with distributing such data should an Equity Member request Historical Data. Access to the Exchange is provided on fair and non-discriminatory terms. The Exchange believes the proposed fee for Historical Data is equitable and not unfairly discriminatory because the fee level results in a reasonable and equitable allocation of fees amongst users for similar services. Moreover, the decision as to whether or not to purchase Historical Data is entirely optional to all users. Potential purchasers are not required to purchase the Historical Data, and the Exchange is not required to make the Historical Data available. Purchasers may request the data at any time or may decline to purchase such data. The allocation of fees among users is fair and reasonable because, if the market deems the proposed fees to be unfair or inequitable, firms can diminish or discontinue their use of this data.

The Exchange believes that the proposed fee for Historical Data is consistent with Section 6(b)(4) of the Act because the Proposed Access Fees will permit recovery of the Exchange's costs and will not result in excessive or supra-competitive profit. The proposed fee for Historical Data will allow the Exchange to recover a portion (less than all) of the costs incurred by the Exchange associated with providing and maintaining the necessary hardware and other infrastructure as well as network monitoring and support services in order to provide Historical Data. The Exchange believes that it is reasonable and appropriate to establish a fee for Historical Data at a level that will partially offset the costs to the Exchange associated with maintaining and providing Historical Data. For example, Historical Market Data is uploaded onto an Exchange-provided device. Each device shall have a maximum storage capacity of 8 terabytes. The Exchange incurs costs in providing the device, storing the historical data, and utilizing resources to upload the data onto the device. Specifically, the device provided by the Exchange costs approximately $200 to $300. Moreover, the Exchange tracks the number of hours spent by Exchange personnel procuring Historical Market Data. Based on the average number of person hours spent by the Exchange on procuring Historical Market Data, and based on the Exchange's average cost per full-time employee (''FTE'') of approximately $250,000 (inclusive of all compensation and employee benefits) per year, the Exchange represents that its cost to provide this service is reasonably related to (and often exceeds) the amount of the Historical Market Data fee the Exchange proposes to charge for such service. Therefore, the FTE cost to the Exchange on average $130 an hour and it takes approximately four FTE hours to process a request for Historical Market Data. Accordingly, the proposed Historical Market Data fee would enable the Exchange to recover a material portion of its costs to provide Historical Market Data. The Exchange believes this is a conservative cost allocation because the Exchange is not allocating any additional costs beyond the employee compensation for employees directly involved in this process and the cost of the device. These unallocated addition costs include technology costs of employees, office space costs of employees, costs associated with supporting departments' time for things such as internal meetings, project management coordination among the individuals who indirectly support the provision of Historical Market Data, and various other indirectly-related costs.

The Exchange also notes that its proposed fee is identical to that it charges today for options historical data and less than that charged by other exchanges for their own historical data. For example, all four of the Cboe equity exchanges charge a fee of $500 for one month of historical data and $2,500 for one terabyte drive of data.[39]

Pass-Through of External Connectivity Fees

The Exchange believes that the proposed pass-through of external connectivity fees constitutes an equitable allocation of fees, and is not unfairly discriminatory, because it allows the Exchange to recover costs associated with offering access through the network connections, responding to customer requests, configuring MIAX PEARL Equities' systems, programming

[35] *See* Nasdaq, Phlx and ISE General Rules, General 8, Section 1(b). Nasdaq, Phlx and ISE each charge a monthly fee of $2,500 for each 1Gb connection, $10,000 for each 10Gb connection and $15,000 for each 10Gb Ultra connection, which is the equivalent of the Exchange's 10Gb ULL connection.

[36] *See* NYSE American Fee Schedule, NYSE Arca Fee Schedule, NYSE Chicago Fee Schedule and NYSE National Fee Schedule, Co-Location Fees. NYSE American, NYSE Arca, NYSE Chicago and NYSE National each charge a monthly fee of $5,000 for each 1Gb circuit and $22,000 for each 10Gb LX circuit, which is the equivalent of the Exchange's 10Gb ULL connection.

[37] *See* Cboe EDGA Exchange, Inc. (''EDGA'') and Cboe EDGX Exchange, Inc. (''EDGX'') Fee Schedules, Physical Connectivity Fees, (charging a monthly fee of $2,000 for a 1Gb disaster recovery network access port and a monthly fee of $6,000 for a 10Gb disaster recovery network access port).

[38] *See* Nasdaq Fee Schedule, Equity Rules, Equity 7, Pricing Schedule, Ports (charging $575 per FIX port per month); Phlx Fee Schedule, Equity Rules, Equity 7, Pricing Schedule, Section 3 Nasdaq PSX Fees (charging $400 per FIX port per month); EDGX Fee Schedule, Logical Port Fees (charging $550 per Logical Port per month and $650 per Purge port per month).

[39] *See, e.g.,* Cboe BZX Exchange, Inc. fee schedule *available at https://markets.cboe.com/us/equities/membership/fee_schedule/bzx/.*

API user specifications and administering the various services. Access to the MIAX PEARL Equities market is offered on fair and non-discriminatory terms.

The Exchange believes it is reasonable, equitable and not unfairly discriminatory to pass-through External Connectivity fees to Equity Members and non-Members that establish connections with MIAX PEARL Equities through a third-party. MIAX PEARL Equities will only pass-through the actual costs it is charged by third-party external vendors. The Exchange believes it is reasonable and equitable to recover costs charged it on behalf of an Equity Member or non-Member that establishes connections with MIAX PEARL Equities through a third party. Other exchanges, including EDGX and EDGA, charge a fee for similar services to their members and non-members.

Technical Support Request Fee

The Exchange believes that the proposed Technical Support Request fee is fair, equitable and not unreasonably discriminatory, because it is assessed equally to all Equity Members and non-Members who request technical support. Furthermore, Equity Members and non-Members are not required to use the service but instead it is offered as a convenience to all Equity Members and non-Members. The proposed fee is reasonably designed because it will permit both Equity Members and non-Members to request the use of the Exchange's on-site data center personnel as technical support and as a convenience in order to test or otherwise assess their connectivity to the Exchange and the fee is within the range of the fee charged by other exchanges for similar services and is identical to the same fee assessed by the Exchange today for options as well as the Exchange's affiliates, MIAX and MIAX Emerald.

As discussed above, the Exchange's average cost per FTE of approximately $250,000 (inclusive of all compensation and employee benefits) per year, the Exchange represents that its cost to provide this service is reasonably related to (and often exceeds) the amount of the Technical Support fee the Exchange proposes to charge for such service. Therefore, the cost to the Exchange to provide an employee to provide technical support is approximately $130 per FTE. Also, more than one FTE may be involved depending on the nature of the request. Accordingly, the proposed per hour fee for technical support would enable the Exchange to recover a material portion of such cost. The Exchange believes this is a conservative cost allocation because the Exchange is not allocating any additional costs beyond the employee compensation costs for employees directly involved in this process. These unallocated addition costs include costs associated with potential management review and sign off, technology costs of employees, office space costs of employees, costs associated with supporting departments' time for things such as internal meetings, project management coordination among the individuals who indirectly support the technology support process, and various other indirectly-related costs.

* * * * *

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must establish fees that are competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed fees in the MIAX PEARL Equities Fee Schedule appropriately reflect this competitive environment.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the Proposed Fees do not place certain market participants at a relative disadvantage to other market participants because the pricing of the Proposed Fees is associated with relative usage of the various market participants and does not impose a barrier to entry to smaller participants. The Exchange believes the Proposed Fees do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the allocation of the Proposed Fees reflects the network and access resources consumed by various market participants.

The Exchange believes the Proposed Fees do not place an undue burden on competition on other SROs that is not necessary or appropriate. Additionally, other equity exchanges have similar connectivity and port alternatives for their participants, including similar low-latency connectivity, but with much higher rates to connect.[40] The Exchange is also unaware of any assertion that the Proposed Fees would somehow unduly impair its competition with other equities exchanges. To the contrary, if the fees charged are deemed too high by market participants, they can simply not connect to the Exchange or not use the services associated with the Proposed Access Fees.

While the Exchange recognizes the distinction between connecting to an exchange and trading at the exchange, the Exchange notes that it plans to operate in a highly competitive market in which market participants can readily connect and trade with venues they desire. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. The Exchange believes that the Proposed Fees reflect this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[41] and Rule 19b–4(f)(2)[42] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–PEARL–2021–02 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

[40] *See supra* notes 35 through 38.

[41] 15 U.S.C. 78s(b)(3)(A)(ii).

[42] 17 CFR 240.19b–4(f)(2).

All submissions should refer to File Number SR–PEARL–2021–02. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PEARL–2021–02 and should be submitted on or before March 4, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[43]

J. Matthew DeLesDernier,

Assistant Secretary.

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[43] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91067; File No. SR–CBOE–2020–116]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, To Add Options on the Mini-Russell 2000 Index to Its P.M. Pilot Program

February 5, 2021.

I. Introduction

On December 18, 2020, Cboe Exchange, Inc. (''Cboe'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to add Mini-Russell 2000 Index (''Mini-RUT'' or ''MRUT'') options to the Exchange's pilot program for P.M. settled options with third-Friday-of-the-month expiration dates (''Expiration Friday''). The proposed rule change was published for comment in the **Federal Register** on December 29, 2020.[3] On January 28, 2021, the Exchange filed Amendment No. 1 to the proposed rule change.[4] The Commission received no comment letters on the proposed rule change. The Commission is approving the proposed rule change.

II. Description of the Proposal, as Modified by Amendment No. 1

The Exchange is proposing to amend its rules to permit it to list and trade, on a pilot basis, cash-settled MRUT options with Expiration Friday expiration dates, for which the exercise settlement value will be based on the index value derived from the closing prices of the component securities (''P.M.-settled''). MRUT options are options on the Mini-RUT Index, the value of which is 1/10th the value of the Russell 2000 (''RUT'') Index.

The Exchange proposes to add P.M.-settled MRUT options to the Exchange's pilot program under Interpretation and Policy .13 to Rule 4.13 that allows the listing of P.M. settled options that expire on Expiration Friday (''P.M. Pilot Program''). The Exchange notes that the existing P.M. Pilot Program, which is set to end on May 3, 2021, includes options on the Mini-SPX Index (''XSP''), the value of which is 1/10th the value of the S&P 500 Index.[5] Cboe has proposed to add P.M.-settled MRUT options to that pilot so that the end of the pilot period for P.M.-settled MRUT options would also be May 3, 2021.

The Exchange notes that trading in P.M.-settled MRUT options would operate in the same manner as provided in the proposal to list and trade Mini-RUT options on the Exchange. That is, P.M.-settled MRUT options would have the same European-style exercise, same number of permissible expirations, same exercise interval prices and limitations, same position and exercise limits, and will trade in the same minimum price increment.[6]

The Exchange proposes to abide by the same reporting requirements for the trading of P.M.-settled MRUT options that it does for the trading of P.M.-settled XSP options.[7] The Exchange proposes to include data regarding P.M.-settled MRUT options as it does for P.M.-settled XSP options in the pilot program report that it submits to the Commission at least two months prior to the expiration date of the P.M. Pilot Program (the ''annual report'').[8] Specifically, the Exchange submits annual reports to the Commission that contain an analysis of volume, open interest, and trading patterns in connection with products in the P.M. Pilot Program. The analysis examines trading in products in the P.M. Pilot Program, as well as trading in the securities that comprise the underlying index. Additionally, for series that exceed certain minimum open interest parameters, the annual reports provide analysis of index price volatility and share trading activity.

Going forward, the Exchange would include the same analysis of P.M.-settled MRUT options, as well as trading in securities that comprise the RUT Index (as MRUT options are based on 1/10th the value of the RUT Index), in the annual reports. Also, like it currently does for P.M.-settled XSP options, the Exchange would submit periodic interim reports for P.M.-settled MRUT options that contain some, but not all, of the information contained in the annual reports.

The pilot reports will both contain the following volume and open interest data:

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 90749 (December 21, 2020), 85 FR 85752 (''Notice'').

[4] In Amendment No. 1, the Exchange (i) represented that its existing surveillance and reporting safeguards in place are adequate to deter and detect possible manipulative behavior which might arise from listing and trading P.M.-settled MRUT options and (ii) stated that the trading of P.M.-settled MRUT options will be subject to Exchange Rules governing customer accounts, position and exercise limits, margin requirements and trading halt procedures. Because Amendment No. 1 to the proposed rule change does not materially alter the substance of the proposed rule change and makes conforming and technical changes, Amendment No. 1 is not subject to notice and comment. Amendment No. 1 is available at: *https://www.sec.gov/comments/sr-cboe-2020-116/srcboe2020116-8302266-228358.pdf.*

[5] *See* Securities Exchange Act Release No. 90263 (October 23, 2020), 85 FR 68611 (October 29, 2020) (CBOE–2020–100). *See also* Securities Exchange Act Release No. 70087 (July 31, 2013), 78 FR 47809 (August 6, 2013) (SR–CBOE–2013–055) (''P.M.-settled XSP Approval Order'').

[6] See Notice, supra note 3, fn. 3 at 85753. The Exchange represents that its existing surveillance and reporting safeguards in place are adequate to deter and detect possible manipulative behavior which might arise from listing and trading P.M.-settled MRUT options. *See* Amendment No. 1, supra note 4.

[7] *See* P.M.-settled XSP Approval Order supra note 4.

[8] *See* P.M.-settled XSP Approval Order, supra note 4.

(1) Monthly volume aggregated for all trades;

(2) monthly volume aggregated by expiration date;

(3) monthly volume for each individual series;

(4) month-end open interest aggregated for all series;

(5) month-end open interest for all series aggregated by expiration date; and

(6) month-end open interest for each individual series.

The annual reports will also contain the information noted in Items (1) through (6) above for Expiration Friday, A.M.-settled, RUT index options traded on Cboe, as well as the following analysis of trading patterns in P.M.-settled MRUT options series in the Pilot Program:

(1) A time series analysis of open interest; and

(2) an analysis of the distribution of trade sizes.

Finally, for series that exceed certain minimum parameters, the annual reports will contain the following analysis related to index price changes and underlying share trading volume at the close on Expiration Fridays:

(1) A comparison of index price changes at the close of trading on a given Expiration Friday with comparable price changes from a control sample. The data includes a calculation of percentage price changes for various time intervals and compare that information to the respective control sample. Raw percentage price change data as well as percentage price change data normalized for prevailing market volatility, as measured by the Cboe Volatility Index (VIX), is provided; and

(2) a calculation of share volume for a sample set of the component securities representing an upper limit on share trading that could be attributable to expiring in-the-money series. The data includes a comparison of the calculated share volume for securities in the sample set to the average daily trading volumes of those securities over a sample period.

The minimum open interest parameters, control sample, time intervals, method for randomly selecting the component securities, and sample periods are determined by the Exchange and the Commission. Additionally, the Exchange would provide the Commission with any additional data or analyses the Commission requests because it deems such data or analyses necessary to determine whether the P.M. Pilot Program, including P.M.-settled MRUT options as proposed, is consistent with the Exchange Act. As it does for current P.M. Pilot products, the Exchange would make public any data and analyses in connection with P.M.-settled MRUT options it submits to the Commission under the Pilot Program.[9]

Further, the Exchange proposes to amend Rule 5.1, which governs trading days and hours, in conjunction with the proposed addition of MRUT options to the P.M. Pilot Program. Cboe Rule 5.1(b)(2)(C) currently provides that on their last trading day, Regular Trading Hours for P.M.-settled XSP options are between 9:30 a.m. and 4:00 p.m. Eastern Time (as opposed to the 9:30 a.m. to 4:15 p.m. Regular Trading Hours for options with those expirations that are non-expiring). The proposed rule change amends Rule 5.1(b)(2)(C) to apply these time frames to the trading of P.M.-settled MRUT options on their last trading day.

With regard to the impact of this proposal on system capacity, the Exchange has analyzed its capacity and represents that it and the Options Price Reporting Authority have the necessary systems capacity to handle any potential additional traffic associated with trading of P.M.-settled MRUT options.[10] The Exchange believes that its Trading Permit Holders will not experience a capacity issue as a result of this proposal. Cboe represents that it will monitor the trading volume associated with any possible additional options series listed as a result of this proposal and the effect (if any) of these additional series on market fragmentation and on the capacity of the Exchange's automated systems.[11]

III. Discussion and Commission Findings

After careful consideration of the proposal, the Commission finds that the proposed rule is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,[12] and, in particular, the requirements of Section 6 of the Act.[13] Specifically, the Commission finds that the proposed rule change to allow the Exchange to add P.M.-settled MRUT options to the P.M. Pilot Program is consistent with Section 6(b)(5) of the Act,[14] which requires that an exchange have rules designed to remove impediments to and perfect the mechanism of a free and open market and to protect investors and the public interest.

As the Commission noted in its orders approving the listing and trading of P.M.-settled options on the S&P 500 Index (''SPXPM''), the Commission has had concerns about the potential adverse effects and impact of P.M. settlement upon market volatility and the operation of fair and orderly markets on the underlying cash markets at or near the close of trading, including for cash-settled derivatives contracts based on a broad-based index.[15] The potential impact today remains unclear, given the significant changes in the closing procedures of the primary markets in recent decades. The Commission is mindful of the historical experience with the impact of P.M. settlement of cash-settled index derivatives on the underlying cash markets, but recognizes that these risks may be mitigated today by the enhanced closing procedures that are now in use at the primary equity markets.

For the reasons described below, the Commission believes that the Exchange's proposal to add P.M.-settled MRUT options to the P.M. Pilot Program is designed to mitigate concerns regarding P.M. settlement and will provide additional trading opportunities for investors while providing the Commission with data to monitor the effects of MRUT options and the impact of P.M. settlement on the markets. To assist the Commission in assessing any potential impact of a P.M.-settled Mini-RUT index option on the options market as well as the underlying cash equities markets, Cboe will be required to submit data to the Commission in connection with the P.M. Pilot Program. The Commission believes that Cboe's P.M. Pilot Program, together with the data and analysis that the Exchange will provide to the Commission, will allow Cboe and the Commission to monitor for and assess any potential for adverse market effects of allowing P.M. settlement for Mini-RUT index options, including on the underlying component stocks. In particular, the data collected from Cboe's P.M. Pilot Program will help inform the Commission's consideration of whether the P.M. Pilot

[9] P.M. Pilot products data and analyses are made available at *https://www.cboe.com/aboutcboe/legal-regulatory/national-market-system-plans/pm-settlement-spxpm-data.*

[10] See Notice supra, note 3 at 85754.

[11] See Notice supra, note 3 at 85754.

[12] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78f.

[14] 15 U.S.C. 78(f)(b)(5).

[15] *See* Securities Exchange Act Release No. 68888 (February 8, 2013), 78 FR 10668, 10669 (February 14, 2013) (order approving the listing and trading of SPXPM on CBOE). *See also* Securities Exchange Act Release Nos. 64599 (June 3, 2011), 76 FR 33798, 33801–02 (June 9, 2011) (order instituting proceedings to determine whether to approve or disapprove a proposed rule change to allow the listing and trading of SPXPM options); and 65256 (September 2, 2011), 76 FR 55969, 55970–76 (September 9, 2011) (order approving proposed rule change to establish a pilot program to list and trade SPXPM options).

Program should be modified, discontinued, extended, or permanently approved. Furthermore, the Exchange's ongoing analysis of the P.M. Pilot Program should help it monitor any potential risks from large P.M.-settled positions and take appropriate action on a timely basis if warranted.

The Exchange represents that it has adequate surveillance procedures to monitor trading in these options thereby helping to ensure the maintenance of a fair and orderly market [16] and has represented that it has sufficient capacity to handle additional traffic associated with this new listing.[17]

For the reasons discussed above, the Commission finds that Cboe's proposal is consistent with the Act, including Section 6(b)(5) thereof, in that it is designed to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. In light of the enhanced closing procedures at the underlying markets and the potential benefits to investors discussed by the Exchange in the Notice,[18] the Commission finds that it is appropriate and consistent with the Act to approve Cboe's proposal on a pilot basis. The collection of data during the P.M. Pilot Program and Cboe's active monitoring of any effects of P.M.-settled MRUT options on the markets will help Cboe and the Commission assess any impact of P.M. settlement in today's market.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule change (SR–CBOE–2020–116), as modified by Amendment No. 1, be, and hereby is, approved, subject to a pilot period set to expire on May 3, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

J. Matthew DeLesDernier,

Assistant Secretary.

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[16] *See* Amendment No. 1, supra note 4.

[17] *See* Notice, supra note 3 at 85754.

[18] *See* Notice, supra note 3 at 85755.

[19] 15 U.S.C. 78s(b)(2).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91070; File No. SR–FINRA–2020–037]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change To Amend the By-Laws of FINRA Regulation, Inc. To Align the Grounds for Member Removal From the NAC With an Existing Provision in the FINRA By-Laws

February 5, 2021.

I. Introduction

On October 22, 2020, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'' or ''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend a provision in the By-Laws of FINRA Regulation, Inc. (''FINRA Regulation''), FINRA's regulatory subsidiary. The proposed rule change would further align the grounds in the FINRA Regulation By-Laws for removal of a member from the National Adjudicatory Council (''NAC'') with an existing provision in the FINRA By-Laws for removal of a governor from the FINRA Board of Governors (''FINRA Board'').[3]

The proposed rule change was published for comment in the **Federal Register** on November 9, 2020.[4] The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

As described in the Notice, FINRA Regulation is the regulatory subsidiary of FINRA and operates according to the Plan of Allocation and Delegation of Functions by FINRA to Subsidiaries (the ''Plan'').[5] The FINRA Regulation By-Laws authorize the NAC to function on behalf of the FINRA Board in several capacities.[6] For example, FINRA explains that the NAC presides over disciplinary matters that have been appealed to or called for review by the NAC and also acts on applications in statutory disqualification and membership proceedings.[7] In most matters that the NAC considers, FINRA states that the NAC prepares proposed written decisions that become final FINRA action if the FINRA Board does not call for review of those decisions.[8]

FINRA also states that it periodically reviews its and FINRA Regulation's By-Laws to ensure adherence to effective governance practices.[9] Based on that review, FINRA explains that currently, Article V, Section 5.8 of the FINRA Regulation By-Laws provides that, ''[a]ny or all of the members of the [NAC] may be removed from office at any time for refusal, failure, neglect, or inability to discharge the duties of such office by majority vote of the FINRA Board.'' [10] By comparison, however, the FINRA By-Laws provide that a governor may be removed for those grounds as well as ''for any cause affecting the best interests of [FINRA] the sufficiency of which the Board shall be the sole judge.'' [11] As a result, FINRA proposes to amend the FINRA Regulation By-Laws to add this ground for removal of a NAC member to further align the bases for removal of a NAC member with the bases for removal of a FINRA Board governor.[12] Specifically, the proposed rule change would amend the FINRA Regulation By-Laws to permit a NAC member to be removed by a majority vote of the FINRA Board ''for any cause affecting the best interests of the [NAC] the sufficiency of which the FINRA Board shall be the sole judge.'' [13]

FINRA further explains that the removal of a NAC member would continue to require a majority vote of the FINRA Board, while a vote to remove a FINRA Board governor requires a two-thirds vote.[14] In

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See infra* Section II.

[4] *See* Exchange Act Release No. 90324 (November 3, 2020), 85 FR 71387 (November 9, 2020) (File No. SR–FINRA–2020–037) (the ''Notice'').

[5] *See id.* at 71388, n.4 (citing the Plan, Sec. II., FINRA Regulation, Inc., *https://www.finra.org/rules-guidance/rulebooks/corporate-organization/ii-finra-regulation-inc*).

[6] *See id.* (citing Article V, Sec. 5.1 of the FINRA Regulation By-Laws).

[7] *See id.* FINRA states that the NAC also exercises exemption authority and acts in other proceedings as set forth in the FINRA Rule 9000 Series (Code of Procedure). The FINRA Board may also delegate other powers and duties to the NAC as the FINRA Board deems appropriate and in a manner not inconsistent with the Plan. *See id.*

[8] *See id.*

[9] *See id.*

[10] *See id.* As FINRA explains, the FINRA Regulation By-Laws were amended in 2008 to, among other things, designate the FINRA Board as the body authorized to oversee the NAC and empowered to remove NAC members for the grounds mentioned above. *See id.* (citing Exchange Act Release No. 58909 (November 6, 2008), 73 FR 68467 (November 18, 2008) (Order Approving File No. SR–FINRA–2008–046) (the ''FINRA Regulation By-Laws Approval Order'').

[11] *See id. Compare* Article VII, Section 1(b) of the FINRA By-Laws, *with* Article V, Sec. 5.8 of the FINRA Regulation By-Laws.

[12] *See* Notice, 85 FR at 71388.

[13] *See id.*

[14] *See id.* As FINRA notes, both FINRA and FINRA Regulation are corporations organized under

discussing this difference between voting thresholds for removal, FINRA states that the higher voting standard for the removal of a governor reflects the historical standard that existed at the National Association of Securities Dealers (''NASD'') prior to the formation of FINRA, and that it provides an additional safeguard at the FINRA Board level ''to ensure a diverse, majority non-industry composition, and fair representation of the industry in governance matters.'' [15]

FINRA also states that, given the NAC's adjudicatory role, the best interests of the NAC are more targeted than the best interests of FINRA.[16] More specifically, FINRA explains that the best interests of the NAC are reflected in conduct and attributes that ensure that the NAC remains an unbiased and competent adjudicatory body that is free of conflicts of interest, that its members conduct themselves with integrity, and that its decisions are rendered fairly and consistently with the law and rules that govern FINRA members and their associated persons.[17] FINRA also states that the FINRA Board's decision to remove a NAC member is a facts and circumstances determination.[18] In considering whether to remove a NAC member for cause affecting the best interests of the NAC, FINRA explains that its Board may consider, among other things, the NAC member's adherence to general standards concerning actual and apparent adjudicator conflicts of interest and bias,[19] and to the NAC's Conflict of Interest and Bias Policy, which sets forth broad-based principles of behavior that are expected from NAC members.[20] FINRA recognizes that there may, depending on the facts and circumstances, be overlap in part between the new and existing grounds to remove a NAC member. However, FINRA states that, depending on the facts and circumstances, the proposed rule change may also provide an additional basis for removal for a cause affecting the best interests of the NAC that would not fall within the scope of the FINRA's Board's current removal authority.[21]

III. Discussion and Commission Findings

After careful review of the proposed rule change, the Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder that are applicable to a national securities association.[22] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(4) of the Exchange Act,[23] which requires, among other things, that the rules of a national securities association, like FINRA, assure the fair representation of its members in the administration of its affairs. Additionally, the Commission finds that the proposed rule change is also consistent with Section 15A(b)(6) of the Exchange Act,[24] which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

As a threshold matter, the Commission observes that the provision that is being added to the FINRA Regulation By-Laws by this proposed rule change mirrors a parallel provision found in the FINRA By-Laws.[25] Moreover, the Commission has previously reviewed and approved a proposal that conformed the then-NASD Regulation By-Laws to the FINRA By-Laws, and has also previously reviewed and approved the NAC committee and its governance structure (which remains the same under this proposal), finding both proposals to be consistent with Section 15A(b)(4) of the Exchange Act.[26] We discuss below some of the pertinent aspects of the Commission's prior findings as they apply, at least in part, to the current proposed rule change.

As the Commission explained in approving the FINRA By-Laws, Section 15A(b)(4) requires that the rules of a national securities association, like FINRA, assure the fair representation of its members in, among other things, the administration of its affairs.[27] In approving the FINRA By-Laws, the Commission found, in part, that FINRA's members' participation on various committees provided for the fair representation of members in the administration of the affairs of a self-regulatory organization such as FINRA, particularly with respect to participation on committees relating to, among other things, the disciplinary process.[28] More specifically, the Commission observed that FINRA has extensive member involvement in the administration of its affairs through representation on various subject matter committees, including the NAC.[29] In connection with this proposal, FINRA states that, similar to the FINRA By-Laws addressing the composition of its Board, the FINRA Regulation By-Laws addressing the composition of the NAC provide for a diverse, majority non-industry composition, and for the fair representation of industry.[30] The Commission agrees with FINRA's statements and, moreover, observes that the Commission found previously that the NAC's governance structure, including the NAC's composition as well as the nomination and election processes for NAC seats, align with those of the FINRA Board and were consistent with Section 15A(b)(4) of the Act.[31]

Furthermore, in approving certain amendments to the then-NASD Regulation By-Laws, the Commission found that because those amendments conformed certain NASD Regulation By-Laws provisions to the relevant

Delaware law. The Delaware General Corporation Law provides that, in general, directors may be removed by a majority vote of the shares then entitled to vote at an election of directors. *See* Del. Code Ann. Tit. 8, § 141(k). FINRA states that it has adopted a removal threshold for NAC members that is consistent with the Delaware General Corporation Law, although the NAC is not subject to this standard. *See* Notice, 85 FR at 71388, n.9.

[15] Notice, 85 FR at 71388. FINRA also notes that the provision of the FINRA Regulation By-Laws addressing the composition of the NAC also provides for a diverse, majority non-industry composition, and for the fair representation of the industry. *See id.* at n.10 (citing Article V, Section 5.2(a) of the FINRA Regulation By-Laws and Exchange Act Release No. 78094 (June 17, 2016), 81 FR 40932, 40934–35 (June 23, 2016)).

[16] *See id.*

[17] *See id.*

[18] *See id.* at 71388–89.

[19] *See id.* at 71388, n.11 (citing Article IV, Section 4.14(a) of the FINRA Regulation By-Laws).

[20] *See id.* at n.12. FINRA notes that the principles outlined in the NAC's Conflict of Interest and Bias Policy are independence, impartiality, integrity, accountability and transparency; and place upon NAC adjudicators the responsibility for recognizing and reporting actual and apparent conflicts of interest and bias. *See id.*

[21] *See id.* at 71389.

[22] In approving this rule change, the Commission has considered the rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[23] 15 U.S.C. 78*o*–3(b)(4).

[24] 15 U.S.C. 78*o*–3(b)(6).

[25] *See* Notice, 85 FR at 71388 (comparing Article VII, Section 1(b) of the FINRA By-Laws with Article V, Sec. 5.8 of the FINRA Regulation By-Laws).

[26] *See id.* at n.17 (citing Exchange Act Release No. 56145 (July 26, 2007), 72 FR 42169 (August 1, 2007) (the ''NASD By-Laws Approval Order''), as amended by Exchange Act Release No. 56145A (May 30, 2008), 73 FR 32377 (June 6, 2008) (Order Approving File No. SR–NASD–2007–023)). These orders approved FINRA's By-Laws when the NASD merged with the member regulation, enforcement and arbitration operations of the New York Stock Exchange (''NYSE'') to form FINRA. *See also infra* notes 31–32.

[27] *See* NASD By-Laws Approval Order, 72 FR at 42182 (explaining that this requirement helps to assure that members have a stake in the governance of the national securities association, which is charged with self-regulatory responsibilities under the Exchange Act).

[28] *See id.* at 42185.

[29] *See id. See also supra* note 7 and accompanying text.

[30] *See supra* note 15 and accompanying text.

[31] *See* FINRA Regulation By-Laws Approval Order, 73 FR at 68469–70.

provisions in the FINRA By-Laws and reflected the governance structure set forth in the FINRA By-Laws those amendments were consistent with the Exchange Act.[32] Similarly, this proposal will also further conform the FINRA Regulation By-Laws with the FINRA By-Laws and will also continue to reflect the previously approved governance structure of the NAC. As a result, the Commission believes that this proposal will continue to help assure the fair representation of FINRA members in the administration of FINRA's affairs and, therefore, is consistent with Section 15A(b)(4) of the Act.

The Commission further observes that the NAC acts on behalf of the FINRA Board in several important capacities, including presiding over disciplinary matters that have been appealed to or called for review by the NAC and acting on applications in statutory disqualification and membership proceeding.[33] Given the NAC's ability to perform these actions and prepare written decisions on behalf of the FINRA Board, and that these decisions become FINRA's final action in the vast majority of cases,[34] the Commission finds that applying the same grounds for the removal of a NAC member as those that apply for the removal of a governor is consistent with the Act. The proposal will strengthen the FINRA Board's oversight of the NAC and further support the principles outlined in the NAC's Conflict of Interest and Bias Policy, which include independence, impartiality, integrity, and accountability.[35] In doing so, the proposal will help protect investors and further the public interest by expanding the scope of the FINRA Board's authority to remove NAC members that, in the Board's view, may be biased or have actual or apparent conflicts of interest or otherwise impede the NAC's adjudicatory responsibilities.[36]

In sum, the Commission finds that the proposal will continue to help assure the fair representation of FINRA members in the administration of FINRA's affairs. The Commission also finds that this proposal will help protect investors and further the public interest by supporting fair and impartial adjudicatory processes for, among other things, FINRA's disciplinary matters as well as statutory disqualification and membership proceedings.

[32] *See* NASD By-Laws Approval Order, 72 FR at 42188.

[33] *See supra* note 7 and accompanying text.

[34] *See* Notice, 85 FR at 71389.

[35] *See id.* at 71388, n.12. *See also supra* note 20 and accompanying text.

[36] *See id.* at 71388 (citing Article IV, Section 4.14(a) of the FINRA Regulation By-Laws).

IV. Conclusion

It is therefore ordered pursuant to Section 19(b)(2) of the Exchange Act[37] that the proposal (SR–FINRA–2020–037) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[38]

J. Matthew DeLesDernier,

Assistant Secretary.

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[37] 15 U.S.C. 78s(b)(2).

[38] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91068; File No. SR–NYSEAMER–2021–06]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Rule 971.2NY Regarding Its Complex Customer Best Execution Auction

February 5, 2021.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on January 27, 2021, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify Rule 971.2NY regarding its Complex Customer Best Execution (''CUBE'') auction to provide optional all-or-none functionality for larger-sized orders and to make conforming changes to Rule 971.1NY to clarify existing functionality of the Single-Leg AON CUBE functionality. The proposed rule change is available on the Exchange's website at *www.nyse.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to expand its electronic crossing mechanism—the CUBE Auction, to provide optional all-or-none (''AON'')[4] functionality for ATP Holders to execute larger-sized orders (*i.e.,* at least 500 contracts on the smallest leg) in the Complex CUBE Auction and to make conforming changes to Rule 971.1NY to clarify existing functionality of the Single-Leg AON CUBE functionality.[5]

The proposed rule change would be consistent with the recently approved AON CUBE Order functionality for the Single-Leg CUBE Auction.[6] In this regard, the Exchange seeks to expand this functionality to the Complex CUBE Auction, which functionality is also consistent with similar price-improvement mechanisms for larger-sized complex orders already available on other options exchanges.[7] As such,

[4] An All-or-None Order or AON Order is a ''Market or Limit Order that is to be executed on the Exchange in its entirety or not at all.'' *See* Rule 900.3NY(d)(4).

[5] *See* proposed Commentary .04 to Rule 971.2NY; proposed Commentary .05 to Rule 971.1NY. Capitalized terms have the same meaning as the defined terms in Rules 971.1NY and 971.2NY.

[6] *See* Commentary .05 to Rule 971.1NY; *see also* Securities Exchange Act Release No. 90584 (December 7, 2020), 85 FR 80196 (December 11, 2020) (SR–NYSEAmer–2020–60) (order approving auction functionality for Single-Leg AON CUBE Orders of at least 500 contracts). As proposed, AON Complex CUBE Orders would be processed and executed in the Complex CUBE Auction in a similar manner as Single-Leg AON CUBE Orders are processed and executed in the Single-Leg CUBE Auction—the differences for Complex relating primarily to the underlying differences between simple and complex order processing and execution (*i.e.,* auction pricing and allocation).

[7] *See, e.g.,* Nasdaq ISE LLC (''ISE''), Options 3, Section 11(e) (setting forth its Complex Solicited Order Mechanism which allows an agency complex order to execute in full against the solicited complex order—both of which are designated as AON—at the proposed execution net price so long

this is a filing that will allow the Exchange to compete with other options exchanges for such larger-sized Complex Orders which would in turn benefit market participants already familiar with such price-improvement mechanisms in that it would provide another venue to trade their larger-sized orders.

The Complex CUBE Auction operates seamlessly with the Consolidated Book—while still affording Complex CUBE Orders an opportunity to receive price improvement.[8] In particular, the Exchange utilizes the concept of a CUBE BBO, which requires price improvement over resting interest to initiate a Complex CUBE Auction.[9] Upon entry of a Complex CUBE Order in the System, the CUBE BBO is determined to be the more aggressive of (i) the Complex BBO improved by $0.01, or (ii) the Derived BBO improved by: $0.01 multiplied by the smallest leg of the complex order strategy.[10] A Complex CUBE Auction begins with an ''initiating price,'' which for a Complex CUBE Order is the less aggressive of the net debit/credit price of such order or the price that locks the contra-side CUBE BBO and the ''range of permissible executions'' of a Complex CUBE Order is all prices equal to or between the initiating price and the same-side CUBE BBO.[11] As proposed, the initiation of, and the range of permissible executions for, an AON Complex CUBE Order would align with the protections afforded a standard (non-AON) Complex CUBE Order.

The proposal to expand the current Complex CUBE Auction functionality by providing an additional (optional) method for market participants to effect larger-sized orders in the Complex CUBE Auction would likewise operate seamlessly with the Consolidated Book. The Exchange also believes this proposal would encourage ATP Holders to compete vigorously to provide the opportunity for price improvement for larger-sized orders in a competitive auction process, which may lead to enhanced liquidity and tighter markets.

Proposed AON Complex CUBE Functionality [12]

The Exchange proposes to add new Commentary .04 to Rule 971.2NY to provide that a Complex CUBE Order that has at least 500 contracts on the smallest leg would execute in full at the single stop price against the Complex Contra Order, except under specified circumstances (the ''AON Complex CUBE Order'').[13] As further proposed, a Complex Contra Order would not be permitted to guarantee an AON Complex CUBE Order for auto-match limit, which feature is otherwise available in a Complex CUBE Auction.[14]

The CUBE BBO for a proposed AON Complex CUBE Order would be determined in the same manner as for a standard Complex CUBE Order.[15] An AON Complex CUBE Order Auction would also be subject to the same early end events as a Complex CUBE Order.[16]

As proposed, an AON Complex CUBE Order would execute in full with the Complex Contra Order at the single stop price even if there is non-Customer interest priced better than the stop price that, either on its own or when aggregated with other better-priced non-Customer RFR Responses, is insufficient to satisfy the full quantity of the AON Complex CUBE Order.[17] In addition, as proposed, an AON Complex CUBE Order would *not* execute with the Complex Contra Order if the entire AON Complex CUBE Order can be satisfied in full by certain eligible contra-side interest. Specifically, the Exchange proposes that paragraph (b) to Commentary .04 to Rule 971.2NY would provide that:

> (b) The Complex Contra Order will not receive any allocation and will be cancelled (i) if RFR Responses that are priced better than the stop price can satisfy the full quantity of the AON Complex CUBE Order or (ii) there is contra-side Customer interest at the stop price or better that on its own, or when aggregated with RFR Responses equal to or priced better than the stop price, can satisfy the full quantity of the AON Complex CUBE Order. In either such case, the RFR Responses will be allocated as provided for in paragraphs (c)(4)(A) and (c)(4)(B)(i) of this Rule, as applicable.[18]

Thus, if there is price-improving contra-side interest that can satisfy the AON condition of the Auction, the AON

as, at the time of execution such price is not inferior to interest in the ISE leg markets or ISE's complex order book and there are no ISE Priority Customers equal to the net execution price. If there is Priority Customer interest at the proposed execution price and there is sufficient size in the aggregate (*i.e.,* Customer interest plus any other quotes, orders, and responses) to fill the agency complex order, such agency order will trade first with the Priority Customer, followed by other interest and the solicited order is canceled. If, however, in such a scenario, there is insufficient size of the Priority Customer and aggregated interest to fill the agency order, both the agency complex order and solicited order are canceled). *See also* Cboe Options Rule 5.40 (Complex Solicitation Auction Mechanism).

[8] *See* Rule 900.2NY(14) (defining Consolidated Book (or ''Book'') and providing that all quotes and orders ''that are entered into the Book will be ranked and maintained in accordance with the rules of priority as provided in Rule 964NY''). Rule 964NY (Display, Priority and Order Allocation—Trading Systems) dictates the priority of quotes and orders. The Exchange has integrated the Complex CUBE Auction into the Complex Matching Engine (or CME), which ensures that the Complex CUBE Auction respects the priority of interest in the Consolidated Book. *See* Rule 971.2NY(a).

[9] *See generally* Rule 971.2NY and Commentary .02 (definitions). *See also* Rule 900.2NY(7)(b),(c) (defining Complex BBO and Derived BBO). The ''same-side CUBE BBO'' and ''contra-side CUBE BBO'' refer to the CUBE BBO on the same or opposite side of the market as the Complex CUBE Order, respectively. *See* Rule 971.2NY(a)(2).

[10] *See* Rule 971.2NY(a)(2). A complex order strategy is entered with the ratio expressed in the fewest number of contracts for each leg of the ratio. For a complex order strategy with a ratio of 2, 3, and 6 contracts per leg, the $0.01 figure would be multiplied by 2 contracts, which represents the smallest leg. To calculate the CUBE BBO for this strategy, the Derived BBO would need to be priced improved by $0.02.

[11] *See* Rule 971.2NY(a)(2)–(4).

[12] *See generally* Rule 971.2NY (for detailed description of operation of Complex CUBE Auction).

[13] *See also* proposed Commentary .04 to Rule 971.2NY. *See* Rule 971.2NY(b)(1)(A) (setting forth parameters for single stop price). An AON Complex CUBE Order would be rejected for the same reasons as a Complex CUBE Order (*see* Rule 971.2NY(b)(2)–(5)).

[14] *See also* proposed Commentary .04 to Rule 971.2NY. *See* also Rule 971.2NY(b)(1)(B) (regarding parameters for auto-match limit price).

[15] An AON Complex CUBE Order and its paired Complex Contra Order would be rejected if it failed to meet the pricing parameters. *See* Rule 971.2NY(b) (regarding auction eligibility requirements).

[16] *See* Rule 971.2NY(c)(3) (setting forth the type of interest that causes the early end to a Complex CUBE Auction). In particular, to respect priority of the leg markets, the AON Complex CUBE Auction would end early if during the Auction the Exchange receives ''[i]nterest in the leg market that causes the contra-side CUBE BBO to be better than the stop price or auto-match limit price.'' *See* Rule 971.2NY(c)(3)(F).

[17] *See* proposed Commentary .04(a) to Rule 971.2NY. The Exchange also proposes to modify Commentary .05 to Rule 971.1NY to clarify the handling of AON CUBE Orders in a Single-Leg CUBE Auction—including by relocating certain text to a new paragraph (a), which would not alter existing functionality and mirrors the handling of AON Complex CUBE Orders in a Complex CUBE Auction. *See* proposed Commentary .05(a) to Rule 971.1NY (providing that ''[a]n AON CUBE Order to buy (sell) will execute in full with the Contra Order at the single stop price even if there is non-Customer interest priced higher (lower) than the stop price that, either on its own or when aggregated with other non-Customer RFR Responses at the stop price or better, is insufficient to satisfy the full quantity of the AON CUBE Order''). In addition, the Exchange proposes to make a non-substantive change to remove the now extraneous text ''provided that'' and to re-number existing paragraphs (a) and (b) to new paragraphs (b) and (c), which makes the Rule easier to navigate and would align with the AON Complex CUBE rule. *See* proposed Commentary .05(b), (c) to Rule 971.1NY.

[18] *See* proposed Commentary .04(b) to Rule 971.2NY. The Exchange also proposes to modify (new) paragraph (b) to Commentary .05 to Rule 971.1NY regarding the Single-Leg CUBE Auction to make clear that Customer interest ''at the stop price *or better*'' may prevent the Contra Order from executing, which does not alter existing functionality and mirrors the handling of AON Complex CUBE Orders in a Complex CUBE Auction. *See* proposed Commentary .05(b) to Rule 971.1NY (emphasis added). In addition, the Exchange proposes to make a non-substantive change to capitalize the first sentence of this paragraph, which makes the Rule easier to navigate and would align with the AON Complex CUBE rule. *See id.*

Complex CUBE Order would execute in full against those price-improving RFR Responses and the Complex Contra Order would cancel. Or, absent such price-improving interest, if there is contra-side Customer interest equal to the stop price or better that on its own, or when combined with equal or better-priced RFR Responses, can satisfy the AON condition of the Auction, the AON Complex CUBE Order would execute in full against such interest and the Complex Contra Order would cancel. Under either scenario, the AON Complex CUBE Order would be allocated against contra-side interest at the best price(s) pursuant to the Exchange's priority rules.[19] This proposal is also consistent with the AON nature of similar mechanisms on other options exchanges.[20]

As further proposed, both the AON CUBE Order and Contra Order would be cancelled, *i.e.,* the Auction would be cancelled, if there is contra-side Customer interest at the stop price and such interest on its own or when combined with RFR Responses (at the stop price or better) is insufficient to satisfy the entire AON Complex CUBE Order. To effect this, the Exchange proposes that paragraph (b) [sic] to Commentary .04 to Rule 971.2NY would provide that:

(c) The AON Complex CUBE Order and Complex Contra Order will both be cancelled if there is contra-side Customer interest at the stop price or better and such interest, either on its own or when aggregated with RFR Responses equal to or priced better than the stop price is insufficient to satisfy the full quantity of the AON Complex CUBE Order.[21]

Thus, as proposed, if there is contra-side Customer interest at the stop price, but there is not enough size (considering the Customer interest and all RFR Responses at the stop price or better) to satisfy the entire AON Complex CUBE Order, then both the AON Complex CUBE Order and the Contra Complex Order would be cancelled. The Exchange believes that this proposal is consistent with the terms of how AONs function generally without violating the Exchange's general priority rules.[22] With respect to allocation, the Exchange notes that the proposed functionality differs from the allocation of a standard Complex CUBE Order in that the Complex Contra Order is not guaranteed a minimum allocation at the stop price. Instead, given the AON nature of the functionality, the Complex Contra Order either trades with the entire AON Complex CUBE Order or not at all.[23] This proposal is also consistent with the AON nature of similar mechanisms on other options exchanges.[24]

With the exception of differences to the minimum size and allocation described in proposed Commentary .04 to Rule 971.2NY, an AON Complex CUBE auction would be subject to all of the provisions of Rule 971.2NY.[25]

Finally, proposed paragraph (d) to Commentary .04 to Rule 971.2NY would provide that prior to entering an agency order (*i.e.,* Complex CUBE Order) on behalf of a Customer into the Complex CUBE Auction as an AON Complex CUBE Order, Initiating Participants would be required to deliver to the Customer a written notification informing the Customer that such order may be executed using the Complex CUBE Auction, which notification would disclose the terms and conditions of Commentary .04 to Rule 971.2NY and be in a form approved by the Exchange.[26] This notification requirement is consistent with the rules of other options exchanges that offer an AON paired order auction mechanism for complex orders.[27]

Implementation

The Exchange will announce the implementation date of the proposed rule change in a Trader Update to be published no later than 60 days following the approval of this proposed rule change. The Exchange has already notified ATP Holders about the planned implementation of AON Complex CUBE functionality, which has provided them advance time to prepare their systems for participation in the AON Complex CUBE Auction once it becomes available.[28]

2. Statutory Basis

For the reasons set forth above, the Exchange believes the proposed rule change is consistent with Section 6(b) of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The proposed optional all-or-none functionality for larger-sized orders, which is consistent with Exchange's recently approved Single-Leg AON CUBE Order functionality,[29] is intended to benefit investors, because it is designed to provide investors seeking to execute larger-sized option orders in the Complex CUBE Auction with greater certainty regarding the price at which the order would be executed. In this regard, the Exchange seeks to expand this functionality to the Complex CUBE Auction, which functionality is also consistent with similar price-improvement mechanisms for larger-

[19] *See also* Rule 971.2NY (c)(4)(A) (providing Customer interest first priority to trade with the Complex CUBE Order, at each price level, pursuant to the size pro rata algorithm set forth in Rule 964NY(b)(3)) and (c)(4)(B)(i)(a) (providing RFR Responses priced better than the stop price, beginning with the most aggressive price within the range of permissible executions, pursuant to the size pro rata algorithm set forth in Rule 964NY(b)(3) at each price point).

[20] *See, e.g., supra* note 7 (regarding Nasdaq ISE's Complex Solicited Order Mechanism and Cboe's Complex Solicitation Auction Mechanism, both of which are mechanisms for larger-sized paired complex orders designated as AON).

[21] *See* proposed Commentary .04(c) to Rule 971.2NY. The Exchange also proposes to modify (new) paragraph (c) to Commentary .05 to Rule 971.1NY regarding the Single-Leg CUBE Auction to make clear that Customer interest ''at the stop price *or better*'' would result in cancellation of the AON CUBE Order and the Contra Order, which would mirror the AON Complex CUBE functionality. *See* proposed Commentary .05(c) to Rule 971.1NY (emphasis added). In addition, the Exchange proposes to make a non-substantive change to capitalize the first sentence of this paragraph, which makes the Rule easier to navigate and would align with the AON Complex CUBE rule. *See id.*

[22] *See* Rule 980NY(b) (''Priority of Electronic Complex Orders in the Consolidated Book''). *See also* Rule 971.2NY (regarding processing of Complex CUBE Orders per Rule 980NY).

[23] *See* Rule 971.2NY(c)(4)(B)(i)(b) (providing that, ''[a]t the stop price, if there is sufficient size of the Complex CUBE Order still available after executing at prices better than the stop price or against Customer interest, the Complex Contra Order will receive an allocation of the greater of 40% of the original Complex CUBE Order size or one contract (or the greater of 50% of the original Complex CUBE Order size or one contract if there is only one RFR Response)'').

[24] *See e.g., supra* note 7 (regarding Nasdaq ISE's Complex Solicited Order Mechanism and Cboe's Complex Solicitation Auction Mechanism, both of which are mechanisms for larger-sized paired complex orders designated as AON).

[25] *See* proposed Commentary .04 to Rule 971.2NY. The Exchange also proposes to modify the text in the last paragraph of Commentary .05 to Rule 971.1NY regarding the Single-Leg CUBE Auction to clarify that ''[e]xcept as provided in this Commentary .05, an AON CUBE auction will be subject to all of the provisions of Rule 971.1NY,'' which makes the Rule easier to navigate and would align with the AON Complex CUBE rule. *See* proposed Commentary .05 to Rule 971.1NY.

[26] *See* proposed Commentary .04(d) to Rule 971.2NY. The Exchange also proposes to add a paragraph (d) to Commentary .05 to Rule 971.1NY regarding the Single-Leg CUBE Auction to adopt a notice provision identical to that being proposed for the AON Complex CUBE functionality, which clarifies the obligations of ATP Holders to their customers and does not alter existing functionality. *See* proposed Commentary .05(d) to Rule 971.1NY.

[27] *See, e.g., supra* note 7, Nasdaq ISE, Options 3, Section 11(e)(5) and Cboe Options Rule 5.40, Interpretations and Policies .01 (both setting forth substantially similar notice requirements for agency orders handled on behalf of customers).

[28] *See* Trader Update, October 6, 2020, NYSE American Options: AON CUBE Orders Available for Testing, *available here: https://www.nyse.com/trader-update/history#110000319620.*

[29] *See supra* note 6 (regarding recent approval of Commentary .05 to Rule 971.1NY).

sized complex orders already available on other options exchanges. As such, this is a filing that will allow the Exchange to compete with other options exchanges for such larger-sized Complex Orders and would benefit market participants who are already familiar with such price-improvement mechanisms.[30]

This proposal would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would provide ATP Holders that locate liquidity for their customers' larger-sized orders a facility in which to execute those orders at the agreed-upon price, while also providing an opportunity for such orders to be price improved. In addition, ATP Holders that opt to utilize this proposed functionality would have an equal opportunity to initiate their own or to respond with their best prices to other AON CUBE Auctions. The Exchange believes the proposed functionality would promote and foster competition and provide more options contracts with the opportunity for price improvement.

The Exchange believes that the proposed functionality would provide more efficient transactions, reduce execution risk to ATP Holders, and afford greater execution opportunities for larger-sized orders. The proposed functionality would operate within the Complex CUBE (including by integrating Complex CUBE into the Complex Matching Engine, per Rule 971.2NY(a)) such that the Exchange is able to assure that the proposed functionality would continue to respect the priority of interest, in particular Customer interest. The proposal ensures that the AON Complex CUBE Order is exposed to ATP Holders for the possibility of price improvement and that Customer orders on the Exchange are protected. As noted above, at the conclusion of an AON Complex CUBE Auction, the AON Complex CUBE Order would be executed in full (against the Complex Contra Order or eligible contra-side auction interest) or would be cancelled, together with the Complex Contra Order.

Further, the proposed functionality is reasonable and promotes a fair and orderly market and national market system, because it is substantially similar to the price- improvement mechanisms for larger-sized orders available on other options exchanges. The Exchange believes this proposal may lead to an increase in Exchange volume and should allow the Exchange to better compete against other markets that already offer an all-or-none electronic solicitation mechanism for larger-sized orders. The Exchange believes that its proposal would allow the Exchange to better compete for solicited transactions, while providing an opportunity for price improvement on the larger-sized orders. In addition, the proposed functionality should promote and foster competition and provide more options contracts with the opportunity for price improvement, which should benefit market participants.

The proposed clarifications to the Single-Leg CUBE Auction Rule would protect investors and the public interest because the proposed changes add clarity, transparency and internal consistency to Exchange rules.[31]

Finally, consistent with other options exchanges offering similar price-improvement auctions, the proposed rule change would require ATP Holders to provide customers with the terms and conditions of agency orders that might be submitted as AON Complex CUBE Orders on their behalf.[32]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed rule change would impose any burden on intramarket competition, as the proposed rule change will apply in the same manner to all orders submitted as AON Complex Orders to the Complex CUBE Auction. The Exchange recently received rule approval for AON CUBE Order functionality in the Single-Leg CUBE Auction, which operates in a substantially similar manner to the complex functionality, accounting for differing priority and allocation rules.[33]

The Exchange is proposing the functionality for Complex Orders as an optional market enhancement that, if utilized, should increase competition for ATP Holders seeking to execute such larger-sized orders in an electronic auction mechanism. ATP Holders that opt to utilize this proposed functionality would have an equal opportunity to initiate their own or to respond with their best prices to other AON CUBE Auctions. The Exchange notes that other options exchanges offer electronic auction mechanisms for larger-sized orders on an AON basis. The Exchange believes the proposed functionality would provide ATP Holders with a greater choice of exchanges from which to execute such orders. The proposal is structured to offer the same enhancement to all market participants and would not impose an intra-market competitive burden on any participant. The price-improvement functionality for the AON Complex CUBE Auction is designed to promote competition for ATP Holders to compete amongst each other by responding with not only their best price, but also the full size for a particular auction.

The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues who offer similar functionality. The Exchange believes that the proposed rule change will relieve any burden on, or otherwise promote, competition. The Exchange believes this proposed rule change is necessary to permit fair competition among the options exchanges and to establish more uniform price-improvement auction rules on the various options exchanges. The proposed functionality may lead to an increase in Exchange volume and should allow the Exchange to better compete against other markets that already offer similar price-improvement mechanisms for larger-sized orders. The Exchange anticipates that this proposal will create new opportunities for the Exchange to attract new business and compete on equal footing with those options exchanges that offer auction AON functionality for larger-sized Complex Orders and for this reason the proposal does not create an undue burden on intermarket competition. By contrast, not having the proposed functionality places the Exchange at a competitive disadvantage vis-à-vis other exchanges that offer similar price-improvement mechanisms for larger-sized Complex Orders.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

[30] *See supra* note 7 (regarding Nasdaq ISE's Complex Solicited Order Mechanism and Cboe's Complex Solicitation Auction Mechanism, both of which are mechanisms for larger-sized paired complex orders designated as AON).

[31] *See supra* notes 17, 18, 21 and 26.

[32] *See* Nasdaq ISE, Options 3, Section 11(e)(5) and Cboe Options Rule 5.40, Interpretations and Policies .01 (both setting forth substantially similar notice requirements for agency orders handled on behalf of customers). *See supra note* 26 (regarding the addition of a notice provisions to the Single-Leg CUBE auction rule).

[33] *See supra* note 6 (regarding recent approval of Commentary .05 to Rule 971.1NY).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [34] and Rule 19b–4(f)(6) thereunder.[35] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [36] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[37] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that waiver of the operative delay would allow the Exchange to deploy the new functionality immediately, which would help to ease the potential disruption to floor trading in the event that the Exchange is required to temporarily close its trading floor for reasons related to COVID–19.[38] The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange to implement the proposed functionality without delay in the event that the Exchange must temporarily close its trading floor. As discussed above, the proposed AON complex CUBE auction is substantially similar to the paired solicited complex order auctions in place on other options exchanges and does not raise new or novel regulatory issues.[39] In addition, the proposed changes to the single-leg AON CUBE provisions in Rule 971.1NY should help to avoid confusion by assuring that the descriptions of the single-leg and the complex AON CUBE auctions remain consistent. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[40]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [41] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAMER–2021–06 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAMER–2021–06. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAMER–2021–06, and should be submitted on or before March 4, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[42]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–02777 Filed 2–10–21; 8:45 am]

BILLING CODE 8011–01–P

[34] 15 U.S.C. 78s(b)(3)(A)(iii).

[35] 17 CFR 240.19b–4(f)(6).

[36] 17 CFR 240.19b–4(f)(6).

[37] 17 CFR 240.19b–4(f)(6)(iii).

[38] The Exchange notes that it temporarily closed its trading floor for several months in 2020 and for the last week of December 2020 for reasons related to COVID–19. *See* Trader Update, December 24, 2020, NYSE American Options to Move Temporarily to All-Electronic Trading on December 28, 2020, available here: *https://www.nyse.com/trader-update/history#110000331853.*

[39] *See, e.g.,* note 7, *supra.*

[40] For purposed only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[41] 15 U.S.C. 78s(b)(2)(B).

[42] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting; Cancellation

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 86 FR 8061, February 3, 2021.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Tuesday, February 9, 2021 at 5:00 p.m.

CHANGES IN THE MEETING: The Closed Meeting scheduled for Tuesday, February 9, 2021 at 5:00 p.m., has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Dated: February 9, 2021.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2021–02961 Filed 2–9–21; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34189; File No. 812–15165]

The RBB Fund, Inc., et al.

February 5, 2021.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act.

APPLICANTS: The RBB Fund, Inc. (the ''Company''), Red Gate Advisers, LLC (the ''Initial Adviser''), and Herald Investment Marketing, LLC (the ''Distributor'').

SUMMARY OF APPLICATION: Applicants request an order (''Order'') that permits: (a) Shielded Alpha ETFs (as described in the Reference Order (defined below)) to issue shares (''Shares'') redeemable in large aggregations only (''creation units''); (b) secondary market transactions in Shares to occur at negotiated market prices rather than at net asset value; (c) certain Shielded Alpha ETFs to pay redemption proceeds, under certain circumstances, more than seven days after the tender of Shares for redemption; and (d) certain affiliated persons of a Shielded Alpha ETF to deposit securities into, and receive securities from, the Shielded Alpha ETF in connection with the purchase and redemption of creation units. The relief in the Order would incorporate by reference terms and conditions of the same relief of a previous order granting the same relief sought by applicants, as that order may be amended from time to time (''Reference Order'').[1]

FILING DATE: The application was filed on September 28, 2020 and amended on December 10, 2020 and on January 15, 2020.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by emailing the Commission's Secretary at *Secretarys-Office@sec.gov* and serving applicants with a copy of the request by email. Hearing requests should be received by the Commission by 5:30 p.m. on February 25, 2021, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at *Secretarys-Office@sec.gov.*

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants: The RBB Fund, Inc.; Red Gate Advisers, LLC; and Herald Investment Marketing, LLC, c/o Craig A. Urciuoli, Red Gate Advisers, LLC, *craig@redgateadvisers.com.*

FOR FURTHER INFORMATION CONTACT: Harry Eisenstein, Senior Special Counsel, at (202) 551–6764, or Kaitlin Bottock, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants

1. The Company is a corporation organized under the laws of Maryland and will consist of one or more series operating as Shielded Alpha ETFs. The Company is registered as an open-end management investment company under the Act. Applicants seek relief with respect to Funds (as defined below), including an initial Fund (the ''Initial Fund''). The Funds will operate as Shielded Alpha ETFs as described in the Reference Order.[2]

2. The Initial Adviser is a limited liability company organized under the laws of Pennsylvania and will be the investment adviser to the Initial Fund. Subject to approval by the Fund's board of directors, an Adviser (as defined below) will serve as investment adviser to each Fund. The Initial Adviser is, and any other Adviser will be, registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act''). The Adviser may enter into sub-advisory agreements with other investment advisers to act as sub-advisers with respect to the Funds (each a ''Sub-Adviser''). Any Sub-Adviser will be registered under the Advisers Act.

3. The Distributor is a limited liability company organized under the laws of Pennsylvania and a broker-dealer registered under the Securities Exchange Act of 1934, as amended, and will act as the principal underwriter of Shares of the Funds. Applicants request that the requested relief apply to any distributor of Shares, whether affiliated or unaffiliated with the Adviser and/or Sub-Adviser (included in the term ''Distributor''). Any Distributor will comply with the terms and conditions of the Order.

Applicants' Requested Exemptive Relief

4. Applicants seek the requested Order under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act. The requested Order would permit applicants to offer Funds that operate as Shielded Alpha ETFs. Because the relief requested is the same as certain of the relief granted by the Commission under the Reference Order and because the Initial Adviser has entered into a licensing agreement with Blue Tractor Group, LLC, or an affiliate thereof, in order to offer Funds that operate as Shielded Alpha ETFs, the Order would incorporate by reference the terms and conditions of the same relief of the Reference Order.

5. Applicants request that the Order apply to the Initial Fund and to any other existing or future registered open-end management investment company or series thereof that: (a) Is advised by the Initial Adviser or any entity controlling, controlled by, or under common control with the Initial Adviser (any such entity, along with the Initial Adviser, included in the term ''Adviser''); (b) operates as a Shielded Alpha ETF as described in the Reference Order; and (c) complies with the terms and conditions of the Order and the terms and conditions of the Reference Order that are incorporated by reference

[1] Blue Tractor ETF Trust and Blue Tractor Group, LLC, Investment Company Act Rel. Nos. 33682 (Nov. 14, 2019) (notice) and 33710 (Dec. 10, 2019) (order). Applicants are not seeking relief under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act (the ''Section 12(d)(1) Relief''), and relief under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act relating to the Section 12(d)(1) Relief, as granted in the Reference Order. Accordingly, to the extent the terms and conditions of the Reference Order relate to such relief, they are not incorporated by reference into the Order.

[2] To facilitate arbitrage, among other things, each day a Fund would publish a basket of securities and cash that, while different from the Fund's portfolio, is designed to closely track its daily performance.

into the Order (each such company or series and the Initial Fund, a ''Fund'').[3]

6. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provisions of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the transaction is consistent with the policies of the registered investment company and the general purposes of the Act. Applicants submit that for the reasons stated in the Reference Order the requested relief meets the exemptive standards under sections 6(c) and 17(b) of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–02775 Filed 2–10–21; 8:45 am]

BILLING CODE 8011–01–P

[3] All entities that currently intend to rely on the Order are named as applicants. Any other entity that relies on the Order in the future will comply with the terms and conditions of the Order and the terms and conditions of the Reference Order that are incorporated by reference into the Order.

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0715]

Agency Information Collection Activity Under OMB Review: Servicer's Staff Appraisal Reviewer (SAR) Application

AGENCY: Loan Guaranty Service, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Loan Guaranty Service, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Refer to ''OMB Control No. 2900–0715.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 1717 H Street NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0715'' in any correspondence.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

Authority: Public Law 104–13; 44 U.S.C. 3501–3521.

Title: VA FORM 26–0829, Lender's Staff Appraisal Reviewer (SAR) Application.

OMB Control Number: 2900–0715.

Type of Review: Extension of a currently approved collection.

Abstract: Title 38 U.S.C. 3702(d) authorizes the Department of Veterans Affairs (VA) to establish standards for Servicers making automatically guaranteed loans and 38 U.S.C. 3731(f) authorizes VA to establish, in regulation, standards and procedures to authorize a lender to determine the reasonable value of property. VA has implemented this authority through its Servicer Appraisal Processing Program (SAPP), codified in 38 CFR 36.4348. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 85 FR 80228, on December 11, 2020, page 80228.

Affected Public: Individuals (employees of lenders making applications).

Estimated Annual Burden: 2 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 20 per year.

By direction of the Secretary:

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2021–02816 Filed 2–10–21; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 86 Thursday,

No. 27 February 11, 2021

Part II

Department of the Treasury

Office of the Comptroller of the Currency

Federal Reserve System

Federal Deposit Insurance Corporation

12 CFR Parts 50, 249, and 329

Net Stable Funding Ratio: Liquidity Risk Measurement Standards and Disclosure Requirements; Final Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 50

[Docket ID OCC–2014–0029]

RIN 1557–AD97

FEDERAL RESERVE SYSTEM

12 CFR Part 249

[Regulation WW; Docket No. R–1537]

RIN 7100–AE 51

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 329

RIN 3064–AE 44

Net Stable Funding Ratio: Liquidity Risk Measurement Standards and Disclosure Requirements

AGENCY: Office of the Comptroller of the Currency, Department of the Treasury; Board of Governors of the Federal Reserve System; and Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) (collectively, the agencies) are adopting a final rule that implements a stable funding requirement, known as the net stable funding ratio (NSFR), for certain large banking organizations. The final rule establishes a quantitative metric, the NSFR, to measure the stability of the funding profile of certain large banking organizations and requires these banking organizations to maintain minimum amounts of stable funding to support their assets, commitments, and derivatives exposures over a one-year time horizon. The NSFR is designed to reduce the likelihood that disruptions to a banking organization's regular sources of funding will compromise its liquidity position, promote effective liquidity risk management, and support the ability of banking organizations to provide financial intermediation to businesses and households across a range of market conditions. The NSFR supports financial stability by requiring banking organizations to fund their activities with stable sources of funding on an ongoing basis, reducing the possibility that funding shocks would substantially increase distress at individual banking organizations. The final rule applies to certain large U.S. depository institution holding companies, depository institutions, and U.S. intermediate holding companies of foreign banking organizations, each with total consolidated assets of $100 billion or more, together with certain depository institution subsidiaries (together, covered companies). Under the final rule, the NSFR requirement increases in stringency based on risk-based measures of the top-tier covered company. U.S. depository institution holding companies and U.S. intermediate holding companies subject to the final rule are required to publicly disclose their NSFR and certain components of their NSFR every second and fourth calendar quarter for each of the two immediately preceding calendar quarters. The final rule also amends certain definitions in the agencies' liquidity coverage ratio rule that are also applicable to the NSFR.

DATES: *Effective Date:* July 1, 2021.

FOR FURTHER INFORMATION CONTACT:

OCC: Christopher McBride, Director, James Weinberger, Technical Expert, or Ang Middleton, Bank Examiner (Risk Specialist), (202) 649–6360, Treasury & Market Risk Policy; Dave Toxie, Capital Markets Lead Expert, (202) 649–6833; Patrick T. Tierney, Assistant Director, Henry Barkhausen, Counsel, or Daniel Perez, Counsel, Chief Counsel's Office, (202) 649–5490; for persons who are deaf or hard of hearing, TTY, (202) 649–5597; Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219.

Board: Juan Climent, Assistant Director, (202) 872–7526, Kathryn Ballintine, Manager, (202) 452–2555, J. Kevin Littler, Lead Financial Institution Policy Analyst, (202) 475–6677, Michael Ofori-Kuragu, Senior Financial Institution Policy Analyst II, (202) 475–6623 or Christopher Powell, Senior Financial Institution Policy Analyst II, (202) 452–3442, Division of Supervision and Regulation; Benjamin W. McDonough, Associate General Counsel, (202) 452–2036, Steve Bowne, Senior Counsel, (202) 452–3900, Jason Shafer, Senior Counsel, (202) 728–5811, Laura Bain, Counsel, (202) 736–5546, or Jeffery Zhang, Attorney, (202) 736–1968, Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), (202) 263–4869.

FDIC: Bobby R. Bean, Associate Director, *bbean@fdic.gov;* Brian Cox, Chief, Capital Markets Strategies Section, *brcox@fdic.gov;* Eric Schatten, Senior Policy Analyst, *eschatten@fdic.gov;* Andrew Carayiannis, Senior Policy Analyst, *acarayiannis@fdic.gov;* Kyle McCormick, Capital Markets Policy Analyst, *kmccormick@fdic.gov;* Capital Markets Branch, Division of Risk Management Supervision, (202) 898–6888; Gregory S. Feder, Counsel, *gfeder@fdic.gov,* Andrew B. Williams, II, Counsel, and *williams@fdic.gov,* or Suzanne J. Dawley, Counsel, *sudawley@fdic.gov,* Supervision, Legislation & Enforcement Branch, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), (800) 925–4618.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) (collectively, the agencies) are adopting in final form the agencies' 2016 proposal to implement a net stable funding ratio (NSFR) requirement (the proposed rule), with certain adjustments.[1] The agencies also are finalizing two proposals released subsequent to issuance of the proposed rule to revise the criteria for determining the scope of application of the NSFR requirement (tailoring proposals).[2] The Board will issue a separate proposal for notice and comment to amend its information collection under its Complex Institution Liquidity Monitoring Report (FR 2052a) to collect information and data related to the requirements of the final rule.

The final rule establishes a quantitative metric, the NSFR, to measure the stability of the funding profile of large U.S. banking organizations, U.S. intermediate holding companies of foreign banking organizations, and their depository institution subsidiaries with $10 billion or more in total consolidated assets. The final rule also requires these banking organizations to maintain minimum amounts of stable funding to support their assets, commitments, and derivatives exposures.[3] By requiring banking organizations to maintain a stable funding profile, the final rule reduces liquidity risk in the financial sector and provides for a safer and more resilient financial system.

Sections II and III of this Supplementary Information section provide background on the agencies' proposed rule and the tailoring proposals (together, the proposals). Section IV provides an overview of comments received on the proposals and significant changes to the proposals under this final rule. Section V describes the final rule's purpose, design, scope of application, and minimum requirements. The discussion of the final rule in sections VI through IX describes amendments to certain applicable definitions, the calculation of the NSFR, requirements imposed on a banking organization that fails to meet its minimum NSFR requirement, and the public disclosure requirements for U.S. depository institution holding companies and U.S. intermediate holding companies subject to the final rule. Sections X through XII describe the agencies' impact assessment, the effective date and transitions under the final rule, and certain administrative matters.

II. Background

The 2007–2009 financial crisis revealed significant weaknesses in banking organizations' liquidity risk management and liquidity positions, including how banking organizations managed their liabilities to fund their assets in light of the risks inherent in their on-balance sheet assets and off-balance sheet commitments.[4] The 2007–2009 financial crisis also revealed an overreliance on short-term, less-stable funding, and demonstrated the vulnerability of large and internationally active banking organizations to funding shocks. For example, weaknesses in funding management at many banking organizations made them vulnerable to contractions in funding supply, and they had difficulties renewing short-term funding that they had used to support longer term or illiquid assets. As access to funding became limited and asset prices fell, many banking organizations faced an increased possibility of default and failure. To stabilize the global financial markets, governments and central banks around the world provided significant levels of support to these institutions in the form of liquidity facilities and capital injections.

In response to the 2007–2009 financial crisis, the Basel Committee on Banking Supervision (BCBS) established two international liquidity standards. In January 2013, the BCBS established a short-term liquidity metric, the liquidity coverage ratio (LCR), to mitigate the risks arising when banking organizations face significantly increased net cash outflows in a period

[1] *See* "Net Stable Funding Ratio: Liquidity Risk Measurement Standards and Disclosure Requirements," 81 FR 35124 (June 1, 2016).

[2] *See* Proposed Changes to Applicability Thresholds for Regulatory Capital and Liquidity Requirements, 83 FR 66024 (December 21, 2018) (domestic tailoring proposal); Changes to Applicability Thresholds for Regulatory Capital Requirements for Certain U.S. Subsidiaries of Foreign Banking Organizations and Application of Liquidity Requirements to Foreign Banking Organizations, Certain U.S. Depository Institution Holding Companies, and Certain Depository Institution Subsidiaries, 84 FR 24296 (May 24, 2019) (FBO tailoring proposal). The agencies indicated that comments regarding the NSFR proposed rule would be addressed in the context of a final rule to adopt a NSFR requirement for large U.S. banking organizations and foreign banking organizations.

[3] See further discussion of balance sheet funding in section V.C below.

[4] *See* Senior Supervisors Group, Risk Management Lessons from the Global Banking Crisis of 2008, (October 21, 2009), available at *https://www.newyorkfed.org/medialibrary/media/newsevents/news/banking/2009/SSG_report.pdf.*

of stress (Basel LCR standard).[5] As a complement to the LCR, the BCBS in October 2014 established the net stable funding ratio standard (Basel NSFR standard) to mitigate the risks presented by banking organizations supporting their assets with insufficiently stable funding; the Basel NSFR standard requires banking organizations to maintain a stable funding profile over a longer, one-year time horizon.[6] The agencies have been, and remain, actively involved in the BCBS' international efforts, including the continued development and monitoring of the BCBS's framework for liquidity.

Following the 2007–2009 financial crisis, the agencies implemented several requirements designed to improve the largest and most complex banking organizations' liquidity positions and liquidity risk management practices. In 2014, the agencies adopted the LCR rule to improve the banking sector's resiliency to a short-term liquidity stress by requiring large U.S. banking organizations to hold a minimum amount of unencumbered high-quality liquid assets (HQLA) that can be readily converted into cash to meet projected net cash outflows over a prospective 30 calendar-day stress period.[7] In addition, pursuant to section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act [8] (Dodd-Frank Act) and in consultation with the OCC and FDIC, the Board adopted the enhanced prudential standards rule, which established general risk management, liquidity risk management, and stress testing requirements for certain bank holding companies and foreign banking organizations.[9] These reforms in the post-crisis regulatory framework did not include a requirement that directly addresses the relationship between a banking organization's funding profile and its composition of assets and off-balance commitments.[10]

III. Overview of the Proposed Rule and Proposed Scope of Application

A. The Proposed Stable Funding Requirement

In June 2016, the agencies invited comment on a proposal to implement a net stable funding requirement for the U.S. banking organizations that were subject to the LCR rule at that time.[11] The proposed rule was generally consistent with the Basel NSFR standard, with adjustments to reflect the characteristics of U.S. banking organizations, markets, and other U.S. specific considerations.[12]

The proposed rule would have required a banking organization to maintain an amount of available stable funding (ASF) equal to or greater than the banking organization's projected minimum funding needs, or required stable funding (RSF), over a one-year time horizon.[13] A banking organization's NSFR would have been expressed as the ratio of its ASF amount to its RSF amount, with a banking organization required to maintain a minimum NSFR of 1.0.[14]

Under the proposed rule, a banking organization's ASF amount would have been calculated as the sum of the carrying values of the banking organization's liabilities and regulatory capital, each multiplied by a standardized weighting (ASF factor) ranging from zero to 100 percent to reflect the relative stability of such liabilities and capital over a one-year time horizon. Similarly, a banking organization's minimum RSF amount would have been calculated as (1) the sum of the carrying values of its assets, each multiplied by a standardized weighting (RSF factor) ranging from zero to 100 percent to reflect the relative need for funding over a one-year time horizon based on the liquidity characteristics of the asset, plus (2) RSF amounts based on the banking organization's committed facilities and derivative exposures. The proposed rule also would have included public disclosure requirements for depository institution holding companies subject to the proposed rule.

B. Revised Scope of Application

The proposed rule would have applied to: (1) Bank holding companies, savings and loan holding companies without significant commercial or insurance operations, and depository institutions that, in each case, have $250 billion or more in total consolidated assets or $10 billion or more in on-balance sheet foreign exposure; and (2) depository institutions with $10 billion or more in total consolidated assets that are consolidated subsidiaries of such bank holding companies and savings and loan holding companies. In addition, the Board proposed a modified NSFR requirement that would have applied to certain depository institution holding companies with total consolidated assets of $50 billion or more.[15]

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[5] *See* ''Basel III: The Liquidity Coverage Ratio and liquidity risk monitoring tools'' at *https://www.bis.org/publ/bcbs238.htm.*

[6] *See* ''Basel III: the net stable funding ratio'' at *https://www.bis.org/bcbs/publ/d295.htm.* The BCBS relatedly published the net stable funding ratio disclosure standards published by the BCBS in June 2015. *See* ''Basel III: the net stable funding ratio'' (October 2014), available at *http://www.bis.org/bcbs/publ/d295.pdf;* ''Net Stable Funding Ratio disclosure standards'' (June 2015), available at *http://www.bis.org/bcbs/publ/d324.pdf.*

[7] 12 CFR part 50 (OCC); 12 CFR part 249 (Board); 12 CFR part 329 (FDIC). *See also* ''Liquidity Coverage Ratio: Liquidity Risk Measurement Standards,'' 79 FR 61440 (October 10, 2014).

[8] 12 U.S.C. 5365.

[9] *See* 12 CFR part 252. *See also* ''Enhanced Prudential Standards for Bank Holding Companies and Foreign Banking Organizations,'' 79 FR 17240 (March 27, 2014). The Economic Growth, Regulatory Relief, and Consumer Protection Act, which became law on May 24, 2018, subsequently raised the asset thresholds for applicability of enhanced prudential standards under section 165 of the Dodd-Frank Act. *See* Public Law 115–174, 132 Stat. 1296 (2018). The Board amended the scope of application of these requirements in October 2019. *See* 84 FR 59032, (November 1, 2019).

[10] During the same period, the Board implemented requirements designed to enhance the capital positions and loss-absorbing capabilities for global systemically important banking organizations (GSIBs), which can also have the effect of improving the funding profiles of these firms. The Board adopted a risk-based capital surcharge for GSIBs in the United States that is calculated based on a bank holding company's risk profile, including its reliance on short-term wholesale funding (the GSIB capital surcharge rule). *See* 12 CFR 217 subpart H. The Board also adopted a total loss-absorbing capacity (TLAC) requirement and a long-term debt requirement (LTD) requirement (the TLAC/LTD rule) for U.S. GSIBs and the U.S. operations of certain foreign GSIBs, which requires these firms and operations to have sufficient amounts of equity and eligible long-term debt to improve their ability to absorb significant losses and withstand financial stress and to improve their resolvability in the event of failure or material distress. *See* 12 CFR 252 subparts G and P.

[11] *See* ''Net Stable Funding Ratio: Liquidity Risk Measurement Standards and Disclosure Requirements,'' 81 FR 35124 (June 1, 2016).

[12] The BCBS developed the Basel NSFR standard as a longer-term balance sheet funding metric to complement the Basel LCR standard's short-term liquidity stress metric. In developing the Basel NSFR standard, the agencies and their international counterparts in the BCBS considered a number of possible funding metrics. For example, the BCBS considered the traditional ''cash capital'' measure, which compares the amount of a firm's long-term and stable sources of funding to the amount of the firm's illiquid assets. The BCBS found that this cash capital measure failed to account for material funding risks, such as those related to off-balance sheet commitments and certain on-balance sheet short-term funding and lending mismatches. The Basel NSFR standard incorporates consideration of these and other funding risks, as does this final rule.

[13] For certain depository institution holding companies with $50 billion or more, but less than $250 billion, in total consolidated assets and less than $10 billion in on-balance sheet foreign exposure, the Board separately proposed a modified NSFR requirement.

[14] Under the Board's proposed modified NSFR requirement, a depository institution holding company subject to a modified NSFR would have been required to maintain an NSFR of 1.0 but would have calculated such ratio using a lower minimum RSF amount in the denominator of the ratio, equivalent to 70 percent of the holding company's RSF amount as calculated under the agencies' proposed rule.

[15] Subsequent to the issuance of the proposed rule, certain foreign banking organizations with substantial operations in the United States were required to form or designate U.S. intermediate holding companies. The scope of application under the proposed rule would have included certain U.S.

Subsequent to the proposed rule, the agencies published the tailoring proposals to modify the application of the LCR rule and the proposed rule consistent with considerations and factors set forth under section 165 of the Dodd-Frank Act, as amended by the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA).[16] As part of the tailoring proposals, the agencies proposed to establish four risk-based categories for determining applicability of requirements under the LCR rule and the proposed rule. The requirements would have increased in stringency based on measures of size, cross-jurisdictional activity, weighted short-term wholesale funding, nonbank assets, and off-balance sheet exposures (risk-based indicators). In addition, the tailoring proposals would have removed the Board's proposed modified NSFR requirement for certain depository institution holding companies.[17]

In October 2019, the agencies adopted a final rule (tailoring final rule) that amended the scope of application of the LCR rule so that it applies to certain U.S. banking organizations and U.S. intermediate holding companies of foreign banking organizations, each with $100 billion or more in total consolidated assets, together with certain of their depository institution subsidiaries.[18] The tailoring final rule applies LCR requirements on the basis of the four risk-based categories determined by the risk profile of the top-tier banking organization, including a depository institution that is not a subsidiary of a depository institution holding company.[19] The effective date of the revisions to the LCR rule's scope was December 31, 2019.[20]

bank holding company subsidiaries of foreign banking organizations.

[16] Public Law 115–174, 132 Stat. 1296 (2018).

[17] The tailoring proposals also would have removed the LCR rule's modified LCR requirement that at the time applied to certain depository institution holding companies with total consolidated assets of $50 billion or more.

[18] 84 FR 59230 (November 1, 2019). In a change from the tailoring proposals, the tailoring final rule applied LCR requirements to a U.S. intermediate holding company of a foreign banking organization on the basis of risk-based indicators measured for the U.S intermediate holding company and not the foreign banking organization's combined U.S. operations.

[19] A ''top-tier banking organization'' means the top-tier bank holding company, U.S. intermediate holding company, savings and loan holding company, or depository institution domiciled in the United States.

[20] The tailoring final rule noted that comments regarding the NSFR proposal would be addressed in the context of any final rule to adopt a NSFR requirement for large U.S. banking organizations and U.S. intermediate holding companies. 84 FR at 59235.

IV. Summary of Comments and Overview of Significant Changes to the Proposals

The agencies received approximately 30 comments on the proposed rule, as well as approximately 20 comments related to the NSFR rule in response to the tailoring proposals. Commenters included U.S. and foreign banking organizations, trade groups, public interest groups, and other interested parties. Agency staff also met with some commenters at their request to discuss their comments on the proposed rule and the tailoring proposals.[21] Although many commenters supported the goal of improving funding stability, many commenters expressed concern regarding the overall proposal and criticized specific aspects of the proposed rule.

A number of commenters argued that the proposed rule was unnecessary because it would target risks already addressed by existing regulations, such as the LCR rule. Other commenters expressed concern regarding the design and calibration of the proposed rule. These commenters requested clarification on the conceptual underpinnings of the NSFR, requested additional quantitative support for the proposed ASF and RSF factors, and argued that the proposed rule did not satisfy Administrative Procedure Act (APA) requirements because it provided insufficient support for its design and calibration. Some commenters criticized the proposed rule as not being appropriately tailored for implementation in the United States and argued that the proposed rule was more stringent than the Basel NSFR standard such that it could disadvantage U.S. banking organizations relative to their foreign competitors. Relatedly, certain commenters requested that the agencies conform the final rule to the European Union's implementation of the Basel NSFR standard (EU NSFR rule) in order to minimize potential adverse effects on U.S. banking organizations.[22]

[21] Summaries of these meetings are available on the agencies' public websites. *See https://www.regulations.gov/docket?D=OCC-2014-0029* (OCC), *https://www.federalreserve.gov/apps/foia/ViewComments.aspx?doc_id=R%2D1537&doc_ver=1* (Board), and *https://www.fdic.gov/regulations/laws/federal/2016/2016-net_stable-funding-ratio-3064-ae44.html* (FDIC).

[22] The European Union (EU) implementation of the NSFR requirement, effective 2021, includes targeted adjustments from the Basel NSFR standard in order to reflect EU specificities generally consistent with the EU implementation of the Basel LCR standard. The EU's NSFR requirements also include targeted adjustments to support sovereign bond markets. *See* Regulation (EU) 2019/876 of the European Parliament and the Council, May 20, 2019, *available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019R0876* (EU NSFR rule).

Some commenters expressed concern that the proposed rule could result in increased costs to banking organizations and the financial system that would exceed the proposed rule's benefits.[23] Specifically, some commenters argued that the proposed rule could increase funding and compliance costs, which could cause banking organizations to withdraw from or reduce the scale of certain business activities with low margins, including certain capital markets-related activities. According to the commenters, this could have the effect of tightening credit and increasing borrowing costs for households and businesses in the United States. Commenters also argued that the funding and compliance costs of the proposed rule could increase financial stability risk by shifting certain financial intermediation activities from the banking sector to less regulated ''shadow banking'' channels. Commenters also expressed concern that the proposed rule could have pro-cyclical effects, for example, by incentivizing banking organizations to restrict lending to improve their NSFRs during periods of stress.

Additionally, many commenters requested changes to specific elements of the proposed rule. For example, commenters recommended the agencies assign higher ASF factors for certain liabilities, such as certain types of deposits, and lower RSF factors for certain categories of assets and committed facilities. Some commenters recommended changes to the proposed rule's treatment of derivatives, particularly the treatment of variation margin and the treatment of potential valuation changes in a derivatives portfolio. In addition, a number of commenters requested that the agencies modify the proposed rule to assign zero percent RSF and ASF factors to certain assets and liabilities commenters viewed as interdependent such that the specific, identifiable assets are funded by the specific, identifiable liabilities of an equal or similar tenor and, therefore, present little or minimal funding risk. Finally, some commenters requested that the agencies delay implementation of the NSFR requirement to allow banking organizations additional time to build internal reporting systems and comply with disclosure requirements.

[23] The agencies received a number of comments that were not specifically responsive to the proposed rule but more generally requested that the agencies assess the combined costs of post-crisis regulations on the availability of credit and the economy.

The agencies received a number of comments requesting the agencies reconsider the proposed rule's scope of application. Specifically, many commenters argued that the proposed thresholds for application were arbitrary and insufficiently risk-sensitive and requested the agencies further tailor the scope of the proposed rule. The agencies also received a number of comments on the appropriateness of the revised scope of application in the tailoring proposals.

As discussed throughout this Supplementary Information section, the final rule retains the general design for the NSFR calculation and calibrates minimum requirements to the risk profiles of banking organizations in a manner consistent with the tailoring final rule. However, the final rule includes a number of modifications, including:

- The final rule assigns a zero percent RSF factor to unencumbered level 1 liquid asset securities and certain short-term secured lending transactions backed by level 1 liquid asset securities (see section VII.D of this Supplementary Information section).
- The final rule provides more favorable treatment for certain affiliate sweep deposits and non-deposit retail funding (see section VII.C of this Supplementary Information section).
- The final rule permits cash variation margin to be eligible to offset a covered company's current exposures under its derivatives transactions even if it does not meet all of the criteria in the agencies' supplementary leverage ratio rule (SLR rule).[24] In addition, variation margin received in the form of rehypothecatable level 1 liquid asset securities also would be eligible to offset a covered company's current exposures (see section VII.E of this Supplementary Information section).
- The final rule reduces the amount of a covered company's gross derivatives liabilities that will be assigned a 100 percent RSF factor (see section VII.E of this Supplementary Information section).

V. The Final Rule's Purpose, Design, Scope of Application, and Minimum Requirements

A. Purpose of the Final Rule

The NSFR is designed to address risks that are inherent in the business of banking. Banking organizations perform maturity and liquidity transformation,[25] which is an important financial intermediation process that contributes to efficient resource allocation and credit creation. To conduct maturity and liquidity transformation and meet the long-term credit needs of businesses and households, banking organizations also must address the short-term liquidity preferences of funds providers. These transformation activities create a certain inherent level of risk to banking organizations, the U.S. financial system, and the broader economy caused by banking organizations' potential overreliance on unstable funding sources relative to the composition of their balance sheets. Such overreliance could potentially result in the failure of banking organizations, disruptions to asset prices, and reduction in the provision of credit to households and businesses.

A banking organization may mitigate these risks by having funding sources that are appropriately stable over time. Because short-term funding generally tends to be less expensive than longer-term funding, banking organizations have incentives to fund their longer-term or less-liquid assets with less stable, shorter-term liabilities. While this approach may benefit short-term earnings, it may lead to imbalances between how a banking organization chooses to fund its assets and the funding it may need to maintain the assets over time, as well as increases in liquidity and funding risk arising from potential customer and counterparty runs and a more interconnected financial sector. In turn, this creates a funding risk for banking organizations, the financial system, and the broader economy. The final rule requires large banking organizations to avoid excessively funding long-term and less-liquid assets with short-term or less-reliable funding and thus reduces the likelihood that disruptions in a banking organization's regular funding sources would compromise its funding stability and liquidity position.

The final rule establishes a minimum NSFR requirement that is applicable on a consolidated basis to certain top-tier banking organizations with total consolidated assets of $100 billion or more, together with certain depository institution subsidiaries (together, covered companies). Consistent with the proposed rule, the final rule requires a covered company to calculate an NSFR based on the ratio of its ASF amount to its RSF amount and maintain an NSFR equal to or greater than 1.0 on an ongoing basis.[26] In addition, the final rule, like the proposed rule, includes public disclosure requirements for U.S. depository institution holding companies and U.S. intermediate holding companies of foreign banking organizations that are subject to the final rule.

B. Comments on the Need for the NSFR Requirement

Banking organizations have improved their liquidity risk management practices and liquidity positions since the 2007–2009 financial crisis, including by holding larger liquidity buffers, avoiding excessive reliance on very short-term unstable wholesale funding sources, and improving their internal controls and governance structures surrounding liquidity risk management. The NSFR requirement aims to preserve these improvements and help position covered companies to act as resilient financial intermediaries through potential future periods of instability. The agencies received a number of comments arguing that the proposed rule is unnecessary because other elements of the agencies' regulatory framework already sufficiently address liquidity and funding risk at covered companies.[27] Some commenters also argued that the agencies should not apply an NSFR requirement because many covered companies have improved their current funding profiles relative to the period leading up to the 2007–2009 financial crisis. By contrast, one commenter supported the proposed rule, asserting that it would be an important complement to the LCR rule because it would address funding stability and

[24] 12 CFR 3.10(c)(4) (OCC); 12 CFR 217.10(c)(4) (Board); 12 CFR 324.10(c)(4) (FDIC). In addition, the final rule includes a new provision to exclude assets received by a covered company as variation margin under derivative transactions from the treatment of rehypothecated assets that are off-balance sheet assets in accordance with U.S. generally accepted accounting principles (GAAP).

[25] To conduct financial intermediation, banking organizations obtain resources that are currently surplus to the needs of certain parts of the economy (funds providers) and lend them to other parts of the economy that currently need those resources (users of funds). Funds providers generally prefer to supply their resources on a short-term basis with easy access to their funds (liquid resources); for example, household savings. Users of funds often need these resources on a long-term basis and in ways that make such resources difficult to convert to cash (illiquid resources); for example, building factories or capital for business growth. Maturity and liquidity transformation refers to the process of bridging the competing needs of funds providers and users of funds.

[26] ASF factors are described in section VII.C, RSF factors are described in section VII.D, and the derivatives RSF amount is described in section VII.E of this Supplementary Information section.

[27] Commenters provided examples, including the LCR rule; the Board's enhanced prudential standards rule; the TLAC/LTD rule; the GSIB capital surcharge rule (which includes a measure of weighted short-term wholesale funding), SLR rule, and other capital requirements; single counterparty credit limits; mandatory clearing requirements and margin requirements for non-cleared swaps and non-cleared security-based swaps; and Board and FDIC supervisory guidance relating to liquidity in connection with resolution planning.

maturity mismatch more broadly and over a longer time horizon.

The final rule is intended to complement and reinforce other elements of the agencies' regulatory framework that strengthen financial sector resiliency by addressing risks that are not directly addressed by the agencies' other regulatory measures. For example, the NSFR rule provides an important complement to the LCR rule, which addresses the risk of increased net cash outflows over a 30-calendar day period of stress by requiring banking organizations to hold HQLA that can be readily converted to cash. While addressing short-term cash-flow related risks is a core component of a banking organization's liquidity risk management, a banking organization could comply with the LCR requirement and still fund its long-term or illiquid assets and commitments with short-term liabilities not sufficiently stable to preserve these assets over an extended period.[28] The final rule further complements the LCR rule by mitigating the risk of a banking organization concentrating funding just outside the LCR's 30-day window. The final rule also complements requirements related to firm-specific measures of funding risk under the Board's enhanced prudential standards rule by providing a standardized measure of the stability of a banking organization's funding profile, which would promote greater comparability of funding structures across banking organizations and improve transparency and market discipline through public disclosure requirements.[29] With respect to the other rules and guidance commenters cited as sufficiently addressing liquidity and funding risk, these elements of the agencies' regulatory framework do not directly address balance sheet funding risks for covered companies on a going-concern basis. [30]

Reliance on less-stable sources of funding may require a banking organization to repay or replace its funding more often and make it more exposed to sudden funding market disruptions. Potential loss of funding can restrict a banking organization's ability to support its assets and commitments over the long term, generating both safety and soundness and financial stability risks. The final rule is designed to mitigate such risks by directly increasing the funding resilience of subject banking organizations. The final rule mitigates risks to U.S. financial stability by improving the capacity of banking organizations to continue to support their assets and lending activities across a range of market conditions. A covered company that sufficiently aligns the stability of its funding sources with its funding needs based on the liquidity characteristics of its assets and commitments is better positioned to avoid asset fire sales and continue to function as a financial intermediary in the event of funding or asset market disruptions. As a result, a covered company will be better positioned to continue to operate and lend, which promotes more stable and consistent levels of financial intermediation in the U.S. economy across economic and market conditions.

As a standardized metric, the NSFR also promotes greater comparability across covered companies and foreign banks subject to substantially similar requirements in other jurisdictions and facilitates supervisory assessments of vulnerability. Through public disclosure requirements, the NSFR rule also promotes greater market discipline through enhanced transparency.[31] In these ways, a standardized long-term funding measure, such as the NSFR, is intended to work in tandem with internal models-based measures to provide a more robust and complete framework to monitor and manage funding and liquidity risks of covered companies.

C. The NSFR's Conceptual Framework, Design, and Calibration

A number of commenters questioned the conceptual framework and design of the proposed rule, as well as its overall analytical basis and the calibrations of specific components. In particular, commenters argued that the agencies did not provide sufficient justification or data analysis to support the proposed calibration of the NSFR rule's relevant factors. Some commenters questioned whether the calibrations in the proposed rule reflected a one-year period of stress or whether the calibration was intended to reflect different "business-as-usual" conditions.[32] A number of commenters also argued that if the proposed rule was not calibrated based on the same stress assumptions as the LCR rule, the proposed rule should not incorporate elements and definitions from the LCR rule. Some commenters also requested that the agencies reconsider elements of the proposed rule that they believed to be more conservative than the LCR rule. In addition, several commenters argued that the proposed rule was focused on commercial banking and was therefore not sensitive enough to the different business models of covered companies, such as custody banks and banking organizations significantly involved in capital markets. Another commenter stated that the NSFR is a static measure and does not take into account actions a firm may take in the future to address funding risk. As addressed in sections VII.C and VII.D of this Supplementary Information section, the agencies also received a number of comments on the proposed values of ASF factors and RSF factors where the commenter's concern was predicated on the design of the NSFR. For example, commenters described the value of certain ASF factors as conservative based on the assumption that the values represented cash-flow amounts and commenters therefore made direct comparison to factors used in the LCR rule. In light of these comments, the agencies are clarifying in this Supplementary Information section the conceptual basis for the NSFR design under the final rule.

1. Use of an Aggregate Balance Sheet Measure and Weightings

The NSFR's conceptual design builds on commonly used assessments of balance sheet funding.[33] The NSFR is a standardized measure of a banking organization's funding relative to its assets and commitments. Consistent with the Basel NSFR standard, the final

[28] Cash flow projections, liquidity stress testing, and liquidity buffer requirements for certain covered holding companies under the Board's enhanced prudential standards rule complement the LCR rule by addressing cash flow risks with additional firm-specific granularity and across additional time horizons, including a one-year planning horizon. These requirements do not directly address balance sheet funding risks.

[29] *See* 12 CFR 252.35 and 12 CFR 252.157.

[30] The final rule reflects that regulatory capital elements and long-term debt required under the agencies' regulatory capital rule, the Board's GSIB capital surcharge rule, and the TLAC/LTD rule provide stable funding by virtue of the long-term or perpetual tenor of such regulatory capital elements and long-term debt. The Board's GSIB capital surcharge rule and the tailoring final rule include a measure of historic funding composition, weighted short-term wholesale funding, but this measure does not measure or directly address funding risk. The weighted short-term wholesale funding measure is based on a banking organization's average use of short-term funding sources over the prior year but does not reflect a banking organization's assets or the banking organization's use of longer-term funding sources.

[31] Public disclosure requirements are not required for non-standardized measurements of liquidity risk required under the Board's enhanced prudential standards rule.

[32] Certain commenters also expressed concerns about the descriptions by the BCBS of the Basel NSFR standard between 2009 and 2014 and the opportunities to comment on certain elements of the international standard. Commenters argued that the agencies should remove elements of the proposed rule or re-open the comment period because, in these commenters' view, the public was unable to comment on the inclusion of certain elements in the Basel NSFR standard.

[33] *See supra* note 12.

rule conceptually draws on supervisory and industry-developed funding risk management measures, with modifications to account for material funding risks and policy considerations.[34] Supervisors and industry stakeholders such as credit rating agencies and equity analysts routinely assess the funding profiles of banking organizations through comparisons of the compositions of the banking organization's assets and liabilities.[35] The NSFR's design as a ratio of weighted liabilities and regulatory capital to weighted assets and commitments is consistent with these approaches. Using a ratio measure is appropriate for measuring and addressing funding risks because it provides a holistic assessment of a banking organization's funding profile based on the aggregate composition of the banking organization's balance sheet and commitments rather than on individual assets or liabilities.

The final rule takes into account the differing risk characteristics of a covered company's various assets, liabilities, and certain off-balance sheet commitments and applies different weightings (ASF and RSF factors) to reflect these risk characteristics. Under the final rule, ASF and RSF factors are used to determine the numerator and denominator of the NSFR and reflect, respectively, the stability of funding, and the need for assets and commitments to be supported by such funding over a range of market conditions, each as assessed under the final rule. As described in sections VII.C and VII.D of this Supplementary Information section, the final rule uses broad categories of liabilities and assets to assess relative stability and funding needs, respectively. These weightings make the NSFR assessment risk sensitive by differentiating between types of assets and types of liabilities.

While the NSFR is a simplified and standardized metric, meeting the NSFR minimum requirement of 1.0 provides evidence that a covered company has, in aggregate, a sufficient amount of stable liabilities and regulatory capital to support over a one-year time horizon its aggregate assets and commitments based on the liquidity characteristics of such aggregate assets and commitments.[36] Given the size, complexity, scope of activities, and interconnectedness of covered companies, a covered company with an NSFR of less than 1.0 may face an increased likelihood of liquidity stress or of having to dispose of illiquid assets, and may be less well positioned to maintain its level of financial intermediation over various market conditions.

Commenters expressed concerns that application of RSF factors to specific assets has the effect of imposing a requirement on covered companies to issue additional long-dated liabilities to fund such assets. The final rule does not prescribe the method by which a covered company must meet its minimum requirement. Under the final rule, the NSFR requirement reflects the aggregate balance sheet of a covered company, and the final rule does not apply separate minimum funding requirements to individual assets, legal entities, or business lines represented on the balance sheet. For example, a covered company that has an NSFR of 1.0 and increases its holding of certain long-dated assets is not required to issue additional long-dated liabilities under the final rule but, rather, has discretion on how to continue to meet its minimum requirement, including by changing its overall asset composition.

2. Use of a Simplified and Standardized Point-in-Time Metric

Many commenters expressed concerns or suggestions that related to the level of granularity in the NSFR's conceptual design or that the NSFR was a point-in-time measure. For example, commenters suggested the NSFR include additional RSF and ASF factors tailored to specific products and activities.[37] Commenters similarly expressed concerns about the number of residual maturity categories used in the NSFR. A number of commenters criticized the design of the NSFR as a static metric arguing that the measurement of the funding risk of a covered company's aggregate balance sheet should consider actions that banking organizations may undertake in the future.

In response to these concerns, the agencies note that a broad comparison of the stability of a covered company's funding relative to the liquidity characteristics of its assets achieves the final rule's funding risk-mitigation objectives. To limit the burden on covered companies and to maximize the comparability of the metric between each covered company and other international banking organizations, the NSFR is designed as a simplified metric that uses a small number of categories of assets, exposures, liabilities, counterparty types, and residual maturity buckets to achieve its objective. While the balance sheets of large banking organizations reflect a complex variety of transactions and business activities, additional granularity could be burdensome to covered companies relative to the goals of the NSFR requirement. The NSFR was designed holistically and introducing additional granularity could require recalibration of certain other elements. For example, the incorporation of additional RSF factors may require other RSF factors to be adjusted upward, as they currently reflect an aggregate view of the level of stable funding required for the entire set of assets or off-balance sheet commitments in a given category. Additionally, to the extent possible, the metric utilizes the carrying values of assets and liabilities on a covered company's balance sheet under U.S. Generally Accepted Accounting Principles (GAAP) and limits the need for additional valuations.

In response to comments that the NSFR is not sensitive to the different business models of covered companies, the agencies note that the NSFR is designed to allow comparison across covered companies and other international firms, and to minimize differences in how liquidity characteristics of liabilities and assets are evaluated by covered companies. As a standardized metric, the final rule is constructed to ensure a sufficient amount of stable funding across all covered companies, regardless of their business models. The NSFR generally does not differentiate by a banking organization's business model, its lines of business, or the purpose for which individual assets or liabilities are held on its balance sheet. For example, the NSFR treats securities held on a covered company's balance sheet based on the securities' credit risk and market characteristics regardless of whether such securities are held as long-term investments, as hedging instruments, or as market making inventory. While the composition of banking organizations' balance sheets varies based on business models and the services provided to customers, the NSFR is not focused on

[34] For example, the final rule takes into account policy considerations such as externalities associated with an unstable funding structure that can affect the safety and soundness of other banking organizations and U.S. financial stability and an interest in maintaining financial intermediation of covered companies across economic and market conditions.

[35] For example, supervisors and industry analysts compare compositions of assets and liabilities though the use of a loans-to-deposits ratio or by defining a measure of ''noncore'' funding dependency.

[36] As described in section V.E.3 of this Supplementary Information section, the final rule applies an adjustment factor to the denominator of the ratio to reflect the risk profile of a covered company.

[37] *See* sections VII.C, VII.D and VII.E of this Supplementary Information section.

any particular business model (for example, commercial banking), as suggested by commenters.

Like most prudential requirements, the NSFR is a measure of a covered company's condition at a point in time and by design does not consider the broad variety of actions that management may take in the future. As a general principle, the agencies do not speculate about future transactions, contingencies, or potential managerial remediation steps that the covered company may take.[38]

3. Use of a Time Horizon

Certain commenters questioned the NSFR's design in respect to its time horizon. While the NSFR measures a banking organization's balance sheet and commitments at a point in time, the assessment of adequate funding considers the stability of, and the need for, funding with reference to a general one-year time horizon and a range of market conditions. The measurement incorporates contractual maturities but generally does not reflect expectations about the year following the calculation date.[39] Rather, consistent with the Basel NSFR standard, the NSFR calibrations seek to reflect resilient credit intermediation to the real economy and general behaviors by banking organizations and their counterparties.

The use of a time horizon for the assessment of funding imbalances is appropriate because the residual maturities of liabilities and assets of a covered company at the calculation date are, among other characteristics, indicative of the liabilities' stability and the assets' need for funding, respectively. For example, liabilities that are due to mature in the short term will generally provide less stability to a banking organization's balance sheet than longer-term liabilities. Similarly, certain short-dated assets maturing in less than one year should require a smaller portion of funding to be maintained over a one-year time horizon because banking organizations may allow such assets to mature without replacing them. The choice of a one-year time horizon is also consistent with traditional accounting and supervisory measures of short-term and long-term financial instruments and exposures.

4. Stress Perspectives and Using Elements From the LCR Rule

A number of commenters requested clarification on the extent to which the NSFR calibrations incorporated stress assumptions. Consistent with the complementary designs of the Basel LCR and NSFR standards, the final rule is designed differently from, and to be complementary to, the LCR rule. Unlike the LCR, which compares immediately available sources of cash to potential stressed cash outflows over a 30-calendar day period, the NSFR is not a cash-flow coverage metric, and ASF and RSF amounts are not cash-flow amounts. While ASF factors take into account the characteristics of liabilities that influence relative funding stability across a range of market conditions, the values of ASF factors do not represent liability outflow rates. Similarly, while RSF factors take into account the liquidity characteristics of assets that generally influence their need for funding over a one-year horizon, the values of RSF factors do not reflect the monetization value of assets. In response to comments that the values of factors used in the LCR rule imply that ASF or RSF factors were incorrectly calibrated, it is important to note that comparisons of the values of ASF or RSF factors under the final rule to the values of outflow and inflow rates used in the LCR rule are not indicative of the relative conservatism of the requirements under both rules.[40]

Further, the final rule is not designed to function as a one-year liquidity stress test, and therefore its ASF and RSF factors are not assigned based on, or intended to directly translate to, assumed cash inflows and outflows over a one-year period of stress. Rather, the final rule is intended to serve as a balance-sheet metric, and ASF and RSF factors reflect, respectively, the relative stability of funding and the need for funding based on the liquidity characteristics of assets and commitments, each across a range of economic and financial conditions.[41] Funding and liquidity characteristics of liabilities and assets under stress conditions are therefore relevant to, but not determinative of, ASF and RSF factors. As a result, ASF and RSF factor calibrations take into account potential effects of stress on the stability of funding and liquidity characteristics of assets and commitments, but are not calibrated to require a covered company to retain a buffer against a stress period of one year, as discussed in sections VII.C and VII.D of this Supplementary Information section.

Although the NSFR generally is not calibrated to the stress assumptions of the LCR rule, it nevertheless shares certain common elements and definitions with the complementary LCR where such consistency is helpful. The alignment of the final rule with the structure and design of the LCR rule, where appropriate, aims to improve efficiency and limit compliance costs to covered companies by allowing them more efficiently to implement the two requirements. In response to commenters' concerns that sharing definitions and elements with the LCR rule inappropriately incorporates stress assumptions into the NSFR requirement, the agencies note that many shared elements and defined terms are independent of stress assumptions.[42] Moreover, to the extent that the final rule incorporates definitions of the LCR rule, their usage in the final rule generally reflects assumptions that are specific to the final rule.[43] Finally, while the final rule is not calibrated based on a one-year stress, some considerations of conservatism are still relevant. For example, as discussed in section VII.B of this Supplementary Information section, the final rule generally applies the same assumptions for determining maturity as the LCR rule because conservative assumptions regarding the maturity of funding relative to the duration of asset holdings are appropriate for assessing the risks presented by mismatches in balance sheet funding.

5. Analytical Basis of Factor Calibrations and Supervisory Considerations

Several commenters argued that the agencies did not sufficiently rely on empirical analysis to inform various portions of the proposed rule. Other commenters argued that the agencies

[38] As noted above, the point-in-time NSFR complements forward-looking assessments of risk, such as a covered company's internal liquidity stress testing practices.

[39] As described below, calculation date means any date on which a covered company calculates its NSFR. *See* section VI.A.1 of this Supplementary Information section.

[40] *See* sections VII.C and VII.D of this Supplementary Information section.

[41] The LCR rule compares cash-generating resources (*i.e.,* the HQLA amount) to cash needs (total net cash outflows) in a 30-day stress. The final rule compares sources of stable funding (ASF amount) to the need for stable funding (RSF amount), each calibrated over a 12-month horizon and across a range of market conditions.

[42] For example, the definitions of "general obligation," "affiliate," and "company" do not incorporate an assumption of stress.

[43] For example, the final rule applies the same ASF factor to certain forms of funding from a financial sector entity that mature in six months or less, regardless of whether such funding is in the form of a secured funding transaction or unsecured wholesale funding, whereas the LCR rule generally treats these categories of funding separately for purposes of determining applicable outflow amounts. *See* 12 CFR 50.32(h) and (j) (OCC); 12 CFR 249.32(h) and (j) (Board); 12 CFR 329.32(h) and (j) (FDIC).

did not sufficiently disclose the quantitative data and analyses on which the agencies relied.

As explained in detail in sections VII.C and VII.D of this Supplementary Information section, the liabilities within an ASF factor category generally exhibit similar levels of funding stability and the assets within an RSF factor category generally exhibit similar liquidity characteristics. In addition, there is a sufficient number of ASF factor and RSF factor categories in the final rule to differentiate among the funding risks presented by the assets, commitments, and liabilities covered by the NSFR. The ASF and RSF factors as calibrated for these categories of liabilities and assets, and as applied under the Basel NSFR standard to similar categorizations, are generally appropriate for U.S. implementation.[44] However, as discussed below, the final rule departs from the Basel NSFR standard where doing so would support important domestic policy objectives. The agencies regularly review their regulatory framework, including liquidity requirements, to ensure it is functioning as intended and will continue to assess the NSFR's calibration under the final rule. A more specific discussion of the agencies' analysis is provided in sections VII.C and VII.D of this Supplementary Information section, which discuss the comments received on the calibration of ASF and RSF factors.

Consistent with the proposed rule and as noted above, certain ASF and RSF factor assignments in the final rule take into account policy considerations relating to the safety and soundness of covered companies and U.S. financial stability.[45] For example, the assignment of a zero percent ASF factor to wholesale funding from financial sector entities that matures within six months generally reflects supervisory concerns related to the financial stability risks related to overreliance on this source of funding by large interconnected banking organizations. In calibrating the factors, the agencies also considered behavioral and operational factors that can affect funding stability or asset liquidity, such as reputational incentives that could cause a covered company to maintain lending to certain counterparties.[46]

In response to commenters' assertion that the agencies failed to disclose quantitative data and analyses used to support the proposed rule, the agencies note that they disclosed in the proposed rule material that was available and reliable. In the instances in which the agencies cited data in support of the proposed rule, the agencies identified that data, acknowledged the shortcomings of the available data, and invited input from the public. In developing the final rule, the agencies have considered the comments received.

D. Adjusting Calibration for the U.S. Implementation of the NSFR

As noted above, the final rule is based on the general framework of the Basel NSFR standard. Some commenters argued that the agencies should not adopt the proposed rule, or should modify certain elements of the proposed rule, because the Basel NSFR standard is an internationally negotiated standard that was not properly tailored to reflect U.S. financial, legal, and market conditions. By contrast, a number of commenters argued that the final rule should be more consistent with the Basel NSFR standard, particularly with respect to elements that would be more stringent under the proposed rule than the Basel NSFR standard.

In developing the proposed and final rules, the agencies considered the Basel NSFR standard as well as financial, legal, market, and other considerations specific to the United States. Basing the final rule on the general framework of the Basel NSFR standard helps promote competitive equity with respect to covered companies and other large, internationally active banking organizations in other jurisdictions, facilitate regulatory consistency across jurisdictions, and ensure a minimum level of resiliency across the global financial system. Where appropriate, the final rule differs from the Basel NSFR standard to reflect specific characteristics of U.S. markets, practices of U.S. banking organizations and domestic policy objectives.[47]

E. NSFR Scope and Minimum Requirement Under the Final Rule—Full and Reduced NSFR

1. Proposed Minimum Requirement and the Tailoring Final Rule

In the tailoring proposals, the agencies re-proposed the scope of application of the NSFR proposed rule. The tailoring proposals would have established four categories of requirements—Category I, II, III, and IV—that would have been used to tailor the application of the NSFR requirement based on the risk profile of a top-tier banking organization as measured by the risk-based indicators.[48] Covered companies subject to Category I and II requirements would have been subject to the full requirements of the proposed rule (full NSFR). Under Category III or Category IV, however, covered companies would have been subject to further tailored NSFR requirements based on the top-tier banking organization's level of weighted short-term wholesale funding. Specifically, a covered company that meets the criteria for Category III with $75 billion or more in average weighted short-term wholesale funding would have been subject to the full NSFR requirement. By contrast, banking organizations in Category III with less than $75 billion in average weighted short-term wholesale funding, or in Category IV with $50 billion or more in average weighted short-term wholesale funding, would have been required to comply with a reduced NSFR (reduced NSFR) requirement, calibrated at a level equivalent to between 85 and 70 percent of the full NSFR requirement.[49] Banking organizations in Category IV with less than $50 billion in weighted short-term wholesale funding would not have been subject to an NSFR requirement. In addition, a depository institution subsidiary of a covered company meeting the criteria of Category I, II, or III would have been required to comply with the NSFR requirement to which its parent covered company was subject if the depository institution subsidiary's total consolidated assets were $10 billion or greater. Depository institution subsidiaries with less than $10 billion in total consolidated assets, as well as depository institution subsidiaries of covered companies meeting the criteria of Category IV, would not have been required to comply with an NSFR requirement.

The tailoring final rule adopted these categories, with certain changes, for purposes of the LCR rule and the agencies' capital rule. Under the tailoring final rule, Category I requirements apply to U.S. global systemically important banks (GSIBs)

[44] Supervisory experience is informed in part through confidential data obtained through the FR 2052a report.

[45] *See* sections VII.C and VII.D of this Supplementary Information section.

[46] *See* section VII of this Supplementary Information section.

[47] Notable divergences in the final rule from the Basel NSFR standard include the treatment of level 1 liquid asset securities, certain short-term secured lending transactions backed by level 1 liquid assets, variation margin in derivatives transactions, and non-deposit retail funding.

[48] *See* section III.B of this Supplementary Information section. In the tailoring proposals, the proposed scope of application for the NSFR was the same as that proposed for the LCR rule.

[49] As noted above, the tailoring proposals would have removed the Board's modified LCR and modified NSFR requirement because the reduced LCR and reduced NSFR would be better designed for assessing liquidity and funding risks for banking organizations in Categories III and IV.

and any of their depository institution subsidiaries with $10 billion or more in consolidated assets. Category II requirements apply to top-tier banking organizations,[50] other than U.S. GSIBs, with $700 billion or more in consolidated assets or $75 billion or more in average cross-jurisdictional activity, and to their depository institution subsidiaries with $10 billion or more in consolidated assets. Category III requirements apply to top-tier banking organizations that have $250 billion or more in consolidated assets, or that have $100 billion or more in consolidated assets and also have $75 billion or more in (1) average nonbank assets, (2) average weighted short-term wholesale funding, or (3) average off-balance sheet exposure, that are not subject to Category I or II requirements. Category III requirements also apply to depository institution subsidiaries of these top-tier banking organizations, each with $10 billion or more in consolidated assets. Category IV requirements apply to top-tier depository institution holding companies or U.S. intermediate holding companies that in each case have $100 billion or more in consolidated assets and $50 billion or more in average weighted short-term wholesale funding that are not subject to Category I, II or III requirements.

Under the tailoring final rule, covered companies in Category I and II, or in Category III with $75 billion or more in average weighted short-term wholesale funding are subject to the full requirements of the LCR rule. All other covered companies in Category III and covered companies in Category IV with $50 billion or more in average weighted short-term wholesale funding are subject to a reduced LCR requirement calibrated at 85 percent and 70 percent, respectively. The calibration approaches outlined in the tailoring proposals and tailoring final rule were designed to better align the regulatory requirements of banking organizations with their risk profiles, taking into account their size and complexity, as well as their potential impact on systemic risk.

The final rule adopts the risk-based category approach used in the tailoring final rule for purposes of applying the NSFR. The application of the NSFR requirements to specific entities based on their tailoring category is discussed further below.

[50] *See supra* note 19.

2. Applicability of the Final Rule to U.S. Intermediate Holding Companies and Use of the Risk-Based Indicators

The tailoring proposals would have applied liquidity requirements to foreign banking organizations based on the risk profile of their combined U.S. operations. Specifically, the proposed NSFR requirements would have applied to a foreign banking organization based on the combined risk profile of its U.S. intermediate holding company and any U.S. branches or agencies, as measured by the risk-based indicators.[51]

Most commenters argued that the NSFR requirement should apply directly to a U.S. intermediate holding company of a foreign banking organization based on the U.S. intermediate holding company's risk profile. Some commenters further asserted that no NSFR requirement should be imposed on U.S. intermediate holding companies in view of the application of the NSFR under home country standards to the top-tier foreign parent. These commenters argued that the application of an NSFR requirement to U.S. intermediate holding companies is inconsistent with the principles of national treatment and equality of competitive opportunity because mid-tier U.S. bank holding companies of a similar size and risk profile would not be subject to an NSFR requirement but rather would be reflected in the NSFR applied at the top-tier consolidated U.S. parent. Other commenters argued that the liquidity requirements that apply to foreign banking organizations' U.S. operations, such as internal liquidity stress testing and liquidity risk management standards, and total loss-absorbing capacity (TLAC) instruments issued by U.S. intermediate holding companies make the application of the NSFR rule unnecessary for such companies. In addition, some commenters argued that U.S. intermediate holding companies should not be subject to the NSFR rule until after the agencies have conducted an impact analysis. By contrast, other commenters supported the proposed application of an NSFR requirement to a U.S. intermediate holding company based on the risk profile of the combined U.S. operations of the foreign banking organization.

A U.S. intermediate holding company poses risks in the United States similar to domestic banking organizations of a similar size and risk profile, even if the parent foreign banking organization is subject to an NSFR requirement in its home jurisdiction. The LCR rule, the Board's enhanced prudential standards rule, and the final rule apply to applicable U.S. banking organizations on a global consolidated basis and incorporate certain liquidity risks posed by mid-tier holding companies and their subsidiaries.[52] For this reason, such requirements do not apply directly to mid-tier holding companies on a standalone basis. Consistent with the LCR rule and the Board's enhanced prudential standards rule, the final rule applies to a U.S. intermediate holding company of a foreign banking organization because of the risks it presents to the U.S. financial system on a consolidated basis. However, the final rule does not apply liquidity or funding requirements to a subsidiary holding company of a U.S. intermediate holding company of a foreign banking organization. Further, for the reasons described in section V.A of this Supplementary Information section, the NSFR requirement is a complement to the LCR rule and other regulatory requirements for banking organizations that can present material risks to the U.S. financial system. In light of these concerns, the agencies are applying an NSFR requirement to U.S. intermediate holding companies.

In addition, consistent with the scope of application of the LCR rule, the final rule applies the NSFR requirement to a U.S. intermediate holding company based on the risk profile of the U.S. intermediate holding company, rather than on the combined U.S. operations of the foreign banking organization.[53] Specifically, the final rule applies a full NSFR or reduced NSFR requirement to a U.S. intermediate holding company under the risk-based categories based on measures of the U.S. intermediate holding company's risk-based indicators. This approach helps to enhance the efficiency of NSFR requirements relative to the proposal, because stable funding requirements that apply to a U.S. intermediate holding company are based on the U.S.

[51] The tailoring proposals also sought comment on whether standardized liquidity requirements, such as the LCR and NSFR, should apply to the U.S. branches and agencies of a foreign banking organization to complement the internal liquidity stress testing standards that currently apply to these entities. As described in the tailoring final rule, the Board continues to consider whether to develop and propose for implementation a standardized liquidity requirement with respect to the U.S. branches and agencies of foreign banking organizations. *See* 84 FR at 59257. Any such requirement would be subject to notice and comment as part of a separate rulemaking process.

[52] The consolidated risks posed by U.S. banking organizations to the U.S. financial system also include risks derived from foreign-based branches and subsidiaries.

[53] *See supra* note 18.

intermediate holding company's risk profile.

3. NSFR Minimum Requirements Under the Final Rule: Applicability and Calibration

A number of commenters argued that the re-proposed scope of applicability of the NSFR requirement was too stringent. Some commenters argued that smaller regional banking organizations should not be subject to the NSFR rule and that NSFR requirements for Category IV banking organizations should be eliminated. By contrast, other commenters argued that the tailoring proposals would tailor NSFR requirements in a way that would weaken the safety and soundness of large banking organizations and increase risks to U.S. financial stability. Some commenters argued that full NSFR requirements should apply to all covered companies until after the final rule has been effective for a sufficiently long period of time for the agencies to evaluate its efficacy. Other commenters advocated for further tailoring of the NSFR requirements.

For the reasons discussed below, the final rule generally retains the NSFR requirements described under the tailoring proposals. The final rule adopts a reduced NSFR requirement calibrated to 85 percent of the full NSFR requirement for Category III banking organizations with less than $75 billion in weighted short-term wholesale funding, and to 70 percent of the full NSFR requirement for Category IV banking organizations with $50 billion or more in weighted short-term wholesale funding.[54] Consistent with the tailoring proposals, depository institution subsidiaries with less than $10 billion in total consolidated assets would not be subject to an NSFR requirement. Moreover, no NSFR requirement applies at the subsidiary depository institution-level under Category IV.

a) NSFR Requirements Under Category I

Consistent with the scope of application of the LCR rule, the tailoring proposals would have applied full NSFR requirements to covered companies that meet the criteria for Category I. The agencies did not receive comments on the application of the NSFR requirement under Category I and are finalizing this aspect as proposed.

b) NSFR Requirements Under Category II

The tailoring proposals would have applied the full NSFR requirement to covered companies that meet the criteria for Category II. Some commenters argued that Category II should include a reduced NSFR requirement to reflect the lower risk profile of Category II banking organizations relative to those in Category I. Specifically, these commenters argued certain banking organizations in Category II present relatively lower stable funding risks than Category I banking organizations due to such banking organizations' concentration in custody activities and use of operational deposits.

Similar to U.S. GSIBs and their large depository institution subsidiaries, banking organizations that meet the criteria for Category II provide material levels of financial intermediation within the United States or internationally, and the NSFR helps to ensure that such banking organizations have appropriate funding to be in a position to sustain the necessary intermediation activities over a range of conditions. Additionally, the failure or distress of banking organizations that meet the criteria for Category II could impose significant costs on the U.S. financial system and economy. For example, any very large or global banking organization, including one that has a significant custody business, that is subject to asset fire sales resulting from funding disruptions is likely to transmit distress on a broader scale because of the greater volume of assets it may sell and the number of its counterparties across multiple jurisdictions. Similarly, a banking organization with significant international activity is more exposed to the risk of ring-fencing of funding resources by one or more jurisdictions. Ring-fencing may hamper the movement of funding, regardless of the level of custody business. More generally, the overall size of a banking organization's operations, material transactions in foreign jurisdictions, and the use of overseas funding sources add complexity to the management of the banking organization's funding profile. For these reasons, the agencies are adopting the proposal to apply the full NSFR requirement to Category II banking organizations.

c) NSFR Requirements Under Category III

As described above, the tailoring proposals would have differentiated NSFR requirements in Category III based on whether the level of average weighted short-term wholesale funding of a banking organization was at least $75 billion and sought comment on the calibration of the reduced NSFR requirement.

Some commenters argued that Category III banking organizations with less than $75 billion in average weighted short-term wholesale funding should not be subject to a reduced NSFR requirement. By contrast, many commenters expressed support for a reduced NSFR requirement under Category III, and generally recommended that such requirement be calibrated to 70 percent of the full NSFR requirement, consistent with the calibration of the Board's previously proposed modified NSFR requirement. In addition, several of these commenters argued that the reduced NSFR requirement should apply only to holding companies.

To improve the calibration of a banking organization's minimum ASF amount relative to its funding profile and its potential risk to U.S. financial stability, the final rule differentiates between banking organizations based on their category and their reliance on short-term wholesale funding. As discussed in the tailoring final rule, ongoing reliance on short-term, wholesale funding can make a banking organization more vulnerable to safety and soundness and financial stability risks. Accordingly, under the final rule, a banking organization subject to Category III standards with average weighted short-term wholesale funding of $75 billion or more is subject to the full NSFR requirement.

A banking organization subject to Category III standards with average weighted short-term wholesale funding of less than $75 billion is subject to a reduced NSFR requirement calibrated at 85 percent of the full NSFR requirement. An 85 percent calibration is appropriate for these banking organizations because they are less likely to contribute to a systemic event relative to similarly sized banking organizations that have a greater reliance on short-term wholesale funding and therefore, are more complex, and whose distress or failure is more likely to have greater systemic impact.

As a general matter, the alignment of the reduced NSFR with the Board's initially proposed modified NSFR

[54] Under the final rule, a banking organization applies the appropriate adjustment factor to its calculated RSF amount (required stable funding adjustment percentage), by multiplying its RSF amount by its required stable funding adjustment percentage. Banking organizations subject to the full NSFR requirement apply a 100 percent required stable funding adjustment percentage. Banking organizations subject to a reduced NSFR requirement apply an 85 or 70 percent required stable funding adjustment percentage.

would not be appropriate because each of these requirements was designed to address different risk profiles. The Board designed the modified NSFR for smaller U.S. holding companies with less complex business models and more limited potential impact on U.S. financial stability compared to banking organizations that would be subject to the reduced NSFR requirement.[55]

d) NSFR Requirements Under Category IV

Under the tailoring proposals, a Category IV banking organization with average weighted short-term wholesale funding of $50 billion or more would have been required to comply with a reduced NSFR requirement of between 70 and 85 percent. However, the reduced NSFR requirement under Category IV would not have applied to standalone depository institutions or at the level of a subsidiary depository institution.

Some commenters argued that all banking organizations subject to Category IV should be subject to an NSFR requirement and that the requirement could be further modified or simplified for these organizations, as appropriate. In contrast, other commenters argued for the removal of any NSFR requirement for all banking organizations subject to Category IV.

For a banking organization with total consolidated assets of at least $100 billion and less than $250 billion, average weighted short-term wholesale funding of $50 billion or more demonstrates a material reliance on short-term, generally uninsured funding from more sophisticated counterparties, which can make a banking organization more vulnerable to large-scale funding runs, generating both safety and soundness and financial stability risks. Accordingly, such a banking organization is relatively more vulnerable to the funding stability risks addressed by the reduced NSFR requirement relative to similarly sized banking organizations that rely more heavily on stable funding such as retail deposits and have traditional balance sheet structures. The application of the NSFR requirement, albeit at a reduced level, is therefore appropriate for these banking organizations given their lower potential impact on systemic risk.

The final rule calibrates the minimum reduced NSFR requirement under Category IV at a level equivalent to 70 percent of the minimum level required under Category I and II. The difference between the 85 percent reduced NSFR calibration in Category III and the reduced 70 percent LCR calibration in Category IV reflects the differences in risk profiles of banking organizations subject to each respective requirement. The 70 percent calibration recognizes that these banking organizations are less complex and smaller than other banking organizations subject to more stringent requirements under the final rule and would likely have more modest systemic impact than larger, more complex banking organizations if they experienced funding disruptions. Banking organizations that are not subject to Category I, II or III requirements and that have average weighted short-term wholesale funding of less than $50 billion are not subject to an NSFR requirement under the final rule. Depository institution subsidiaries of banking organizations subject to Category IV requirements are not subject to an NSFR requirement.

4. Applicability to Depository Institution Subsidiaries

As described above, the tailoring proposals would have applied the same NSFR requirement to top-tier banking organizations subject to Category I, II, or III standards and to their subsidiary depository institutions with $10 billion or more in total consolidated assets.

Although a number of commenters generally supported the application of consistent requirements for U.S. depository institutions holding companies and their depository institution subsidiaries, many commenters requested that the agencies eliminate the application of the NSFR requirement to depository institutions that are consolidated subsidiaries of covered companies. These commenters stated that the NSFR rule should recognize that the holding company structure in the United States allows for banking organizations to manage liquidity across the broader corporate group and provides firms with flexibility regarding where liquidity is held within the corporate structure. These commenters also argued that an NSFR requirement for a consolidated depository institution is unnecessary in view of the supervisory monitoring and prudential limits applicable to the depository institution's funding structure, as well as the source of strength requirements that obligate the parent to remediate any funding deficiencies at a subsidiary depository institution. Alternatively, these commenters suggested that the agencies should rely on their supervisory authority to ensure stable funding for depository institutions. The commenters also requested that, if the agencies apply the NSFR requirement to depository institutions, an exemption should apply to depository institutions that comprise 85 percent or more of the assets of the consolidated organization. Commenters supporting such an approach stated that the costs of separately applying an NSFR at the subsidiary depository institution-level would outweigh any benefits.

The proposed treatment would have aligned with the agencies' longstanding policy of applying similar standards to holding companies and their depository institution subsidiaries. Large depository institution subsidiaries play a significant role in a banking organization's funding structure, and in the operation of the payments system. Such entities should have sufficient amounts of stable funding to meet their funding needs rather than be overly reliant on their parents or affiliates. In addition, these large subsidiaries generally have access to deposit insurance coverage and, as a result, application of standardized funding requirements would help to reduce the potential for losses to the FDIC's deposit insurance fund. Accordingly, the final rule maintains the application of an NSFR requirement to covered depository institution subsidiaries as proposed.

VI. Definitions

The proposed rule would have shared definitions with the LCR rule and would have been codified in the same part of the Code of Federal Regulations as the LCR rule for each of the agencies.[56] The proposed rule also would have revised certain of the existing definitions under the LCR rule and adopted new definitions for purposes of both the LCR and NSFR rules. The agencies received a number of comments regarding the proposed definitions.

One commenter argued that certain of the LCR rule's definitions are flawed and should not be used for purposes of the NSFR rule because they are the result of an internationally negotiated standard that was not properly calibrated to reflect U.S. market conditions or U.S. banking organizations' practices. As discussed in section V.C of this Supplementary Information section, to the extent that the final rule incorporates definitions

[55] The Board's initially proposed modified NSFR applied to depository holding companies with between $50 billion and less than $250 billion in total assets whereas the tailoring proposal would have applied Category III requirements to banking organizations that either have $250 billion or more in total assets or have $100 billion or more in total assets as well as heightened levels of off-balance sheet exposure, nonbank assets, or weighted short-term wholesale funding.

[56] 12 CFR part 50 (OCC); 12 CFR part 249 (Board); 12 CFR part 329 (FDIC).

also used in the LCR rule, their usage in the final rule generally reflects assumptions specific to the final rule. The agencies also note that these common definitions include defined terms that are not included in the Basel LCR standard, but are specific to U.S. markets and banking organizations. For example, the definitions for certain types of brokered deposits and collateralized deposits are not included in the Basel LCR standard or the Basel NSFR standard. In addition, the final rule has tailored certain definitions, such as the definition of ''operational deposit,'' for the U.S. market. The use of common definitions across the regulatory framework, as appropriate, helps to minimize compliance costs, facilitate comparability across banking organizations, and reduce regulatory burden. Comments regarding specific defined terms are discussed below. For ease of convenience, the following discussion refers to § ____.3 of the LCR rule, even though the definitions found in § ____.3 will apply to both the LCR rule and final rule.

A. Revisions to Existing Definitions

The proposed rule would have amended the following definitions that were included in § ____.3 of the LCR rule: ''calculation date,'' ''collateralized deposits,'' ''committed,'' ''covered nonbank company,'' ''operational deposit,'' ''secured funding transaction,'' ''secured lending transaction,'' and ''unsecured wholesale funding.''

1. Revised Definitions for Which the Agencies Received no Comments

The proposed rule would have amended the existing definition of ''calculation date,'' ''committed,'' and ''covered nonbank company'' in § ____.3 of the LCR rule. The agencies received no comments on the changes to these definitions and are adopting these revised definitions as proposed.

Calculation date. The final rule amends to the definition of ''calculation date'' in § ____.3 of the LCR rule to include any date on which a covered company calculates its NSFR for purposes of § ____.100 of the final rule.

Committed. The definition of ''committed'' in § ____.3 of the LCR rule provides the criteria under which a credit facility or liquidity facility is considered committed for purposes of the LCR rule. To more clearly reflect the intended meaning of ''committed,'' the final rule, consistent with the proposed rule, amends the definition to state that a credit or liquidity facility is committed if it is not unconditionally cancelable under the terms of the facility. Consistent with the agencies' risk-based capital rule, the final rule defines ''unconditionally cancelable'' to mean that a covered company may refuse to extend credit under the facility at any time, including without cause (to the extent permitted under applicable law).[57] For example, a credit or liquidity facility that permits a covered company to refuse to extend credit only upon the occurrence of a specified event (such as a material adverse change) would not be considered unconditionally cancelable, and therefore the facility would be considered ''committed'' under the final rule. Conversely, a credit or liquidity facility that the covered company may cancel without cause would be considered unconditionally cancelable because the covered company may refuse to extend credit under the facility at any time, and therefore the facility would not be considered ''committed.'' For example, credit card lines that are cancelable without cause (to the extent permitted under applicable law), as is generally the case, are not considered committed under the amendment to the definition.

Covered nonbank company. Consistent with the proposed rule, the final rule revises the definition of ''covered nonbank company'' to clarify that if the Board requires a company designated by the Financial Stability Oversight Council (FSOC) for Board supervision to comply with the LCR rule or the final rule, it will do so through a rulemaking that is separate from the LCR rule and the final rule or by issuing an order.

2. Revised Definitions for Which the Agencies Received Comments

The agencies received comments on the following proposed amendments to existing definitions that are included in § ____.3 of the LCR rule: ''collateralized deposit,'' ''operational deposit,'' ''secured funding transaction,'' ''secured lending transaction,'' and ''unsecured wholesale funding.''

Collateralized Deposit. The proposed rule would have amended the definition of ''collateralized deposit'' to include those deposits of a fiduciary account collateralized as required under state law, as applicable to state member and nonmember banks and state savings associations. In addition, the proposed rule would have amended the definition to include those deposits of a fiduciary account held at a covered company for which a depository institution affiliate of the covered company is a fiduciary and that the covered company has opted to collateralize pursuant to 12 CFR 9.10(c) (for national banks) or 12 CFR 150.310 (for federal savings associations).

The agencies received two comments regarding the definition of ''collateralized deposit.'' One commenter supported the proposed amendment to include fiduciary deposits collateralized as required under state law, as applicable to state member banks, state nonmember banks, and state savings associations. The other commenter requested that the agencies revise the definition to include secured sweep repurchase arrangements, which the commenter described as arrangements that allow a customer's balances to be temporarily ''swept'' out of a deposit account and into a secured non-deposit funding arrangement with the covered company. The commenter argued that secured sweep repurchase arrangements are distinct from other secured funding transactions, including wholesale funding offered by a broker-dealer, because they are typically tied to operational accounts and involve an automated sweep of corporate client funds into a secured sweep repurchase account, thus posing, in the commenter's view, less liquidity risk. The commenter argued that secured sweep repurchase arrangements are similar to secured deposit funding because the arrangements are offered as part of a broader business relationship between a covered company and a customer and, therefore, should not be subject to the unwind provisions in § ____.21 of the LCR rule.

The final rule adopts the amended definition of ''collateralized deposit'' as proposed with an adjustment to expressly include deposits of a fiduciary account collateralized pursuant to state law requirements for which a covered company's depository institution affiliate is a fiduciary. The agencies defined ''collateralized deposit'' to identify a narrow set of secured funding transactions that should not be subject to the unwind provision in the LCR rule for a covered company when determining its HQLA amount.[58] The agencies excluded such deposits from the unwind provision based on their unique characteristics, including, among other things, that such deposits ''are required to be collateralized under applicable law'' and that ''the banking relationship associated with collateralized deposit can be different in nature from shorter-term repurchase and

[57] *See* 12 CFR 3.2 (OCC); 12 CFR 217.2 (Board); 12 CFR 324.2 (FDIC).

[58] *See* § ____.21 of the LCR rule. Certain secured funding transactions other than collateralized deposits are used in calculating adjusted liquid asset amounts for determining the adjusted excess HQLA amount under the LCR rule.

reverse repurchase agreements.'' [59] The revised definition includes deposits of a fiduciary account collateralized pursuant to state law requirements or at the covered company's discretion pursuant to 12 CFR 9.10(c) (for national banks) or 12 CFR 150.310 (for federal savings associations) in order to provide consistent treatment to deposits that are subject to collateralization requirements or have been collateralized. Additionally, temporary secured sweep repurchase arrangements, including those offered part of a broader business relationship, that will mature in 30 calendar days or less of an LCR calculation date may affect a covered company's excess HQLA amount similar to other wholesale secured funding transactions conducted by a broker-dealer and do not qualify for the treatment afforded to collateralized deposits.

Operational Deposit. The proposed rule would have amended the definition of ''operational deposit'' to include both deposits received by the covered company in connection with operational services provided by the covered company and deposits placed by the covered company in connection with operational services received by the covered company. The proposed rule also would have amended this definition to clarify that only deposits can qualify. Further, because operational deposits are limited to accounts that facilitate short-term transactional cash flows associated with operational services, operational deposits also should only have short-term maturities, falling within the proposed rule's less-than-six-month maturity category and generally within the LCR rule's 30-calendar-day period. Further, because operational deposits are limited to accounts that facilitate short-term transactional cash flows associated with operational services, operational deposits also should only have short-term maturities, falling within the proposed rule's less-than-six-month maturity category and generally within the LCR rule's 30-calendar-day period. Notwithstanding the proposed revisions to this definition, the treatment of operational deposits under §§ ____.32 and ____.33 of the LCR rule would have remained the same.

The agencies received a number of comments regarding the proposed definition of ''operational deposit.'' Some commenters requested removal of the limitation that operational deposits cannot be provided by non-regulated funds. These commenters argued that a deposit placed at a covered company by a non-regulated fund for the provision of operational services would have similar liquidity risks as a deposit placed by a regulated fund for the same operational purposes.[60] One commenter argued that the exclusion of deposits placed by a non-regulated fund lacks a clear policy rationale and is unduly strict towards the custody bank business model. The commenter also argued that this exclusion is more stringent than the treatment of operational deposits in the Basel LCR standard. The commenter expressed concern that retaining this exclusion could undermine the current trend among non-regulated funds of separating the safekeeping and administration of their investment assets from their trading and financing activities. A commenter also asserted this exclusion is unnecessary because the risk associated with operational deposits from non-regulated funds is addressed sufficiently by the exclusion of deposits provided in connection with a covered company's provision of prime brokerage services.

One commenter argued that the definition of ''operational deposit'' should not be limited to deposits. The commenter suggested instead that the definition should be revised to include non-deposit unsecured wholesale funding that matures within the LCR rule's 30-day time horizon, in order to include arrangements that allow an operational customer's balances to be temporarily swept out of a deposit account into non-deposit products until such time as the funds are needed to meet operational demands. The commenter argued that excluding such arrangements from the definition of ''operational deposit'' could underrepresent the amount of a covered company's funding that is associated with the provision of operational services over the LCR rule's 30-day time horizon.

Operational deposit are deposits necessary for the covered company to provide operational services, as that term is defined in § ____.3 of the LCR rule, to the wholesale customer or counterparty providing the deposit.[61] Among other things, the definition requires compliance with certain operational requirements of § ____.4 of the LCR rule in order for a deposit to be recognized as an operational deposit (operational requirements).

The exclusion of deposits provided by non-regulated funds is appropriate because, in general, non-regulated funds tend to be sophisticated and are more likely than many other types of counterparties to engage in higher-risk trading strategies involving leverage, which may result in higher cash needs due to collateral calls and less stable deposit balances during certain market conditions. In comparison to non-financial wholesale counterparties or regulated financial sector entities, it is also more likely that operational activities at a non-regulated fund would be impacted by the performance of the fund's investment or trading activity that relies upon prime brokerage services, and thus it would be more difficult to separate its deposit balances that are necessary to maintain operational activities from its balances that support trading and investment activities that rely on prime brokerage services (even if these services are provided by different entities of a covered company). As a result, deposits from non-regulated funds may present heightened funding risk relative to deposits from other counterparties.

In addition, operational deposit balances swept out of a deposit account and into non-deposit products will not be eligible to be considered ''operational deposits''. The LCR rule provides that in order to be recognized as an operational deposit, any excess amount not linked to operational services must be excluded.[62]

As the preamble to the LCR rule noted, operational deposits are assigned a lower outflow rate under the LCR rule compared to other short-term wholesale funding due to the perceived stability arising from the relationship between a covered company and a depositor, the necessity of the deposit for the provision of operational services, and the switching costs associated with moving such deposits.[63] In contrast, excess funds, including funds that are swept into non-deposit products until funds are needed to meet operational demands, are not necessary for the provision of operational services and therefore do not exhibit these

[59] 79 FR at 61473.

[60] *See* § ____.4(b)(6) of the LCR rule; 79 FR at 61501. This section provides that operational deposits do not include deposits that are provided in connection with the covered company's provision of prime brokerage services, which include operational services provided to a non-regulated fund. Section ____.3 of the LCR rule defines a ''non-regulated fund'' as any hedge fund or private equity fund whose investment adviser is required to file SEC Form PF (Reporting Form for Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors), other than a small business investment company as defined in section 102 of the Small Business Investment Act of 1958 (15 U.S.C. 661 *et seq.*).

[61] *See* 79 FR at 61498.

[62] *See* § ____.4(b)(5) of the LCR rule.

[63] *See* 79 FR at 61497–502.

characteristics.[64] Furthermore, the LCR rule excludes from operational deposits those deposits held in an account that is designed to incentivize customers to maintain excess funds in the account through increased revenue, reduction in fees, or other economic incentives.[65] Because the sweep arrangements described by the commenter are typically used to increase returns on deposits, the continued exclusion of these sweep arrangements from the definition of ''operational deposit'' is consistent with this treatment.

For these reasons, the final rule adopts the amended definition of ''operational deposits'' as proposed.

Secured Funding Transaction and Secured Lending Transaction. The proposed rule would have revised the definitions of ''secured funding transaction'' and ''secured lending transaction'' to clarify that (i) the transactions must be secured by a lien on securities or loans, rather than secured by a lien on other assets; (ii) the definitions include only transactions with wholesale customers or counterparties, and (iii) securities issued or owned by a covered company do not constitute secured funding or lending transactions.[66]

One commenter recommended amending the definitions of ''secured funding transaction'' and ''secured lending transaction'' by replacing ''securities'' with ''financial assets'' in order to broaden the forms of collateral that may be used in transactions that meet the definitions. Specifically, the commenter argued that short-term debt, commercial paper, gold, and certain other assets should be permitted forms of collateral because they effectively reduce the risk associated with secured transactions. The same commenter also requested that the definition of ''secured lending transaction'' be expanded to include certain transactions with retail customers, and, in particular, open-maturity loans to retail customers collateralized by customer securities, such as a margin loan. The commenter asserted that a securities-based loan to a retail counterparty has similar characteristics to an open-maturity reverse repurchase agreement with a wholesale counterparty, including that the transaction is fully secured by the borrower's collateral, the lender has a legal right and operational ability to close out the loan upon default by the counterparty and sell the collateral to offset the lender's credit exposure, and the maturity of the loan extends each day that a notice of termination is not provided.

Under the LCR rule, the cash flows associated with secured funding and secured lending transactions take into account the relative liquidity of the cash and marketable collateral that will be exchanged at the maturity of the transaction and recognize that collateral in the form of HQLA securities tends to be the most liquid. By contrast, collateral that is not generally traded in liquid markets, including property, plant, and equipment, may provide limited liquidity value, particularly relative to the LCR rule's time horizon. While collateral that is not in the form of securities or loans may serve to mitigate credit risk, in the agencies' experience, the cash flows on lending secured by such collateral, including the likelihood of renewing the lending at maturity, depend to a greater degree on the characteristics of the counterparty rather than the collateral, thus making the liquidity risk associated with such arrangements more akin to that of unsecured lending. Accordingly, such lending transactions should not necessarily receive a 100 percent inflow rate under the LCR rule; rather, the inflow rate should depend on the characteristics of the borrower, which more accurately reflect the likelihood that a covered company will be able to realize inflows from or roll over some or all of the loan during a period of significant stress. In contrast to their contributions to total net cash outflows under the LCR rule, the contributions of secured loan assets and secured funding liabilities to the funding risk of a covered company's aggregate balance sheet generally depend on their maturities and counterparty characteristics and the final rule generally treats secured and unsecured wholesale transactions similarly.

In addition, while there is no defined term ''securities'' in the LCR rule, the agencies are clarifying that a funding transaction that is not a security, is conducted with a wholesale customer or counterparty, and is secured under applicable law by a lien on third-party short-term debt or commercial paper provided by a covered company would qualify as a secured funding transaction. Similarly, a lending transaction that is not a security, is conducted with a wholesale customer or counterparty, and is secured under applicable law by a lien on third-party short-term debt or commercial paper provided by the wholesale customer or counterparty would qualify as a secured lending transaction. However, secured funding and lending transactions where the collateral is in the form of gold or other commodities would not meet the definition of a secured funding transaction or secured lending transaction. These assets exhibit an increased volatility in market value and there are logistical factors associated with holding and liquidating these assets as compared to loans and securities.[67]

The final rule adopts the amended definitions of ''secured funding transaction'' and ''secured lending transaction'' as proposed. Under the final rule, the definitions of ''secured funding transaction'' and ''secured lending transaction'' include only transactions with wholesale customers or counterparties. Secured lending transactions do not include secured lending to a retail customer or counterparty, such as a retail margin loan. For purposes of the LCR rule generally, secured lending transactions categorize certain lending to a wholesale customer or counterparty where the expectation is that the transaction may mature in the near term with the covered company receiving cash from the counterparty and being required to return collateral to the counterparty.[68] In contrast, the treatment of retail exposures generally reflects the agencies' expectation that a covered company will need to maintain a portion of retail lending even during stress, regardless of collateralization.[69] As noted above, RSF factors assigned to unencumbered loans to retail and wholesale customers and counterparties under the final rule reflect their maturity and counterparty, rather than collateralization, and the RSF factors assigned to secured retail lending are the same as for secured lending to non-financial sector wholesale counterparties. As a result, the final rule, like the proposed rule, categorizes secured lending to a retail customer or counterparty separately from secured lending transactions with wholesale customers or counterparties for

[64] *See* 79 FR at 61500.

[65] *See* § ____.4(b)(4) of the LCR rule.

[66] As noted in § ____.3 of the LCR rule and the proposed rule, the definition of ''secured funding transaction'' also includes repurchase agreements and securities lending transactions, and the definition of ''secured lending transaction'' also includes reverse repurchase agreements and securities borrowing transactions, as these transactions result in the equivalent of a lien, securing the cash leg of the transaction, that gives the asset borrower priority over the asset in the event the covered company or the counterparty, as applicable, enters into receivership, bankruptcy, insolvency, liquidation, resolution, or similar proceeding.

[67] The LCR rule for similar reasons does not include gold bullion as a level 1 liquid asset. *See* 79 FR at 61456.

[68] *See* 79 FR at 61513.

[69] *See* 79 FR at 61512.

purposes of assigning RSF factors under the NSFR requirement.[70]

Finally, under the final rule securities issued or owned by a covered company do not constitute secured funding or lending transactions. For example, asset-backed securities issued by a special purpose entity that a covered company consolidates on its balance sheet are not secured funding transactions. Similarly, securities owned by a covered company where contractual payments to the covered company are collateralized are not secured lending transactions.

Unsecured wholesale funding. The proposed rule would have amended the definition of ''unsecured wholesale funding'' to mean a liability or general obligation of a covered company to a wholesale customer or counterparty that is not a secured funding transaction. The agencies received one comment regarding this proposed definition. The commenter asserted that, although ''asset exchange'' is separately defined in the LCR rule, an asset exchange could nonetheless fall under the definition of ''unsecured wholesale funding'' because it could be viewed as a liability or general obligation that is not a secured funding transaction if entered into with a wholesale customer or counterparty.

The final rule adopts the amended definition of ''unsecured wholesale funding'' as proposed with an adjustment to expressly exclude asset exchanges. Under the final rule, secured funding with a wholesale counterparty that does not meet the revised definition of ''secured funding transaction'' generally meets the definition of ''unsecured wholesale funding.'' However, consistent with the agencies' intent to provide a special framework for asset exchanges, the definitions of ''unsecured wholesale funding'' and ''unsecured wholesale lending'' in the final rule have been revised to exclude asset exchanges.[71]

3. Other Definitions and Requirements for Which the Agencies Received Comments

Given that the definitions in the LCR rule would apply to the final rule, the proposed rule also requested comment as to whether any other existing definitions or terms should be amended. The agencies received several comments requesting revisions and clarifications to other definitions in the LCR rule that the agencies did not propose to amend.

Credit and liquidity facility. One commenter requested that the agencies provide examples of a lending commitment that would qualify as a ''credit facility'' or ''liquidity facility'' under the rules. Section ____.3 of the LCR rule defines ''credit facility'' to mean a legally binding agreement to extend funds if requested at a future date, including a general working capital facility such as a revolving credit facility for general corporate or working capital purposes.[72] Other examples of credit facilities may include a letter of credit, home equity line of credit, or any other legally binding agreement to extend funds if requested at a future date that is not included in the definition of ''liquidity facility.''

Section ____.3 of the LCR rule defines ''liquidity facility'' to mean a legally binding written agreement to extend funds at a future date to a counterparty that is made for the purpose of refinancing the debt of the counterparty when it is unable to obtain a primary or anticipated source of funding. The definition of ''liquidity facility'' further clarifies that it includes an agreement to provide liquidity support to asset-backed commercial paper by lending to, or purchasing assets from, any structure, program, or conduit in the event that funds are required to repay maturing asset-backed commercial paper.[73] Other examples of liquidity facilities include agreements related to non-asset backed commercial paper programs, secured financing transactions, securities investment vehicles, and conduits that, in each case, meet the requirements of the liquidity facility definition in § ____.3 of the LCR rule. The LCR rule requires a facility that has characteristics of both credit and liquidity facilities to be classified as a liquidity facility.

In addition, a commenter asked the agencies to clarify the treatment of (1) commercial paper backstop facilities where the customer has no commercial paper currently outstanding and (2) facilities that are expected to be cancelled without funding, such as an unfunded bridge lending facility in connection with a capital markets issuance. A commercial paper backstop facility may meet the definition of a liquidity facility because the purpose of the facility is to provide liquidity support in the future, if needed, regardless of whether the customer currently has any commercial paper outstanding or not. The determination of whether such a facility is ''committed'' likewise would not be impacted by the fact that the customer has no amount of commercial paper outstanding, but would depend on whether it was ''unconditionally cancelable'' as described above.[74] With respect to an unfunded bridge lending facility in connection with a capital markets issuance, the facility may be considered a credit facility if its sole purpose is to provide working capital to the issuer prior to the capital markets issuance. If, however, the unfunded bridge lending facility's purpose at least partially includes providing funds in the event that the issuer cannot otherwise refinance its outstanding liabilities prior to the capital market issuance, then the facility would likely meet the definition of a liquidity facility. Whether a facility meets the definition of a credit or liquidity facility at a calculation date is not influenced by expectations regarding its future cancellation. In addition, the determination of whether such a facility is ''committed'' at a calculation date depends on whether it was ''unconditionally cancelable,'' and would not be impacted by the likelihood of its cancellation.

Retail customer or counterparty. Section ____.3 of the LCR rule defines ''retail customer or counterparty'' to include a living or testamentary trust that: (i) Is solely for the benefit of natural persons; (ii) does not have a corporate trustee; and (iii) terminates within 21 years and 10 months after the death of grantors or beneficiaries of the trust living on the effective date of the trust or within 25 years, if applicable under state law. One commenter suggested changing the definition of ''retail customer or counterparty'' to account for certain trusts, such as common trust arrangements with corporate trustees that the commenter viewed as akin to a natural person. The commenter suggested that a natural person's direct or indirect power to control a trust's investment is a better measure for assessing whether a trust should be treated for purposes of the LCR and NSFR rule as a retail customer or counterparty. The commenter suggested that a natural person's direct

[70] *See* section VII.D of this Supplementary Information section.

[71] In addition to the unique treatment of asset exchanges in § ____.102(c) of the final rule, asset exchanges are also subject to special treatment pursuant to § ____.106(d). These treatments are discussed further in section VII.D.4 of this Supplementary Information section.

[72] A credit facility does not include a legally binding written agreement to extend funds at a future date to a counterparty made for the purpose of refinancing the debt of the counterparty when it is unable to obtain a primary or anticipated source of funding, which is included in the definition of ''liquidity facility.''

[73] A liquidity facility excludes facilities that are established solely for the purpose of general working capital, such as revolving credit facilities for general corporate or working capital purposes.

[74] The undrawn amount of the facility would be determined under § ____.32(e)(2) of the LCR rule and § ____.106(a)(2) of the final rule.

or indirect power to control a trust's investment is a better measure for assessing whether a trust should be treated for purposes of the LCR and NSFR rules as a retail customer or counterparty.

The agencies expect that, as a class, living and testamentary trusts with corporate trustees are more likely to exhibit behavioral traits and sophistication comparable to those of a wholesale rather than retail customer or counterparty, even if a natural person has indirect authority over the trustee or complementary power to direct the trust's investment activity.[75] For example, despite the authority of a natural person to direct the trustee's investment, a corporate trustee would be more likely to act for the trust in the manner of a financial counterparty. The final rule does not include any change to the definition of ''retail customer or counterparty.''

Liquid and readily-marketable. Under the LCR rule, certain assets must be liquid and readily-marketable in order to be included as HQLA by a covered company. This requirement is intended to ensure that assets included as HQLA exhibit a level of liquidity that would allow a covered company to convert them into cash during times of stress in order to meet its obligations when other sources of liquidity may be reduced or unavailable. Under the LCR rule, an asset is liquid and readily-marketable if it is traded in an active secondary market with more than two committed market makers, a large number of committed non-market maker participants on both the buying and selling sides of transactions, timely and observable market prices, and a high trading volume.

The agencies received several comments and requests for clarification on this definition. Several commenters suggested that the liquid and readily-marketable criteria are unduly difficult to satisfy. One commenter stated that banking organizations have had difficulty collecting the data necessary to demonstrate that securities meet these criteria, and that the cost of collecting data for certain securities that are widely accepted as being liquid and readily-marketable outweighs the benefits. Several commenters requested additional clarification concerning what is required by each of the elements of the liquid and readily-marketable standard. For example, commenters requested clarification for how to determine that a market maker is ''committed,'' that there is a ''large'' number of market participants, and that the trading volume for a security is ''high.'' Commenters expressed concern that relatively new types of securities and securities that are preferred by investors utilizing a ''buy and hold'' strategy, including securities of the highest credit quality that have strong demand at primary issuance, may not meet the criteria. Commenters also expressed concern that there appears to be no widely accepted or straightforward method for assessing these criteria.

Commenters also provided alternative methods to establish that a security is liquid and readily-marketable. Several commenters suggested that certain asset classes should be presumed to be liquid and readily-marketable without further analysis if they meet certain criteria. For example, commenters suggested that certain securities should be presumed to be liquid and readily-marketable, including (i) securities backed by the full faith and credit of the United States, including agency securities, (ii) debt issues of foreign sovereigns that meet certain risk weight and other criteria, and (iii) U.S. equities included in the Russell 1000 index. These commenters also suggested that securities presumed to be liquid and readily-marketable could be assessed annually or more frequently to ensure that they are liquid and readily-marketable. Another commenter suggested that a security should be deemed liquid and readily-marketable if a firm can demonstrate that the 30-day trading volume for the security exceeds the firm's holdings of that security, or that there has been a purchase in the market for each offer to sell the security. One commenter suggested that securities should be considered liquid and readily-marketable if other securities issued by the same issuer or guaranteed by the same credit protection provider have already been deemed liquid and readily-marketable.

The LCR rule's definition of ''liquid and readily-marketable'' is intended to complement other restrictions on the assets that can potentially be included in HQLA. Within the universe of possible HQLA, the criteria in the definition are not overly prescriptive given the divergence of trading frequency and practices. Suggestions to more narrowly define these criteria would be difficult to apply because of the different market structures for different asset classes. In response to commenters' requests for clarification, this Supplementary Information section describes the agencies' general expectations regarding how assets may satisfy the definition's criteria.

The agencies do not expect covered companies to conduct the liquid and readily-marketable analysis on a daily basis. However, the agencies expect that covered companies monitor the securities included as HQLA and conduct the analysis periodically, especially following a change in market conditions. Covered companies should be able to demonstrate that they have an appropriate process to regularly review that each security meets the liquid and readily-marketable requirements and that they do in fact perform this analysis.

The LCR rule defines ''liquid and readily-marketable'' to mean that a given security is traded in an active secondary market that satisfies four conditions. The first condition is that the active secondary market must have more than two committed market makers. The presence of committed market makers is an important characteristic of liquid securities markets, to ensure that trades within the market will be fulfilled on an ongoing basis. A covered company generally may treat a market maker as committed if the market maker has a history of trading the security in a substantial volume, particularly during times of stress. As with the other criteria necessary for a security to be liquid and readily-marketable, once the covered company makes an initial determination that a security has more than two committed market makers, a periodic review is adequate to confirm the continued presence of committed market makers. The second condition is that the active secondary market must have a large number of non-market maker participants acting as buyers and sellers of the security. The agencies generally will consider a security to satisfy this requirement if the majority of the trading volume for the security involves non-market maker participants. It also may be possible to satisfy this requirement for securities traded in secondary markets where most trades are between market makers if there are a large number of non-market maker participants. The third condition is that the active secondary market must have timely and observable market prices. The agencies generally expect that securities that trade regularly and at prices that are quoted daily can be considered to meet this requirement. The fourth condition is that the active secondary market must have a high trading volume. The analysis should take into account the depth of the market across a range of time periods.

[75] Subsequent to the proposal, the agencies issued in October 2017 frequently asked questions related to the LCR rule, including discussion of corporate trustees. *See https://www.federalreserve.gov/supervisionreg/topics/liquidity-coverage-ratio-faqs.htm.*

Operational Requirements for HQLA. One commenter suggested that the agencies eliminate the operational requirement that firms periodically monetize a sample of their HQLA held as eligible HQLA through an outright sale or pursuant to a repurchase (LCR monetization requirement). The commenter argued that if a security already satisfies the agencies' liquid and readily-marketable standard, then it is unnecessary to also sell the security to demonstrate its liquidity to determine that it is eligible HQLA. The commenter also suggested that the agencies accept proof that a security has been used to secure a loan from a Federal Home Loan Bank (FHLB) to satisfy the LCR monetization requirement. The LCR rule has separate definitions for ''High-quality liquid assets'' and ''Eligible HQLA'' for distinct purposes under the LCR rule. The agencies are retaining the LCR monetization requirement in order to ensure a covered company's continued access to funds providers and the effectiveness of its processes for monetization. While satisfaction of the liquid and readily-marketable criteria indicates that a covered company should be able to monetize a security, actual monetization confirms the security's marketability and confirms that the covered company maintains adequate processes for monetizing the security.

3. Other Definitions and Requirements for Which the Agencies Did Not Receive Comments

As noted above in section VI.A.3 of this Supplementary Information section, the proposed rule also requested comment as to whether any other existing definitions or terms in § ____.3 of the LCR rule should be amended. Although the agencies did not receive specific requests to change the definition of ''brokered deposit,'' several commenters expressed concern that the FDIC's interpretation of ''brokered deposit'' is overly broad. The final rule amends certain of the definitions related to brokered deposits in § ____.3 to improve clarity and consistency with the FDIC's brokered deposit framework.[76]

Section ____.3 previously defined a brokered deposit to mean any deposit held at the covered company that is obtained, directly or indirectly, from or through the mediation or assistance of a deposit broker as that term is defined in section 29 of the Federal Deposit Insurance Act (12 U.S.C. 1831f(g)) (FDI Act) and includes a reciprocal brokered deposit and a brokered sweep deposit. The final rule amends this definition by adding a reference to the FDIC's regulations and eliminating the reference to reciprocal brokered deposits and brokered sweep deposits because not all reciprocal and sweep deposits are brokered deposits under section 29 of FDI Act and the FDIC's implementing regulations.[77]

For this reason, the final rule also renames ''brokered sweep deposit'' to ''sweep deposit'' and ''reciprocal brokered deposit'' to ''brokered reciprocal deposit'' wherever these terms appear. These clarifications are important in light of ongoing FDIC efforts to update the classification of brokered deposits. Under the final rule, the term ''sweep deposit'' includes deposits that are brokered deposits as well as deposits that are not brokered deposits. The term ''reciprocal brokered deposits'' only includes deposits that are classified as brokered deposits.

Pursuant to section 553(b)(B) of the APA, general notice and the opportunity for public comment are not required with respect to a rulemaking when an ''agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' The changes to these definitions are only intended to clarify the scope of the definitions, not substantively alter the definitions or changes the applicable outflow or inflow amounts in the LCR rule. Because these changes are technical in nature and merely improve the clarity of these definitions in the LCR and NSFR rules, the agencies have determined that it is unnecessary to provide notice or the opportunity to comment prior to adopting these changes to these definitions related to brokered deposits.

B. New Definitions

The proposed rule would have added several new definitions: ''carrying value,'' ''encumbered,'' ''NSFR regulatory capital element,'' ''NSFR liability,'' and ''QMNA netting set,'' and ''unsecured wholesale lending.''

1. New Definitions for Which the Agencies Received no Comments

The agencies received no comments on the proposed definitions of ''carrying value,'' ''encumbered,'' ''NSFR regulatory capital element,'' ''NSFR liability,'' and ''QMNA netting set,'' and the final rule adopts these definitions as proposed.

The final rule defines ''carrying value'' to mean the value on a covered company's balance sheet of an asset, NSFR regulatory capital element, or NSFR liability, as determined in accordance with GAAP. The final rule includes this definition because RSF and ASF factors generally are applied to the carrying value of a covered company's assets, NSFR regulatory capital elements, and NSFR liabilities. By relying on values based on GAAP, the final rule aims to ensure consistency in the application of the NSFR requirement across covered companies and limit operational compliance costs because covered companies already prepare financial reports in accordance with GAAP. This definition is consistent with the definition used in the agencies' regulatory capital rules.[78]

The final rule's definition of ''encumbered'' uses the criteria for an ''unencumbered'' asset found in § ____.22(b) of the LCR rule. The definition does not include any substantive changes to the concept of encumbrance included in the LCR rule. The final rule uses this definition in place of the criteria enumerated in § ____.22(b) of the LCR rule. The addition of this definition is necessary to apply the concept of encumbrance in §§ ____.106(c) and (d) of the final rule, which are discussed in sections VII.D of this Supplementary Information section.

Additionally, the final rule defines ''NSFR regulatory capital element'' to mean any capital element included in a covered company's common equity tier 1 capital, additional tier 1 capital, and tier 2 capital, as those terms are defined

[76] The FDIC separately published a proposal in February 2020 to modernize its brokered deposit regulations, which would establish a new framework for analyzing whether deposits placed through deposit placement arrangements qualify as brokered deposits (FDIC brokered deposit proposal). Unsafe and Unsound Banking Practices: Brokered Deposits Restrictions, 85 FR 7453 (February 10, 2020). In addition, in 2019 the FDIC published a final rule amending its brokered deposit regulations to conform with changes to section 29 of the Federal Deposit Insurance Act (FDI Act) made by section 202 of EGRRCPA related to reciprocal deposits. *See* Limited Exception for a Capped Amount of Reciprocal Deposits From Treatment as Brokered Deposits, 84 FR 1346, 1349 (February 4, 2019), *technical amendment at 84 FR 15095 (April 15, 2019).*

[77] In 2019, the FDIC published a final rule implementing section 202 of the Economic Growth, Regulatory Relief, and Consumer Protection Act, Public Law 115–174, 132 Stat. 1296–1368 (2018), codified at 12 U.S.C. 1831f. 84 FR 1346 (February. 4, 2019). Section 202 amends section 29 of the FDI Act to except a capped amount of reciprocal deposits from treatment as brokered deposits for certain insured depository institutions. Additionally, a third party whose primary purpose is not the placement of funds with depository institutions is not a deposit broker, meaning deposits placed or facilitated by such a person are not brokered deposits.

[78] *See* 12 CFR 3.2 (OCC); 12 CFR 217.2 (Board); 12 CFR 324.2 (FDIC).

in the agencies' risk-based capital rule, prior to the application of capital adjustments or deductions set forth in the agencies' risk-based capital rule.[79] This definition excludes any debt or equity instrument that does not meet the criteria for additional tier 1 or tier 2 capital instruments in § ____.22 of the agencies' risk-based capital rule or that is being phased out of tier 1 or tier 2 capital pursuant to subpart G of the agencies' risk-based capital rule.[80] The term ''NSFR regulatory capital element'' includes both equity and liabilities under GAAP that meet the requirements of the definition. This definition of ''NSFR regulatory capital element'' generally aligns with the definition of regulatory capital in the agencies' risk-based capital rule, but does not include capital deductions and adjustments.[81] As a result, the final rule requires assets that are capital deductions (such as goodwill) to be included in the determination of required stable funding, as discussed in section VII.D of this Supplementary Information section.

Further, the final rule defines ''NSFR liability'' to mean any liability or equity reported on a covered company's balance sheet that is not an ''NSFR regulatory capital element.'' The term ''NSFR liability'' primarily refers to balance sheet liabilities but may include equity because some equity may not qualify as an ''NSFR regulatory capital element.'' The definitions of ''NSFR liability'' and ''NSFR regulatory capital element,'' taken together, should cover the entirety of the liability and equity side of a covered company's balance sheet.

Finally, the final rule defines ''QMNA netting set'' to refer to a group of derivative transactions with a single counterparty that is subject to a qualifying master netting agreement (QMNA),[82] and is netted under the QMNA.[83] QMNA netting sets include, in addition to non-cleared derivative transactions, a group of cleared derivative transactions (that is, a group of derivative transactions that have been entered into with, or accepted by, a central counterparty (CCP)) if the applicable governing rules for the group of cleared derivative transactions meet the definition of a QMNA. The term ''QMNA netting set'' is used in the calculation of a covered company's stable funding requirement attributable to its derivative transactions, as discussed in section VII.E of this Supplementary Information section.

2. New Definitions for Which the Agencies Received Comments

Unsecured wholesale lending. The proposed rule would have added a definition of ''unsecured wholesale lending'' to mean a liability or general obligation of a wholesale customer or counterparty to the covered company that is not a secured lending transaction. Similar to the comment received regarding the revised definition of ''unsecured wholesale funding,'' a commenter noted that an asset exchange could be viewed as a liability or general obligation that is not a secured lending transaction if entered into with a wholesale customer and treated as unsecured wholesale lending under the LCR and NSFR rules. For the reasons discussed above in respect to the definition of ''unsecured wholesale funding,'' the agencies are revising the definition of ''unsecured wholesale lending'' to exclude asset exchanges.[84] The final rule otherwise adopts the definition of ''unsecured wholesale lending'' as proposed.

VII. NSFR Requirement Under the Final Rule

A. Rules of Construction

The proposed rule would have included rules of construction in § ____.102 relating to how items recorded on a covered company's balance sheet would be reflected in the covered company's ASF and RSF amounts.

1. Balance-Sheet Values

As noted above, a covered company generally would have determined its ASF and RSF amounts based on the carrying values of its on-balance sheet assets, NSFR regulatory capital elements, and NSFR liabilities as determined under GAAP. For off-balance sheet assets, the proposed rule would have included a rule of construction in § ____.102(a) specifying that, unless otherwise provided, a transaction or exposure that is not recorded on the balance sheet of a covered company would not be assigned an ASF or RSF factor and, conversely, a transaction or exposure that is recorded on the balance sheet of the covered company would be assigned an ASF or RSF factor. While the proposed rule generally would have relied on balance sheet carrying values, it would have provided a separate treatment for derivative transactions and the undrawn amount of commitments. The proposed rule also would have included adjustments to account for certain rehypothecated off-balance sheet assets.

The agencies received several comments regarding the treatment of securitization exposures. Two commenters requested that all or certain securitization exposures that are included on a covered company's balance sheet pursuant to GAAP be excluded from a covered company's NSFR.[85] The commenters argued that the assets and liabilities of the securitization vehicle are not owned or owed, respectively, by the covered company or that the securitization vehicle normally has no legal obligation to make payments when the cash flow from the assets underlying the securitization is insufficient. As an alternative to this exclusion, one of the commenters suggested that the assets collateralizing the securitization should be assigned an RSF factor to match the ASF factor assigned to the securities issued. This commenter also argued that where the covered company provides a liquidity facility to support an asset-backed commercial paper (ABCP) conduit, the NSFR rule should treat the ABCP conduit as a third-party securitization and assign a 5 percent RSF factor to the committed liquidity facility.

During the 2007–2009 financial crisis, a number of banking organizations provided funding support for securitization exposures, even if the banking organization did not include the exposures on its balance sheet. In response to these events, changes were made to GAAP that now require firms to include certain securitization

[79] *See* 12 CFR part 3 (OCC); 12 CFR part 217 (Board); 12 CFR part 324 (FDIC).

[80] Tier 2 capital instruments that have a remaining maturity of less than one year are not included in regulatory capital. *See* 12 CFR 3.20(d)(1)(iv) (OCC); 12 CFR 217.20(d)(1)(iv) (Board); 12 CFR 324.20(d)(1)(iv) (FDIC); *see also* 12 CFR 3.300 (OCC); 12 CFR 217.300 (Board); 12 CFR 324.300 (FDIC).

[81] The definition of ''NSFR regulatory capital element'' includes allowances for loan and lease losses (ALLL) to the same extent as under the risk-based capital rule. *See* 12 CFR 3.20(d)(3) (OCC); 12 CFR 217.20(d)(3) (Board); 12 CFR 324.20(d)(3) (FDIC).

[82] Each QMNA netting set must meet each of the conditions specified in the definition of ''qualifying master netting agreement'' under § ____.3 of the LCR rule and the operational requirements under § ____.4(a) of the LCR rule.

[83] A QMNA may identify a single QMNA netting set (for which the agreement creates a single net payment obligation and for which collection and posting of margin applies on an aggregate net basis) or it may establish multiple QMNA netting sets, each of which would be separate from and exclusive of any other QMNA netting set or derivative transaction covered by the QMNA.

[84] Under the LCR rule, a covered company should continue to look to § ____.33(f) for the appropriate methodology for determining inflows with respect to asset exchanges.

[85] For example, commenters requested the exclusion of securitizations that are ''traditional securitizations'' under the agencies' regulatory capital rules and meet the operational requirements of risk transfer under those rules, or certain asset-backed commercial paper (ABCP) conduits.

exposures on their balance sheets.[86] GAAP's requirements for including securitization exposures on a firm's balance sheet are based, in part, on whether the firm exercises control of those exposures. As discussed in section V.C of this Supplementary Information section, the NSFR is designed to assess the consolidated balance sheet of a covered company and using GAAP both promotes consistency in the application of the NSFR across covered companies and limits operational costs associated with compliance. In addition, if a covered company meets the requirements under GAAP for including securitization exposures on-balance sheet, it may be exposed to funding obligations generated by those exposures. Therefore, it is appropriate to require stable funding for securitization exposures that are reflected on-balance sheet in accordance with GAAP.

In response to the request of one commenter that the rule not assign RSF factors to assets of an on-balance sheet securitization that meets (1) the definition of ''traditional securitization'' under the agencies' regulatory capital rules and (2) the operational requirements of risk transfer under those rules, the agencies note that the operational requirements include the requirement that the exposures are not reported on the firm's consolidated balance sheet under GAAP.[87] As a result, the commenter's requested treatment would not result in the exclusion of any on-balance sheet securitizations from a covered company's NSFR. Regardless of the accounting treatment of particular securitization transactions, all securitizations carry liquidity risks, including unexpected funding needs. Covered companies may experience reputational pressure to support securitization transactions that they are associated with. The final rule accordingly does not include the commenter's requested exclusion.

2. Netting of Certain Transactions

The proposed rule would have included a rule of construction in § ____.102(b) that describes the treatment of receivables and payables that are associated with secured funding transactions, secured lending transactions, and asset exchanges with the same counterparty that the covered company has netted against each other. The agencies did not receive any comments regarding these netting criteria and are finalizing these netting criteria as proposed.

For purposes of determining the carrying value of these transactions, GAAP permits a covered company, when the relevant accounting criteria are met, to offset the gross value of receivables due from a counterparty under secured lending transactions by the amount of payments due to the same counterparty under secured funding transactions (GAAP offset treatment). The final rule requires a covered company to satisfy these GAAP accounting criteria and the criteria applied in § ____.102(b) before it can treat the applicable receivables and payables on a net basis for the purposes of the NSFR requirement.

Section ____.102(b) of the final rule applies the same netting criteria specified in the agencies' SLR rule.[88] These criteria require, first, that the offsetting transactions have the same explicit final settlement date under their governing agreements. Second, the criteria require that the right to offset the amount owed to the counterparty with the amount owed by the counterparty is legally enforceable in the normal course of business and in the event of receivership, insolvency, liquidation, or similar proceeding. Third, the criteria require that under the governing agreements the counterparties intended to settle net, settle simultaneously, or settle according to a process that is the functional equivalent of net settlement (that is, the cash flows of the transactions are equivalent, in effect, to a single net amount on the settlement date), where the transactions are settled through the same settlement system, the settlement arrangements are supported by cash or intraday credit facilities intended to ensure that settlement of the transactions will occur by the end of the business day, and the settlement of the underlying securities does not interfere with the net cash settlement.

3. Treatment of Securities Received in an Asset Exchange by a Securities Lender

The proposed rule would have included a rule of construction in § ____.102(c) specifying that when a covered company, acting as a securities lender, receives a security in an asset exchange, includes the value of the security on its balance sheet, and has not rehypothecated the security received, the covered company is not required to assign an RSF factor to the security it has received and is not permitted to assign an ASF factor to any liability to return the security.

The agencies received two comments relating to this section of the proposed rule. One commenter asserted that § ____.102(c), together with § ____.106(d),[89] of the proposed rule would be inconsistent with the Basel NSFR standard by assigning RSF factors to assets not included on the balance sheet of a covered company under GAAP. In response to the comment, the agencies note that § ____.102(c) of the proposed rule, would not have applied to assets excluded from a covered company's balance sheet under GAAP; it would have applied only to the carrying value of assets received in an asset exchange that the covered company includes on its balance sheet.

The other commenter argued that the proposed rule should apply a different treatment for asset exchanges more generally because, according to the commenter, the proposed rule did not sufficiently recognize the funding value of assets received in an asset exchange. In particular, this commenter argued that the rule should assign an ASF factor to the value of the asset received in an asset exchange, based on the type of asset and the remaining maturity of the asset exchange. The commenter asserted that such treatment would also better align with the LCR rule, which under certain circumstances allows a covered company to include in its HQLA amount an asset received in an asset exchange and may take into account both the assets received and provided for purposes of assigning inflow or outflow rates. The commenter further argued that the proposed rule's treatment of asset exchanges would incentivize covered companies to rehypothecate assets received in an asset exchange, which the commenter argued would increase systemic risk.

The NSFR assesses the adequacy of a covered company's funding stability based on the covered company's balance sheet at a point in time. A covered company, acting as a securities lender, retains the security on its balance sheet. Since the covered company is the owner of the provided security, it is appropriate for the covered company to retain stable funding for that security, even in cases where the liquidity characteristics of the asset that the

[86] For example, GAAP may require consolidation where a covered company retains a controlling financial interest in the securitization structure.

[87] *See* 12 CFR 41(a)(1) (OCC); 12 CFR 217.41(a)(1) (Board); 12 CFR 324.41(a)(1) (FDIC).

[88] 12 CFR 3.10(c)(4)(ii)(E)(1) through (3) (OCC); 12 CFR 217.10(c)(4)(ii)(E)(1) through (3) (Board); 12 CFR 324.10(c)(4)(ii)(E)(1) through (3) (FDIC).

[89] Section ____.106(d) of the proposed rule would have addressed certain assets received by a covered company in an asset exchange and not included on the covered company's balance sheet, as well as certain other off-balance sheet assets rehypothecated by a covered company. Comments regarding that provision are discussed in section VII.D.4 of this Supplementary Information section.

covered company provides are less favorable relative to the asset it receives in the asset exchange. Unlike the LCR, the NSFR is not a cash flow coverage metric and, where the asset received has not been rehypothecated, the availability of the received asset as a source of liquidity is not considered in the design of the NSFR, even in cases where the received asset is recorded on a covered company's balance sheet.

The final rule adopts the proposed treatment for securities received in an asset exchange by a covered company acting as a securities lender. This provision is intended to neutralize differences across accounting frameworks and maintain consistency across covered companies, and is consistent with the treatment of security-for-security transactions under the SLR rule.[90] Because the final rule does not require stable funding for the securities received, it does not treat the covered company's obligation to return these securities as stable funding and does not permit a covered company to assign an ASF factor to this obligation. If, however, the covered company, acting as the securities lender, sells or rehypothecates the securities received, the final rule requires the covered company to assign the appropriate RSF factor or factors under § ____.106 to the proceeds of the sale or, in the case of a pledge or rehypothecation, to the securities themselves if such securities remain on the covered company's balance sheet.[91] Similarly, the covered company must assign a corresponding ASF factor to the NSFR liability associated with the asset exchange, for example, with an obligation to return the security received.

B. Determining Maturity

The proposed rule would have assigned ASF and RSF factors to a covered company's NSFR liabilities and assets based in part on the maturity of each NSFR liability or asset. Section ____.101 of the proposed rule would have incorporated the maturity assumptions in §§ ____.31(a)(1) and (2) of the LCR rule to determine the maturities of a covered company's NSFR liabilities and assets. For example, the proposed rule would require a covered company to apply the earliest possible maturity date to an NSFR liability (which would be assigned an ASF factor) and the latest possible maturity date to an asset (which would be assigned an RSF factor), taking into account any notice periods or options that may modify the maturity date.

A commenter argued that the proposed rule's maturity assumptions provide a less risk-sensitive approach than the Basel NSFR standard, stating that the Basel NSFR standard does not require the assumption that a liability matures according to its earliest possible maturity date, but provides supervisors with discretion regarding assumptions about the exercise of certain options based on reputational factors and market expectations. Another commenter posited that the NSFR rule should not assume that a covered company would exercise a ''clean-up'' call option with respect to a securitization at the earliest possible date.[92] Instead, the commenter argued that the NSFR rule should require a covered company to identify the securitizations that are likely to have a clean-up call option maturing over the next year and to reasonably evaluate whether the covered company intends to exercise that option.

The final rule incorporates the maturity assumptions of the LCR rule as proposed. The final rule requires a covered company to identify the maturity date of its NSFR liabilities and assets in a conservative manner by applying the earliest possible maturity date to an NSFR liability and the latest possible maturity date to an asset. The final rule generally also requires a covered company to take a conservative approach when determining maturity with respect to any notice periods and with respect to any options, either explicit or embedded, that may modify maturity dates. For example, a covered company is required to treat an option to reduce the maturity of an NSFR liability or an option to extend the maturity of an asset as if it will be exercised on the earliest possible date.

The final rule treats an NSFR liability that has an ''open'' maturity (*i.e.,* the NSFR liability has no maturity date under § ____.101 and may be closed out on demand) as maturing on the day after the calculation date. For example, an ''open'' repurchase transaction or a demand deposit placed at a covered company is treated as maturing on the day after the calculation date. To ensure consistent use of terms in the final rule and LCR rule and to avoid ambiguity between perpetual instruments and transactions (*i.e.,* the instrument or transaction has no contractual maturity date and may not be closed out on demand) and open maturity instruments and transactions, the final rule amends § ____.31 of the LCR rule to use the term ''open'' instead of using the phrase ''has no maturity date.'' This change has no substantive impact on the LCR rule. The final rule treats a perpetual NSFR liability (such as perpetual securities issued by a covered company) as maturing one year or more after the calculation date.

The final rule treats each principal amount due under a transaction, such as separate principal payments due under an amortizing loan, as a separate transaction for which the covered company would be required to identify the date on which the payment is contractually due and apply the appropriate ASF or RSF factor based on that maturity date. This treatment ensures that a covered company's ASF and RSF amounts reflect the timing of the contractual maturities of a covered company's liabilities and assets, rather than treating the full principal amount as though it were due on one date (such as the last contractual principal payment date). For example, if funding provided by a counterparty to a covered company requires two contractual principal repayments, the first due less than six months from the calculation date and the second due one year or more from the calculation date, only the principal amount that is due one year or more from the calculation date is assigned a 100 percent ASF factor, which is the factor assigned to liabilities that have a maturity of one year or more from the calculation date. The liability for the contractual principal repayment due within six months represents a less stable source of funding and is therefore assigned a lower ASF factor.

For deferred tax liabilities that have no maturity date, the maturity date under the final rule is the first calendar day after the date on which the deferred tax liability could be realized.

Because the maturity assumptions in § ____.101 of the final rule apply only to NSFR liabilities and assets, the final rule does not apply the LCR rule's maturity assumptions to a covered company's NSFR regulatory capital elements. Unlike NSFR liabilities, which have varying maturities, NSFR regulatory capital elements are longer-term by definition, and as such, the proposed rule would have assigned a

[90] 12 CFR 3.10(c)(4)(ii)(A) (OCC); 12 CFR 217.10(c)(4)(ii)(A) (Board); 12 CFR 324.10(c)(4)(ii)(A) (FDIC).

[91] If the assets received by the securities lender have been rehypothecated but remain on the covered company's balance sheet, these collateral securities would have been assigned an RSF factor under § ____.106(c) to reflect their encumbrance. For the treatment of rehypothecated off-balance sheet assets, *see* section VII.D.4 of this Supplementary Information section.

[92] The commenter's discussion referred to contractual provisions whereby an originating banking organization or servicer has the option to exercise a ''clean-up'' call by repurchasing the remaining securitization exposures once the amount of the underlying asset exposures or outstanding securitization exposures falls below a specified amount.

100 percent ASF factor to all NSFR regulatory capital elements.

The final rule's incorporation of the above maturity assumptions provides for consistent determination of maturities across covered companies, which improves comparability and standardization of the NSFR. In addition, these assumptions reflect an appropriate degree of conservatism regarding the timing of when an asset or NSFR liability will mature, which helps to support a covered company's funding resiliency across a range of economic and financial conditions. This approach is also consistent with a provision in the Basel NSFR standard that one commenter argued would be more risk-sensitive. This standard provides that for funding with options exercisable at the discretion of a firm subject to a jurisdiction's NSFR requirement, national supervisors should take into account reputational factors that may pressure a firm not to exercise the option. Given the possibility and variability of reputational considerations with respect to many forms of funding, in addition to the considerations discussed above, the final rule incorporates the LCR rule maturity assumptions as proposed.

With respect to the treatment of securitization clean-up call options, these options are generally features of securitizations with terms greater than one year and are generally exercisable near the end of the term. Instead of providing for firm specific evaluations of the likelihood of exercising a clean-up call option as commenters suggested, the final rule employs standardized assumptions to all firms to facilitate comparability across firms. The maturity assumptions of the LCR rule and final rule, however, do not require all clean-up call options to be exercised at the earliest possible date. Section ____.31(a)(1)(iii)(A) of the LCR rule, applicable to the NSFR through § ____.101 of the final rule, provides that a covered company must treat an option to reduce the maturity of an obligation as though it will be exercised at the earliest possible date, except where the original maturity of the obligation is greater than one year and the option does not go into effect for a period of 180 days following the issuance of the instrument. If that condition is met, then the maturity of the obligation will be the original maturity date at issuance under both the LCR rule and the final rule.

C. Available Stable Funding

1. Calculation of the ASF Amount

Section ____.103 of the proposed rule would have established the requirements for a covered company to calculate its ASF amount, which would have equaled the sum of the carrying values of the covered company's NSFR regulatory capital elements and NSFR liabilities, each multiplied by an ASF factor assigned in § ____.104 or § ____.107(c).[93]

In the proposed rule, ASF factors would have been assigned based on the relative stability of each category of NSFR regulatory capital element or NSFR liability relative to the NSFR's one-year time horizon. In addition, § ____.108 of the proposed rule would have provided that a covered company may include in its ASF amount the ASF of a consolidated subsidiary only to the extent that the funding of the subsidiary supports the RSF amount of the subsidiary or is readily available to support RSF amounts of the covered company outside the consolidated subsidiary.[94] The agencies received no comments on the calculation of the ASF amount and are adopting such calculation as proposed.

Comments regarding the proposed assignment of ASF factors and specific contractual and funding-related features of a number of NSFR regulatory capital elements and NSFR liabilities are described below.

2. Characteristics for Assignment of ASF Factors

For the purpose of assigning ASF factors, the proposed rule would have categorized NSFR regulatory capital elements and NSFR liabilities into five broad categories based on their tenor, the type of funding, and the type of funding counterparty. The proposed rule would have applied the same ASF factor in each category to reflect the relative stability of a covered company's NSFR regulatory capital elements and NSFR liabilities over a one-year time horizon. ASF factors would have been scaled from zero to 100 percent, with a zero percent weighting representing the lowest relative stability and a 100 percent weighting representing the highest relative stability.

For operational simplicity, the proposed rule would have grouped NSFR regulatory capital elements and NSFR liabilities into one of four maturity categories: One year or more, less than one year, six months or more but less than one year, and less than six months (ASF maturity categories). One commenter expressed concern that the ASF maturity categories are arbitrary and may lead a covered company to unnecessarily adjust its funding profile to align with the ASF maturity categories rather than its actual funding needs. This commenter recommended that the ASF factor framework provide more granular maturity categories (*e.g.,* monthly residual maturity categories), which would be more risk-sensitive.

The agencies did not receive general comments on the proposed approach to differentiate ASF factors based on different funding types and counterparties, although some comments were received on the proposed categories of ASF and are discussed below. However, some commenters suggested that, for purposes of measuring the stand-alone NSFR of a covered company that is a depository institution subsidiary of another covered company, ASF factors should be higher or subject to a floor where the counterparty providing the funding is an affiliated insured depository institution. For example, one commenter suggested that the ASF factor for funding provided by an affiliated depository institution should be no less than 95 percent, particularly where the affiliated depository institution has an ASF amount in excess of its RSF amount when measured on a stand-alone basis. These commenters argued that a higher ASF factor would be appropriate because funding provided by an affiliated depository institution is more stable than funding from non-affiliated sources. These commenters also asserted that special treatment for funding transactions between affiliated insured depository institutions in the final rule would be consistent with the treatment of affiliates in the U.S. bank regulatory framework, such as the treatment of affiliates in sections 23A and 23B of the Federal Reserve Act,[95] the Board's Regulation W,[96] and cross-guarantee liability provisions in the FDI Act.[97] Commenters also suggested that special treatment could be limited to institutions that would qualify for the

[93] ASF factors would have been assigned to NSFR regulatory capital elements and NSFR liabilities under § ____.104, except for NSFR liabilities relating to derivatives. As discussed in section VII.E of this Supplementary Information section, certain NSFR liabilities relating to derivative transactions would not have been considered stable funding for purposes of a covered company's NSFR calculation and would have been assigned a zero percent ASF factor under § ____.107(c) of the proposed rule.

[94] *See* section VII.F of this Supplementary Information section.

[95] 12 U.S.C. 371c and 12 U.S.C. 371c–1.

[96] 12 CFR part 223.

[97] 12 U.S.C. 1815(e).

''sister bank exemption'' in section 223.41(b) of Regulation W.[98]

The final rule generally adopts the proposed rule's approach to assigning ASF factors subject to certain modifications and clarifications that are discussed below in this Supplementary Information section. The final rule treats funding to be relatively less stable if there is a greater likelihood that a covered company would need to replace or repay it over a one-year time horizon. As in the proposed rule, the final rule assigns an ASF factor to NSFR regulatory capital elements and NSFR liabilities based on three characteristics relating to the stability of the funding: (1) Funding tenor, (2) funding type, and (3) counterparty type. As discussed below, certain ASF factor assignments under the final rule reflect additional policy considerations.

a) Funding Tenor

For purposes of assigning ASF factors, the final rule assigns a higher ASF factor to funding that has a longer remaining maturity (or tenor) than shorter-term funding because, funding that by its terms has a longer tenor is more stable relative to a one-year horizon and should be less susceptible to short-term rollover risk. Specifically, the assignment of a higher ASF factor reflects the relatively decreased likelihood that a firm in the near term would need to replace funding that has a longer tenor, or if necessary, monetize assets at a loss to repay the funding in comparison to funding of a shorter tenor. The need to replace funding or monetize assets could adversely impact a firm's liquidity position or generate negative externalities for other market participants. Longer-term funding, therefore, generally would provide greater stability across all market conditions. For operational simplicity, and consistent with the proposed rule, the final rule groups the tenor of NSFR regulatory capital elements and NSFR liabilities into one of the four ASF maturity categories: One year or more, less than one year, six months or more but less than one year, and less than six months. These ASF maturity categories are consistent with the design principles described in section V of this Supplementary Information section and the Basel NSFR standard. They are also generally consistent to other approaches used for reflecting the role of residual maturities in other agencies' regulations and supervisory approaches.[99]

The purpose of the ASF maturity categories is to categorize NSFR regulatory capital elements and NSFR liabilities in a simple manner based on the relative stability of such funding. Although the categories may result in some greater cliff effects between groups than more granular categories (*e.g.,* one-month maturity categories), including more granular categories would increase complexity and result in a metric that is more difficult to monitor and supervise.[100] The final rule generally treats funding with a remaining maturity of one year or more as the most stable and short-term funding as less stable. In this manner, the final rule incentivizes a covered company to maintain a stable funding profile by utilizing funding, such as equity and long-term debt, that matures beyond the NSFR's one-year time horizon. The final rule generally treats funding that matures in six months or more but less than one year as less stable than regulatory capital and long-term debt because a covered company would need to replace or repay such funding before the end of the NSFR's one-year time horizon. Funding with a remaining maturity of less than six months or an open maturity is generally treated as less stable because a covered company may need to replace or repay it in the near term.

b) Funding Type

The final rule recognizes that certain types of funding, such as certain types of deposits, tend to be more stable than other types of funding, independent of their tenor. For example, as described below in this Supplementary Information section, the final rule assigns a higher ASF factor to stable retail deposits relative to other retail deposits, due in large part to the presence of full deposit insurance coverage and other stabilizing features, such as another established relationship with the depository institution,[101] that increase the likelihood of a counterparty continuing the funding across a broad range of market conditions. Similarly, the final rule assigns a higher ASF factor to operational deposits provided to a covered company than to certain other forms of short-term wholesale deposits, as discussed below in this Supplementary Information section. In a manner consistent with the proposed rule, the final rule takes into account the characteristics of funding type on funding stability when assigning ASF factors.

c) Counterparty Type

The final rule assigns ASF factors by taking into account the type of counterparty that provides the funding, using the same counterparty type classifications as the LCR rule: (1) Retail customers or counterparties, (2) wholesale customers or counterparties that are not financial sector entities, and (3) financial sector entities.[102]

Consistent with the proposed rule, the final rule considers the differences in funding provided by retail and wholesale customers or counterparties when assigning ASF factors. Retail customers or counterparties (including small businesses) typically maintain long-term relationships with covered companies and their deposits may consist of larger numbers of accounts with smaller balances relative to wholesale depositors. Retail customers or counterparties are generally less likely to move deposits over a one-year time horizon than wholesale depositors. In contrast, wholesale depositors are more likely to move deposits over a one-year time horizon for business or investment reasons. Therefore, the final rule treats most types of deposit funding provided by retail customers or counterparties as more stable than deposit funding provided by wholesale customers or counterparties.

In addition, wholesale customers and counterparties that are not financial sector entities typically maintain balances with covered companies to support their non-financial activities, such as production and physical investment, which tend to be less correlated to short-term financial market fluctuations than activities of financial sector entities. Therefore, non-financial wholesale customers or counterparties are more likely than financial sector

[98] 12 CFR 223.41(b).

[99] For example, the Board's GSIB capital surcharge rule includes generally similar categories for the maturities of average wholesale funding, including short-term wholesale funding, with remaining maturities of one year or more and six months or more but less than one year.

[100] The agencies note that adoption of the final rule does not preclude covered companies from using other metrics to manage funding risks and conduct internal stress testing over various time horizons that may include, among other things, more granular maturity categories.

[101] For example, another deposit account, a loan, bill payment services, or any similar service or product provided to the depositor.

[102] Under § ____.3 of the LCR rule, the term ''retail customer or counterparty'' includes individuals, certain small businesses, and certain living or testamentary trusts. The term ''wholesale customer or counterparty'' refers to any customer or counterparty that is not a retail customer or counterparty. The term ''financial sector entity'' refers to a regulated financial company, identified company, investment advisor, investment company, pension fund, or non-regulated fund, as such terms are defined in § ____.3 of the LCR rule. The final rule incorporates these definitions. For purposes of determining ASF and RSF factors assigned to liabilities, assets, and commitments where counterparty type is relevant, the final rule treats an unconsolidated affiliate of a covered company as a financial sector entity.

entities to continue to provide funding to a covered company over a one-year horizon.

Further, differences in business models and liability structures tend to make short-term funding provided by financial sector entities less stable than similar funding provided by non-financial wholesale customers or counterparties. Financial sector entities are typically less reliable funding providers than non-financial wholesale customers or counterparties due, in part, to their financial intermediation activities. Financial sector entities tend to be more sensitive to market fluctuations that could cause them to reduce their general level of funding provided to a covered company. Furthermore, the increased interconnectedness between financial sector entities means that there is a higher correlation of risks across the financial sector that may adversely impact the stability of short-term funding provided by a financial sector entity. Therefore, the final rule treats most short-term funding that is provided by financial sector entities as less stable than similar types of funding provided by non-financial wholesale customers or counterparties.

Further, as a general matter, an affiliation would not necessarily improve the funding stability of the covered company. Banking organizations that generally rely on funding from financial sector affiliates may have similar balance sheet funding risks to those that generally rely on funding of the same tenor from non-affiliates. An affiliated depository institution that is providing funding to a covered company may have a business model, liability structure, sensitivity to market fluctuations, degree of financial sector interconnectedness, or other characteristics that are similar to unaffiliated financial sector entities. While funding relationships with affiliates may provide a banking organization with additional flexibility in the normal course of business, ongoing reliance on contractually short-term funding from affiliates may present risks that are similar to funding from non-affiliate sources, particularly during stress. Therefore, the final rule's treatment of funding from affiliated sources consistent with non-affiliate funding provides a more appropriate measure of balance sheet funding risk.

The agencies also are not convinced that the ASF factors applicable to funding provided by an affiliated insured depository institution should be higher in cases where the affiliated funds provider has an ASF amount in excess of its RSF amount when calculated on a standalone basis. The comparison of ASF to RSF amounts is informative of the overall funding position of a banking organization, taking into account its entire balance sheet, lending commitments, and derivative exposures. However, the balance sheet funding position of an affiliated insured depository institution at a calculation date does not necessarily imply that the institution is generally more likely to continue to provide funds to a covered company than an unaffiliated funding provider. The agencies note that the specific legal provisions cited by commenters (*e.g.,* sections 23A and 23B of the Federal Reserve Act, the Board's Regulation W, and the FDI Act) address different policy considerations than the NSFR and do not suggest that funding from affiliates is more stable than funding received from non-affiliates.

While comprehensive data on the funding of covered companies by counterparty type is limited, the agencies' analysis of available data confirmed the agencies' expectation of funding stability differences across counterparty types.[103] Prior to issuing the proposed rule, the agencies reviewed information collected on the Consolidated Reports of Condition and Income (Call Report), Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002), and the Securities and Exchange Commission (SEC) Financial and Operational Combined Uniform Single Report (FOCUS Report) over the period beginning December 31, 2007, and ending December 31, 2008, in combination with more recent FR 2052a report data, and supervisory information collected in connection with the LCR rule. In addition, the agencies reviewed supervisory information collected from depository institutions for which the FDIC was appointed as receiver in 2008 and 2009. Although the NSFR requirement is designed to measure the stability of a covered company's funding profile across all market conditions and would not be specifically based on a particular market stress environment, the agencies considered a period of stress for purposes of evaluating the relative effects of counterparty type on funding stability. Because a covered company under normal conditions may adjust funding across counterparty types for any number of reasons, focusing on periods of stress allowed the agencies to evaluate general differences in stability by counterparty type.

The agencies' analysis of available public and supervisory information shows that, during 2008, funding from financial sector entities exhibited less stability than funding provided by non-financial wholesale counterparties, which in turn exhibited less stability than insured retail deposits. For example, Call Report data on insured deposits, deposit data from the FFIEC 002, and broker-dealer liability data reported on the FOCUS Report showed higher withdrawals in wholesale funding than retail deposits over this period. The agencies' analysis of supervisory data from a sample of large depository institutions for which the FDIC was appointed as receiver in 2008 and 2009 also indicated that, during the periods leading up to receivership, funding provided by wholesale counterparties was significantly less stable, showing higher average total withdrawals, than funding provided by retail customers and counterparties.

3. Categories of ASF Factors

Based on the tenor, funding type and counterparty type characteristics described above, the agencies categorized NSFR regulatory capital elements and NSFR liabilities into five broad categories and assigned a single ASF factor in each category, as shown in Table 1 below. The types of funding grouped together in each category generally displays relatively similar stability as compared to funding in a different category. The value of the ASF factor is calibrated to reflect the relative distinctions between categories and the general composition of balance sheet liabilities, and is generally consistent with the Basel NSFR standard to promote comparability across jurisdictions and the supervisory assessment of the aggregate funding position of covered companies.

[103] Prior to the 2007–2009 financial crisis, covered companies did not consistently report or disclose detailed liquidity information. On November 17, 2015, the Board adopted the revised FR 2052a to collect quantitative information on selected assets, liabilities, funding activities, and contingent liabilities from certain large banking organizations.

TABLE 1—CATEGORIES OF NSFR REGULATORY CAPITAL ELEMENTS AND LIABILITIES BASED ON THEIR CHARACTERISTICS AND RESULTING ASF FACTORS

Tenor	Counter-party type	Funding type	NSFR regulatory capital and liabilities	ASF factor percent
One year or more	All	All	NSFR regulatory capital elements and long-term NSFR liabilities.	100
Any tenor	Retail	Fully insured	Stable retail deposits and certain affiliate sweep deposits	95
		Not fully insured	Other non-brokered retail deposits and certain affiliate sweep deposits.	90
	Retail brokered	Fully insured	Brokered reciprocal deposits	
One year or more		All	Other brokered deposits not held in a transactional account.	
Less than one year	Wholesale	Non-operational *	Unsecured funding provided by, and secured funding transactions with, a counterparty that is not a financial sector entity or central bank.	50
Six months but less than one year.	Financial or central bank	Non-operational	Unsecured wholesale funding provided by, and secured funding transactions with, a financial sector entity or central bank.	
	All	Securities	Securities issued by a covered company	
	Retail brokered	All	Retail brokered deposits *other than* brokered reciprocal deposits, sweep deposits, or transactional deposits.	
Any tenor			Transactional retail brokered deposits	
		Not fully insured	Brokered reciprocal deposits	
	Retail	All	Non-affiliate sweep deposits Retail funding that is not a deposit or security.	
	Wholesale	Operational	Operational deposits	
Less than six months	Retail brokered	Any	Certain short-term retail brokered deposits	0
	Financial or central bank	Non-operational	Short-term funding from a financial sector entity or central bank.	
	All	Securities	Securities issued by a covered company	
		Other	Trade date payables	
Any tenor **	All	Derivative	NSFR derivatives liability amount	

* That is, not an operational deposit.
** The derivative treatment nets derivative transactions with various maturities.

a) 100 Percent ASF Factor

Section ____.104(a) of the proposed rule would have assigned a 100 percent ASF factor to NSFR regulatory capital elements, as defined in § ____.3 of the proposed rule, and described in section VI.B of this Supplementary Information section. The proposed rule also would have assigned a 100 percent ASF factor to NSFR liabilities that have a remaining maturity of one year or more from the calculation date, other than funding typically provided by retail customers or counterparties. This category would have included debt or equity securities issued by a covered company that have a remaining maturity of one year or more.

In the proposed rule, the agencies requested comment on whether long-term debt securities issued by a covered company where the company is the primary market maker of such securities should be assigned an ASF factor other than 100 percent (for example, between 95 and 99 percent) to recognize the risk that a covered company may buy back these debt securities. One commenter supported the proposed assignment of a 100 percent ASF factor to such securities on the basis that a lower ASF is unnecessary because the NSFR is not a stress metric. The agencies did not receive other comments regarding treatment of the NSFR regulatory capital elements and NSFR liabilities that mature one year or more from the calculation date not provided by retail customers or counterparties.

The final rule assigns a 100 percent ASF factor to NSFR regulatory capital elements and NSFR liabilities that mature one year or more from the calculation date as proposed. NSFR regulatory capital elements and non-retail long-term liabilities that do not mature during the NSFR's one-year time horizon represent the most stable form of funding under the final rule because they are not susceptible to rollover risk during the NSFR's timeframe. Similarly, and as noted by the commenter, there is reduced risk, absent stress conditions, that a covered company will face pressure to buy back its long-term debt securities in significant quantities during the NSFR's one-year time horizon as compared to other liabilities on its balance sheet.

The agencies received comments requesting assignment of a 100 percent ASF factor to certain other NSFR liabilities, which are discussed in more detail below.

b) 95 Percent ASF Factor

Section ____.104(b) of the proposed rule would have assigned a 95 percent ASF factor to stable retail deposits held at a covered company.[104] The assignment of a 95 percent ASF factor would have reflected that such deposits generally provide a highly stable source of funding for covered companies.

Some commenters requested that the final rule assign a 95 or 100 percent ASF factor to certain retail deposits that do not meet the definition of ''stable retail deposits,'' but are subject to contractual restrictions that make it less likely the deposits would be redeemed earlier than their contractual term. For example, some commenters suggested that the NSFR rule assign a 100 percent ASF factor to a retail deposit, such as a certificate of deposit, with a remaining maturity greater than one year if the covered company or its consolidated depository institution does not maintain a secondary market for the deposit, or if the contract contained provisions restricting redemption only to certain specified events, such as death or

[104] Section ____.3 of the LCR rule defines a ''stable retail deposit'' as a retail deposit that is entirely covered by deposit insurance and either (1) is held by the depositor in a transactional account or (2) the depositor that holds the account has another established relationship with the covered company such as another deposit account, a loan, bill payment services, or any similar service or product provided to the depositor that the covered company demonstrates, to the satisfaction of the appropriate Federal banking agency, would make the withdrawal of the deposit highly unlikely during a liquidity stress event.

determination of mental incapacity of the depositor.

The final rule assigns a 95 percent ASF factor to deposits that meet the definition of ''stable retail deposit'' as proposed. Relative to liabilities in the 100 percent ASF category, stable retail deposits either have no contractual restriction on withdrawal within a one-year period or there is some likelihood that covered companies may permit withdrawals despite contractual restrictions within the one-year horizon. Although some evidence suggests that these deposits are highly stable, they are not as stable as funding for which there is greater certainty of maturity outside the NSFR one-year horizon. Therefore, an ASF factor that is only slightly lower than that assigned to NSFR regulatory capital elements and long-term NSFR liabilities is appropriate because stable retail deposits are nearly as stable over the NSFR's one-year time horizon as NSFR regulatory capital elements and long-term NSFR liabilities under § ____.104(a) of the final rule.

The remaining maturity of stable retail deposits does not affect the assignment of an ASF factor under the final rule because the stability of retail deposits is more closely linked to counterparty and funding type characteristics. As noted in the preamble to the proposed rule, the combination of full deposit insurance coverage, the depositor's relationship with the covered company, and the costs of moving transactional or multiple accounts to another institution substantially reduce the likelihood that retail depositors will withdraw stable retail deposits in significant amounts over a one-year time horizon.[105] Maturity or other contractual provisions restricting redemption are less relevant, for example, because a covered company may permit withdrawal of a retail term deposit for business and reputational reasons in the event of a depositor's early withdrawal request despite the absence of a contractual requirement to permit such a withdrawal within the NSFR's one-year time horizon. Generally, other categories of funding that do not have the features of stable retail deposits are not as stable and therefore assigned to a lower ASF factor category in the final rule.

Under the proposal, affiliated brokered sweep deposits deposited in accordance with a contract with a retail customer or counterparty and where the entire amount of the deposit is covered by deposit insurance would have been assigned a 90 percent ASF factor.[106] Commenters requested that similar types of deposits be assigned a higher ASF factor, claiming that these deposits have historically evidenced stability across a range of market conditions.

In a change from the proposal, the final rule also assigns a 95 percent ASF factor to affiliate sweep deposits where the entire amount of the sweep deposit is covered by deposit insurance and where a covered company has demonstrated to the satisfaction of its appropriate Federal banking agency that withdrawal of the deposit is highly unlikely to occur during a liquidity stress event. A sweep deposit arrangement places deposits at one or more banking organizations, with each banking organization receiving the maximum amount that is covered by deposit insurance, according to a priority ''waterfall.'' Within the waterfall structure, affiliates tend to be the first to receive deposits and the last from which deposits are withdrawn. Because of this priority relationship with an affiliate, a covered company is more likely to receive and maintain a steady stream of sweep deposits provided by a retail customer or counterparty across a range of market conditions. The priority relationship with an affiliate results in a deposit relationship that is reflective of an overall relationship with the underlying retail customer or counterparty where these deposits generally exhibit a stability profile associated with deposits directly from retail customers. This affiliate relationship combined with the presence of full deposit insurance coverage reduces the likelihood that retail depositors will withdraw these deposits in significant amounts over a one-year time horizon. Given these stabilizing characteristics, some affiliate sweep deposits from retail customers may provide similar funding stability across a range of market conditions as stable retail deposits, particularly if there are contractual features or costs that substantially reduce the likelihood that an affiliate sweep deposit will be withdrawn over a one-year time horizon. In light of this possibility, the final rule assigns a 95 percent ASF factor to any fully insured affiliate sweep deposit from a retail customer or counterparty that the covered company demonstrates is highly unlikely to be withdrawn during a liquidity stress event. For the same reasons as the agencies described in connection with this final rule, the agencies are considering making similar changes to the treatment of affiliate sweep deposits in the LCR in a separate rulemaking.

c) 90 Percent ASF Factor

While stable retail deposits and certain fully-insured retail affiliate sweep deposits, regardless of tenor, have the highest stability characteristics for deposits under the final rule, other non-brokered retail deposits and certain retail brokered deposits have a combination of deposit insurance, counterparty relationship, and tenor characteristics that provide relatively less stability than stable retail deposits and are assigned a slightly lower ASF factor of 90 percent.

(i) Other Non-Brokered Retail Deposits

Section ____.104(c) of the proposed rule would have assigned a 90 percent ASF factor to retail deposits that are neither stable retail deposits nor retail brokered deposits. This category would have included retail deposits that are not fully insured by the FDIC or are insured under non-FDIC deposit insurance systems. The agencies did not receive comments on this aspect of the proposed rule, and the final rule assigns a 90 percent ASF factor to these other retail deposits as proposed.

As discussed above in section VII.C.2 of this Supplementary Information section, retail customers and counterparties tend to provide deposits that are more stable than funding provided by other types of counterparties. However, deposits provided by retail customers and counterparties that are not fully covered by FDIC deposit insurance are assigned a lower ASF factor than the ASF factor assigned to stable retail deposits because of the elevated risk that depositors will withdraw funds if they become concerned about the condition of the bank, in part, because the depositor will have no guarantee that uninsured funds will promptly be made available through established and timely intervention and resolution protocols. In addition, deposits that are neither held in a transactional account nor from a customer that has another relationship with a covered company tend to be less stable than stable retail deposits because

[105] *See* section VII.C.2.b of this Supplementary Information section.

[106] Under § ____.3 of the LCR rule, a ''brokered sweep deposit'' previously was defined to mean a deposit held at a covered company by a customer or counterparty through a contractual feature that automatically transfers to the covered company from another regulated financial company at the close of each business day amounts identified under the agreement governing the account from which the amount is being transferred. As discussed in section VI.A.4 of this Supplementary Information section, the final rule amends § ____.3 to replace ''brokered sweep deposit'' with the term ''sweep deposit'' because not all sweep deposits are brokered, for example, if they meet the terms of the primary purpose exception under section 29 of the FDI Act and the FDIC's brokered deposit regulations.

the depositor is less reliant on the services of the covered company. Therefore, the assigned ASF factor reflects the somewhat greater likelihood of withdrawal for those deposits that are not stable retail deposits. Similar to stable retail deposits and for the same reasons, the remaining maturity of these retail deposits does not affect the assignment of an ASF factor under the final rule.

(ii) Affiliate Sweep Deposits, Fully Insured Brokered Reciprocal Deposits, and Certain Longer-Term Retail Brokered Deposits

Section ____.104(c) of the proposed rule would have assigned a 90 percent ASF factor to the following three categories of brokered deposits [107] provided by retail customers or counterparties: (1) A reciprocal brokered deposit where the entire amount is covered by deposit insurance,[108] (2) an affiliated brokered sweep deposit where the entire amount of the deposit is covered by deposit insurance,[109] and (3) a brokered deposit that is not a reciprocal brokered deposit or brokered sweep deposit, is not held in a transactional account, and has a remaining maturity of one year or more.[110] Other types of brokered deposits would have been assigned lower ASF factors under the proposed rule.[111]

A commenter argued that brokered deposits are not inherently unstable and should receive similar treatment as non-brokered retail deposits. Several commenters suggested that retail brokered deposits with a remaining maturity of one year or more be assigned a 100 percent ASF factor. Commenters argued that assigning these long-term retail brokered deposits an ASF factor of 100 percent would align with the Basel standard and recognize the more significant role of this funding source in the U.S. financial system relative to other jurisdictions. The commenters further argued that covered companies can expect to rely on these deposits for funding over the NSFR's one-year time horizon given their maturity and because depositors are generally not permitted to withdraw such deposits except under narrow circumstances and usually not without a significant penalty. The commenters also argued that depositors are less likely to accelerate the maturity of their brokered deposits outside of a stress scenario. Commenters also expressed concern that the FDIC's interpretation of ''brokered deposit'' is overly broad and reflects policy concerns, such as rapid deposit expansion and improper deposit management that are not relevant for purposes of determining the appropriate treatment of such products for regulatory liquidity and stable funding requirements.

Except in the cases described below where brokered deposits have certain stabilizing features, the typical characteristics of brokered deposits support assigning a lower ASF factor for retail brokered deposits than the ASF factor assigned to stable or other retail deposits. Specifically, deposits that are placed by a deposit broker are typically at higher risk of being withdrawn over a one-year period as compared to a retail deposit placed directly by a retail customer or counterparty. As noted, the FDIC has issued a proposal revising its brokered deposits framework [112] and expects the finalization of this proposal will address some concerns that the FDIC's existing interpretations are overly broad.

Additionally, statutory restrictions on certain brokered deposits can make this form of funding less stable than other deposit types across a range of market environments. Specifically, a covered company that becomes less than ''well capitalized'' [113] is subject to restrictions on renewing or rolling over funds obtained directly or indirectly through a deposit broker.[114]

For these reasons, the final rule generally assigns a lower ASF factor to retail brokered deposits to reflect their reduced stability in comparison to other forms of retail deposits. However, consistent with the proposal, the final rule applies a 90 percent ASF factor to the following retail brokered deposits that have certain stabilizing characteristics: (1) A brokered reciprocal deposit provided by a retail customer or counterparty, where the entire amount of the deposit is covered by deposit insurance; and (2) a brokered deposit provided by a retail customer or counterparty that is not a brokered reciprocal deposit or sweep deposit, is not held in a transactional account, and has a remaining maturity of one year or more. In a change from the proposal, the final rule assigns a 90 percent ASF factor to any affiliate sweep deposit that does not meet all of the requirements for affiliate sweep deposits to be assigned a 95 percent ASF factor, which includes affiliate sweep deposits that are not fully covered by deposit insurance.[115] Each of these types of deposits is discussed below.

Brokered reciprocal deposits. The reciprocal nature of a brokered reciprocal deposit provided by a retail customer or counterparty means that a deposit placement network contractually provides a covered company with the same amount of deposits that it places with other depository institutions. As a result, and because the deposit is fully insured, the retail customers or counterparties providing the deposit tend to be less

[107] A ''brokered deposit'' previously was defined in § ____.3 of the LCR rule as a deposit held at the covered company that is obtained, directly or indirectly, from or through the mediation or assistance of a deposit broker, as that term is defined in section 29(g) of the FDI Act (12 U.S.C. 1831f(g)), and includes reciprocal brokered deposits and brokered sweep deposits. In the final rule, the agencies have amended the definition to mean a deposit held at the covered company that is obtained, directly or indirectly, from or through the mediation or assistance of a deposit broker, as that term is defined in section 29(g) of the FDI Act (12 U.S.C. 1831f(g)) and the FDIC's regulations. *See* section VI.A.4 of this Supplementary Information section.

The agencies note that the ASF factors assigned to retail brokered deposits are based solely on the stable funding characteristics of these deposits over a one-year time horizon. The assignment of ASF factors is not intended to reflect other impacts of these deposits on a covered company, such as their effect on a company's probability of failure or loss given default, franchise value, or asset growth rate or lending practices.

[108] A ''reciprocal brokered deposit'' previously was defined in § ____.3 of the LCR rule as a brokered deposit that the covered company receives through a deposit placement network on a reciprocal basis, such that: (1) For any deposit received, the covered company (as agent for the depositors) places the same amount with other depository institutions through the network and (2) each member of the network sets the interest rate to be paid on the entire amount of funds it places with other network members. The final rule renames the term ''reciprocal brokered deposit'' to ''brokered reciprocal deposit'' to avoid confusion and use terminology consistent with other regulations. *See* 12 CFR 327.8(q).

[109] *See supra* note 106. Typically, these transactions involve securities firms or investment companies that transfer (''sweep'') idle customer funds into deposit accounts at one or more banks. An affiliate sweep deposit is deposited in accordance with a contract between the retail customer or counterparty and the covered company, a controlled subsidiary of the covered company, or a company that is a controlled subsidiary of the same top-tier company of which the covered company is a controlled subsidiary.

[110] Under the final rule, the agencies removed from the definition of ''brokered deposit'' references to deposits defined as either a ''reciprocal brokered deposit'' or ''brokered sweep deposit'' in § ____.3 of the LCR rule. This revision reflects modifications made to these terms under the final rule, as discussed in section VI.A.4 of this Supplementary Information section. *See supra* note 107.

[111] These other types of brokered deposits are discussed in sections VII.C.3.d and VII.C.3.e of this Supplementary Information section.

[112] 85 FR 7453.

[113] As defined in section 38 of the FDI Act, 12 U.S.C. 1831o.

[114] *See* 12 U.S.C. 1831f.

[115] Section ____.104(d)(7) of the proposed rule would have assigned a 50 percent ASF factor to a brokered affiliate sweep deposit where less than the entire amount of the deposit is covered by deposit insurance and without regard to whether a covered company could demonstrate to the satisfaction of its appropriate Federal banking agency that a withdrawal of such deposit is highly unlikely to occur during a liquidity stress event.

likely to withdraw it than other types of deposits that are assigned a lower ASF factor.

Affiliate sweep deposits. As described above in section VII.C.3.b of this Supplementary Information section, within the waterfall structure of sweep deposit arrangements, affiliates tend to be the first to receive deposits and the last from which deposits are withdrawn. With this priority relationship with an affiliate, a covered company is more likely to receive and maintain a steady stream of sweep deposits across a range of market conditions. Based on the reliability of this stream of sweep deposits the final rule treats sweep deposits received from affiliates as more stable than sweep deposits received from non-affiliates and more similar to other types of retail deposits. The final rule takes into account that the priority relationship with an affiliate results in a deposit relationship that is reflective of an overall relationship with the underlying retail customer where these deposits generally exhibit a stability profile associated with deposits directly from retail customers or counterparties, even if the deposits are not fully covered by deposit insurance.

Certain longer-term brokered deposits. For a brokered deposit provided by a retail customer or counterparty that is not a brokered reciprocal deposit or sweep deposit, which is not held in a transactional account and that has a remaining maturity of one year or more, the contractual term makes it a more stable source of funding than other types of deposits that are assigned a lower ASF factor. However, these brokered deposits are not assigned an ASF factor higher than 90 percent, as requested by certain commenters, because a covered company may be more likely to permit withdrawal of retail brokered deposits in the event of an early withdrawal request by the depositor, for reputational or franchise reasons, despite the absence of contractual requirements to permit withdrawal within the NSFR's one-year time horizon.

d) 50 Percent ASF Factor

The final rule assigns an ASF factor of 50 percent to most forms of wholesale funding with residual maturities of less than one year, certain retail brokered deposits that do not have the stabilizing characteristics described above, and non-deposit retail funding. For wholesale funding, the 50 percent ASF factor recognizes that funding that contractually matures in less than one year is less stable than longer term wholesale funding relative to the NSFR time horizon. The likelihood that maturing wholesale funding will be renewed generally depends on counterparty relationship characteristics, with financial sector entities being less likely than non-financial sector entities to renew their provision of funding. In addition, the final rule assigns the 50 percent ASF factor to all wholesale operational deposits, regardless of contractual maturity or counterparty, reflecting the provision of operational services. The 50 percent ASF factor applied to certain retail brokered deposits and to retail funding that is not a deposit or security reflect the counterparty relationship characteristics and the extent to which the retail funding has other stabilizing characteristics.

Unsecured Wholesale Funding Provided by, and Secured Funding Transactions With, a Counterparty That is Not a Financial Sector Entity or Central Bank and With Remaining Maturity of Less Than One Year

Sections ____.104(d)(1) and (2) of the proposed rule would have assigned a 50 percent ASF factor to a secured funding transaction or unsecured wholesale funding (including a wholesale deposit) that, in each case, matures less than one year from the calculation date and is provided by a wholesale customer or counterparty that is not a central bank or a financial sector entity (or a consolidated subsidiary thereof). The proposed rule would have assigned this ASF factor because covered companies generally will need to roll over or replace funding with these characteristics during the NSFR's one-year time horizon.

Several commenters also requested that the NSFR assign a higher ASF factor to public sector entity deposits, including public deposits that must be collateralized and collateralized corporate trust deposits. These commenters argued that these public sector entity collateralized deposits are more stable than most other wholesale deposits because, among other things, the deposit relationship is connected to longer-term relationships between a covered company and the public sector entity, the relationship is often acquired through prescribed bidding processes, and the deposits frequently are secured by HQLA. These commenters also argued that assigning a higher ASF factor to collateralized deposits would be consistent with the LCR rule, which assigns a lower outflow rate to such deposits compared to other forms of wholesale funding. The commenters recommended that the agencies revise the ASF factor for such deposits to one minus the RSF factor applicable to the underlying collateral. One commenter advocated assigning a 95 percent ASF factor (or an alternative factor slightly lower than 95 percent) to public sector entity deposits in excess of FDIC deposit insurance limits if the deposit is privately insured or fully collateralized by an FHLB letter of credit. The commenter argued that such features would lower the likelihood of withdrawal for these types of funds, including during times of stress.

Other commenters requested a higher ASF factor for FHLB advances because, in their view, FHLB advances are stable, reliable and fully secured, and the FHLBs have a proven track record of providing liquidity. For example, one commenter recommended assigning an ASF factor of 80 percent to FHLB advances with maturities of six months or more but less than one year.

The treatment of wholesale deposits in the final rule includes consideration of counterparty relationships. As compared to retail customers or counterparties, wholesale customers or counterparties may be motivated to a greater degree by return and risk of an investment, tend to be more sophisticated and responsive to changing market conditions, and often employ personnel who specialize in the financial management of the counterparty. As a result, wholesale customers or counterparties are more likely to withdraw their funding than a retail customer or counterparty. Further, FDIC deposit insurance coverage does not mitigate these motivations and sophistication characteristics to increase the stability of funding provided by a wholesale customer or counterparty sufficient to warrant an ASF factor higher than 50 percent.

The NSFR's application to a covered company's aggregate balance sheet generally does not involve differentiation between secured and unsecured liabilities and, by design, the NSFR treats the liquidity characteristics of collateral differently from the LCR rule. Although collateralization may reduce credit risk in the event of default, funding stability is influenced more by tenor, funding type and counterparty relationship characteristics. The fact that certain deposits placed by public sector entities are required to be collateralized for their contractual term does not mitigate the risk that a public sector entity may not renew such funding upon maturity. The final rule treats the collateralization of FHLB advances in the same fashion. Additionally, ASF and RSF factor values are not intended to be values of, respectively, cash outflow amounts as in the LCR rule or market haircuts of assets used as collateral. Accordingly, it would not be appropriate for the type of collateral, nor the RSF factor assigned to such assets, to determine the ASF factor assigned to a collateralized deposit, as suggested by commenters.[116]

The final rule also treats the maturity characteristics of FHLB advances consistent with other wholesale funding. Although the FHLBs served as a source of liquidity during the 2007–2009 financial crisis, covered companies generally may need to renew maturing funding from these entities across a range of market conditions. The FHLB system also conduct maturity transformation in obtaining the system's funding from investors. Similar to other wholesale counterparties, the FHLB system responds to events and market conditions in different ways than retail counterparties and could be sensitive to fluctuations in market conditions, which make funding already obtained from FHLBs less stable than retail deposits and other forms of funding that are assigned higher ASF factors. As a result, distinguishing FHLB advances from other types of wholesale funding would be at odds with the goal of the NSFR, which is to provide a standardized measure to ensure appropriate stable funding of covered companies relative to their assets and commitments.

For the reasons discussed above, the final rule assigns an ASF factor of 50 percent for a secured funding transaction or unsecured wholesale funding (including a wholesale deposit) that, in each case, matures less than one year from the calculation date and is provided by a wholesale customer or counterparty that is not a central bank or a financial sector entity (or a consolidated subsidiary thereof), as proposed. Funding from FHLBs and public sector entity deposits that have a residual maturity of less than one year from the calculation date are included in this category.

Unsecured Wholesale Funding Provided by, and Secured Funding Transactions With, a Financial Sector Entity or Central Bank With Remaining Maturity of Six Months or More, but Less Than One Year

Sections ____.104(d)(3) and (4) of the proposed rule would have assigned a 50 percent ASF factor to a secured funding transaction or unsecured wholesale funding that matures six months or more but less than one year from the calculation date and is provided by a financial sector entity or a consolidated subsidiary thereof, or a central bank.[117] The proposed rule would therefore have treated funding from central banks consistently with funding from financial sector entities.

The agencies did not receive comments on this aspect of the proposed rule, and the final rule adopts this provision as proposed. In assigning a 50 percent ASF factor, the final rule treats secured funding transactions and unsecured funding that each have a remaining maturity of six months or more but less than one year, and are conducted with financial sector counterparties and central banks, the same as similar types of funding from other wholesale customers and counterparties.

Securities Issued by a Covered Company With Remaining Maturity of Six Months or More, but Less Than One Year

Section ____.104(d)(5) of the proposed rule would have assigned a 50 percent ASF factor to securities issued by a covered company that mature in six months or more, but less than one year, from the calculation date.

The agencies received no comments on this provision of the proposed rule. Consistent with the proposed rule, the final rule assigns a 50 percent ASF factor to securities issued by a covered company that mature in six months or more, but less than one year, from the calculation date. This treatment is appropriate because funds providers that are investors in securities issued by covered companies include, among others, financial sector entities and the relationship of the funds provider to a covered company generally will have characteristics that make such funding less stable than other types of funding received from retail customers or counterparties.[118] Further, due to the operation of secondary markets, a covered company may not be aware of the nature of the current investor in a security issued by a covered company and requiring a covered company to apply an ASF factor based on counterparty type would be operationally complex.

Operational Deposits

Section ____.104(d)(6) of the proposed rule would have assigned a 50 percent ASF factor to operational deposit funding, including operational deposits from financial sector entities. Operational deposits would include both (i) unsecured wholesale funding in the form of deposits and (ii) collateralized deposits that, in each case, are necessary for the provision of operational services, such as clearing, custody, or cash management services.[119]

Commenters requested that the final rule assign operational deposits a higher ASF factor (*e.g.,* one commenter recommended an ASF factor of between 60 and 75 percent) because moving operational deposits to a different institution is expensive, time consuming, and risky. [120] In support of this request, a commenter stated that changing custody service providers can take between six and twelve months and can significantly disrupt a company's essential payment, clearing, and settlement functions. Another commenter argued that depositors are unlikely to move their operational deposits from a covered company because of other relationships the depositor has with the covered company, particularly when the covered company is a regional banking institution. By contrast, one commenter noted that operational deposits can be withdrawn from a covered company by a customer within the NSFR's one-year time horizon and therefore do not warrant a higher ASF factor.

Commenters also asserted that the proposed rule's treatment of operational deposits was inconsistent with the treatment of operational deposits under the LCR rule, and argued that this type of funding is more stable than suggested by the treatment in the LCR rule or the proposed rule based on historical experience, evidenced in the empirical data, and the results of internal stress testing. These commenters contended that the proposed treatment of operational deposits would compound the already punitive treatment of operational deposits under the LCR rule. A commenter also argued that the proposed treatment of operational

[116] Additionally, as discussed in section VII.D of this Supplementary Information section, the final rule applies lower RSF factors to HQLA on a covered company's balance sheet relative to certain less liquid assets, including HQLA used for, or available for, the collateralization of public sector entity deposits, consistent with the treatment of encumbered assets described below.

[117] *See supra* note 102.

[118] Securities issued by a covered company that have a remaining maturity of one year or more receive an ASF factor of 100 percent. *See* section VII.C.3.a of this Supplementary Information section.

[119] The agencies note that the methodology that a covered company would have used to determine whether and to what extent a deposit is operational for the purposes of the proposed rule must be consistent with the methodology used for the purposes of the LCR rule. *See* § ____.3 of the LCR rule for the full list of services that qualify as operational services and § ____.4(b) of the LCR rule for additional requirements for operational deposits. Consistent with the proposed rule, the methodology for determining an operational deposit under the final rule is the same as the methodology used for the LCR rule.

[120] Comments about the definition of operational deposits are discussed in section VI.A of this Supplementary Information section.

deposits could penalize the business of custody banks.

The final rule applies an ASF factor of 50 percent to operational deposits as proposed. By definition, operational deposits are essential for the ongoing provision of operational services by a covered company to a wholesale depositor. The final rule therefore applies the ASF factor for operational deposits based on the operational relationship with the depositor rather than the contractual tenor of the funding or the type of wholesale counterparty. The level of operational deposits from a given funds provider may vary over time based on the customer's needs and, consistent with other wholesale funding that matures within one year that is assigned a 50 percent ASF factor, is not contractually guaranteed for the NSFR's one-year horizon. Further a counterparty could successfully restructure how it obtains various operational services and could place some or all of its operational deposits with another financial institution over a one-year time horizon. The 50 percent ASF factor also recognizes that the stability of short-term operational and non-operational deposits from financial counterparties are not identical because switching operational service providers may be difficult and have associated costs that are not present with non-operational deposits.

As discussed in section V.C of this Supplementary Information section, ASF factors are not directly comparable to outflow rates assigned in the LCR rule or other cash flow risk assessments, such as internal liquidity stress testing. While there are some barriers to withdrawing operational deposits, such as switching costs, operational deposits are not as stable as those forms of funding that are assigned a higher ASF factor in the final rule.

In response to commenters' concern that the proposed treatment of operational deposits is especially impactful to the custody banks business model, which place greater reliance on operational deposits than other business models, the agencies note the NSFR rule is meant to apply a single minimum standard to all covered companies regardless of business model, in order to improve resiliency and comparability of funding profiles for all covered companies. Accordingly, the NSFR assigns ASF factors and RSF factors to categories of liabilities and assets based on the characteristics of those liabilities and assets rather than their prevalence in certain business models.

Other Retail Brokered Deposits

Section ____.104(d)(7) of the proposed rule would have assigned a 50 percent ASF factor to most categories of brokered deposits provided by retail customers or counterparties that do not include the additional stabilizing features described under § ____.104(c) and summarized above. Specifically, retail brokered deposits to which the proposed rule would have assigned a 50 percent ASF factor included: (1) A brokered deposit that is not a reciprocal brokered deposit or brokered sweep deposit and that is held in a transactional account; (2) a brokered deposit that is not a reciprocal brokered deposit or brokered sweep deposit, is not held in a transactional account, and matures in six months or more, but less than one year, from the calculation date; (3) a reciprocal brokered deposit or brokered affiliate sweep deposit where less than the entire amount of the deposit is covered by deposit insurance; and (4) a brokered non-affiliate sweep deposit, regardless of deposit insurance coverage.

Commenters argued that one or more of the above types of retail brokered deposits should be assigned a higher ASF factor. Commenters asserted the proposed rule's treatment of brokered deposits was too conservative, arguing that brokered deposits have historically been stable sources of funding, including during times of stress, and their use has not been correlated with the growth of risky assets.

Commenters recommended that specific brokered deposits be assigned a 90 percent ASF factor. For example, some commenters suggested that non-affiliate sweep deposits with contractual agreements that provide a depository institution with priority over other participants in a brokered sweep deposit program waterfall receive the same 90 percent ASF factor assigned to affiliated brokered sweep deposits. Another commenter requested that the 90 percent ASF factor be applied to all non-affiliate brokered retail sweep deposits that are fully insured and with remaining terms of greater than one year. Similarly, one commenter suggested that retail brokered deposits categorized as money market deposit accounts that are subject to a commitment to leave the balances on deposit with the bank for a pre-determined period of time and subject to an early withdrawal penalty should be assigned a 90 percent ASF factor. The commenter argued that the agreements, which require that the funds not be withdrawn for a minimum period without incurring a significant interest penalty, make the funds sufficiently stable to warrant a higher ASF factor.

One commenter argued that many brokered deposits held in transactional accounts behave substantially similarly to retail deposits and should therefore receive an ASF factor that is higher than the proposed 50 percent factor. In particular, this commenter noted that, due to the types of deposits that may be considered ''brokered deposits'' under the FDIC's brokered deposit guidance,[121] many transactional account products that act as a stable source of retail funding could be classified as ''brokered'' due to a referral from a third party. This, the commenter noted, would make them subject to a 50 percent ASF factor under the NSFR rule.[122] Another commenter argued that retail brokered deposits are more stable due to the large number and variety of providers of such deposits. Accordingly, the commenter asserted that a covered company could easily find a substitute counterparty for a company that withdraws its brokered deposits from the covered company.

Finally, commenters requested that the agencies increase the ASF factors applied to retail brokered deposits to align the ASF factors with the outflow rates assigned in the LCR rule. For example, one commenter argued that it would be inconsistent for brokered deposits that receive a 25 percent outflow rate under the LCR rule to receive a 50 percent ASF factor under NSFR rule. The commenter argued that the ASF factor and LCR outflow rate should be complements, and, if not, the ASF factor should be more favorable because a covered company would have a full year to make adjustments to its balance sheet to replace a withdrawal of retail brokered deposits, whereas the LCR outflow rate is assumed to occur over a 30 calendar-day stress period. The same commenter argued that the perceived disparate treatment of these brokered deposits between the NSFR rule and LCR rule could incentivize covered companies to meet funding needs with shorter, rather than long-term brokered deposits.

The retail brokered deposits to which a 50 percent ASF factor would have been assigned are less stable sources of funding than the retail brokered deposits that are assigned a 90 percent ASF factor, other deposits that are assigned a 90 percent ASF factor, and

[121] *See* Federal Deposit Insurance Corporation, ''Frequently Asked Questions on Identifying, Accepting and Reporting Brokered Deposits,'' updated June 30, 2016, available at *https://www.fdic.gov/news/news/financial/2016/fil16042b.pdf.*

[122] *Id.*

stable retail deposits, which are assigned a 95 percent ASF factor. Although the considerations identified by commenters may cause certain brokered deposits to have increased relative stability, these brokered deposits do not have the same combination of stabilizing features that warrant assignment of a higher ASF factor. Specifically, they lack a combination of being fully covered by deposit insurance, being received from an affiliate, or having a longer-term maturity.

In response to commenters' request to treat certain non-affiliate sweep deposits in a similar manner to affiliate sweep deposits, the agencies note that an affiliate sweep deposit relationship is reflective of an overall relationship with the underlying retail customer or counterparty and these deposits generally exhibit a stability profile associated with deposits directly from retail customers, which warrants assignment of a higher ASF factor. As a result, the final rule assigns a 50 percent ASF factor to non-affiliate sweep deposits and a higher ASF factor to affiliate sweep deposits, as discussed above. The agencies will continue to review the treatment of sweep deposits, including non-affiliate sweep deposits, under the LCR and NSFR rules.[123] In response to the comments regarding treatment under the LCR rule, as discussed above in section V.C of this Supplementary Information section, the agencies note that the ASF factors are not intended to align with the outflow rates assigned in the LCR rule in all cases due to the different purposes of the two rules. With the exception of affiliate sweep deposits where less than the entire amount of the deposit is covered by deposit insurance, which the final rule assigns a 90 percent ASF factor,[124] the agencies are adopting the 50 percent ASF factor for these deposits as proposed for the reasons discussed above.

Funding From a Retail Customer or Counterparty not in the Form of a Deposit or Security

The proposed rule would have assigned a zero percent ASF factor to retail funding that is not in the form of a deposit or security issued by the covered company. In the proposed rule, the agencies noted that non-deposit retail liabilities are not regular sources of funding or commonly utilized funding arrangements for covered companies.[125] The proposed rule also, however, solicited comment as to whether the final rule should assign an ASF factor greater than zero to any non-deposit retail liabilities.[126]

Some commenters expressed concern that the proposed treatment of non-deposit retail liabilities was overly conservative and would unfairly penalize business models that focus on securities trading, such as retail-oriented securities brokerage firms that utilize retail brokerage payables as a source of funding.[127] For example, a commenter expressed concern that an organization with a depository institution and a broker-dealer subsidiary of equal size could face a funding shortfall under the proposed rule because the funding of the broker-dealer subsidiary would not be assigned sufficiently high ASF factors and the stable funding of the depository institution may not be treated under the NSFR rule as available to support the nonbank funding needs of the consolidated entity's broker-dealer subsidiary.[128] Some commenters noted that retail brokerage payables have been historically stable across both normal and stressed economic periods—for example, one commenter asserted that its amount of retail brokerage payables increased at the height of the 2007–2009 financial crisis, and from 2009 to 2016. Commenters further indicated that retail brokerage payables have counterparty credit risks similar to uninsured deposits, in part because they arise in a transactional context and as part of a client's larger brokerage relationship. One commenter argued that because the risk-based capital surcharge for GSIBs in the United States (GSIB capital surcharge rule) excludes non-deposit retail customer funding entirely from its Method 2 calculation methodology,[129] this implicitly suggests that other Board rules consider such funding to be stable.

Some commenters suggested more favorable treatment for specific types of non-deposit retail liabilities. Specifically, commenters argued that some liabilities owed to retail counterparties in connection with non-deposit products, such as prepaid cards, travelers checks, and customer rewards programs, should be recognized as a stable source of funding given historical experience of low volatility in balances and redemptions over time. In addition, these commenters argued that certain features may be offered in connection with certain prepaid products that would increase their stability, such as pass-through insurance provided by some prepaid card products and state law requirements that money transmitters hold and invest funds equal to outstanding prepaid liabilities in high grade, low-risk assets.

Several commenters argued that the agencies should apply an ASF factor higher than zero percent to non-deposit retail liabilities to align with the treatment of similar liabilities under the LCR rule.[130] Some commenters recommended assigning an ASF factor of 60 percent to non-deposit retail liabilities. Other commenters recommended assigning a 50 percent ASF factor to non-deposit retail funding or assigning a 50 percent ASF factor to the unsecured liabilities of a broker-dealer subsidiary of a covered company that are owed to a retail customer or counterparty.

As a general matter, the final rule considers the relationship characteristics of retail customers or counterparties at least as favorably as wholesale counterparties that are not financial sector entities, and takes into account whether funding is obtained in connection with a transactional account or as part of another relationship with the covered company. However, not all forms of retail funding are equally stable. Although the GSIB capital surcharge rule excludes certain forms of non-deposit retail funding from the Method 2 calculation methodology, exclusion of a funding source is not dispositive of its stability because the GSIB score measures a banking organization's systemic importance and does not measure the stability of each type of funding. Accordingly, the final rule does not calibrate ASF factors to non-deposit retail liabilities based on whether those liabilities are included in the Method 2 calculation under the GSIB capital surcharge rule.

[123] As part of this effort, the agencies intend to revise the regulatory reporting (*e.g.* Call Report) to obtain data that may help evaluate funding stability of sweep deposits over time to determine their appropriate treatment under liquidity regulations.

[124] *See* section VII.C.3.c.ii. of this Supplementary Information section.

[125] As noted above, a security issued by the covered company that is held by a retail customer or counterparty would not take into account counterparty type and therefore would not fall within this category.

[126] *See* 81 FR at 35140.

[127] The term ''retail brokerage payables'' generally refers to (1) cash awaiting investment in retail clients' brokerage accounts, or ''free credit balances,'' and (2) cash balances in a securities firm's bank account related to a retail client's pending securities purchase and sale transactions and pending deposits to and distributions from clients' brokerage accounts, or ''float.''

[128] *See also* section VII.F of this Supplementary Information section.

[129] 12 CFR 217.405.

[130] Section ____.32(a)(5) of the LCR rule assigns a 40 percent outflow rate to non-deposit retail funding. As discussed in section V of this Supplementary Information section, the treatment of liabilities under the NSFR rule is not intended to align directly with that of the LCR rule due to the different purposes of the two requirements.

As noted by commenters, many of the liabilities that would have been included in the non-deposit retail funding category have demonstrated a relative degree of stability during normal and adverse economic periods, similar to types of funding that receive a 50 percent ASF factor. As non-deposits, however, the types of retail funding described above do not have the same stabilizing characteristics as the categories of deposits assigned a 90 percent or 95 percent ASF factor under the final rule. Although certain non-deposit retail funding may have transactional and other counterparty relationship characteristics similar to retail deposits and retail brokered deposits, they may also reflect counterparty sophistication characteristics similar to certain wholesale counterparties. For these reasons, the final rule assigns a 50 percent ASF factor to funding from a retail customer that is not a deposit or a security, including retail brokerage payables.

All Other NSFR Liabilities With Remaining Maturity of Six Months or More, but Less Than One Year

Section ____.104(d)(8) of the proposed rule would have assigned a 50 percent ASF factor to all other NSFR liabilities that have a remaining maturity of six months or more, but less than one year. As discussed in section VII.C.2 of this Supplementary Information section, a covered company would not need to roll over a liability of this maturity in the shorter-term, but may need to roll it over before the end of the NSFR's one-year time horizon.

The agencies received no comments on this provision of the proposed rule. For the reasons discussed in the proposed rule, the final rule assigns a 50 percent ASF factor to all other NSFR liabilities that have a remaining maturity of six months or more, but less than one year as proposed.

e) Zero Percent ASF Factor

The final rule assigns a zero percent ASF factor to NSFR liabilities that demonstrate the least stable funding characteristics, including trade date payables, certain short-term retail brokered deposits, certain short-term funding from financial sector entities or central banks, and any other NSFR liability that matures in less than six months and is not described above. In the absence of a remaining tenor of at least six months, funding on a covered company's balance sheet of these types are considered unreliable sources of funding relative to the need to support assets and commitments over the NSFR's time horizon.

Trade Date Payables

Section ____.104(e)(1) of the proposed rule would have assigned an ASF factor of zero percent to trade date payables that result from purchases by a covered company of financial instruments, foreign currencies, and commodities that are required to settle within the lesser of the market standard settlement period for the particular transactions and five business days from the date of the sale. Trade date payables are established when a covered company buys financial instruments, foreign currencies, and commodities, but the transactions have not yet settled. Trade date payables are recorded on the covered company's balance sheet as a liability. These payables should result in a payment from a covered company at the settlement date, which varies depending on the specific market. Accordingly, trade date payables are not a source of stable funding.

The agencies did not receive comments on this provision. As proposed, the final rule assigns an ASF factor of zero percent to trade date payables because trade date payables should result in a payment from a covered company at the settlement date, meaning the liability does not represent a stable source of funding.

Certain Short-Term Retail Brokered Deposits

Section ____.104(e)(2) of the proposed rule would have assigned a zero percent ASF factor to a brokered deposit provided by a retail customer or counterparty that is not a reciprocal brokered deposit or brokered sweep deposit, is not held in a transactional account, and matures less than six months from the calculation date.

Commenters argued that non-maturity brokered deposits that are held in a savings account are similar in stability to non-brokered retail deposits held in a retail savings account, and therefore should be assigned a higher ASF factor. The commenters argued that assignment of a zero percent ASF factor would overstate the funding risks of brokered savings accounts, which these commenters argued include stabilizing deposit features such as the availability of full or partial FDIC deposit insurance and that the account holder can use other services provided by the banking organization.

Retail brokered deposits that are not brokered reciprocal deposits or sweep deposits, are not held in transactional accounts, and mature in less than six months tend to be less stable than other types of brokered deposits because they do not have the stabilizing features of brokered deposits that are assigned a higher ASF factor. Although non-maturity brokered deposits held in savings accounts may be fully or not fully insured and may provide similar access to services as a non-brokered deposit in a retail savings account, deposit brokers can, in some cases, decide whether to move this funding to a different banking organization at low cost and with little notice to the covered company. Additionally, even if the deposit is fully insured, because the funds are held in non-transactional accounts they are less stable due to the ease with which the deposits can be withdrawn. Finally, under the maturity categories of the final rule, the term of these deposits would fall into the shortest-term and thus represent the least stable form of funding.

For these reasons, the final rule assigns a zero percent ASF factor to a brokered deposit provided by a retail customer or counterparty that is not a brokered reciprocal deposit or sweep deposit, is not held in a transactional account, and matures less than six months from the calculation date as proposed.

Securities Issued by a Covered Company With Remaining Maturity of Less Than Six Months

Section ____.104(e)(4) of the proposed rule would have assigned a zero percent ASF factor to securities that are issued by a covered company and that have a remaining maturity of less than six months. As discussed above in section VII.C.2 of this Supplementary Information section, the proposed rule generally would have treated as less stable funding that has to be paid within the NSFR's one-year time horizon.

The agencies received no comments on this provision of the proposed rule. The final rule assigns a zero percent ASF factor to securities that are issued by a covered company and that have a remaining maturity of less than six months because such funding does not represent a source of stable funding over the NSFR's one-year time horizon.

Short-Term Funding From a Financial Sector Entity

Section ____.104(e)(5) of the proposed rule would have applied a zero percent ASF factor to funding (other than operational deposits) for which the counterparty is a financial sector entity or a consolidated subsidiary thereof and the transaction matures less than six months from the calculation date.[131] In general, financial sector entities and their consolidated subsidiaries are more likely than other types of counterparties to withdraw funding from a covered company, regardless of whether the funding is secured or the type of collateral securing the funding, as described in section VII.C.2 of this Supplementary Information section.

Many commenters raised concerns that the proposed assignment of a zero percent ASF factor to short-term funding from a financial sector entity would impair an important funding source for covered companies and could adversely affect the functioning of credit markets by increasing borrowing and transaction costs for end-users. Specifically, commenters objected that the proposed rule would assign a zero percent ASF factor to secured funding transactions while also assigning a 10 to 15 percent RSF factor to secured lending transactions.[132]

Commenters also raised domestic and international regulatory concerns around the proposed framework for repurchase agreements. Commenters stated that rulemakings such as the GSIB capital surcharge rule and the SLR rule have increased the costs of transacting in matched-book repurchase agreements by adding higher capital requirements and that the NSFR would further exacerbate these costs. Commenters also questioned the assumption underlying the ASF and RSF factors for repurchase agreement and reverse repurchase agreement transactions—namely, that a covered company would be more likely to roll over short-term loans to financial sector entities than such entities would be likely to roll over short-term funding to a covered company. Since commenters primarily raised these concerns with regards to the assignment of RSF factors to short-term secured funding transactions, these issues are addressed more fully in section VII.D of this Supplementary Information section.

Consistent with the proposed rule, the final rule assigns a zero percent ASF factor to funding (other than operational deposits) for which the counterparty is a financial sector entity or a consolidated subsidiary thereof and the transaction matures less than six months from the calculation date because financial sector counterparties are more likely to withdraw short term funding within a one-year time horizon, regardless of whether the transaction is secured or unsecured. As discussed in section V of this Supplementary Information section, one of the goals of the final rule is to ensure that covered companies have sufficient levels of long-term stable funding and do not excessively rely on short-term borrowings from financial sector entities. Moreover, these types of short-term borrowings with financial sector counterparties can carry elevated risks to the funding needs of covered companies when combined with concentrations that can increase systemic risk and interconnectedness.

The agencies do not anticipate that the treatment of these short-term secured funding transactions will have a significant impact on the markets identified by commenters, such as fixed income markets, commercial mortgage-backed securities, lending markets, or money markets, especially in light of the adjustments made in the treatment of short-term secured lending transactions as discussed in VII.D.3 of this Supplementary Information section. However, the agencies monitor these market segments on an ongoing basis to evaluate the impact of agency rulemakings on financial intermediation. At the same time, the agencies will continue to examine collateral markets for any warning signals, including the costs of short- and long-term funding, participation rates, and collateral flows between covered companies and financial sector entities.

Short-Term Funding From a Central Bank

Section ____.104(e)(5) of the proposed rule also would have assigned a zero percent ASF factor to short-term funding from central banks to recognize the short-term nature of such funding from central banks, consistent with the proposed rule's focus on stable funding from market sources. For example, funding obtained from the discount window would have been assigned a zero percent ASF factor, consistent with the terms of discount window advances.

The agencies received no comments on this provision of the proposed rule. The final rule assigns a zero percent ASF factor to short-term funding from central banks as proposed.

All Other NSFR Liabilities With Remaining Maturity of Less Than Six Months or an Open Maturity

Section ____.104(e)(6) of the proposed rule would have assigned a zero percent ASF factor to all other NSFR liabilities, including those that mature less than six months from the calculation date and those that have an open maturity. NSFR liabilities that do not fall into one of the categories that are assigned an ASF factor generally would not represent a regular or reliable source of funding and, therefore, the proposed rule would not have treated any portion as stable funding.

Commenters requested that the NSFR rule assign a non-zero ASF factor to the unused borrowing capacity with FHLBs because the FHLB system is an important source of liquidity for U.S. banking organizations. The commenters pointed to FHLB lending activity during the 2007–2009 financial crisis, which demonstrated that FHLBs increased their lending by 50 percent between 2007 and 2008. Commenters argued that recognizing this source of funding was appropriate since the NSFR requirement, unlike the LCR rule, is intended to be a structural metric that reflects the stable funding required across all market conditions over a longer one-year time horizon. One commenter suggested that the agencies conduct a study on the potential impact of the final rule on the FHLB system and its role in providing liquidity to banks.

As discussed in section V.C of this Supplementary Information section, the NSFR is determined based on a covered company's balance sheet at a point in time. In order for a funding source to be considered relevant stable funding under the NSFR, a covered company must have obtained the funding for its balance sheet at that point in time. Establishing reliable sources of contingent funding in advance of potential funding needs is an essential part of sound liquidity risk management for banking organizations. For the purposes of assessing the risks presented by a banking organization's balance sheet, however, the NSFR does not treat undrawn lines of credit available to a covered company as stable funding, regardless of whether they are collateralized or whether they are provided by the FHLB system, the Federal Reserve System, or any other third parties.

The final rule assigns a zero percent ASF factor to all other NSFR liabilities, including those that mature less than six months from the calculation date and those that have an open maturity.

D. Required Stable Funding

1. Calculation of the RSF Amount

Consistent with the proposed rule, under the final rule a covered company's RSF amount reflects a covered company's funding requirement based on the liquidity characteristics of

[131] *See supra* note 102.

[132] As discussed in section VII.D.3.a of this Supplementary Information section, the agencies are decreasing the effect on the market for short-term secured lending transactions by adopting a zero percent RSF factor for certain secured lending transactions that are secured by rehypothecatable level 1 liquid assets.

its assets, commitments, and derivative exposures. Under § ____.105 of the proposed rule, a covered company's RSF amount would have equaled the sum of two components: (i) The carrying values of a covered company's assets (other than assets included in the calculation of the covered company's derivatives RSF amount) and the undrawn amounts of its committed credit and liquidity facilities, each multiplied by an RSF factor assigned under § ____.106 (discussed in section VII.D.3 of this Supplementary Information section), and (ii) the covered company's derivatives RSF amount, as calculated under § ____.107 (discussed in section VII.E of this Supplementary Information section). The agencies received no comments on the calculation of the RSF amount and are adopting it as proposed.

2. Characteristics for Assignment of RSF Factors

The proposed rule would have grouped NSFR assets, derivative exposures and commitments into broad categories and assigned RSF factors to determine the overall amount of stable funding a covered company must maintain. RSF factors would have been scaled from zero to 100 percent based on the tenor and other liquidity characteristics of an asset, derivative exposure, or committed facility. The agencies did not receive comments on this general approach to using the characteristics of assets and commitments, and the final rule adopts the characteristics for assigning RSF factors as proposed. As in the proposed rule, the final rule categorizes assets, derivative exposures, and committed facilities into categories and assigns RSF factors based on the following liquidity characteristics: (1) Tenor; (2) encumbrance; (3) type of counterparty; (4) credit quality, and (5) market characteristics. As discussed below and in the relevant sections of this Supplementary Information section, the final rule assigns RSF factors using these characteristics as proposed with certain modifications that simplify the framework to seven categories for the assignment of RSF factors.

a) Tenor

In general, the final rule requires a covered company to maintain more stable funding to support assets that have longer tenors because of the greater time the asset will remain on the balance sheet and before the covered company is contractually scheduled to realize inflows at the maturity of the asset. In addition, if assets with a longer tenor are not held to maturity, such assets may liquidate at a discount because of the increased market and credit risks associated with cash flows occurring further in the future. Assets with a shorter tenor, in contrast, generally require a smaller amount of stable funding under the final rule because a covered company would not need to fund such assets after the maturity date unless the assets are extended or rolled over and the covered company would therefore have access to the inflows from these maturing assets sooner. The final rule divides maturities for purposes of a covered company's RSF amount calculation into the same four maturity categories consistent with the ASF maturity categories: One year or more, less than one year, six months or more but less than one year, and less than six months (RSF maturity categories).

b) Encumbrance

As described in section VII.D.3.h of this Supplementary Information section, whether an asset is encumbered and the extent of the encumbrance dictates the amount of stable funding required to support the particular asset. Similar to assets with longer contractual tenors, assets that are encumbered at a calculation date may be required to be held for the duration of the encumbrance and these assets often cannot be monetized while encumbered. In general, the longer an asset is encumbered, the more stable funding is required under the final rule.

c) Counterparty Type

A covered company may face pressure to renew some portion of its assets at contractual maturity in order to maintain its franchise value with customers and because a failure to roll over such assets could be perceived by market participants as an indicator of financial distress at the covered company. Typically, these pressures are influenced by the type of counterparty to the maturing asset. For example, covered companies often consider their lending relationships with a wholesale, non-financial borrower to be important to maintain current business and generate additional business in the future. By contrast, the agencies expect these concerns are less likely to be a factor with respect to financial sector counterparties because financial counterparties typically have a wider range of alternate funding sources already in place, face lower transaction costs associated with arranging alternate funding, and have less expectation of stable lending relationships with any single provider of credit. In light of these business and reputational considerations, the final rule generally requires a covered company to maintain more aggregate stable funding to support certain lending to non-financial counterparties than for lending to financial counterparties.[133]

d) Credit Quality

Credit quality is a factor in an asset's general funding requirements because market participants tend to be more willing to purchase assets with higher credit quality on a consistent basis and the prices of these assets are generally less volatile across a range of market and economic conditions. The demand for higher credit quality assets, therefore, is more likely to persist, and such assets are more likely to have resilient values, allowing a covered company to dispose of them more easily across a range of market conditions. Assets of lower credit quality, in contrast, are less likely to retain their value over time across market conditions. The final rule, like the proposed rule, generally requires greater aggregate stable funding with respect to assets of lower credit quality, to reduce the risk that in the event of having to dispose of such an asset prior to maturity a covered company may have to monetize it at a discount.

e) Market Characteristics

Assets that are traded in transparent, standardized markets with large numbers of participants and dedicated intermediaries tend to exhibit a higher degree of reliable liquidity. The final rule, therefore, generally requires less aggregate stable funding for holdings of such assets relative to those traded in markets characterized by information asymmetry and relatively few participants.

f) Comments Proposing Other Liquidity Characteristics

The agencies invited comment on whether other characteristics should be considered for purposes of assigning RSF factors. Several commenters suggested that RSF factors should be assigned based on criteria related to existing regulations and other market and operational factors.[134] Another commenter argued that RSF factors should more closely align with market haircuts used in secured funding markets. One commenter recommended

[133] *See supra* note 102.

[134] For example, a commenter recommended incorporating the impact of existing regulations on a given asset or the counterparty to the asset, and an asset's external credit rating. The commenter recommended other market and operational factors, including the seniority, hedging, clearing characteristics of the asset and the size of the market for the asset.

the agencies assign RSF factors based on the intent for which a security is held and apply a lower RSF factor to short-term securities held for market-making purposes than for securities held for investment purposes, arguing that the proposal would negatively impact market-making activities. Other commenters argued that the assignment of RSF factors should take into account eligibility of assets as collateral for FHLB advances.[135]

As discussed in section V.B of this Supplementary Information section, the final rule addresses funding stability risks not directly addressed in other parts of the agencies' regulatory framework. Although the agencies recognize that other regulations may require or incentivize covered companies to hold, or refrain from holding, certain assets, those regulations do not directly address the stability of a banking organization's funding profile in relation to the composition of its assets and commitments. Accordingly, it would not be appropriate to assign RSF factors to assets based on their treatment in other regulations or the impact of regulations on the counterparty to an asset. The liquidity characteristics described above tend to be generally reflected in market haircuts, but RSF factor values are not directly representative of asset haircuts and closer alignment of RSF factors with haircuts used in secured funding markets would be inappropriate for calibrating aggregate funding requirements of covered companies. As also discussed in section V.C, the final rule's simplified and standardized measure of funding risk does not differentiate between business activities or the intent for which a covered company holds a given asset. Accordingly, the final rule takes into account an asset's contractual residual maturity at a point in time and does not speculate on a covered company's intended purpose and timeframe for holding an asset in the future. Further, an asset's eligibility as collateral for FHLB advances is not an appropriate additional basis for determining RSF factors. The liquidity characteristics described above, including credit quality, are likely factors also considered by FHLBs when assessing collateral eligibility. Generally, assets currently held by a covered company contribute to its balance sheet funding risk regardless of the covered company's operational ability to obtain FHLB advances in the future.[136]

3. Categories of RSF Factors for Unencumbered Assets and Commitments

Based on the tenor, encumbrance, counterparty type, credit quality, and market characteristics described above, the final rule assigns RSF factors to unencumbered assets and commitments in the categories shown in Table 2. The treatment of encumbered assets is described below and shown in Table 3. The assignment of RSF factors for derivative exposures is described in section VII.E of this Supplementary Information section.

TABLE 2—CATEGORIES OF UNENCUMBERED ASSETS AND COMMITMENTS BASED ON THEIR CHARACTERISTSICS AND RESULTING RSF FACTORS

Unencumbered and with tenor of:	Counterparty types	Credit quality or market characteristics	NSFR assets or commitments	RSF factor percent
Perpetual	Central bank	Other	Currency and coin	0
Any tenor	Non-financial	HQLA	Level 1 liquid assets held on balance sheet	
Less than six months	All	Other	Cash items in the process of collection and certain trade date receivables.	
	Central bank	HQLA	Reserve Bank balances and claims on foreign central banks.	
	Financial	Non-operational	Secured lending transactions secured by rehypothecatable level 1 liquid assets.	
Committed	All	Other	Committed credit and liquidity facilities	5
Any tenor	Non-financial	HQLA	Level 2A liquid assets held on balance sheet	15
Less than six months	Financial	Non-operational	Secured lending transactions secured by assets other than rehypothecatable level 1 liquid assets and unsecured lending.	
Any tenor	Non-financial	HQLA	Level 2B liquid assets held on balance sheet	50
Six months or more, but less than one year.	Financial	Non-operational	Secured lending transactions and unsecured wholesale lending.	
Any tenor	Financial	Operational	Operational deposit placements	
Less than one year	Non-financial	Non-operational	Secured lending transactions and unsecured lending	
	Retail	Any	Retail lending	
	Any	Any	All other assets	
One year or more	Retail	Risk weight ≤50 percent	Retail mortgages	65
	Retail and non-financial	Risk weight ≤20 percent	Secured lending transactions, unsecured wholesale lending, and retail lending.	
	Retail	Risk weight >50 percent	Retail mortgages	85
	Retail and non-financial	Risk weight >20 percent	Secured lending transactions, unsecured wholesale lending, and retail lending.	
	All	Non-HQLA	Securities other than common equity shares that are not HQLA.	
Any tenor			Publicly traded common equity shares that are not HQLA.	
		Derivative transactions are traded on U.S. or non-U.S. exchanges.	Commodities	
One year or more	Financial	Any	Secured lending transactions and unsecured lending to a financial sector entity.	100
Any tenor	All	>90 days past due or non-accrual.	Nonperforming assets	
		Any	All other assets	

[135] As discussed in section VII.C.3 of this Supplementary Information section, some commenters also recommended assigning a non-zero ASF factor to unused borrowing capacity from FHLBs.

[136] In respect to FHLB advances, many FHLB advances may have long maturities that may be reflected in the assignment of ASF factors described in section VII.C.3 of this Supplementary Information section.

TABLE 2—CATEGORIES OF UNENCUMBERED ASSETS AND COMMITMENTS BASED ON THEIR CHARACTERISTSICS AND RESULTING RSF FACTORS—Continued

Unencumbered and with tenor of:	Counterparty types	Credit quality or market characteristics	NSFR assets or commitments	RSF factor percent
Any tenor *	All	Derivative	NSFR derivatives asset amount	

* The derivative treatment nets derivative transactions with various maturities.

a) Zero Percent RSF Factor

Certain assets held by banking organizations have unique characteristics such that they do not contribute risk to a banking organization's funding profile. Assets such as currency, coin, cash items in the process of collection and short-term central bank reserves on a covered company's balance sheet at the NSFR calculation date generally can be used in the immediate term to meet obligations and eliminate short-term liabilities. In the normal course of business, trade date receivables also constitute assets of this type, even though they are subject to certain operational frictions.

Certain other assets in this category, such as level 1 liquid asset securities on a covered company's balance sheet and certain short-term secured lending transactions backed by rehypothecatable level 1 liquid assets conducted with financial sector entities make minimal contribution to a covered company's aggregate funding risk and are important to the efficient operation of key short-term funding markets.

These unique characteristics make it appropriate to assign an RSF factor of zero percent, the lowest RSF factor assigned to assets.

(i) Asset Classes for Which the Agencies Received No Comments

The proposal would have applied a zero percent RSF factor to currency, coin, cash items in the process of collection, Reserve Bank balances and other central bank reserves with a maturity of less than six months. The agencies received no comments on these asset classes and are finalizing them as proposed.

Currency and Coin

Section ____.106(a)(1)(i) of the final rule assigns a zero percent RSF factor to currency and coin because these assets can be directly used to meet financial obligations. Currency and coin include U.S. and foreign currency and coin owned and held in all offices of a covered company; currency and coin in transit to a Federal Reserve Bank or to any other depository institution for which the covered company's subsidiaries have not yet received credit; and currency and coin in transit from a Federal Reserve Bank or from any other depository institution for which the accounts of the subsidiaries of the covered company have already been charged.[137]

Cash Items in the Process of Collection

Section ____.106(a)(1)(ii) of the final rule assigns a zero percent RSF factor to cash items in the process of collection because these assets will not persist on a covered company's balance sheet, but rather will be converted to assets that can be directly used to meet financial obligations in the immediate term. These items would include: (1) Checks or drafts in process of collection that are drawn on another depository institution (or a Federal Reserve Bank) and that are payable immediately upon presentation in the country where the covered company's office that is clearing or collecting the check or draft is located, including checks or drafts drawn on other institutions that have already been forwarded for collection, but for which the covered company has not yet been given credit (known as cash letters), and checks or drafts on hand that will be presented for payment or forwarded for collection on the following business day; (2) U.S. government checks drawn on the Treasury of the United States or any other U.S. government agency that are payable immediately upon presentation and that are in process of collection; and (3) such other items in process of collection that are payable immediately upon presentation and that are customarily cleared or collected as cash items by depository institutions in the country where the covered company's office that is clearing or collecting the item is located.[138]

Reserve Bank Balances and Other Claims on a Reserve Bank That Mature in Less Than Six Months

Section ____.106(a)(1)(iii) of the final rule assigns a zero percent RSF factor to a Reserve Bank balance or to another claim on a Reserve Bank that matures in less than six months from the calculation date. The term ''Reserve Bank balances'' is defined in § ____.3 of the LCR rule and includes required reserve balances and excess reserves, but not other balances that a covered company maintains on behalf of another institution.[139] Reserve Bank balances can be directly used to meet financial obligations through the Federal Reserve's payment system. Although other claims on Reserve Banks that mature in less than six months cannot be directly used to meet financial obligations, a covered company faces little risk of harm to its franchise value if it does not roll over the lending to a Reserve Bank at maturity. The covered company, therefore, may realize cash flows associated with the asset in the near term and not retain the asset on its balance sheet.

Claims on a Foreign Central Bank That Matures in Less Than Six Months

Section ____.106(a)(1)(iv) of the final rule assigns a zero percent RSF factor to claims on a foreign central bank that mature in less than six months. Similar to claims on a Reserve Bank, claims on a foreign central bank in this category may generally either be directly used to meet financial obligations or will be available for such use in the near term, and a covered company faces little risk of harm to its franchise value if it does not roll over the lending.

(ii) Asset Classes for Which the Agencies Received Comments

The proposed rule would have applied a zero percent RSF factor to trade date receivables that met certain criteria. The proposed rule also would have assigned RSF factors higher than zero to (1) certain level 1 liquid assets and (2) secured lending transactions with a maturity of less than six months

[137] This description of currency and coin is consistent with the treatment of currency and coin in Federal Reserve form FR Y–9C.

[138] This description of cash items in the process of collection is consistent with the treatment of cash items in process of collection in Federal Reserve form FR Y–9C.

[139] For example, the term ''Reserve Bank balance'' does not include balances maintained by a covered company on behalf of a respondent for which it acts as a pass-through correspondent. *See* 12 CFR 204.5(a)(1)(ii). The definition also does not include balances maintained on behalf of an excess balance account participant. *See* 12 CFR 204.10(d). The Board reduced reserve requirement ratios to zero percent effective March 26, 2020. This action eliminated reserve requirements for all depository institutions. *See https://www.federalreserve.gov/monetarypolicy/reservereq.htm* The Board could revise required reserve requirements in the future.

conducted with financial sector entities (or their subsidiaries) and secured by rehypothecatable level 1 liquid assets. The agencies received a number of comments on the proposed treatment of these assets.

Trade Date Receivables

Section ____.106(a)(1)(v) of the proposed rule would have assigned a zero percent RSF factor to a trade date receivable due to a covered company that results from the sale of a financial instrument, foreign currency, or commodity that (1) is contractually required to settle within the lesser of the market standard settlement period for the relevant type of transaction, without extension of the standard settlement period, and five business days from the date of the sale; and (2) has not failed to settle within the required settlement period. By contrast, § ____.106(a)(8) of the proposed rule would have assigned a 100 percent RSF factor to a trade date receivable that (1) is contractually required to settle within the lesser of the market standard settlement period and five business days, but (2) fails to settle within this period.[140] Several commenters expressed concerns that the proposed treatment was overly conservative and would result in assignment of a 100 percent RSF to trade date receivables that would likely still settle. Some commenters requested a zero percent RSF factor for trade date receivables that have failed to settle within the standard settlement period or five days, but still are expected to settle. These commenters noted that such treatment would align with the treatment in the Basel NSFR standard. One commenter contended that certain instruments have standard market settlement periods longer than five days and requested a zero percent RSF factor for receivables that settle within the greater of the standard market settlement period and five days. Another commenter requested a zero percent RSF factor for trade date receivables that failed to settle but are not more than five days past the standard settlement date, arguing that a covered company would expect the majority of its trade date receivables to have settled by that date.

The final rule expands the types of trade date receivables that are assigned a zero percent RSF factor to include trade date receivables due to a covered company that result from the sale of a financial instrument, foreign currency, or commodity that is required to settle no later than the market standard for the particular transaction, and that has yet to settle but is not more than five business days past the scheduled settlement date. This change from the proposal will more accurately measure the amount of receivables that are expected to settle and result in inflows in the near future because such trade date receivables are still reasonably expected to settle imminently. As discussed in section VII.D.3.g of this Supplementary Information, trade date receivables that do not qualify for a zero percent RSF factor are assigned a 100 percent RSF factor.

Unencumbered Level 1 Liquid Assets Held on Balance Sheet

Section ____.106(a)(2)(i) of the proposed rule would have assigned a 5 percent RSF factor to unencumbered level 1 liquid assets that would not have been assigned a zero percent RSF factor. The proposed rule would have incorporated the definition of ''level 1 liquid assets'' set forth in § ____.20(a) of the LCR rule but would not have taken into consideration the operational requirements described in § ____.22 of the LCR rule. As a result, the proposed rule would have assigned a 5 percent RSF factor to the following level 1 liquid assets: (1) Securities issued or unconditionally guaranteed as to the timely payment of principal and interest by the U.S. Department of the Treasury; (2) liquid and readily-marketable securities,[141] as defined in § ____.3 of the LCR rule, issued or unconditionally guaranteed as to the timely payment of principal and interest by any other U.S. government agency (provided that its obligations are fully and explicitly guaranteed by the full faith and credit of the U.S. government); (3) certain liquid and readily-marketable securities that are claims on, or claims guaranteed by, a sovereign entity, a central bank, the Bank for International Settlements, the International Monetary Fund, the European Central Bank and European Community, or a multilateral development bank; and (4) certain liquid and readily-marketable debt securities issued by sovereign entities.

Some commenters argued that the NSFR rule should assign a zero percent RSF factor for all HQLA. These commenters argued that the proposed non-zero RSF factors for these assets would unduly penalize low-risk sources of funding, increase banking organizations' costs for holding HQLA and engaging in securities financing transactions involving HQLA, and undermine the ability of banking organizations to act as market makers. Other commenters believed a zero percent RSF factor would provide for a more level playing field by aligning with other jurisdictions' implementation of the NSFR.

A number of commenters requested a zero percent RSF factor be assigned to all level 1 liquid assets, which include certain government securities that commenters argued have liquidity characteristics similar to assets that would have been assigned a zero percent RSF factor under the proposed rule.[142] Many commenters argued that U.S. Treasury securities, in particular, should be assigned a zero percent RSF factor because they are among the most liquid and readily marketable securities a covered company may hold and benefit from flight to quality during times of stress.

As described above, assets that a covered company can directly use to meet financial obligations or can reasonably expect to obtain the cash inflows at the maturity of these assets in the near future are assigned a zero percent RSF factor under the final rule. Such assets generally do not present risks to a covered company or the financial sector in the event of funding disruptions. Similarly, given their liquidity characteristics, level 1 liquid asset securities present minimal risks resulting from a covered company's funding of these assets as assessed over a one-year time horizon. Across a broad range of market conditions, a covered company generally may be less likely to have to fund these securities for one year compared to other securities. Although U.S. Treasury securities and other level 1 liquid asset securities generally must be monetized before they can be used to settle obligations and face modest transaction costs in doing so, these assets, regardless of their

[140] In addition, consistent with the definition of ''derivative transaction'' under § ____.3 of the LCR rule, a trade date receivable that has a contractual settlement or delivery lag longer than the lesser of the market standard for the particular instrument or five days would have been treated as a derivative transaction under § ____.107 of this final rule.

[141] As discussed in section VI of this Supplementary Information section, the final rule incorporates the LCR rule's definition of ''liquid and readily-marketable,'' which means, with respect to a security that the security is traded in an active secondary market with: (1) More than two committed market makers; (2) a large number of non-market maker participants on both the buying and selling sides of transactions; (3) timely and observable market prices; and (4) a high trading volume. *See* § ____.3 of the LCR rule.

[142] These commenters also argued that the proposed treatment would be more conservative than the treatment of level 1 liquid assets under the LCR rule, which allows a banking organization to include the full fair value of level 1 liquid assets in its HQLA amount. The value of RSF factors are not representative of market haircuts to asset values.

contractual maturity, serve as reliable sources of liquidity across market conditions, based on their high credit quality and the favorable characteristics of the markets for these assets. Further, level 1 liquid asset securities generally retain their value in the event of market disruptions relative to most other assets. In addition, these level 1 liquid asset securities serve a critically important role in supporting the smooth functioning of the funding markets, and, as further discussed in section X of this Supplementary Information section, a non-zero RSF factor on level 1 liquid assets could discourage intermediation in the U.S. Treasury market. For these reasons, the final rule applies a zero percent RSF factor to unencumbered level 1 liquid assets. Responses to comments requesting the final rule assign a zero percent RSF factor to all other HQLA are included below.

Secured Lending Transactions With a Financial Sector Entity or a Subsidiary Thereof That Mature Within Six Months and Are Secured by Rehypothecatable Level 1 Liquid Assets

Section ____.106(a)(3) of the proposed rule would have assigned a 10 percent RSF factor to a secured lending transaction[143] with a financial sector entity or a consolidated subsidiary thereof that matures within six months of the calculation date and is secured by level 1 liquid assets that are rehypothecatable for the duration of the transaction.[144] The proposal explained that a relatively lower amount of stable funding is needed to support all forms of short-term lending to financial sector entities because the financial nature of the counterparty presents relatively lower reputational risk to a covered company if it chooses not to roll over the transaction when it matures. As a general matter, the proposed rule would have treated secured lending transactions and unsecured lending transactions with financial sector counterparties the same. However, the proposed rule would have assigned a lower RSF factor to such short-term lending transactions that are secured by rehypothecatable level 1 assets, relative to most other lending, because of a covered company's ability to monetize the level 1 liquid asset for the duration of the transactions.

A number of commenters requested that the agencies reduce or remove the proposed RSF factors for all short-term secured lending transactions to financial sector entities. These commenters argued that the RSF factor should match the zero percent ASF factor assigned to short-term secured funding transactions with financial sector entities, noting that the proposed asymmetrical treatment would prevent a covered company from using such short-term funding transactions wholly to fund its short-term lending transactions. Commenters asserted that this asymmetry would be overly punitive, impair a covered company's ability to conduct prudent short-term liquidity risk management, not accurately reflect collateral quality, and increase costs. Such increased costs, commenters contended, would cause covered companies to reduce such lending, resulting in a further contraction of the repo market, increased market volatility for the securities typically used as collateral, and have a negative impact on financial institutions that rely on the short-term funding market. Commenters also argued that the proposed RSF factors for short-term secured lending transactions to financial sector entities are unnecessary and overly burdensome because other regulatory measures sufficiently address the risks posed by these transactions. Several commenters argued that the proposed RSF treatment would reduce the competitiveness of covered companies relative to other market participants. Other commenters requested that the agencies reduce the RSF factors to align with other jurisdictions' implementation of the NSFR.

The agencies also received comments requesting a zero percent RSF factor be assigned to short-term secured lending transactions with financial sector entities secured by rehypothecatable level 1 liquid assets. One commenter argued that these transactions present few risks of disorderly or destabilizing unwinds due to the quality of the underlying collateral. Another commenter expressed concern that the proposed 10 percent RSF factor would incentivize a covered company to purchase on balance sheet level 1 liquid assets rather than borrow such assets through secured lending transactions to obtain more favorable RSF treatment, which would increase liquidity and interest rate risk as a result of holding the assets on balance sheet.

Covered companies may use short-term secured funding and lending transactions, such as repurchase agreements and reverse repurchase agreements, for collateral management and funding purposes as well as other business and risk management purposes. Short-term secured funding and lending transactions, however, can give rise to certain funding risks. For example, a covered company is exposed to risk of borrower default and fluctuation in the price of the underlying collateral. At the same time, a covered company may be incentivized to continue funding a certain portion of its lending under these transactions even as it loses access to its short term funding transactions. Although the agencies recognize that other regulations reduce certain risks associated with short-term secured lending transactions, the NSFR requirement is designed to directly measure and ensure the stability of covered companies' aggregate funding profile over a one-year horizon.

Consistent with the proposed rule, the final rule generally treats secured lending transactions with financial sector counterparties the same as unsecured lending to these counterparties based on their tenor and counterparty characteristics, described below. However, the agencies have revised the proposed rule by adding § ____.106(a)(1)(vii) to the final rule, which assigns an RSF factor of zero percent, rather than 10 percent, for short-term lending transactions with a financial sector entity secured by rehypothecatable level 1 liquid assets, as such short-term secured lending transactions present minimal risk to the covered company. Moreover, as further discussed in section X of this Supplementary Information section, a non-zero RSF factor on secured lending transactions secured with rehypothecateble level 1 liquid assets could also discourage intermediation in certain short-term secured lending markets. The calibration would also align the RSF factor for these loan receivables with the RSF factor for level 1 liquid assets that are held on the covered company's balance sheet.

b) 5 Percent RSF Factor

Committed Credit and Liquidity Facilities—RSF Factor and Undrawn Amount

Section ____.106(a)(2)(ii) of the proposed rule would have assigned a 5 percent RSF factor to the undrawn amount of committed credit and liquidity facilities that a covered company provides to its customers and counterparties.[145] The proposed rule

[143] *See* section VI of this Supplementary Information section for a description of the definition of ''secured lending transaction'' in § ____.3 of the LCR rule.

[144] The proposal would have assigned a 15 percent RSF factor to all other secured lending transactions to a financial sector counterparty with a remaining maturity of less than six months.

[145] The terms ''credit facility,'' ''liquidity facility,'' and ''committed'' are defined terms under § ____.3 of the LCR rule. As discussed in section

Continued

clarified that the ''undrawn amount'' for purposes of the NSFR rule would be the amount that could be drawn within one year of the calculation date, but would not have included amounts that could only be drawn contingent upon contractual milestones or events that cannot reasonably be expected to occur within one year.

The agencies did not receive any comments on the proposed 5 percent RSF factor assigned to the undrawn amount of committed credit and liquidity facilities. However, several commenters requested the agencies modify the proposed rule to permit a covered company to reduce the undrawn commitments by the value of collateral that it receives to secure its committed facility, particularly collateral in the form of HQLA, for purposes of determining the applicable RSF amount. Commenters noted that the LCR rule permits covered companies to net, for purposes of calculating outflow amounts, level 1 and level 2A liquid assets that secure a committed credit or liquidity facility against the undrawn amount of the facility, and requested similar treatment under the NSFR rule.

Consistent with the proposed rule, the final rule does not permit a covered company to net collateral against undrawn amounts of commitments.[146] As described in section V.C of this Supplementary Information section, unlike the LCR rule, which addresses the risk of cash outflows and permits a covered company to net certain high-quality collateral against the undrawn amount of a committed credit or liquidity facility because such collateral may be used to meet its short-term obligations,[147] the NSFR measures the funding profile of a covered company's balance sheet and any draw upon a committed facility would become an asset (*i.e.,* a loan) on a covered company's balance sheet that generally would increase the covered company's stable funding needs. Similarly, collateral obtained pursuant to a default of a draw on a secured facility would add to a covered company's balance sheet and require stable funding.

One commenter requested clarification of the term ''undrawn amount'' and the treatment of funded commitments that result in contractually offsetting collateral inflows. The commenter also asked what level of support would be required to demonstrate an amount is excludable from the undrawn amount because it is contingent upon events not reasonably expected to occur within the NSFR's time horizon. The agencies are clarifying that the undrawn amount is the maximum amount that could be drawn under the agreement within the NSFR requirement's one-year time horizon under all reasonably possible circumstances.[148] The undrawn amount does not include amounts that are contingent on the occurrence of a contractual milestone or other events that cannot reasonably be expected to be reached or occur within the one-year time horizon. For example, if a construction company can draw a certain amount from a credit facility only upon meeting a construction milestone that cannot reasonably be expected to be reached within one year, such as entering the final stage of a multi-year project that has just begun, then the undrawn amount would not include the amount that would become available only upon entering the final stage of the project.

Similarly, a letter of credit that meets the definition of credit or liquidity facility may entitle a seller to obtain funds from a covered company if a buyer fails to pay the seller. If the seller is legally entitled to obtain the funds available under the letter of credit as of the calculation date (because the buyer has defaulted) or if the buyer should reasonably be expected to default within the NSFR's one-year time horizon, then the funds available under the letter of credit are undrawn amounts. However, if, under the terms of the letter of credit, the seller is not legally entitled to obtain funds from the covered company as of the calculation date because the buyer has not failed to perform under the agreement with the seller, and the covered company does not reasonably expect nonperformance within the NSFR's one-year time horizon, then the funds potentially available under the letter of credit are not undrawn amounts.

The agencies expect that a covered company would conduct an analysis of the likelihood of contingent contractual milestones or other events to be reached or occur, which may include reliance on historical experience, including consideration of both internal and industry-wide data. The agencies also expect a covered company to be able to provide sufficient supporting documentation that justifies its assessment that a contractual milestone or other event cannot reasonably be expected to be reached or occur within the one-year time horizon. The sufficiency and appropriateness of that documentation would be reviewed by supervisory staff.

The agencies are finalizing the assigned 5 percent RSF factor to the undrawn amount of committed credit and liquidity facilities that a covered company provides to its customers and counterparties as proposed. The final rule requires a covered company to recognize committed facilities in its aggregate stable funding requirement to a limited extent, even though they are generally not included on a covered company's balance sheet. The 5 percent RSF factor is the lowest non-zero RSF factor and is applied uniquely to off-balance sheet commitments.

c) 15 Percent RSF Factor

The final rule applies a 15 percent RSF factor to unencumbered level 2A liquid assets held on a covered company's balance sheet and lending to financial counterparties that matures in less than six months, other than secured lending transactions backed by rehypothecatable level 1 liquid assets. Based on their liquidity characteristics, including their high credit quality, these assets may also not need to be funded for the entirety of the NSFR's one-year time horizon, and covered companies may have the ability to recognize inflows from such assets within one year across a range of market conditions.

Unencumbered Level 2A Liquid Assets

Section ____.106(a)(4)(i) of the proposed rule would have assigned a 15 percent RSF factor to level 2A liquid assets, as defined in § ____.20(b) of the LCR rule, but would not have taken into consideration the operational requirements described in § ____.22 or the level 2 cap in § ____.21. As set forth in the LCR rule, level 2A liquid assets

VI.A of this Supplementary Information section, the final rule modifies the definition of ''committed.''

[146] The NSFR requirement generally does not take into account prospective inflows arising from the receipt of collateral. As explained further below in section VII.E of this Supplementary Information section, the NSFR requirement's treatment of derivative transactions permits the receipt of certain eligible collateral to be netted against the derivatives asset amount. Recognition in the NSFR requirement of the funding value of collateral for derivatives transactions is appropriate notwithstanding the rule's general prohibition against netting collateral because of the special role of derivatives margin and because the rule sets forth a number of restrictions and contractual netting criteria for certain collateral to be netted against the derivatives asset amount.

[147] *See* § ____.32(e)(3) of the LCR rule.

[148] For example, if the governing agreement provides that (1) the counterparty must liquidate collateral securing the facility before drawing on the facility and (2) the covered company must provide the amount available under the facility less the proceeds of the collateral sale, the undrawn amount would be the full value of the amount available under the facility (*i.e.,* not reduced by the proceeds of the collateral sale). This reflects the contractual possibility that the covered company may still be required to provide the counterparty the full value allowed under the facility, even though under many circumstances the covered company's exposure would be reduced.

include certain obligations issued or guaranteed by a Government Sponsored Enterprise (GSE) and certain obligations issued or guaranteed by a sovereign entity or a multilateral development bank. The LCR rule requires these securities to be liquid and readily-marketable, as defined in § ____.3, to qualify as level 2A liquid assets.

Commenters requested more favorable treatment for certain GSE securities under the NSFR rule. Several commenters recommended that mortgage-backed securities issued by the Federal National Mortgage Association (Fannie Mae) and Federal Home Loan Mortgage Corporation (Freddie Mac) should receive the same 5 percent RSF factor proposed for level 1 liquid assets, as long as Fannie Mae and Freddie Mac remain under the conservatorship of the Federal Housing Finance Agency (FHFA). One commenter argued these securities exhibit favorable liquidity characteristics and are low risk, and expressed concern that the proposed 15 percent RSF factor would discourage banks from purchasing these mortgage-backed securities, which would result in increased mortgage interest rates for homeowners. Another commenter noted that the European Union allows covered bonds with similar liquidity characteristics to qualify as level 1 liquid assets. Another commenter recommended that FHLB consolidated debt obligations should receive a 5 percent RSF factor based on the historical performance of these obligations during financial stress and their strong market attributes, including narrow bid-ask spreads, numerous active and diverse market makers, timely market prices, and high trading volumes.

Similar to other HQLA, level 2A liquid assets held by covered companies on their balance sheets have a broad range of residual maturities and are held for a variety of purposes. For example, covered companies hold such securities as long-term investments, as instruments to maintain medium-term hedges or as part of the covered company's eligible HQLA under the LCR rule. Holdings of unencumbered level 2A liquid assets on a covered company's balance sheet present only modest risks to the covered company or financial system in the event of funding disruptions. A 15 percent RSF factor is appropriate for GSE-issued or GSE-guaranteed obligations because they have high credit quality and are traded in deep, liquid markets. For example, mortgage-backed securities issued by GSEs have a higher credit quality, higher average daily trading volume, and lower bid-ask spreads relative to corporate debt securities, which are assigned a higher RSF factor. However, these securities have different liquidity characteristics than U.S. Treasury securities and other level 1 liquid assets. For instance, GSE obligations are not subject to the same unconditional sovereign guarantee as certain securities that are level 1 liquid assets, which are assigned a zero percent RSF factor. Moreover, while certain GSEs are currently operating under the conservatorship of the FHFA, GSE obligations are not explicitly guaranteed by the full faith and credit of the United States, and they should not receive the same treatment as obligations that have such an explicit guarantee. This treatment is consistent with the agencies' risk-based capital rule, which differentiates between obligations and guarantees of U.S. GSEs, including those operating under conservatorship of FHFA and securities explicitly guaranteed by the full faith and credit of the United States.[149] With respect to covered bonds, the agencies have determined that covered bonds do not meet the liquid and readily-marketable standard in the United States and thus do not meet the liquidity characteristics to qualify as a level 1 or level 2A liquid asset. The final rule adopts a 15 percent RSF factor for level 2A liquid assets as proposed.

Secured Lending Transactions Secured by All Other Collateral and Unsecured Wholesale Lending With a Financial Sector Entity or a Subsidiary Thereof That Mature Within Six Months

Section ____.106(a)(4)(ii) of the proposed rule would have assigned a 15 percent RSF factor to a secured lending transaction with a financial sector entity or a consolidated subsidiary thereof that is secured by assets other than rehypothecatable level 1 liquid assets and that matures within six months of the calculation date. The proposal also would have assigned a 15 percent RSF factor to unsecured wholesale lending to a financial sector entity or a consolidated subsidiary thereof that matures within six months of the calculation date.[150]

The comments received by the agencies regarding the treatment of secured lending transactions generally, as well as the agencies' response to the comments, are summarized above in section VII.D.3.a of this Supplementary Information section. The agencies did not receive any comments specific to the proposed treatment of unsecured wholesale lending to a financial sector entity or a subsidiary thereof that matures within six months.

The final rule adopts the proposed treatment for these transactions without any modification. A 15 percent RSF factor reflects that these transactions contribute less to a covered company's aggregate funding requirement because of their shorter tenors relative to loans with a longer remaining maturity, when considering cash inflows upon maturity of the loan. In addition, these loans also generally present lower reputational risk if a covered company chooses not to roll over the transaction because of the financial nature of the counterparty. For these reasons, a 15 percent RSF factor for these assets is lower than the RSF factor assigned to longer-term secured transactions to similar counterparties or to similar-term loans to non-financial counterparties. However, the assignment of a higher RSF factor to these assets compared to similar short-term secured lending transactions to financial counterparties that are secured by rehypothecatable level 1 liquid assets reflects the covered company's more limited ability to monetize assets that are not level 1 liquid assets for the duration of the transaction.

d) 50 Percent RSF Factor

Based on the NSFR's one-year time horizon, the final rule applies the median RSF factor of 50 percent to unencumbered level 2B liquid assets of all maturities. Covered companies may not need to fund these securities for the entirety of the NSFR's one-year time horizon, and covered companies may have the ability to recognize inflows from such assets within one year, each across a range of market conditions.

The final rule also applies a 50 percent RSF factor to most loans with remaining maturities of less than one year and to operational deposit placements. Lending that matures in less than one year is less likely to require funding for a full year relative to loans that have residual maturities of one year or more, which generally receive a higher RSF factor under the final rule. While certain loans that mature in less than one year may be renewed, covered companies are generally more likely to receive cash inflows when these loans mature compared to longer maturities. With respect to operational deposit placements, the 50 percent RSF factor reflects that covered companies as recipients of operational services likely would face limitations to making significant changes to their operational activities during the NSFR's one-year

[149] 12 CFR 3.32 (OCC); 12 CFR 217.32 (Board); 12 CFR 324.32 (FDIC).

[150] *See supra* note 102.

time horizon across a range of market conditions.

Unencumbered Level 2B Liquid Assets

Section ____.106(a)(5)(i) of the proposed rule would have assigned a 50 percent RSF factor to level 2B liquid assets, as defined in § ____.20(c) of the LCR rule, but without taking into consideration the operational requirements described in § ____.22 or the level 2 caps in § ____.21. At the time of proposal, level 2B liquid assets included certain publicly traded corporate debt securities and publicly traded common equity shares that are liquid and readily-marketable. To qualify as a level 2B liquid asset, the asset must meet certain criteria under § ____.20 of the LCR rule. For example, among other criteria, equity securities must be part of a major index and both corporate debt securities and municipal obligations must be ''investment grade'' under 12 CFR part 1.

Subsequent to the issuance of the proposed rule, EGRRCPA was enacted, which requires the agencies to treat certain municipal obligations as a level 2B liquid asset for purposes of the LCR rule and any other regulation that incorporates a definition of the term ''high-quality liquid asset'' or substantially similar term.[151] Consistent with EGRRCPA, the agencies amended the LCR rule to treat municipal obligations that are investment grade and liquid and readily-marketable as level 2B liquid assets.[152]

Several commenters expressed concern that the proposed RSF factor for level 2B liquid assets was too high and argued that these securities should be considered more liquid over the NSFR's one-year horizon. For example, one commenter requested a 15 percent RSF factor for equity securities that are included in major market indices, such as exchange-traded funds that track a major market index. Some commenters recommended revised RSF treatment for level 2B liquid asset eligible corporate debt securities. For example, some commenters requested that the RSF factor for corporate debt securities be more granular and calibrated based on the tenor of the securities, the issuer's creditworthiness, or the desired tenor of funding used to purchase the securities. One commenter requested eliminating the requirement that a corporate debt security be investment grade.[153] Another commenter recommended the agencies adopt the RSF factors assigned to various types of corporate debt in the Basel NSFR standard. One commenter recommended that the agencies more closely align the RSF factor for these assets to the market haircuts in secured funding markets. Another commenter expressed concern that the proposed RSF treatment would make it more expensive for banking organizations to hold debt and equity securities intended for trading, which would result in decreased willingness to hold inventories and negatively impact capital markets. The commenter asserted that, given the importance of capital markets in the United States, the proposed RSF factor would place the United States at a competitive disadvantage to other jurisdictions.

The final rule maintains as proposed the 50 percent RSF factor for level 2B liquid assets, which include certain investment grade publicly traded corporate debt securities and municipal obligations[154] and certain publicly traded common equity shares included on the Russell 1000 or an index that a foreign supervisor recognizes for purposes of including equity shares in level 2B liquid assets under applicable regulatory policy of a foreign jurisdiction. As described in section V.C of this Supplementary Information section, the final rule uses definitions common to the LCR rule to increase the efficiency of the rule. The agencies did not propose and the final rule does not adopt any changes to the definition of level 2B liquid assets. The agencies, therefore, are not changing the requirements for corporate debt securities to qualify as a level 2B liquid asset. Such changes would be outside the scope of this rulemaking. Assets that meet the definition of level 2B liquid assets have distinctive liquidity characteristics as described in the LCR rule, which include either relatively higher credit risk, lower trading volumes, or elevated price volatility across market conditions when compared to level 1 and level 2A liquid assets. These securities also have relatively greater liquidity relative to assets that are not HQLA under the LCR rule. For these reasons, the RSF factor assigned to level 2B liquid assets is materially higher than the RSF factor of 15 percent applied to level 2A liquid assets, but lower than the RSF factor applied to securities that do not qualify as HQLA.

Covered companies may be holding level 2B liquid assets on balance sheet at a calculation date that have a wide range of residual maturities and for a range of purposes, each of which may require various contractual or anticipated holding periods. While some portion of level 2B liquid assets may mature or be contractually scheduled to be sold within one year, a covered company may need to fund certain of these securities over a one-year time horizon. Similar to level 2A liquid assets, covered companies may hold these securities for investment purposes or as part of a covered company's HQLA amount. Over a range of market conditions, a covered company may be generally less likely to have to fund these securities for one year compared to securities that do not qualify as HQLA. For the reasons above, it is appropriate for the RSF factor applied to level 2B liquid assets to be materially higher than the RSF factor of 15 percent applied to level 2A liquid assets but lower than that applied to securities that do not qualify as HQLA.

In response to commenters' requests for additional granularity, the agencies note that the purpose of the NSFR is to provide a broad, standardized measure of funding stability that can be compared across covered companies. As discussed in section V.C, to achieve this purpose, the final rule uses a small number of standardized maturity buckets rather than using granular maturity buckets of debt instruments or the funding used to purchase such assets. In addition, the final rule does not differentiate between assets based on other difficult to monitor criteria, such as a covered company's intent for holding or funding the asset or the characteristics of the issuer, because to do so would require the agencies to make determinations about each covered company's intent or the credit risk of each issuer. Such individualized determinations would be contrary to the NSFR's purpose as a standardized measure. In addition, contrary to commenters' concerns, the agencies expect that the final rule will strengthen the U.S. financial system, including capital markets, by ensuring banking organizations maintain sufficiently stable funding on an ongoing basis.

[151] Public Law 115–174, 132 Stat. 1296–1368 (May 24, 2018).

[152] *See* 84 FR 25975 (June 5, 2019). As a result, the agencies are not also finalizing proposed § ____.106(a)(5)(iv).

[153] Pursuant to the LCR rule, corporate debt securities must be investment grade in order to qualify as a level 2B liquid asset. 12 CFR 249.20(c)(1)(i).

[154] Section ____.106(a)(5)(iv) of the proposed rule, which would have assigned a 50 percent RSF factor to general obligation securities of a public sector entity, is removed because such securities now are encompassed by the definition of municipal obligations in § ____.3 of the LCR rule. Consistent with section 403 of EGRRCPA, § ____.3 of the LCR rule defines a ''municipal obligation'' as ''an obligation of (1) a state or any political subdivision thereof, or (2) any agency or instrumentality of a state or any political subdivision thereof.''

Secured Lending Transactions and Unsecured Wholesale Lending to a Financial Sector Entity or a Subsidiary Thereof or a Central Bank That Mature in Six Months or More, But Less Than One Year

Section ____.106(a)(5)(ii) of the proposed rule would have assigned a 50 percent RSF factor to a secured lending transaction or unsecured wholesale lending transaction that matures in six months or more, but less than one year from the calculation date, where the counterparty is a financial sector entity or a consolidated subsidiary thereof or the counterparty is a central bank.[155] As discussed above, a covered company faces lower reputational risk if it chooses not to roll over secured or unsecured loans to financial counterparties or claims on a central bank than it would with loans to non-financial counterparties. Even though loans in this category have terms greater than six months (and liquidity from principal repayments will not be available in the near term) these loans mature within the NSFR's one-year time horizon so the proposed rule would not have required them to be fully supported by stable funding. For the reasons discussed in the proposal, the agencies are finalizing a 50 percent RSF factor for these transactions as proposed.

Operational Deposits Held at Financial Sector Entities

Section ____.106(a)(5)(iii) of the proposed rule would have assigned a 50 percent RSF factor to an operational deposit, as defined in § ____.3 of the LCR rule, placed by the covered company at a financial sector entity. Consistent with the reasoning for the ASF factor assigned to operational deposits placed at a covered company, described in section VII.C.3.d of this Supplementary Information section, such operational deposits placed by a covered company are less readily monetizable by the covered company compared to non-operational placements. These deposits are placed for operational purposes, and covered companies likely would face legal or operational limitations to making significant withdrawals during the NSFR's one-year time horizon. While the agencies received comments addressing the ASF factor assigned to operational deposits received by a covered company, as discussed above at section VII.C.3.d, the agencies did not receive any comments addressing the RSF factor assigned to operational deposits placed by a covered company at an unaffiliated financial sector entity. For the reasons discussed in the proposed rule, the final rule adopts the 50 percent RSF factor for operational deposits placed by a covered company at another financial sector entity as proposed.

Secured Lending Transactions and Unsecured Wholesale Lending to Counterparties That Are Not Financial Sector Entities and Are Not Central Banks and That Mature in Less Than One Year

Section ____.106(a)(5)(v) of the proposed rule would have assigned a 50 percent RSF factor to lending to a wholesale customer or counterparty that is not a financial sector entity or central bank, including a non-financial corporate, sovereign, or public sector entity, that matures in less than one year from the calculation date. Unlike with lending to financial sector entities and central banks, the proposed rule would have assigned the same RSF factor to lending to these entities with a remaining maturity of less than six months as it would have assigned to lending with a remaining maturity of six months or more, but less than one year. The proposed rule would not have required this lending to be fully supported by stable funding based on its maturity within the NSFR's one-year time horizon and the assumption that a covered company may be able to reduce its lending to some degree over the NSFR's one-year time horizon. However, the proposed rule's assignment of a 50 percent RSF factor reflected the stronger incentives that a covered company is likely to have to continue to lend to these wholesale counterparties due to reputational risk and a covered company's need to maintain its franchise value, even when the lending is scheduled to mature in the nearer term, as discussed in section VII.D.2.c of this Supplementary Information section. The agencies did not receive any comments addressing the proposed RSF factor assigned to this category. For the reasons discussed in the proposal, the agencies are adopting this provision as proposed.[156]

Lending to Retail Customers and Counterparties That Matures in Less Than One Year

Section ____.106(a)(5)(v) of the proposed rule would have assigned a 50 percent RSF factor to lending to retail customers or counterparties (including certain small businesses), as defined in § ____.3 of the LCR rule, that matures less than one year from the calculation date for the same reputational and franchise value maintenance reasons for which it would have assigned a 50 percent RSF factor to lending to wholesale customers and counterparties that are not financial sector entities or central banks. The agencies did not receive any comments specific to the RSF factor assigned to this asset category. For the reasons described in the proposed rule, the agencies are adopting this provision as proposed.[157]

All Other Assets That Mature in Less Than One Year

Section ____.106(a)(5)(v) of the proposed rule would have assigned a 50 percent RSF factor to all other assets that mature within one year of the calculation date but are not described in the categories above. The shorter maturity of an asset in this category reduces a covered company's funding needs, since the asset may not need to be retained on the covered company's balance sheet past maturity and provides for cash inflows upon maturity during the NSFR's one-year time horizon. However, a covered company generally may be less able to monetize these assets due to their lower credit quality and their relevant market characteristics as compared to the enumerated asset classes that are assigned lower RSF factors.

One commenter expressed concern that this category would capture asset-backed commercial paper that is fully supported by a credit or liquidity facility provided by another bank and has a maturity of six months or less, while unencumbered loans to banks with maturities of less than six months are assigned a 15 percent RSF factor. The commenter argued that a covered company's risk exposure for purchasing asset-backed commercial paper that is fully supported by a facility provided by a bank is equivalent to its risk exposure for a loan to another bank. Accordingly, the commenter argued that such asset-backed commercial paper should receive the same 15 percent RSF factor as a short-term loan to a financial sector entity. Another commenter argued that the RSF factor assigned to commercial

[155] Section ____.106(a)(5)(ii) of the final rule does not apply to an operational deposit placed at a financial sector entity or consolidated subsidiary thereof. The treatment of such an operational deposit is covered by § ____.106(a)(4)(iii) of the final rule.

[156] This provision is adopted at § ____.106(a)(4)(iv)(A) of the final rule.

[157] This provision is adopted at § ____.106(a)(4)(iv)(B) of the final rule.

paper should be based on the creditworthiness of the issuing company.

In response, the agencies note that the final rule generally assigns RSF factors to exposures as of a point in time. For holdings of asset-backed commercial paper that are supported by a credit or liquidity facility provided by a bank, a covered company would not have an exposure to a financial sector entity unless the facility has been drawn upon; therefore, such asset-backed commercial paper is not treated as a loan to a financial sector entity under the final rule. Although the contractual features of an individual asset or the credit worthiness of its issuer can affect the funding needs related to holding that particular asset, the final rule is intended to provide a standardized measure of funding stability that can be compared across covered companies. Differentiating between holdings of commercial paper based on contractual features or the issuer's credit worthiness would require the agencies to make determinations based on each contractual arrangement and the credit risk of each issuer. Such individualized determinations would be contrary to the NSFR's purpose as a standardized measure.

For the reasons discussed in the proposed rule, the agencies are finalizing this provision as proposed.[158]

e) 65 Percent RSF Factor

Under the final rule, loans that mature in one year or more (other than operational deposit placements) are assigned higher RSF factors than loans that mature in less than one year. The final rule assigns a 65 percent RSF factor to retail mortgages that mature in one year or more and are assigned a risk weight of no greater than 50 percent under the agencies' risk-based capital rule and loans to retail and non-financial wholesale counterparties that mature in one year or more and are assigned a risk weight of no greater than 20 percent.

Retail Mortgages That Mature in One Year or More and Are Assigned a Risk Weight of No Greater Than 50 Percent

Section ____.106(a)(6)(i) of the proposed rule would have assigned a 65 percent RSF factor to retail mortgages that mature one year or more from the calculation date and are assigned a risk weight of no greater than 50 percent under subpart D of the agencies' risk-based capital rule. Under the agencies' risk-based capital rule, residential mortgage exposures secured by a first lien on a one-to-four family property that are prudently underwritten, are not 90 days or more past due or carried in nonaccrual status, and that are neither restructured nor modified generally receive a 50 percent risk weight.[159]

Some commenters argued that the proposed rule's treatment for mortgage loans would be overly conservative in comparison to the 15 percent RSF factor assigned to certain GSE-issued or GSE-guaranteed mortgage-backed securities. One commenter noted that prudently underwritten mortgages can be pooled into GSE or private label mortgage-backed securities and argued that, as a result, they should receive an RSF factor no higher than 50 percent. Similarly, another commenter noted that single family mortgage loans should not receive an RSF factor above 50 percent because such loans can be used as collateral for FHLB loans. One commenter suggested that the proposed RSF factor for mortgage loans under the NSFR could encourage banks to originate and sell loans rather than hold them in portfolio.

Mortgage lending to households is an important form of financial intermediation conducted by banking organizations, including during times of funding disruptions. To support financial intermediation, and based on the residual maturity and other liquidity characteristics of mortgage loans, the final rule requires individual mortgages that meet certain criteria to be supported by a greater amount of stable funding than assets assigned a 50 percent RSF factor. Individual mortgage loans have substantially different credit and liquidity characteristics than mortgage-backed securities eligible for a lower RSF factor. In particular, GSE-issued and GSE-guaranteed securities have a much higher trading volume than individual mortgage loans. Mortgage loans also do not have the same liquidity characteristics as assets that are assigned a 50 percent RSF factor, such as assets that are either securities that satisfy certain benchmark market thresholds or assets with relatively short maturity. In contrast, mortgage loans in the 65 percent RSF category mature in more than one year from the calculation date, and typically have many years until they mature. Prior to maturity, it may be difficult to monetize an individual mortgage loan in a timely fashion or without incurring a relatively higher haircut in a secured funding transaction compared to HQLA.

In addition, the agencies acknowledge that covered companies will take into account the final rule's assignment of a 65 percent RSF factor when deciding whether to sell mortgage loans or retain them in portfolio. However, covered companies may choose to retain or sell mortgage loan originations for a variety of reasons including earnings, liquidity, and capital management. Accordingly, the 65 percent RSF factor for mortgage loans would not significantly impact a covered company's decision to retain a mortgage loan in portfolio. The primary purpose of the final rule is to ensure that a banking organization's assets are adequately funded. For the reasons described above, the final rule assigns a 65 percent RSF factor to mortgage loans that meet certain criteria as proposed.

Secured Lending Transactions, Unsecured Wholesale Lending, and Lending to Retail Customers and Counterparties That Mature in One Year or More and Are Assigned a Risk Weight of No Greater Than 20 Percent

Section ____.106(a)(6)(ii) of the proposed rule would have assigned a 65 percent RSF factor to secured lending transactions, unsecured wholesale lending, and lending to retail customers and counterparties that are not otherwise assigned an RSF factor, that mature one year or more from the calculation date, that are assigned a risk weight of no greater than 20 percent under subpart D of the agencies' risk-based capital rule, and where the borrower is not a financial sector entity or a consolidated subsidiary thereof.[160] As discussed in the proposed rule, these loans generally have more favorable liquidity characteristics because of their lower credit risk than loans that have a risk weight greater than 20 percent under the agencies' risk-based capital rule. However, these loans require more stable funding than loans that mature and provide liquidity within the NSFR's one-year time horizon. The agencies did not receive any comments on this provision. For the reasons discussed in

[158] This provision is adopted at § ____106(a)(4)(iv) of the final rule.

[159] *See* 12 CFR 3.32(g) (OCC); 12 CFR 217.32(g) (Board); 12 CFR 324.32(g) (FDIC). The final rule is consistent with the Basel NSFR standard, which assigns a 65 percent RSF factor to residential mortgages that receive a 35 percent risk weight under the Basel II standardized approach for credit risk, because the agencies' risk-based capital rule assigns a 50 percent risk weight to residential mortgage exposures that meet the same criteria as those that receive a 35 percent risk weight under the Basel II standardized approach for credit risk.

[160] *See* 12 CFR 3.32(g) (OCC); 12 CFR 217.32(g) (Board); 12 CFR 324.32(g) (FDIC). This aspect of the proposed rule would have been consistent with the Basel NSFR standard, which assigns a 65 percent RSF factor to loans that receive a 35 percent or lower risk weight under the Basel II standardized approach for credit risk, because the standardized approach in the agencies' risk-based capital rule does not assign a risk weight that is between 20 and 35 percent to such loans.

the proposed rule, the agencies are adopting this provision as proposed.

f) 85 Percent RSF Factor

The final rule assigns an 85 percent RSF factor to all other retail mortgages not assigned an RSF factor above, all other loans to non-financial sector counterparties, publicly traded common equity shares that are not HQLA, other non-HQLA securities that mature in one year or more, and certain commodities.

Retail Mortgages That Mature in One Year or More and Are Assigned a Risk Weight of Greater Than 50 Percent

Section ____.106(a)(7)(i) of the proposed rule would have assigned an 85 percent RSF factor to retail mortgages that mature one year or more from the calculation date and are assigned a risk weight of greater than 50 percent under subpart D of the agencies' risk-based capital rule. As noted above, under the agencies' risk-based capital rule, a retail mortgage is assigned a 50 percent risk weight if it is secured by a first lien on a one-to-four family property, prudently underwritten, not 90 days or more past due or carried in nonaccrual status, and has not been restructured or modified.[161] Mortgages that do not meet these criteria are assigned a risk weight of greater than 50 percent.[162] The proposed rule would have treated these mortgages as generally riskier than mortgages that receive a risk weight of 50 percent or less and would have required them to be supported by more stable funding because of the possibility that they would be more difficult to monetize.

For the reasons discussed in the proposed rule, the final rule assigns an 85 percent RSF factor to these mortgage exposures as proposed.

Secured Lending Transactions, Unsecured Wholesale Lending, and Lending to Retail Customers and Counterparties That Mature in One Year or More and Are Assigned a Risk Weight of Greater Than 20 Percent

Section ____.106(a)(7)(ii) of the proposed rule would have assigned an 85 percent RSF factor to secured lending transactions, unsecured wholesale lending, and lending to retail customers and counterparties that are not otherwise assigned an RSF factor (such as retail mortgages), that mature one year or more from the calculation date, that are assigned a risk weight greater than 20 percent under subpart D of the agencies' risk-based capital rule, and for which the borrower is not a financial sector entity or consolidated subsidiary thereof.

Several commenters requested lower RSF factors for certain lending transactions. For example, a few commenters argued that commercial real estate mortgages should be assigned an RSF factor lower than 85 percent because commercial real estate loans are low risk, and covered companies already are subject to regulatory requirements related to their real estate portfolios, which renders an RSF requirement unnecessary. Another commenter requested the agencies reduce the RSF factor for credit card exposures to customers who pay their entire account balances each month. This commenter argued that credit card exposures to these customers are analogous to short-term loans that receive a 50 percent RSF factor.

The final rule retains the 85 percent RSF factor for this category of lending. These loans mature in one year or more and have less favorable liquidity and market characteristics, including greater credit risk associated with higher risk weights under the agencies' risk-based capital rule. Commercial real estate loans generally present a higher risk profile, heightened vulnerability to changing market conditions, and greater monetization difficulty than loans that are assigned a lower RSF factor. Although commercial real estate lending is subject to other regulations designed to promote safe and sound lending practices, these regulations do not specifically address the funding risks presented by these loans. Accordingly, the agencies consider the 85 percent RSF factor appropriate for these loans in order to ensure covered companies maintain sufficient funding to support these assets.

In addition, the agencies decline to adopt a commenter's suggestion to apply a lower RSF factor to credit card exposures to customers who repay their entire account balances each month. Although some credit card customers fully and regularly repay account balances, assigning different RSF factors to credit card exposures based on a covered company's assumptions of a credit card customer's future repayment behavior would be inconsistent with the NSFR's purpose as a standardized measure of funding stability. Accordingly, the final rule assigns an 85 percent RSF factor to all credit card exposures that mature in one year or more and have a risk weight of greater than 20 percent under the agencies' risk-based capital rule as proposed. The agencies are clarifying, however, that contractual minimum payment amounts due on credit card exposures would generally be considered to be a loan to a retail customer maturing in less than one year and would be subject to the 50 percent RSF factor.

Publicly Traded Common Equity Shares That Are Not HQLA and Other Securities That Mature in One Year or More That Are Not HQLA

Sections ____.106(a)(7)(iii) and (iv) of the proposed rule would have assigned an 85 percent RSF factor to publicly traded common equity shares that are not HQLA and other non-HQLA securities that mature one year or more from the calculation date. For example, these assets would have included equity shares not listed on a recognized exchange, low rated corporate debt securities and municipal obligations, private-label mortgage-backed securities, and other types of asset-backed securities.

As described above, commenters generally expressed concern that the proposed rule's assignment of RSF factors to equity shares was overly conservative and not reflective of market haircuts for such securities. Commenters, however, also expressed specific concerns related to the 85 percent RSF factor assigned to non-HQLA publicly traded common equity shares and other securities that mature in one year or more. One commenter expressed concern that higher RSF factors for non-HQLA securities would be procyclical and incentivize covered companies to sell non-HQLA securities in favor of HQLA securities in a crisis. Other commenters argued that even though equity and debt securities issued by a financial sector entity are precluded from qualifying as HQLA, these assets should receive a lower RSF factor because there is no empirical basis for assigning a higher RSF factor to securities issued by a financial sector entity than to securities issued by a non-financial sector entity. These commenters also asserted that the 85 percent RSF factor would adversely impact capital flows to financial sector entities, which would impair their ability to provide market-making and other services. Another commenter argued that the 85 percent RSF factor is overly conservative because it fails to take into account a bank's ability to mitigate its exposure risk with liquid options, swaps, or future instruments.

Several commenters also requested that lower RSF factors be assigned to

[161] *See supra* note 159.

[162] Under the agencies' risk-based capital rule, the risk weight on mortgages may be reduced to less than 50 percent if certain conditions are satisfied. In these cases, the final rule assigns an RSF factor of 65 percent, which is the RSF factor assigned to retail mortgages that mature in one year or more and are assigned a risk weight of no greater than 50 percent. *See* 12 CFR 3.36 (OCC); 12 CFR 217.36 (Board); 12 CFR 324.36 (FDIC).

specific types of equities and securities. For example, one commenter recommended a 50 percent RSF factor for equities traded on an exchange that are included in certain global stock indexes. Other commenters requested lower RSF factors for certain private-label residential mortgage-backed securities, commercial mortgage backed securities, and certain asset-backed securities. Commenters argued that the 85 percent RSF factor was overly punitive and would discourage covered companies from holding these securities, which would impair the markets served by these securities. Some of these commenters argued that residential mortgage-backed securities, in particular, should receive the same RSF treatment as level 2 liquid assets consistent with the Basel NSFR standard and the EU NSFR rule. Other commenters requested lower RSF factors for certain traditional securitizations, which commenters asserted are safer assets as a result of certain changes to regulatory requirements and rating agency protocols. One commenter recommended the agencies examine recent initiatives by the BCBS and International Organizations of Securities Commission to identify specific securities that warrant lower RSF factors.

The final rule retains the 85 percent RSF factor for publicly traded securities that are not HQLA and mature in one year or more. Non-HQLA securities, including securities issued by financial sector entities, historically have demonstrated greater price volatility and lower marketability across market conditions than securities that qualify as HQLA. Given this historical experience, it is appropriate to assign a higher RSF factor to these securities than HQLA securities. Although a banking organization may have some ability to mitigate its risk exposure to these assets, the final rule is designed as a standardized measure of the stability of a covered company's funding profile and therefore does not take into account the company's idiosyncratic risk management practices. With respect to the concern that the 85 percent RSF factor would incentivize covered companies to liquidate non-HQLA during a stress period, the 85 percent RSF factor will reduce this risk because covered companies would be holding large amounts of stable funding to support these assets, decreasing the need to immediately monetize these assets.

For the reasons described above, the agencies decline to reduce the RSF factor for certain types of securities which are not eligible as HQLA, as requested by commenters. As previously explained, equities that are not HQLA generally exhibit less favorable liquidity characteristics relative to equities that qualify as HQLA, regardless of the country location of the index or exchange on which that equity is traded. Although specific issuances of private-label residential mortgage-backed securities, commercial mortgage backed securities, or asset-backed securities may exhibit liquidity characteristics similar to HQLA, the final rule assigns RSF factors based on asset class to ensure standardization and ease of comparability of the measure. These securities can exhibit high price volatility, depending on the performance of their underlying assets and specific contractual features. In addition, the bespoke characteristics of securitization structures may be tailored to a limited range of investors, which can limit a banking organization's ability to monetize a given securitization issuance. Although changes in regulatory requirements and rating agency protocols regulations may have reduced certain risks associated with certain securitizations, many of these assets do not have a proven history of liquidity. As a result, the final rule assigns an 85 percent RSF factor as proposed.

Commodities

Section ____.106(a)(7)(v) of the proposed rule would have assigned an 85 percent RSF factor to commodities held by a covered company for which a liquid market exists, as indicated by whether derivative transactions for the commodity are traded on a U.S. board of trade or trading facility designated as a contract market (DCM) under sections 5 and 6 of the Commodity Exchange Act [163] or on a U.S. swap execution facility (SEF) registered under section 5h of the Commodity Exchange Act.[164] The proposed rule would have assigned a 100 percent RSF factor to all other commodities held by a covered company. The proposed rule would have required a covered company to support its commodities positions with a substantial amount of stable funding because, in general, commodities as an asset class have historical material price volatility.

The proposed rule would have assigned an 85 percent RSF factor, rather than a 100 percent RSF factor, to commodities for which derivative transactions are traded on a U.S. DCM or U.S. SEF because the exchange trading of derivatives on a commodity tends to indicate a greater degree of standardization, fungibility, and liquidity in the market for the commodity.[165] As noted in the Supplementary Information section to the proposed rule, a market for a commodity for which a derivative transaction is traded on a U.S. DCM or U.S. SEF is more likely to have established standards (for example, with respect to different grades of commodities) that are relied upon in determining the commodities that can be provided to effect physical settlement under a derivative transaction. In addition, the exchange-traded market for a commodity derivative transaction generally increases price transparency for the underlying commodity. A covered company could therefore more easily monetize a commodity that meets this requirement than a commodity that does not, either through the spot market or through derivative transactions based on the commodity. The proposed rule accordingly would have required less stable funding to support holdings of commodities for which derivative transactions are traded on a U.S. DCM or U.S. SEF than it would have required for other commodities, which a covered company may not be able to monetize as easily.

One commenter argued that the stated rationale for assigning an 85 percent RSF factor to commodities traded on U.S. exchanges should apply equally to commodities traded on non-U.S. exchanges. The commenter requested that rather than assigning a 100 percent RSF factor to commodities traded on non-U.S. exchanges, the final rule assign an 85 percent RSF factor to commodities that are traded on non-U.S. exchanges that are registered in non-U.S. jurisdictions in order to provide consistent treatment with commodities traded on a U.S. exchange. These commodities, the commenter argued, have similar liquidity characteristics to commodities traded on U.S. exchanges.

As noted by the commenter, commodities for which derivative transactions are traded on exchanges registered outside the United States may have a similar degree of liquidity as commodities for which derivative transactions are traded on a U.S. DCM or U.S. SEF. To provide consistent treatment of commodities traded on U.S. and non-U.S. exchanges, the final rule assigns an 85 percent RSF factor to any commodity held by a covered company for which derivative transactions are

[163] 7 U.S.C. 7 and 7 U.S.C. 8.

[164] 7 U.S.C. 7b–3.

[165] Examples of commodities that currently meet this requirement are gold, oil, natural gas, and various agricultural products.

authorized to be traded on an U.S. DCM, U.S. SEF, or any other exchange, whether located in the United States or in a jurisdiction outside of the United States.[166] The agencies note that covered companies are limited in the types of physical commodities activities in which they are able to engage. For example, the Board has approved requests from certain financial holding companies to engage in certain physical commodities trading activities for which derivative contracts are approved for trading on a U.S. futures exchange by the U.S. Commodity Futures Trading Commission (CFTC) (unless specifically excluded by the Board) or other commodities that have been specifically authorized by the Board under section 4(k)(1)(B) of the Bank Holding Company Act of 1956.[167] The legal restrictions applicable to bank holding companies and financial holding companies under the BHC Act (as well as restrictions applicable to national banks and state-chartered banks under the National Bank Act and the FDI Act, respectively) continue to apply, and the final rule does not grant a covered company the authority to engage in any commodities activities not otherwise permitted by applicable law.

g) 100 Percent RSF Factor

All Other Assets Not Described Above

Section ____.106(a)(8) of the proposed rule would have assigned a 100 percent RSF factor to all other performing assets not otherwise assigned an RSF factor under § ____.106 or § ____.107. These assets include, but are not limited to, loans to financial institutions (including to an unconsolidated affiliate) that mature in one year or more; assets deducted from regulatory capital; [168] common equity shares that are not traded on a public exchange; unposted debits; and trade date receivables that have failed to settle within the lesser of the market standard settlement period for the relevant type of transaction, without extension of the standard settlement period, and five business days from the date of the sale.

The agencies received a number of comments suggesting that certain trade date receivables receiving a 100 percent RSF factor under the proposed rule should receive a lower RSF factor. As described above, several commenters opposed the proposal's assignment of a 100 percent RSF factor to trade date receivables that fail to settle within the lesser of five business days and the standard settlement period but are still expected to settle. Another commenter argued that, in the case of trade date receivables generated by primary offerings, settlement delays reflect unique timing needs rather than increased funding risk. Accordingly, the commenter recommended that the agencies assign a zero percent RSF factor to trade date receivables generated by primary offering settlements for the duration of the primary offering.

As described above, the agencies are amending the final rule to assign a zero percent RSF factor to trade date receivables due to a covered company that result from the sale of a financial instrument, foreign currency, or commodity that are required to settle no later than the market standard for the particular instrument, and have yet to settle but are not more than five business days past the scheduled settlement date. The final rule otherwise retains the assignment of a 100 percent RSF factor as proposed. Assets in this category do not consistently exhibit liquidity characteristics that would suggest a covered company should support them with anything less than full stable funding.

Nonperforming Assets RSF Factor

Section ____.106(b) of the proposed rule would have assigned a 100 percent RSF factor to any asset on a covered company's balance sheet that is past due by more than 90 days or that has nonaccrual status. Because these assets have an elevated risk of non-payment, these assets tend to be illiquid regardless of their tenor. The agencies did not receive any comments on this aspect of the proposal. Consistent with the proposed rule, the final rule requires a covered company to assign a 100 percent RSF factor to nonperforming assets.[169]

h) RSF Factors for Encumbered Balance Sheet Assets

Consistent with the criteria used for assigning RSF factors described above, the RSF factor that the proposed rule would have assigned to an asset would have depended on whether or not the asset is encumbered and the length of any encumbrance. As discussed in section VI of this Supplementary Information section, the proposed rule would have defined ''encumbered'' (a new defined term under § ____.3), as the converse of the term ''unencumbered'' currently used in the LCR rule. Encumbered assets must generally be retained for the period of encumbrance and generally cannot be monetized during this period. Thus, § ____.106(c) of the proposed rule would have assigned the RSF factor to encumbered assets based on the tenor of the encumbrance.

The agencies received one comment regarding the potential impact of the proposed rule's treatment of assets pledged for six months or longer by a covered company to an FHLB under a blanket, but not asset-specific, lien to secure an extension of credit to the covered company.

As is the case for an asset pledged to any other counterparty to secure or provide credit enhancement to a transaction, a covered company generally must retain or replace an asset pledged to an FHLB during the period in which it is encumbered and cannot monetize the asset while encumbered.[170] However, where an asset of a covered company is subject to a blanket, rather than asset-specific lien, in favor of an FHLB, such asset would not be considered ''encumbered'' if credit secured by the asset is not currently extended to the covered company or its consolidated subsidiaries. Where credit has been extended and is secured by a blanket

[166] As with all derivatives, commodity derivatives are subject to § ____.107 of the final rule.

[167] 12 U.S.C. 1843(k)(1)(B). The types of commodities permitted by the Board for financial holding companies generally are assigned an 85 percent RSF factor under the final rule. For example, under Board precedent, commodity trading activities involving any type of coal would be permissible for a financial holding company, even though the CFTC has authorized only Central Appalachian coal. Therefore, under the final rule, the carrying value of any type of coal would be assigned an 85 percent RSF factor. Any derivative transaction based on coal, though, would be subject to § ____.107 of the final rule. With respect to commodities for which a derivative is traded on a non-U.S. exchange, the agencies note that such non-U.S. exchanges will be supervised by a prudential regulator in the relevant jurisdiction.

[168] Assets deducted from regulatory capital include, but are not limited to, goodwill, certain deferred tax assets, certain mortgage servicing assets, and certain defined benefit pension fund net assets. *See* 12 CFR 3.22 (OCC); 12 CFR 217.22 (Board); 12 CFR 324.22 (FDIC). These assets, as a class, tend to be difficult for a covered company to readily monetize.

[169] The final rule's description of nonperforming assets in § ____.106(b), like the proposed rule's description, is consistent with the definition of ''nonperforming exposure'' in § ____.3 of the LCR rule.

[170] As discussed in section VI.B of this Supplementary Information section, the final rule's definition of ''encumbered'' does not consider an asset to be encumbered solely because the asset is pledged to a central bank or GSE to secure a transaction if (i) potential credit secured by the asset is not currently extended to the covered company or its consolidated subsidiaries and (ii) the pledged asset is not required to support access to the payment services of a central bank. The final rule's definition of ''encumbered'' does not include any substantive changes to the concept of encumbrance included in the LCR rule. *See* 79 FR at 61469.

lien, a covered company may identify which specific assets covered by the blanket lien secure the amount of extended credit, consistent with the requirements of the LCR rule.

The final rule retains the treatment of encumbered assets as proposed. Under the final rule, an asset that is encumbered for less than six months from the calculation date is assigned the same RSF factor as would be assigned to the asset if it were not encumbered because the covered company will not need to retain the asset beyond six months. For an asset that is encumbered for a period of six months or more, but less than one year, the final rule assigns an RSF factor equal to the greater of 50 percent and the RSF factor that would be assigned if the asset were not encumbered. This treatment ensures that a covered company's RSF amount reflects the effect of the encumbrance on an asset that would be assigned a lower RSF factor if unencumbered based on its tenor and other liquidity characteristics. Additionally, the final rule assigns a 100 percent RSF factor to an asset that is encumbered for a remaining period of one year or more because the asset would be retained and unavailable to the covered company for the entirety of the NSFR's one-year time horizon. Finally, in cases where the duration of an asset's encumbrance exceeds the maturity of that asset, the final rule assigns an RSF factor to the asset based on its encumbrance period. For example, if a covered company provides a level 1 liquid asset security that matures in three months as collateral in a one-year repurchase agreement, the covered company would need to replace that security upon its maturity with another asset that meets the requirements of the repurchase agreement. Thus, even though the maturity of the asset currently provided as collateral is short-dated, a covered company must fully support an asset with stable funding for the duration of the one-year repurchase agreement. As a result, the RSF factor determined by on the one-year encumbrance period.

Table 3 sets forth the RSF factors for assets that are encumbered.

TABLE 3—RSF FACTORS FOR ENCUMBERED ASSETS

	RSF factors for encumbered assets *		
	Asset encumbered <6 months	Asset encumbered ≥6 months <1 year	Asset encumbered ≥1 year
If RSF factor for unencumbered asset is ≤50 percent:.	RSF factor for the asset as if it were unencumbered.	50 percent	100 percent.
If RSF factor for unencumbered asset is >50 percent:.	RSF factor for the asset as if it were unencumbered.	RSF factor for the asset as if it were unencumbered.	100 percent.

* If the remaining encumbrance period exceeds the effective maturity of the asset, the final rule assigns an RSF factor to the asset based on its encumbrance period.

i) Assets Held in Certain Customer Protection Segregated Accounts

Section ____.106(c)(3) of the proposed rule would have specified that an asset held in a segregated account maintained pursuant to statutory or regulatory requirements for the protection of customer assets would not have been considered to be encumbered solely because it is held in such a segregated account.[171] Instead, the proposed rule would have assigned an asset held in such a segregated account the RSF factor that would be assigned to the asset under § ____.106 if it were not held in a segregated account. For example, a covered company must segregate customer free credits, which are customer funds held prior to their investment, until the customer decides to invest or withdraw the funds. The proposed rule would have treated the funds that a covered company places on deposit with a third-party depository institution in accordance with segregation requirements as a short-term loan to a financial sector entity, which would have been assigned a 15 percent RSF factor.

Several commenters argued that segregated client assets should have no stable funding requirement because, among other reasons, they already are funded by liabilities to the client and pose limited funding risks to covered companies. Some commenters noted that SEC and CFTC rules require client assets to be segregated and accounted for separately from the covered company's assets, protected from the bankruptcy of the covered company, and held in cash or other limited investments. Commenters also argued that segregated client assets should be treated analogously to currency and coin, which are assigned a 0 percent RSF factor. One commenter argued that the proposed treatment for segregated client assets would conflict with the treatment of such assets under the LCR rule, which recognizes some inflows from anticipated changes in the value of segregated client accounts and 100 percent outflows for non-operational deposits placed by financial institution counterparties.

Several commenters claimed that requiring stable funding for segregated client assets would inappropriately incentivize covered companies to maintain such balances in non-cash form (*e.g.,* U.S. Treasury securities) rather than hold them in a deposit account at a third-party bank in order to reduce the RSF factor. Other commenters expressed concern that covered companies may pass the cost of maintaining stable funding for segregated client assets on to the client or stop providing services that require segregated accounts.

The agencies are finalizing the treatment of customer segregated account assets as proposed.[172] As discussed in section V.C of this Supplementary Information section, the NSFR applies to a covered company's entire balance sheet, does not differentiate between assets based on business line or the reason for which they are held, and is not designed to mirror the treatment of assets under the LCR rule. Regulatory or contractual requirements to segregate certain assets for the benefit of customers do not necessarily reduce a covered company's funding risks relative to holding the same assets absent segregation, based on the covered company's funding stability relative to the tenor and other liquidity characteristics of its assets. The NSFR measure generally utilizes the carrying value of assets where possible and,

[171] For example, the proposed rule would not consider an asset held pursuant to the SEC's Rule 15c3–3 (17 CFR 240.15c3–3) or the CFTC's Rule 1.20 or Part 22 (17 CFR 1.20; 17 CFR part 22) to be encumbered solely because it is held in a segregated account.

[172] Comments requesting treatment as interdependent assets and liabilities are discussed in section VII.H of this Supplementary Information section.

consistent with GAAP, does not distinguish segregated balance sheet assets from other assets, except to the extent the final rule does not consider assets to be encumbered solely as a result of segregation. Additionally, regulatory requirements to hold specified amounts of assets for clients, in the form of cash, limited investments, or other assets, may result in a covered company holding additional assets relative to the absence of such regulatory requirements and the need to fund such assets is treated consistently in the final rule relative to assets of the same type. For example, the covered company may hold, and need to fund, identical level 1 liquid asset securities for the purpose of customer protection and as a hedging instrument to provide protection to the covered company; therefore, the final rule would assign the RSF factor corresponding to the level 1 liquid asset securities. Further, the NSFR applies to an aggregate balance sheet and generally does not associate specific assets with specific funding.[173] For example, the NSFR does not associate aggregate deposit placements for the protection of clients collectively that may be funded with individual liabilities due to certain clients, as described by commenters.

As discussed above, the final rule assigns a zero percent RSF factor to unencumbered level 1 liquid assets and generally assigns a 15 percent RSF factor to a deposit placed at a third-party financial institution with a remaining maturity of less than six months, based on the tenor and other liquidity characteristics of these assets. A covered company's requirement to comply with certain customer protection segregation requirements that result in a deposit at a third-party financial institution does not, by itself, adjust the tenor of such a placement or serve to improve the covered company's ability to withdraw the funds or otherwise monetize the asset in comparison to other deposits placed with a third-party banking organization. For example, unlike coin and currency, a covered company cannot directly use customer segregated account assets to satisfy its own obligations.[174]

For these reasons, it would not be appropriate to assign a zero percent RSF factor to assets based on their segregated status and an asset held in this type of segregated account is assigned the RSF factor that would be assigned to the asset under § ____.106 as if it was not held in a segregated account.

4. Treatment of Rehypothecated Off-Balance Sheet Assets

As discussed in section V of this Supplementary Information section, the NSFR calculation is based on the carrying value of assets on a covered company's balance sheet consistent with GAAP. However, certain assets that can affect a covered company's aggregate funding risks may not be included on a covered company's balance sheet under GAAP. The proposed rule, therefore, would have included provisions to address the funding risks associated with certain off-balance sheet assets that a covered company may obtain through lending transactions, asset exchanges, or other transactions. These assets can affect a covered company's balance sheet risk profile where they are rehypothecated and used to obtain funding. For example, a covered company may use off-balance sheet assets to generate funding. The assignment of an ASF factor to this liability without recognizing the encumbrance placed on a covered company's balance sheet would distort the NSFR assessment of a covered company's overall balance sheet risks. Therefore, it is appropriate that such reuse of off-balance sheet assets should be associated with an appropriate contribution to a covered company's RSF amount regardless of the source of the assets. This is especially the case if the off-balance sheet asset is encumbered to generate funding that has a longer tenor than the transaction through which the off-balance sheet asset was sourced. In that case, a covered company may need to roll over the transaction through which it obtained the off-balance sheet asset before the encumbrance of the asset terminates. Alternatively, the covered company may need to obtain a replacement asset to close out the sourcing transaction under which it obtained the asset before the encumbrance expires. Under either approach, the covered company must fund an asset for the duration of the encumbrance.

Section ____.106(d) of the proposed rule specified how a covered company would have assigned an RSF factor to a transaction involving an off-balance sheet asset that secures an NSFR liability or the sale of an off-balance sheet asset that results in an NSFR liability (for instance, in the case of a short sale). The proposed rule would have assigned an RSF factor to a receivable of a lending transaction, a security provided in an asset exchange, or to the off-balance sheet asset itself depending on the transaction through which the covered company obtained the off-balance sheet asset. Specifically, for an off-balance sheet asset obtained under a lending transaction, § ____.106(d)(1) of the proposed rule would have assigned an RSF factor to the receivable of the lending transaction as if it were encumbered for the longer of (1) the remaining maturity of the NSFR liability secured by or resulting from the sale of the off-balance sheet asset and (2) any other encumbrance period already applicable to the lending transaction. For an off-balance sheet asset obtained through an asset exchange, § ____.106(d)(2) of the proposed rule would have assigned an RSF factor to the asset provided by the covered company in the asset exchange as if it were encumbered for the longer of (1) the remaining maturity of the NSFR liability secured by or resulting from the sale of the off-balance sheet asset and (2) any other encumbrance period applicable to the provided asset. For an off-balance sheet asset not obtained under either a lending transaction or asset exchange, § .106(d)(3) of the proposed rule would have assigned an RSF factor to the off-balance sheet asset as if it were encumbered for the longer of (1) the remaining maturity of the NSFR liability secured by or resulting from the sale of the off-balance sheet asset and (2) any other encumbrance period applicable to the off-balance sheet asset.

The agencies received several comments on the proposed treatment of rehypothecated off-balance sheet assets under § ____.106(d) of the proposed rule. Commenters argued that the proposed treatment would be inconsistent with the concept of the NSFR as a balance-sheet metric because it would assign RSF factors based on assets not included on the covered company's balance sheet under GAAP. Some commenters also argued that the agencies should not adopt the proposed treatment because it would result in stable funding requirements that would be greater than specified under the Basel NSFR standard. Commenters also argued that the proposed rule lacked a clear empirical foundation for the treatment of rehypothecated off-balance sheet assets. One commenter argued that the proposed treatment would result in the assignment of ASF and RSF factors that do not accurately reflect the funding risk of the underlying transactions. One commenter objected to the proposed treatment for rehypothecated off-balance sheet assets received in an asset exchange, asserting

[173] The final rule does include certain netting of specific assets against certain liabilities as described in sections VII.A.2 and VII.E.2 of this Supplementary Information section.

[174] *See* section VII.D.3.a of this Supplementary Information section.

that the final rule should assign an ASF factor to the value of the asset received in an asset exchange, based on the type of asset and the remaining maturity of the asset exchange. Another commenter asserted that asset exchanges enable a covered company to manage its collateral at reduced funding costs and lower funding risks, so the proposed treatment of rehypothecated off-balance sheet assets received in an asset exchange is unnecessary to achieve the agencies' stated goal of ensuring that off-balance sheet assets are not used to generate ASF while not reducing the covered company's overall funding risk.

Commenters requested additional clarification as to the scope of activities intended to be covered by § ____.106(d) of the proposed rule, in particular by proposed § ____.106(d)(3), which would have addressed off-balance sheet assets that are sourced through all other types of transactions. One of these commenters stated that proposed § ____.106(d)(3) is extremely punitive and could lead to unintended consequences.

Another commenter asserted that it would be operationally difficult to comply with § ____.106(d) of the proposed rule if a covered company is required to link each source and use of off-balance sheet assets to on-balance sheet assets and liabilities. This commenter also suggested that the final rule should recognize the benefits to a covered company of collateral substitution rights, for example, where a covered company has provided two assets to a single counterparty or a single tri-party repurchase agreement intermediary to secure two separate NSFR liabilities, and the covered company has the operational and legal capability to determine the allocation of the assets to each NSFR liability.

To address the funding risks presented when a covered company has an NSFR liability that is secured by, or results from the sale of, an off-balance sheet asset and to prevent distortion of the NSFR metric, the agencies are finalizing the treatment of rehypothecated off-balance sheet assets under § ____.106(d) generally as proposed, but are narrowing the scope of the section such that § ____.106(d) does not apply to off-balance sheet assets received as variation margin under a derivative transaction. The agencies also are modifying § ____.106(d)(3), as explained in this Supplementary Information section. As noted by commenters, the NSFR is a balance-sheet metric, and the treatment for rehypothecated off-balance sheet assets under the final rule assigns RSF factors to assets recorded on a covered company's balance sheet, rather than to off-balance sheet assets. The agencies also note that the BCBS clarified the treatment of certain off-balance sheet assets under the Basel NSFR standard as a result of rehypothecation, which is generally consistent with the treatment under the final rule.[175]

a) Off-Balance Sheet Assets Obtained in Lending Transactions

Where a covered company obtains an off-balance sheet asset through a lending transaction,[176] the lending transaction will be included as a receivable asset on the covered company's balance sheet. Under § ____.106(d)(1) of the final rule, if a covered company obtained an off-balance sheet asset through a lending transaction (*e.g.,* a reverse repurchase agreement), the final rule treats the balance sheet receivable associated with the lending transaction as encumbered for the longer of: (1) The remaining maturity of the NSFR liability secured by the off-balance sheet asset (*e.g.,* a repurchase agreement) or resulting from the sale of the off-balance sheet asset (*e.g.,* a short sale), as the case may be, and (2) any other encumbrance period already applicable to the lending transaction. The remaining maturity of the liability secured by the off-balance sheet asset, or resulting from the sale of the off-balance sheet asset, restricts the ability of a covered company to monetize the lending transaction receivable and the lending receivable is therefore treated as encumbered.[177] For example, § ____.106(d)(1) applies if a covered company obtains a level 2A liquid asset as collateral under an overnight reverse repurchase agreement with a financial counterparty and subsequently pledges the level 2A liquid asset as collateral in a repurchase transaction with a maturity of one year or more but, consistent with GAAP, does not include the level 2A liquid asset on its balance sheet. In this case, the final rule treats the covered company's balance-sheet receivable associated with the reverse repurchase agreement as encumbered for a period of one year or more, since the remaining maturity of the repurchase agreement secured by the rehypothecated level 2A liquid asset is one year or more. Accordingly, the final rule assigns the reverse repurchase agreement receivable an RSF factor of 100 percent (under § ____.106(c)(1)(iii)) instead of 15 percent (under § ____.106(a)(3)(i)).

A commenter asserted that this type of position poses less funding risk, because the on-balance sheet receivable has a shorter maturity than the liability and the off-balance sheet asset is highly liquid. However, the asset funding need for this type of transaction is driven by the obligation to continue to collateralize the liability for a period of one year or more relative to the short-term sourcing transaction rather than the liquidity characteristics of the asset pledged. Therefore, the effective funding need of the receivable associated with the asset pledged must take into account the one-year period of encumbrance, consistent with a 100 percent RSF factor.

b) Off-Balance Sheet Assets Obtained in an Asset Exchange

Where a covered company provides a security in an asset exchange, the security provided remains on the covered company's balance sheet under GAAP. However, the security received by the covered company in the asset exchange may be an off-balance sheet asset under GAAP (for example, because the covered company acted as a securities borrower in the asset exchange). Under § ____.106(d)(2) of the final rule, if a covered company obtains an off-balance sheet asset under an asset exchange and has an NSFR liability secured by, or resulting from the sale of, the off-balance sheet asset, the final rule treats the on-balance sheet asset provided by the covered company in the asset exchange as encumbered for the longer of: (1) The remaining maturity of the NSFR liability secured by the off-balance sheet asset or resulting from the sale of the off-balance asset, as the case may be, and (2) any encumbrance period already applicable to the provided asset. For example, assume a covered company, acting as a securities borrower, provides a level 2A liquid asset as collateral and obtains a level 1 liquid asset security under an asset

[175] BCBS, ''Basel III—The Net Stable Funding Ratio: frequently asked questions,'' February 2017, available at *https://www.bis.org/bcbs/publ/d396.pdf.*

[176] As described in section VI.A.2 of this Supplementary Information section, the final rule defines the term ''secured lending transaction'' to mean any lending transaction that is subject to a legally binding agreement that gives rise to a cash obligation of a wholesale customer or counterparty to the covered company that is secured under applicable law by a lien on securities or loans provided by the wholesale customer or counterparty, which gives the covered company, as holder of the lien, priority over the securities or loans. Section .____106(d)(1) applies to an off-balance sheet asset obtained under any lending transaction, regardless of the nature of the counterparty or the off-balance sheet asset. For the purposes of this section of this Supplementary Information section, a lending transaction is not an asset exchange or a derivative transaction.

[177] As described in section VI.B of this Supplementary Information section, the final rule includes a new definition of ''Encumbered'' based on any legal, regulatory, contractual or other restrictions on the ability of a covered company to monetize an asset. *See* § ____.3 of the LCR rule.

exchange with counterparty A and with a remaining maturity of six months, and subsequently provides the level 1 liquid asset security as collateral to secure a repurchase agreement with counterparty B and that matures in one year or more. In such a case, the covered company typically would not include the level 1 liquid asset security on its balance sheet.[178] Under § ____.106(d)(2) of the final rule, the level 2A liquid asset provided by the covered company (which remains on the covered company's balance sheet) is treated as encumbered for a period of one year or more (equal to the remaining maturity of the repurchase agreement secured by the rehypothecated level 1 liquid asset security) instead of six months (equal to the remaining maturity of the asset exchange) and the carrying value of the level 2A liquid asset provided is assigned an RSF factor of 100 percent (in accordance with § ____.106(c)(1)(iii)) instead of 50 percent.

With regard to comments that the final rule should recognize the funding value of the off-balance sheet asset received in an asset exchange (in the example above where the covered company acts a securities borrower, the level 1 liquid asset) and for the reasons described in section VII.A.3 of this Supplementary Information section, the final rule provides that a covered company must assign an RSF factor to the on-balance sheet asset provided (in the example above, the level 2A liquid asset) rather than the off-balance sheet asset received because the on-balance sheet asset is a component of the covered company's aggregate funding need at the calculation date. Unlike the LCR rule, where an off-balance sheet asset received in an asset exchange can potentially qualify as eligible HQLA available to satisfy short-term cash-flow needs, the NSFR is a measure of the stability of a covered company's funding profile relative to its assets. As discussed in section V of this Supplementary Information section, the final rule generally does not consider the future availability of an asset as a source of liquidity and assigns RSF factors to assets rather than ASF factors as suggested by commenters.

c) Off-Balance Sheet Assets Obtained Through Other Transactions

Where a covered company obtains an off-balance sheet asset through a transaction that is not a lending transaction or an asset exchange (source transaction), there is the potential that the covered company might not record the source transaction on its balance sheet. At the same time, the covered company may rehypothecate the off-balance sheet asset obtained in the source transaction to obtain funding and generate an NSFR liability. This funding could increase the covered company's ASF amount, depending on the maturity and other characteristics of the NSFR liability, without the source transaction or the off-balance sheet asset itself being reflected in its RSF amount. However, due to the rehypothecation of the off-balance sheet asset, a covered company may record a liability to return the asset to the counterparty of the source transaction or a liability secured by the off-balance sheet asset.[179] Further, the covered company may need to roll over the source transaction if this transaction matures before the encumbrance of the rehypothecated asset terminates. Alternatively, the covered company may need to obtain a replacement asset to close out the source transaction before the encumbrance expires.

To address this risk and prevent potential distortions of the NSFR, under § ____.106(d)(3) of the final rule, if a covered company has an off-balance sheet asset that it did not obtain under either a lending transaction or an asset exchange, the covered company is required to treat any associated on-balance sheet asset resulting from the rehypothecation transaction as encumbered for a period equal to the greater of the remaining maturity of the NSFR liability or the encumbrance of the source transaction. This provision would apply to any proceeds that appeared on a covered company's balance sheet as a result of a rehypothecation transaction. For example, if a covered company rehypothecates an off-balance sheet asset for a period of one year more and receives cash as proceeds of the rehypothecation, the covered company would be required to treat the cash received as encumbered and assigned a 100 percent RSF factor. Covered companies are not required to treat the off-balance sheet asset as if the off-balance sheet asset was included on a company's balance sheet. Even if a covered company reuses the proceeds of the rehypothecated transaction, the covered company should still apply an RSF factor, based on the encumbrance, to the on-balance sheet asset that was the direct result of the transaction. Without this treatment, a covered company's RSF amount would not reflect the funding risk that the covered company must maintain the asset, or a similar asset, or the fact that the covered company has limited its ability to monetize or recognize inflows from the source transaction for the duration of the rehypothecation.

Additionally, § ____.106(d)(3) of the proposed rule would have applied in the case of an NSFR liability secured by, or resulting from the sale of, an off-balance sheet asset that a covered company had received in the form of variation margin under a derivative transaction. The final rule modifies the proposal by not subjecting assets received as variation margin under a derivative transaction to the requirements of § ____.106(d).[180] Excluding such variation margin from § ____.106(d) of the final rule is appropriate because the final rule accounts for variation margin within the derivatives RSF amount calculation specified in § ____.107.[181] Section ____.106(d)(3) of the final rule therefore

[178] Under GAAP, where a covered company acting as a securities borrower engages in an asset exchange, the asset provided by the covered company typically remains on the covered company's balance sheet while the received asset, if not rehypothecated, would not be on the covered company's balance sheet. To the extent a covered company includes on its balance sheet an asset received in an asset exchange and the covered company subsequently uses the on-balance sheet asset as collateral to secure a separate NSFR liability, § ____.106(d) of the final rule does not apply. For example, if a covered company acts as a securities lender in an asset exchange and recognizes the collateral securities received on its balance sheet, the covered company should treat those collateral securities received as encumbered if the covered company sells or rehypothecates the collateral securities received, taking into account the remaining maturity of the transaction in which they have been rehypothecated. While the covered company should treat the securities it provided in the asset exchange as encumbered, the covered company would not be required to treat the securities it provided in the original asset exchange as encumbered for a period other than the remaining maturity of the asset exchange. The on-balance sheet asset used as collateral to secure the NSFR liability is assigned an RSF factor in the same manner as other assets on the covered company's balance sheet (including by taking into account the asset's encumbrance) pursuant to §§ ____.106(a) through (c) or § ____.107 of the final rule, as applicable. *See* section VII.A.3 of this Supplementary Information section for assets received that remain unencumbered and section VII.D.3.h of this Supplementary Information section for any balance sheet assets that are encumbered.

[179] If the NSFR liability is a short sale that is booked on an open basis or otherwise has a remaining maturity of less than six months, the asset resulting from the NSFR liability would be treated as unencumbered.

[180] This treatment applies to both assets received as variation margin necessary to cover the current exposure of a derivative or derivative netting set and variation margin received in excess of such an amount.

[181] Section ____.107 of the final rule provides for netting of certain rehypothecatable level 1 liquid assets received as variation margin by the covered company against the value of the underlying derivative asset for purposes of a covered company's derivatives RSF amount. *See* section VII.E.2 of this Supplementary Information section. The final rule's modifications to § ____.106(d)(3) of the proposed rule are consistent with § ____.107 of the final rule.

applies where a covered company has rehypothecated an off-balance sheet asset not received under a lending transaction or asset exchange or as variation margin under a derivative transaction. For example, the agencies note that § ____.106(d)(3) of the final rule applies if a covered company obtains an asset as initial margin under a derivative transaction or borrows an asset for a fee without providing collateral and uses the asset to generate an NSFR liability without including the asset on its balance sheet under GAAP.

TABLE 4—TREATMENT OF OFF-BALANCE SHEET ASSETS

Transaction through which a covered company obtains an off-balance sheet asset (source transaction) and whether the asset is subsequently used in a transaction to generate a NSFR liability.	RSF factor is applied to the following on-balance sheet asset, taking into account the remaining maturity of the NSFR liability and the encumbrance period of the source transaction.
Off-balance sheet asset received in any source transaction and is not rehypothecated.	No RSF factor applied.
Off-balance sheet asset received in a lending transaction and subsequently used to generate a NSFR liability.	RSF factor is applied to on-balance sheet lending transaction receivable under § ____.106(d)(1).
Off-balance sheet asset received in an asset exchange (*e.g.,* where a covered company acts as securities borrower) subsequently used to generate a NSFR liability*.	RSF factor is applied to the on-balance sheet asset provided in the asset exchange under § ____.106(d)(2).
Off-balance sheet asset received as variation margin under a derivative transaction.	See derivative treatment under § ____.107 of the final rule.
Off-balance sheet asset received in a source transaction other than a lending transaction, or asset exchange, and the asset is not received as variation margin under a derivative transaction, and subsequently used to generate a NSFR liability.	RSF factor is applied to the on-balance sheet asset resulting from the NSFR liability under § ____.106(d)(3).

* For assets received in an asset exchange recorded on balance sheet (*e.g.,* when a covered company acts as a securities lender) see sections VII.A.3 and VII.D.3.h of this Supplementary Information section.

Consistent with the proposed rule, § ____.106(d) of the final rule does not apply in cases where a covered company has an NSFR liability secured by, or resulting from the sale of, an on-balance sheet asset.

d) Technical and Operational Clarifications

(i) Amounts of Rehypothecated Off-Balance Sheet Assets Relative to Transactions Through Which the Assets Are Obtained

If the value of rehypothecated off-balance sheet assets obtained in lending transactions or asset exchanges is less than the carrying value of the on-balance sheet receivables for the lending transactions or assets provided under the asset exchanges, respectively, the covered company should treat the value of the receivables or assets provided as encumbered in an amount equivalent to the value of the rehypothecated off-balance sheet assets, for purposes of §§ ____.106(d)(1) and (2).[182] This treatment recognizes that when a covered company rehypothecates only a portion of the value of off-balance sheet assets obtained in a lending transaction or an asset exchange, it would be overly conservative to apply an RSF factor based on such encumbrance to the entire value of the lending transaction receivable, or to the full value of assets provided in the asset exchange, as applicable. Accordingly, the covered company need not treat the entire value of the receivables or assets provided as encumbered.

Conversely, the value of rehypothecated off-balance sheet assets received by a covered company in a lending transaction, asset exchange, or other transaction might exceed the value of the on-balance sheet receivable for the lending transaction, the assets provided under the asset exchange, or the asset resulting from the NSFR liability, respectively. In such cases, a covered company potentially could rehypothecate an amount of off-balance sheet assets to produce an NSFR liability that exceeds the value of the on-balance sheet lending transaction receivable or assets provided (excess rehypothecated assets). Under the final rule, on-balance sheet assets resulting from the rehypothecation of the off-balance sheet assets are assigned the appropriate RSF factor consistent with other on-balance sheet assets. Covered companies should use appropriate and justifiable assumptions in identifying and attributing the sources and uses of off-balance sheet assets, including excess rehypothecated assets, consistent with the operational clarifications below.

(ii) Operational Clarifications

With regard to a commenter's concerns about the operational burden associated with linking assets and liabilities for purposes of § ____.106(d), if a covered company provides an asset as collateral, and the covered company operationally could have provided either an off-balance sheet asset or the same security in the form of on-balance sheet asset, the final rule permits the covered company to identify either the off-balance sheet asset or the on-balance sheet asset as the provided collateral for purposes of determining encumbrance treatment under §§ ____.106(c) and (d). Similarly, if a covered company operationally could have provided either of two equivalent off-balance sheet assets, one received under a lending transaction and the other under an asset exchange, the final rule does not restrict the covered company's ability to identify either asset as the provided collateral for purposes of determining encumbrance treatment under § ____.106(d). In either case, the covered company's identification for purposes of §§ ____.106(c) and ____.106(d) must be consistent with contractual and other applicable requirements on the relevant calculation date. The same treatment would apply for a covered company's use of a security as collateral and the covered company's ability to identify whether the security is already owned by the covered company or is an identical security received from a lending transaction, asset exchange, or other transaction.

For example, if a covered company receives a security in a reverse repurchase agreement that is identical to a security the covered company already owns, and the covered company provides one of these securities as collateral to secure a repurchase

[182] A covered company would assign appropriate RSF factors to the value of the lending transaction receivables, or assets provided in the asset exchanges, equivalent to the value of the rehypothecated off-balance sheet assets based on the appropriate encumbrance periods and categories of RSF factors under § ____.106 of the final rule.

agreement, the final rule permits the covered company to identify, for purposes of determining encumbrance treatment under §§ ____.106(c) and (d), either the owned security or the security received in the reverse repurchase agreement as the encumbered collateral for the repurchase agreement, provided that the covered company had the operational and legal capability to provide either one of the securities as of the calculation date. If the covered company chooses to treat the off-balance sheet security received in connection with the reverse repurchase agreement as the collateral securing the repurchase agreement at the calculation date, § ____.106(d)(1) would apply and the covered company would treat the reverse repurchase agreement as encumbered for purposes of assigning an RSF factor. If the covered company instead chooses to treat the owned security as the collateral encumbered by the repurchase agreement, the covered company would apply the appropriate RSF factor (reflecting the encumbrance) to the owned security under § ____.106(c) and no additional adjustment would need to be made to the encumbrance of the reverse repurchase agreement under § ____.106(d).

The agencies anticipate that a covered company would be able to comply with this section based on aggregate information (because much of the data is currently collected and monitored for other purposes, including the FR 2052a and compliance with the LCR rule) rather than through transaction-by-transaction tracking. For example, a covered company may determine its requirements under §§ ____.106(c) and ____.106(d) based on the aggregate value of an asset class pledged at each of the NSFR rule's encumbrance periods (less than six months, six months or more but less than one year, or one year or more); the aggregate value of the asset class on the covered company's balance sheet; and the values and maturity categories of balance sheet receivables or assets provided by the covered company under transactions sourcing each type of borrowed asset.[183] The agencies expect this approach to substantially limit any incremental operational costs of compliance for covered companies.

In addition, when the covered company has provided two assets to a single counterparty to secure two different NSFR liabilities, and the covered company had the sole legal right and operational capability to determine the allocation of the collateral provided to each of the NSFR liabilities at the calculation date, the final rule permits the covered company to identify which asset secures which NSFR liability for purposes of determining encumbrance treatment under §§ ____.106(c) and ____.106(d). As an example, assume that a covered company enters into two secured funding transactions with a single counterparty (or with a single tri-party repo intermediary), one with an overnight maturity and one with a maturity of one year, and provides level 2A liquid assets as collateral for one secured funding transaction and level 2B liquid assets as collateral for the second secured funding transaction. If the covered company had the legal right and operational capability to allocate the provided level 2A and level 2B liquid assets between the two secured funding transactions, the final rule permits the covered company to identify which of the securities are encumbered for a period of one year and which are encumbered overnight for purposes of §§ ____.106(c) and ____.106(d). As described above, the covered company's determinations for purposes of these sections must be consistent with contractual and other applicable requirements, including accounting treatment.[184] Similar considerations apply where a covered company has borrowed an asset of one type from a counterparty pursuant to an asset borrowing transaction and the covered company has the legal right and operational capability to substitute another type of asset to return.

E. Derivative Transactions

The proposed rule would have required a covered company to maintain stable funding to support its on-balance sheet derivative activities. Under the proposed rule, a covered company would have calculated its required stable funding amount relating to its derivative transactions[185] (derivatives RSF amount) separately from its other assets, commitments, and liabilities due to the variable nature and generally more complex features of derivative transactions relative to other on-balance sheet assets and liabilities of covered companies.[186] For similar reasons, the proposed rule would not have separately treated derivative liabilities in excess of derivative assets as available stable funding to support non-derivative assets and commitments, as described below.

Under the proposed rule, a covered company's derivatives RSF amount would have consisted of three general components, each described further below: (1) A component reflecting the current net value of a covered company's derivative assets and liabilities, taking into account variation margin provided by and received by the covered company (current net value component); (2) a component to account for initial margin provided by a covered company for its derivative transactions and assets contributed by a covered company to a CCP's mutualized loss-sharing arrangement in connection with cleared derivative transactions (initial margin component); and (3) a component to account for potential future derivatives valuation changes (future value component). For the current net value component, a covered company would have netted its derivatives transactions and certain variation margin amounts to identify whether the current net value of its

[183] In the case of securities, this approach would involve a covered company identifying its aggregate encumbrances by each security identifier (*e.g.,* CUSIP or ISIN) for each of the NSFR's encumbrance periods; the aggregate value held in a covered company's inventory by each security identifier; and the aggregate value of on-balance sheet receivables or assets associated with transactions sourcing each security identifier. Since the NSFR generally applies the same funding requirement to all transaction types that have similar counterparty, collateral and maturity characteristics (*e.g.,* a margin loan to a financial sector entity maturing in six months and a reverse repo to a financial sector entity maturing in six months would have the same funding requirement), a covered company may consider transactions that are treated equivalently by the NSFR in aggregate when calculating the receivable amounts that are subject to § ____.106(d) of the final rule.

[184] Covered companies may allocate collateral encumbered at the calculation date between transactions secured by such collateral based on the eligibility of the currently encumbered pool of collateral using justifiable and consistent assumptions. For the purposes of § ____.106 of the final rule, a covered company should not make assumptions regarding the potential future substitution of encumbered collateral with other assets.

[185] As defined in § ____.3 of the LCR rule, ''derivative transaction'' means a financial contract whose value is derived from the values of one or more underlying assets, reference rates, or indices of asset values or reference rates. Derivative contracts include interest rate derivative contracts, exchange rate derivative contracts, equity derivative contracts, commodity derivative contracts, credit derivative contracts, forward contracts, and any other instrument that poses similar counterparty credit risks. Derivative contracts also include unsettled securities, commodities, and foreign currency exchange transactions with a contractual settlement or delivery lag that is longer than the lesser of the market standard for the particular instrument or five business days. A derivative does not include any identified banking product, as that term is defined in section 402(b) of the Legal Certainty for Bank Products Act of 2000 (7 U.S.C. 27(b)), that is subject to section 403(a) of that Act (7 U.S.C. 27a(a)).

[186] The proposed rule would have included mortgage commitments that are derivative transactions in the general derivative transactions treatment, in contrast to the LCR rule, which excludes those transactions and applies a separate, self-contained mortgage commitment treatment. *See* §§ ____.32(c) and (d) of the LCR rule.

derivatives positions was either an NSFR derivatives asset amount or an NSFR derivatives liability amount (described below) and assigned a 100 percent RSF factor or zero percent ASF factor, respectively. For the initial margin component, the proposed rule would have assigned an 85 percent RSF factor to CCP contributions and a minimum 85 percent RSF factor to initial margin provided by a covered company. The proposed rule also would have assigned a 100 percent RSF factor to the future value component, which would have equaled 20 percent of the sum of a covered company's gross derivative liabilities. The final rule makes certain adjustments to the current net value component's treatment of variation margin received by covered companies and the calibration of the future value component.

1. Scope of Derivatives Transactions Subject to § ____.107 of the Final Rule

The proposed rule would have required a covered company to measure its derivatives exposures in its calculation of the NSFR, regardless of the counterparty. A few commenters suggested that all derivative transactions with commercial end-users—specifically, entities that are not subject to the clearing requirement under the Commodity Exchange Act[187] or the margin requirements for non-cleared swaps under the agencies' swap margin rule (swap margin rule)—should be excluded from the NSFR rule.[188] These commenters argued that derivative activities of commercial end-users do not pose a threat to financial stability and that applying funding requirements for such activities would be inconsistent with Congress's intent in the Dodd-Frank Act that the regulation of derivative trading not impose costs on commercial end-users.[189]

The final rule does not distinguish between derivative transactions with commercial end-users and other counterparty types. Unlike the clearing and margin requirements cited by commenters, which apply specifically to derivative transactions and include statutory exemptions for certain transactions with non-financial sector counterparties, the final rule seeks to measure and address funding risks of a covered company's aggregate balance sheet. The final rule therefore includes derivative transactions as one of many types of exposures that contribute to a covered company's aggregate funding risk.[190] Derivative transactions are subject to a range of funding risks driven by the underlying economic exposures and contractual features, such as their variable nature and the regular need to exchange collateral. These funding risks are not primarily determined by the derivative transaction's counterparty, and therefore transactions with commercial end-user counterparties could contribute to funding risk in a manner similar to derivative transactions with financial sector entity counterparties. In addition, although the agencies' regulatory capital rule differentiates the capital requirements for derivative transactions with commercial end-user and financial sector counterparties in certain cases, such distinction is based largely on the potential for the transactions with commercial end-users to be primarily used to hedge or mitigate commercial risks, which can be a material consideration in determining the counterparty credit risk for an exposure.[191] By contrast, the NSFR is not designed to measure the risks associated with counterparty defaults, but instead presumes a covered company would continue to intermediate and fund its derivatives portfolio over a one-year horizon. Accordingly, the final rule does not provide an exclusion for derivative transactions with commercial end-user counterparties and requires a covered company to include all its balance sheet derivatives exposures in its calculation of the NSFR.

2. Current Net Value Component

Under the proposed rule, the stable funding requirement for the current net value component of a covered company's derivative assets and liabilities would have been based on the value (as of the calculation date) of each of its derivative transactions (not subject to a QMNA) and each QMNA netting set and the variation margin provided by and received by the covered company. For the current net value component, the proposed rule would have measured a covered company's aggregate derivative activities on a net basis by: (i) Reducing exposures with each counterparty by taking into account QMNA netting sets; (ii) determining the value of each derivative asset, liability or QMNA netting set after netting certain variation margin amounts; and (iii) offsetting a covered company's overall total derivatives asset amount with its total derivatives liability amount, each as described below (*i.e.,* the proposed rule's NSFR derivatives asset or liability amount). Through these netting calculations, a covered company would have determined whether the current net value of its derivatives positions was either an NSFR derivatives asset amount or an NSFR derivatives liability amount. The proposed rule would have assigned a 100 percent RSF factor to a covered company's NSFR derivatives asset amount or a zero percent ASF factor to a covered company's NSFR derivatives liability amount. By netting across assets and liabilities in addition to counterparties and transactions, the current net value component would have reflected the current stable funding needs associated with the covered company's overall derivatives activities.

The agencies received a number of comments regarding this component, including comments on the calculation of the NSFR derivative asset or liability amount, the proposed RSF and ASF factors for these amounts, and how the proposed calculation would have accounted for variation margin received and provided by a covered company. The final rule modifies the calculation of the current net value component with certain adjustments to the types of variation margin that are eligible for netting in such component, but otherwise adopts the treatment as proposed. Due to the variable nature of derivative transactions, the interdependencies within the derivative

[187] Although the term ''commercial end-user'' is not defined in the Dodd-Frank Act, it is used in this Supplementary Information section to mean a company that is eligible for the exception to the mandatory clearing requirement for swaps under section 2(h)(7)(A) of the Commodity Exchange Act and section 3C(g)(1) of the Securities Exchange Act, respectively. This exception is generally available to a person that (1) is not a financial entity, (2) is using the swap to hedge or mitigate commercial risk, and (3) has notified the CFTC or SEC how it generally meets its financial obligations with respect to non-cleared swaps or security-based swaps. *See* 7 U.S.C. 2(h)(7)(A) and 15 U.S.C. 78c–3(g)(1).

[188] *See* 12 CFR part 45 (OCC); 12 CFR part 237 (Board); 12 CFR part 349 (FDIC); *see also* Final Rule, Margin and Capital Requirements for Covered Swap Entities, 80 FR 74840 (November 30, 2015).

[189] These commenters cited to 7 U.S.C. 2(h)(7), 6s(e)(4) as examples within the Dodd-Frank Act. One commenter noted that certain regulatory requirements relating to derivative transactions in jurisdictions outside the United States also exempt certain derivative transactions with non-financial sector entities, which the commenter argued provided support for an exemption from the NSFR.

[190] As discussed further below, the final rule, like the proposed rule, also applies a stable funding requirement based on a covered company's derivative transactions in the aggregate, using a standardized measure rather than a more granular approach that would consider in greater detail specific features of individual transactions, such as counterparty type.

[191] For example, the standardized approach for calculating the exposure amount of derivative contracts under the agencies' regulatory capital rule removes the alpha factor from the exposure amount formula for derivative contracts with commercial end-user counterparties, resulting in lower requirements in comparison to similar derivative contracts with a counterparty that is not a commercial end-user.

portfolios of covered companies, and the connection to assets and liabilities related to margin provided and received by a covered company, the final rule, like the proposed rule, assesses the funding risks of derivatives activities on a net basis. Under the final rule, the NSFR point-in-time measure generally reflects the funding provided by derivative transactions and associated variation margin in supporting a covered company's funding needs for its derivative portfolio. Under the final rule, the current net value component is calculated as follows:

Step 1: Calculation of Derivative and QMNA Netting set Asset and Liability Values

First, a covered company determines the asset or liability value of each derivative transaction (not subject to a QMNA) and each QMNA netting set. Each derivative transaction or QMNA netting set has either a derivatives asset value or derivatives liability value, depending on (1) the derivative transaction's or QMNA netting set's asset or liability valuation and (2) the value of variation margin provided or received under the derivative transaction or QMNA netting set that is eligible for netting under the final rule.[192]

A derivatives asset value of a derivative transaction or QMNA netting set is the asset value after netting variation margin received in the form of cash or rehypothecatable level 1 liquid asset securities by the covered company that meets the eligibility conditions described in § ____.107(f)(1) of the final rule and discussed in section VII.E.2.b of this Supplementary Information section.

A derivatives liability value of a derivative transaction or QMNA netting set is the liability value after netting any variation margin provided by the covered company, regardless of the type of variation margin. The final rule also specifies that a covered company may not reduce its derivatives asset or liability values by initial margin provided to or received from counterparties.[193]

Step 2: Calculation of Total Derivatives Asset Amounts and Total Derivatives Liability Amounts

Second, a covered company sums its derivatives asset values, as calculated in step 1, to determine its total derivatives asset amount, and separately sums its derivatives liability values, as calculated in step 1, to determine its total derivatives liability amount.[194]

Step 3: Calculation of NSFR Derivatives Asset Amount or NSFR Derivatives Liability Amount

Third, a covered company calculates its overall NSFR derivatives asset amount or NSFR derivatives liability amount by calculating the difference between its total derivatives asset amount and its total derivatives liability amount, each as calculated in step 2.[195] If a covered company's total derivatives asset amount exceeds its total derivatives liability amount, the covered company would have an NSFR derivatives asset amount. Conversely, if a covered company's total derivatives liability amount exceeds the total derivatives asset amount, the covered company would have an NSFR derivatives liability amount. The NSFR derivatives asset or NSFR derivatives liability amount represents a covered company's overall derivatives activities on a net basis.

Step 4: Application of RSF or ASF Factors to the NSFR Derivatives Asset Amount or NSFR Derivatives Liability Amount

Fourth, and finally, the final rule assigns a 100 percent RSF factor to a covered company's NSFR derivatives asset amount or a zero percent ASF factor to a covered company's NSFR derivatives liability amount. [196]

a) Comments Regarding NSFR Derivatives Asset Amount and NSFR Derivatives Liability Amount

A number of commenters recommended that the approach for calculating the NSFR derivatives asset amount or NSFR derivatives liability amount should be based on the remaining maturity of a covered company's derivative transactions or netting sets, which commenters asserted would be more consistent with the proposed rule's consideration of tenor for assigning an RSF factor for certain other assets. Moreover, commenters asserted that short-dated derivatives do not require as much long-term funding as long-dated derivatives because a covered company could generally expect to allow its short-dated derivative transactions to mature within the NSFR's one-year horizon, there are generally no market or client expectations that firms would roll over derivative transactions, and the agencies did not provide empirical evidence suggesting otherwise. For example, commenters suggested reducing the RSF factor for assets based on individual derivative transactions with a remaining maturity of less than one year, with a further reduction for asset values based on individual derivative transactions with a remaining maturity of six months or less. Some commenters suggested that the agencies should rely on other regulatory measures to determine the remaining maturity of derivative netting sets, such as the calculation of maturity for derivative netting sets under the internal models methodology for counterparty credit risk under the agencies' advanced approaches risk-based capital rule.[197] As an alternative to incorporating tenor considerations to determine a covered company's derivatives asset amount, one commenter suggested that the final rule assign reduced RSF factors for an asset purchased by a covered company as a hedge to a derivative transaction based on the remaining maturity of the derivative it is meant to hedge.

The agencies are not adopting in the final rule a more granular approach to the calculation of the NSFR derivatives asset amount and are instead adopting the approach under the proposed rule. The current net value component is an operationally simple measure of the funding needs associated with a covered company's aggregate derivatives portfolio. Relative to other approaches, such as the more granular approaches suggested by commenters that would take into account the remaining maturity of certain derivative transactions or hedging transactions, the final rule's approach allows for a consistent and comparable measure of net derivative exposures across covered companies. Further, while a more complex approach based on a covered company's internal models methodology as suggested by commenters may be appropriate in other contexts, such an approach would be contrary to the NSFR's standardized calculation of a relatively simple measure of the risks raised by a covered company's derivative positions. Although this simplified approach may overstate the funding risk of certain short-maturity derivative assets, it may

[192] *See* § ____.107(f) of the final rule.

[193] Initial margin includes payments provided and received by a covered company to provide credit protection relative to a derivative exposure, including independent amounts. Such payments should be considered as initial margin under the final rule except in instances where a payment, such as the return of part or all of an independent amount, has occurred due to the change in the value of a derivative exposure and the payment has been netted against the covered company's exposure, in which case the payment should be treated as variation margin.

[194] *See* § ____.107(e) of the final rule.

[195] *See* § ____.107(d) of the final rule.

[196] *See* §§ ____.107(b) and (c) of the final rule.

[197] *See* 12 CFR 3.132(d)(4) (OCC); 12 CFR 217.132(d)(4) (Board); 12 CFR 324.132(d)(4) (FDIC).

also understate the funding risk of certain short-maturity derivative liabilities. As described above, the current net value component is arrived at through a series of netting procedures to determine the NSFR derivatives asset amount. Derivative asset exposures to a counterparty with varying maturities may be offset by derivative liabilities within a netting set. Additionally, total derivative assets are netted with total derivative liabilities. Given the inclusion of many different transactions in the calculation, the remaining maturity of the resulting NSFR derivatives asset amount or NSFR derivatives liability amount to which the RSF or ASF factor is applied would not be intuitive or meaningful for the NSFR's one-year time horizon and estimating its effective maturity would require complex calculations. Under the final rule's approach, a covered company's current net value component can be reduced by the value of derivative liabilities of any maturity, including short-dated positions. This simplified approach should serve as a reasonable and balanced approximation of the current stable funding needs associated with a covered company's overall derivatives activities.

In response to comments requesting the assignment of reduced RSF factors to assets that hedge derivative transactions, the agencies similarly note that the current net value component of the final rule is designed as a simplified approach that nets all derivative liabilities against derivative assets. An alternative approach that permits a covered company to match particular derivative assets or liabilities to specific hedging positions (whether derivative transactions or otherwise) to determine the assignment of RSF factors for the current net value component would introduce significant complexity, reduce standardization, and, depending on the approach, introduce an additional operational burden or increased reliance on covered companies' internal models. In addition, although derivative assets or liabilities may reduce certain risks of the specific positions for which they are hedging, they would still require stable funding to enable the covered company to continue to intermediate and fund its derivatives portfolio and hedging positions over a one-year time horizon. The final rule therefore adopts the same calculation structure as the proposed rule for the current net value component, with modifications discussed below with respect to consideration of variation margin received by a covered company.

The agencies are adopting the proposed rule's assignment of a 100 percent RSF factor to an NSFR derivatives asset amount and a zero percent ASF factor to an NSFR derivatives liability amount. The calculation of a covered company's NSFR derivatives asset amount already recognizes the contribution made by variation margin and derivative liabilities to the funding for derivative asset positions, based on their treatment under the final rule. As a result, the NSFR derivatives asset amount represents overall derivatives activities that are not fully margined, based on the eligibility of variation margin for netting under the rule. Derivative transactions are complex financial instruments that can significantly and quickly fluctuate in value. Given these risks, the final rule, like the proposed rule, would require full stable funding for these net residual exposures. Moreover, while the final rule's current net value component recognizes the contribution made by derivative liabilities to the funding for derivative asset positions, the agencies do not consider a covered company's NSFR derivatives liability amount, if any, to be available stable funding to support assets outside of the covered company's derivative portfolio.

b) Variation Margin Received and Provided

Under the proposed rule's calculation of a covered company's current net value component, a covered company would have been permitted to offset derivative assets only by variation margin received that was in the form of cash that met criteria at § ____.10(c)(4)(ii)(C)(*1*) through (*7*) of the SLR rule (SLR netting criteria).[198] Additionally, under the proposed rule, all variation margin provided by the covered company would have been taken into account in determining derivatives liability values. The proposed rule also would have assigned RSF factors to on-balance sheet assets that the covered company has provided or received as variation margin under a derivative transaction (not subject to a QMNA netting set) or QMNA netting set, and an ASF factor to any liability that arises from an obligation to return variation margin.

(i) Criteria for Netting of Variation Margin Received or Provided Against Derivative Assets or Liabilities, Respectively

The agencies received comments regarding the proposed rule's criteria for variation margin received to be eligible for netting against derivatives asset values. Commenters argued that the proposed rule lacked a rationale for recognizing all forms of variation margin provided by a covered company against derivatives liability values, while only permitting derivatives asset values to be netted by variation margin received by a covered company if the variation margin met the SLR netting criteria. These commenters argued that the proposed treatment for netting variation margin received was overly conservative and would increase costs to covered companies. Commenters requested that the agencies allow additional forms of variation margin received to be netted against derivatives assets.

Operational and Contractual Criteria for Netting Variation Margin Received

Many commenters requested that the final rule permit netting of additional variation margin received against the covered company's derivative assets because the amounts received would represent a funding benefit to the covered company. Commenters argued that, unlike the SLR rule, the NSFR rule is designed to measure the funding risk of a covered company's balance sheet and, therefore, should recognize the value of collateral received when the receipt of collateral represents a source of liquidity or facilitates the monetization of the underlying derivative asset. These commenters asserted that the final rule should recognize netting for any cash collateral that is received by a covered company, specifically criticizing the proposed criteria that variation margin be calculated and transferred on a daily basis or provide for the full extinguishment of a net current credit exposure, as the amounts of cash collateral received would represent a funding benefit to the covered company. Commenters noted that, under the proposed rule, a small shortfall of variation margin would result in a

[198] *See* 12 CFR 3.10(c)(4)(ii)(C) (OCC); 12 CFR 217.10(c)(4)(ii)(C) (Board); 12 CFR 324.10(c)(4)(ii)(C) (FDIC). Specifically, under the proposed rule, these conditions were: (1) Cash collateral received is not segregated; (2) variation margin is calculated and transferred on a daily basis based on mark-to-fair value of the derivative contract; (3) variation margin transferred is the full amount necessary to fully extinguish the net current credit exposure to the counterparty, subject to the applicable threshold and minimum transfer amounts; (4) variation margin is cash in the same currency as the settlement currency in the contract; (5) the derivative contract and the variation margin are governed by a QMNA between the counterparties to the contract, which stipulates that the counterparties agree to settle any payment obligations on a net basis, taking into account any variation margin received or provided; (6) variation margin is used to reduce the current credit exposure of the derivative contract and not the PFE (as that term is defined in the SLR rule); and (7) variation margin may not reduce net or gross credit exposure for purposes of calculating the Net-to-gross Ratio (as that term is defined in the SLR rule).

derivative asset being considered as entirely un-margined, which could lead to volatility in the amounts allowed for netting due to periodic shortfalls. Certain commenters requested that, at a minimum, this requirement be revised so that margin disputes or operational shortfalls would not have an impact on the netting amount. Commenters also argued that, if the SLR netting criteria are retained in the final rule, the criteria should be changed to align with proposed changes to the Basel Leverage Ratio Framework to avoid the final rule being more be more stringent than the Basel NSFR standard, which incorporates the Basel Leverage Ratio Framework netting criteria by reference.[199]

Commenters also specifically recommended that the final rule not include the proposed criterion that cash variation margin received must be in the same currency as the settlement currency in the contract. These commenters noted that the LCR rule treats HQLA denominated in a foreign currency as a source of liquidity that can be used to meet near-term outflows denominated in a different currency and the swap margin rule permits the receipt of cash collateral denominated in a currency different from the settlement currency of the derivative transaction if the currency falls within swap margin rule's definition of ''major currency'' or, if the cash variation margin is not in a ''major currency,'' subject to an 8 percent haircut under that rule.[200] Commenters expressed concern that the proposed criterion would discourage covered companies from accepting variation margin in certain currencies. These commenters argued the proposed criterion would make transactions more expensive if covered companies passed along any increased costs to counterparties by requiring them to provide variation margin in certain currencies.

After considering these comments, the agencies have revised the proposal by: (1) Removing the requirement that variation margin be received in the full amount necessary to extinguish the net current credit exposure to a counterparty in order to be recognized for netting purposes; and (2) modifying the currency requirement. In the final rule, to be recognized for netting purposes, the variation margin (1) must not be segregated; (2) must be received in connection with a derivative transaction that is governed by a QMNA or other contract between the counterparties to the derivative transaction, which stipulates that the counterparties agree to settle any payment obligations on a net basis, taking into account any variation margin received or provided; (3) must be calculated and transferred on a daily basis on mark-to-fair value of the derivative contract; and (4) must be in a currency specified as an acceptable currency to settle payment obligations in the relevant governing contract.

In response to commenters, the final rule does not include the requirement that variation margin be received in the full amount necessary to extinguish the net current credit exposure to a counterparty in order to be recognized for netting purposes. This change will avoid unduly penalizing a covered company if variation margin the covered company has received does not fully extinguish the underlying derivative exposure due to short-term margin disputes or operational reasons and would avoid volatility in a covered company's funding requirement due to periodic, short-term shortfalls in variation margin received.[201]

The final rule includes a modified version of the proposed netting criterion for currency. Specifically, the final rule requires that in order to qualify for netting treatment, variation margin received by a covered company must be in a currency specified as an acceptable currency to settle the obligation in the relevant governing contract. Non-cash variation margin must be denominated in a currency specified as an acceptable currency. The final rule does not adopt certain commenters' suggestions to permit netting of variation margin only if it is denominated in certain major currencies, or to apply discount rates to account for costs of currency conversion, because such requirements would have significantly increased the complexity of the final rule. Allowing variation margin, whether cash or non-cash, that is not in a currency specified as an acceptable currency would also entail currency conversion risks and decrease the certainty about whether the variation margin truly netted out a derivatives exposure.

The final rule retains the requirement that variation margin is calculated on a daily basis based on the fair value of the derivative contract. To satisfy this criterion, derivative positions must be valued daily, and margin must be transferred daily when the threshold and daily minimum transfer amounts are satisfied according to the terms of the derivative contract. While variation margin exchanged less frequently may reduce the funding risk associated with a derivative position, the requirement that margin be exchanged daily makes the funding flows associated with derivative positions more predictable and manageable. Derivative positions with less frequent or episodic transfers of variation margin present more significant funding concerns than derivative positions subject to daily margin exchanges.

Netting Variation Margin Received in the Form of Non-Cash Collateral

With respect to non-cash variation margin received by a covered company, commenters recommended that the final rule recognize variation margin received in the form of rehypothecatable securities. In particular, commenters argued that variation margin received in the form of rehypothecatable level 1 liquid assets represents stable funding to a covered company with respect to derivative assets. The commenters cited the treatment of level 1 liquid assets under the LCR rule as evidence that such securities have limited liquidity and market risk.

Other commenters recommended that all classes of rehypothecatable HQLA, not only rehypothecatable level 1 liquid assets, should be recognized for netting under § ____.107 of the final rule. Some commenters urged the agencies to permit netting of variation margin received in the form of rehypothecatable HQLA, subject to haircuts equivalent to the applicable RSF factors for such assets. One commenter also suggested applying the haircuts used by the Board for collateral accepted at the discount window to determine the amount by which such collateral received as variation margin would offset a derivatives asset. Other commenters asserted that market practices—such as haircuts and daily exchange of collateral—ensure that non-cash variation margin received would provide a sufficiently stable source of funding for purposes of netting against a covered company's derivative assets.

Commenters also asserted that permitting netting of non-cash variation margin received would better align with the treatment of collateral under the swap margin rule, which allows certain non-cash collateral to be used to meet variation margin requirements.[202]

[199] *See* BCBS, Consultative Document: Revisions to the Basel Leverage Ratio Framework (April 2016), p. 7, Annex ¶ 24(iv).

[200] *See* 12 CFR 45.6 (OCC); 12 CFR 237.6. (Board); 12 CFR 349.6 (FDIC).

[201] Because the final rule does not include the proposed criterion regarding full extinguishment, the agencies note that comparisons of this criterion to the Basel Leverage Ratio Framework are accordingly no longer relevant.

[202] *See* 12 CFR 45.6 (OCC); 12 CFR 237.6. (Board); 12 CFR 349.6 (FDIC).

Commenters further argued that recognition of non-cash variation margin received would be consistent with the proposed rule's treatment of variation margin provided as well as other parts of the proposed rule that would have assigned lower RSF factors to an asset based on receipt of collateral.[203]

Commenters argued that the proposed treatment of non-cash variation margin received would have a disproportionately adverse impact on certain counterparties, such as mutual funds, pension funds, and insurance companies, which generally provide securities as variation margin due to their business models. Commenters stated that, in order to be able to provide cash variation margin to a covered company, these counterparties would have to engage in securities lending or repurchase agreements, which could increase interconnectedness and systemic risks within the financial system, adversely affect the liquidity of such securities, and reduce returns to these counterparties.[204] Another commenter argued that the NSFR rule would create a substantial new funding requirement across all covered companies if it did not allow netting of non-cash variation margin received in the form of HQLA.

In a change from the proposed rule, for purposes of determining derivatives asset values under the final rule, a covered company may take into account variation margin received in the form of rehypothecatable level 1 liquid asset securities. Level 1 liquid asset securities tend to have very stable value and reliable liquidity across market conditions. However, other types of non-cash collateral (*i.e.,* non-level 1 liquid asset securities) are less likely to hold their value across market conditions, are more likely to be difficult to monetize, and may fluctuate in value to a greater degree. Therefore, the final rule does not permit a covered company to net against a derivatives asset variation margin received in the form of non-level 1 liquid asset securities or other non-cash assets. Moreover, the contractual ability to rehypothecate the level 1 liquid asset securities ensures that the covered company is able to monetize the collateral without a triggering event, such as a default by the counterparty, across market conditions. Therefore, in order to be recognized for netting under the final rule, level 1 liquid asset securities received as variation margin must be rehypothecatable, in addition to meeting the other netting criteria that are required for recognition of cash variation margin.[205]

The final rule's allowance of rehypothecatable level 1 liquid assets to be netted against derivatives assets will further align the final rule and the agencies' swap margin rule. Although the swap margin rule permits certain non-level l liquid assets to be used as variation margin for certain swap transactions, limiting the final rule's permissible netting to variation margin received in the form of cash and rehypothecatable level 1 liquid asset securities is appropriate because permitting a covered company to reduce its derivative assets by other types of non-cash collateral could increase the funding risk associated with its derivative portfolio and reduce its ability to continue to intermediate and fund its derivatives portfolio over a one-year horizon. The agencies also recognize that, when measured by total volume, a significant majority of variation margin exchanged by swap dealers continues to be comprised of cash, with the majority of the remaining variation margin comprised of government securities.[206] As a result, the agencies do not expect that the final rule's allowance of rehypothecatable level 1 liquid assets for the purposes of netting will materially alter counterparties' behaviors regarding variation margin or result in substantial new funding requirements.

Accordingly, § ____.107(f)(1)(ii) of the final rule provides that a covered company must calculate the derivatives asset value of the underlying derivative transaction or QMNA netting set by subtracting the value of variation margin received that is in the form of rehypothecatable level 1 liquid asset securities from the asset value of the derivative transaction or QMNA netting set.[207]

(ii) RSF and ASF Factors Assigned to Assets Provided or Received as Variation Margin and Associated Liabilities

The proposed rule would have required a covered company to include in its RSF amount on-balance sheet assets that the covered company has provided (that remain on a covered company's balance sheet) and received as variation margin in connection with its derivative transactions.

On-Balance Sheet Variation Margin Provided by a Covered Company

The proposed rule would have assigned an RSF factor to on-balance sheet variation margin[208] provided by a covered company based on whether the variation margin reduces the covered company's derivatives liability value or whether it is excess variation margin. The agencies did not receive any comments regarding this proposed treatment.

As described above, under the final rule, the liability value of a derivative transaction or QMNA netting set, as applicable, takes into account any variation margin provided by a covered company. A covered company may have provided variation margin in an amount that reduces its liability to a counterparty or variation margin in excess of this amount. For example, the amount of a receivable or of securities recorded on a covered company's balance sheet may represent both an amount of variation margin provided that reduces a covered company's derivative liability, as calculated under the final rule, and excess variation margin provided. Consistent with the

[203] Commenters noted that short-term secured lending transactions with a financial sector entity secured by rehypothecatable level 1 liquid assets would have received a lower RSF factor than other secured and unsecured lending transactions under the proposed rule.

[204] The commenters also noted that a covered company may then have an incentive to invest the cash variation margin received in securities for business and risk management reasons.

[205] As noted above, for purposes of the netting criterion for currency, rehypothecatable level 1 liquid assets received as variation margin must be denominated in a currency that is specified as an acceptable currency to settle the obligation in the relevant governing contract.

[206] The swap margin rule requires variation margin exchanged between swap entities to be cash, which represents a significant portion of the swaps market. *See* 12 CFR 45.6(a) (OCC); 12 CFR 237.6(a) (Board); 12 CFR 349.6(a) (FDIC). According to the ISDA's Margin Survey for 2019, the 20 counterparties with the largest outstanding notional amounts of derivative transactions reported that their regulatory and discretionary variation margin delivered is comprised of approximately 84.6 percent cash, and 13.2 percent government securities, and regulatory and discretionary variation margin received is approximately 76.5 percent cash and 14.2 percent government securities. *See* ISDA Margin Survey 2019 (September 2019), *available at https://www.isda.org/a/1F7TE/ISDA-Margin-Survey-Year-end-2019.pdf.*

[207] To the extent a covered company receives variation margin in excess of the asset value of the derivative transaction or QMNA netting set, the derivative asset value may not be reduced below zero, treated as a derivative liability value, or netted against other derivative asset values.

[208] For example, if a covered company uses securities from its trading inventory to satisfy a requirement to provide variation margin in respect to a derivative liability, these securities would remain on its balance sheet under GAAP. For cash variation margin provided in respect to a similar derivative transaction, a covered company's cash balance would already have been reduced, and the covered company would have recorded a receivable. The receivable amount may reflect amounts of cash variation margin previously provided in excess of a covered company's liability and owed by a counterparty.

proposed rule, if the variation margin provided by a covered company reduces the derivatives liability value of a derivative transaction or QMNA netting set, the final rule assigns a zero percent RSF factor to the carrying value of such variation margin. This variation margin already reduces the covered company's derivatives liabilities, resulting in a lower total derivatives liability amount that, in turn, offsets the covered company's total derivatives asset amount when calculating its NSFR derivatives asset amount. As a result, the funding needs for this variation margin provided is already reflected in a covered company's RSF amount through the current net value component.

To the extent a covered company provides excess variation margin—that is, an amount of variation margin that does not reduce the liability value of a derivative transaction or QMNA netting set—and includes the excess variation margin asset on its balance sheet, the final rule assigns such excess variation margin an RSF factor under § ____.106, based on the characteristics of the asset or balance sheet receivable associated with the asset, as applicable. Since excess variation margin does not reduce a covered company's derivatives liabilities values, the covered company's current net value component does not reflect these on-balance sheet assets. The final rule assigns RSF factors to excess variation margin on a covered company's balance sheet to reflect the need for stable funding for such assets as part of the covered company's aggregate balance sheet. The RSF factor applied to excess variation margin provided depends on the asset provided. If a covered company has provided different types of variation margin (for example, both cash and securities), the covered company can determine which variation margin should be treated as excess and apply the appropriate RSF factor.

On-Balance Sheet Assets for Variation Margin Received by a Covered Company

The proposed rule would have assigned an RSF factor to all variation margin received by a covered company that is on the balance sheet of the covered company,[209] according to the characteristics of each asset received. The agencies received no comments on this aspect of the proposal.

The agencies are adopting the requirement for variation margin received by a covered company that is on the covered company's balance sheet as proposed. As described above, under the final rule, the derivatives asset value of a derivative transaction or QMNA netting set, as applicable, takes into account certain variation margin received by a covered company. This variation margin received reduces the covered company's derivative assets, resulting in a lower total derivatives asset amount. As a result, the funding needs for this variation margin received is not reflected in the current net value component. Therefore, regardless of whether on-balance sheet variation margin received is eligible for netting under the current net value component calculation, assignment of an RSF factor to these on-balance sheet assets under § ____.106 is necessary to capture the funding risk associated with these assets.

ASF Assignment for Balance Sheet Liabilities Representing the Return of Variation Margin Received by a Covered Company

The proposed rule would have assigned a zero percent ASF factor to any liability that arises from an obligation to return[210] variation margin received by a covered company related to its derivative transactions. One commenter suggested that the final rule assign an ASF factor of greater than zero to the liability to return variation margin received by a covered company. The commenter argued that this change would be consistent with the BCBS and the International Organization of Securities Commission guidelines for acceptable classes of derivatives collateral.

As discussed in the proposed rule, given that these liabilities can change based on the underlying derivative transactions and remain on balance sheet, at most, only for the duration of the associated derivative transactions, they do not represent stable funding for a covered company. Additionally, the contribution of variation margin received to the covered company's funding risk is appropriately recognized through the final rule's calculation of the NSFR derivatives asset amount described above and an additional contribution to a covered company's ASF amount in respect to an accounting liability to return such assets would be duplicative. For these reasons, the final rule assigns a zero percent ASF factor to liabilities representing an obligation to return variation margin received by a covered company.

3. Initial Margin Received by a Covered Company

For initial margin received by the covered company that is recorded as an asset on its balance sheet, the proposed rule would not have treated the asset received as initial margin differently from other balance sheet assets and would have assigned an RSF factor according to the characteristics of each asset received. Additionally, the proposed rule would have assigned a zero percent ASF factor to any liability that arises from an obligation to return initial margin received by a covered company related to its derivative transactions.[211]

Some commenters argued that the final rule should recognize the receipt of initial margin by a covered company as a potential source of stable funding, especially if the covered company has the contractual and operational ability to re-use the collateral assets in the future, which commenters asserted is common market practice in the over-the-counter derivatives market. Commenters requested that the final rule more closely align the ASF treatment of liabilities for initial margin received with the RSF treatment of initial margin assets provided by a covered company, in particular with respect to initial margin received from a counterparty that is a commercial end-user. Some commenters requested that the final rule apply an ASF factor of at least 50 percent to liabilities for initial margin received by a covered company and permit initial margin received to reduce the RSF amount for initial margin provided by a covered company in the initial margin component. As another approach, commenters requested that the NSFR rule permit initial margin assets received by a covered company that can be rehypothecated in the future to offset the current RSF amount derived from the related derivative asset, subject to haircuts on the initial margin assets, because such initial margin is contractually linked to the covered company's rights and obligations under the derivative transaction and is

[209] Under the final rule, RSF factors are assigned to variation margin received that are recorded as on-balance sheet assets of a covered company regardless of whether the variation margin received has reduced the covered company's derivative asset value under the rule. GAAP's treatment of variation margin assets received by a covered company depends on whether the variation margin was received in the form of cash or securities. Variation margin received that is eligible for netting under GAAP reduces the value of derivative assets under GAAP.

[210] A covered company generally will record a liability on its balance sheet representing its obligation to return a value of variation margin received.

[211] Similar to variation margin received, a covered company will record a liability for its obligation to return initial margin and independent amounts received.

available to the covered company for the duration of the derivative contract.

The agencies are adopting the treatment of initial margin received as proposed. As discussed in section V of this Supplementary Information section, the general design of the final rule requires a covered company to assess of the amount of its stable funding based on NSFR regulatory capital and liabilities at a point in time, and the adequacy of such funding based on the characteristics of assets and commitments. The NSFR generally does not determine current stable funding based on the potential future reuse of assets. Consistent with this approach, the derivative framework under the final rule does not recognize as stable funding the potential reuse at a future date of assets received as initial margin. Additionally, the amount of initial margin received by a covered company, and the liability to return such margin, can change based on the aggregate underlying derivative transactions and customer preferences, such as counterparties' demand for derivatives exposure, which may fluctuate over time. Moreover, the extent to which the initial margin assets received are available to a covered company may also fluctuate. Initial margin received by a covered company, including initial margin subject to the swap margin rule, often is subject to segregation requirements that arise from regulatory or contractual requirements, which limits the ability of the covered company to re-use initial margin assets. Even absent a segregation requirement, a covered company may voluntarily agree to segregate the initial margin received at the request of its counterparties or novate the position from the covered company to another counterparty at some point in the future in order to preserve franchise value and avoid negative signaling to market participants, making unsegregated initial margin also an unstable source of funding. This is true also in those cases where a covered company currently has the ability to re-use the initial margin assets that it receives, as the initial margin is only available to the covered company at most for the duration of the derivative transaction. Consistent with the general treatment of balance sheet assets, the final rule applies an RSF factor to a covered company's on-balance sheet assets received as initial margin. These assets result from the current level of activity with derivative counterparties and likely will be held on balance sheet for the duration of the associated derivative transactions or counterparty relationships. It is therefore appropriate to assign RSF factors to these assets based on their liquidity characteristics.

With respect to the liability to return initial margin received, this liability is subject to change based on a covered company's counterparties and their derivative positions and remains, at most, only for the duration of the associated derivative transactions, such that it does not represent stable funding for a covered company. In response to commenters' request that initial margin received be permitted to reduce the RSF amount for initial margin provided, the agencies note that unlike variation margin that is exchanged to account for changes in the current valuations of a derivative transaction or QMNA netting set, initial margin received from counterparties is intended to cover a covered company's potential losses in connection with a counterparty's default (*e.g.,* the cost to close out or replace the transaction with a defaulted counterparty) and therefore would not factor into the measure of the current value of a covered company's derivatives portfolio.

For these reasons, the final rule assigns a zero percent ASF factor to any liability representing an obligation to return initial margin received and assigns an RSF factor under § ____.106 to an asset received as initial margin that is on the covered company's balance sheet based on the characteristics of the asset.

4. Customer Cleared Derivative Transactions

Under the proposed rule, the treatment of a covered company's cleared derivative transaction would have depended on whether the covered company was acting as an agent or as a principal. A covered company's NSFR derivatives asset amount or NSFR derivatives liability amount would have taken into account the asset or liability values of derivative transactions between a CCP and a covered company, acting as principal, where the covered company has entered into an offsetting transaction (commonly known as a "back-to-back" transaction) with a customer. Because a covered company would have obligations as a principal under both derivative transactions comprising the back-to-back transaction, any asset or liability values arising from these transactions, or any variation margin provided or received in connection with these transactions, would have been taken into account in the covered company's calculations of its NSFR derivatives asset or liability amount.

If a covered company was a clearing member of a CCP, it would not have included in its NSFR derivatives asset amount or NSFR derivatives liability amount the value of a cleared derivative transaction that the covered company, acting as agent, has submitted to the CCP on behalf of a customer, including when the covered company has provided a guarantee to the CCP for the performance of the customer. As the proposed rule explained, these cleared derivative transactions are assets or liabilities of a covered company's customer and not the covered company. Similarly, a covered company would not have included in its calculations under § ____.107 of the proposed rule variation margin provided or received in connection with customer cleared derivative transactions.

To the extent a covered company includes on its balance sheet under GAAP a derivative asset or liability value (as opposed to a separate receivable or payable in connection with a derivative transaction) associated with a customer cleared derivative transaction, the derivative transaction would have constituted a derivative transaction of the covered company under the proposed rule.[212] If a covered company includes on its balance sheet an asset associated with a guarantee of a customer's performance on a cleared derivative transaction and that balance sheet entry is substantially equivalent to a derivative contract, the asset should be treated as a derivative.

To the extent a covered company has an asset or liability on its balance sheet associated with a customer derivative transaction that is not a derivative asset or liability—for example, if a covered company has extended credit on behalf of a customer to cover a variation margin payment or a covered company holds customer funds relating to derivative transactions in a customer protection segregated account—such asset or liability of the covered company would have been assigned an RSF or ASF factor under §§ ____.106 or ____.104 of the proposed rule, respectively. Accordingly, to the extent a covered company's balance sheet includes a receivable asset owed by a CCP or payable liability owed to a CCP in connection with customer receipts and payments under derivative

[212] The proposed rule requested comment regarding whether the value of a cleared derivative transaction that a covered company, acting as agent, has submitted to a CCP on behalf of a customer of the covered company would be included on the covered company's balance sheet under any circumstances other than in connection with a default by the customer. Commenters did not identify any such circumstances.

transactions, this asset or liability would not have constituted a derivative asset or liability of the covered company and would not have been included in the covered company's calculations under § ____.107 of the proposed rule.

Commenters supported the proposed exclusion from a covered company's NSFR for a cleared derivative transaction that the covered company, acting as agent, has submitted to a CCP on behalf of a customer, stating that this treatment appropriately reflected the limited funding risks of these activities. Some commenters suggested that certain back-to-back derivative transactions with a customer and a CCP also should be excluded from a covered company's NSFR derivatives asset or liability amount because they present minimal funding risks that are similar to cleared derivative transactions where the covered company is acting as an agent. Specifically, commenters highlighted as low risk a derivative transaction where the covered company is not contractually required to make a payment to the customer unless and until the covered company has received a corresponding payment from the CCP. These commenters noted that in both a back-to-back arrangement and a cleared derivative transaction submitted by a covered company as agent with a guarantee of the customer's performance, the covered company faces the same risk upon customer default of being required to make payments to the CCP without receiving a corresponding payment from the customer.

One commenter asked how the proposed rule would treat initial margin that a covered company receives from customers in excess of amounts provided to the CCP in connection with a cleared derivative transaction. The commenter asked how the proposed rule would treat a customer's initial margin that a covered company maintains in segregated accounts and invests in accordance with applicable rules, regulations and agreements with the customer. The commenter also asserted that the customer's initial margin functions as funding for the resulting assets.

Under the final rule, and consistent with the proposal, a covered company's NSFR derivatives asset amount or NSFR derivatives liability amount does not include the value of a cleared derivative transaction that the covered company, acting as agent, has submitted to a CCP on behalf of a customer. This includes instances when the covered company, acting as agent, has provided a guarantee to the CCP for the performance of the customer, as long as the cleared derivative transaction does not appear on a covered company's balance sheet. Additionally, consistent with GAAP, the final rule requires a covered company to include in its NSFR the derivative asset or liability amounts related to back-to-back derivative transactions that the covered company has executed with a CCP and a customer of the covered company as proposed.

As discussed in section V of this Supplementary Information section, the NSFR rule is a standardized metric that generally relies on the assets and liabilities on a covered company's balance sheet. The treatments of submitted agency transactions and executed back-to-back derivative transactions are consistent with the final rule's reliance of on-balance sheet items. Since exposures due to back-to-back derivative transactions are recorded on the balance sheet of a covered company, the final rule's treatment for these exposures will ease administration of the rule by aligning with the balance sheet treatment, consistent with the design of the NSFR. The agencies note that in the case of back-to-back derivative transactions executed with a customer and a CCP where the covered company maintains equal exposures to each counterparty (which reflects the amount of variation margin posted and collected), the covered company's derivative asset and liability positions facing the customer and CCP should generally offset within the covered company's NSFR derivatives asset or liability amount, reflecting a neutral stable funding requirement. However, by taking this approach, the final rule reflects the incremental funding risk that is present when these exposures are not fully offset, such as in the case where there are differences in the amount of eligible variation margin received and collected. In addition, these net exposures are not excluded from the final rule as certain funding risks may still be present. For example, as commenters noted, a covered company in a back-to-back arrangement may be required to make payments to the CCP even if the covered company's customer has failed to make a corresponding payment to the covered company. Initial margin received by a covered company from customers in excess of amounts provided to a CCP in connection with a cleared derivative transaction, including initial margin maintained in segregated accounts and other permitted assets, is treated the same as other initial margin received by a covered company, as described in section VII.E.3 of this Supplementary Information section. Additional RSF amounts could also result from initial margin provided by a covered company to the CCP and the derivatives future value component, each as described below.

5. Initial Margin Component

The proposed derivative framework included an initial margin component that would address the treatment of assets contributed to a CCP's mutualized loss-sharing arrangement and initial margin provided by a covered company in respect to its derivative transactions. Under the proposed rule, a covered company's contribution to a CCP's mutualized loss-sharing arrangement would have been assigned an RSF factor of 85 percent. Similarly, under the proposed rule, initial margin provided by a covered company for derivative transactions (except where the covered company acts as an agent for a customer's cleared derivative transaction, as described below) would have been assigned an RSF factor equal to the higher of 85 percent or the RSF factor applicable under § ____.106 to each asset comprising the initial margin provided. The proposed rule would have assigned an 85 percent RSF factor to the fair value of a covered company's contributions to a CCP's mutualized loss-sharing arrangement or initial margin provided by a covered company regardless of whether the contribution or initial margin is included on the covered company's balance sheet. This treatment reflects the fact that a covered company would have faced the same funding needs and risks as a result of having to provide these assets, regardless of their balance sheet treatment under GAAP. Under the proposed rule, to the extent a covered company included on its balance sheet a receivable for its contributions to a CCP's mutualized loss-sharing arrangement or for initial margin provided for derivative transactions, the covered company would have assigned an RSF factor to the fair value of the asset, but not the receivable, in order to avoid double-counting.

Under the proposed rule, a covered company would not have assigned an RSF factor to initial margin provided by the covered company when it is acting as an agent for a customer's cleared derivative transaction and the covered company does not guarantee return of the initial margin to the customer. The preamble to the proposal noted that a covered company would have had limited liquidity risk for such initial margin because, following certain timing delays, the customer would have been obligated to fund the initial margin for the duration of the transaction.

However, to the extent a covered company would have included such initial margin on its balance sheet, the proposed rule would have required the covered company to assign an RSF factor to the resulting initial margin asset under § ____.106 of the proposed rule and an ASF factor to the corresponding liability under § ____.104 of the proposed rule, similar to the treatment of other on-balance sheet items.

One commenter asserted that the agencies should not adopt the 85 percent RSF factor because the process by which this percentage was developed for the Basel NSFR standard did not include public input or publication of supporting evidence by the BCBS. Commenters also requested that a lower RSF factor be assigned to a covered company's contributions to a CCP's mutualized loss-sharing arrangement (*e.g.,* one commenter requested an RSF factor of 50 percent, other commenters recommended assigning the RSF factor that applies to operational deposits held at a financial sector entity). To support a lower RSF factor, one commenter asserted that the amount of such contributions tend to exhibit low variability over time and are typically redeemable within a three-month time horizon. The commenter also asserted that there is a low probability of a CCP drawing on the funds available in the mutualized loss-sharing account, which are used in very rare cases of a clearing member default and only after exhaustion of the defaulter clearing member's resources and the CCP's first loss contributions to the mutualized loss-sharing resources. Finally, the commenter argued that a lower RSF amount could be more appropriately set by assigning RSF factors directly to the underlying assets contributed to a CCP's mutualized loss-sharing arrangement, given the low probability that the assets will be used by a CCP.

With respect to the treatment of initial margin provided by a covered company for derivative transactions, the agencies received several comments recommending that such initial margin should be assigned an RSF factor of less than 85 percent and also that the RSF factor should be assigned based on the remaining contractual maturity of the relevant derivative transaction or QMNA netting set. Commenters argued that such treatment is warranted because a covered company may choose to not re-enter into a short-dated derivative transaction following its maturity if the covered company has liquidity needs at that point and a covered company will be able to liquidate the initial margin provided for the transaction in a short period of time after the contract matures.

One commenter argued that initial margin provided to a CCP for cleared derivative transactions should be assigned a lower RSF factor than initial margin provided for non-cleared derivative transactions because cleared derivatives tend to be more standardized and liquid, and turn over more frequently, than non-cleared derivatives. The commenter asserted that a covered company could choose to reduce its cleared derivative activities with a CCP in the future and realize the return of initial margin provided to a CCP within a six-month time horizon. Therefore, the commenter argued, the final rule should assign an RSF factor of 50 percent to initial margin provided for cleared derivative transactions, similar to the RSF factor assigned to secured lending transactions with a financial sector entity that matures in six months or more but less than one year. The commenter also argued that providing favorable treatment for initial margin provided for cleared derivative transactions would be consistent with the CFTC's margin requirements for derivatives clearing organizations, which assume short liquidation periods,[213] and the agencies' swap margin rule.[214]

One commenter supported the proposed rule's treatment of initial margin provided by a covered company when the covered company is acting as an agent for the client and does not guarantee the performance of the CCP to the client. This commenter stated that the proposed rule appropriately reflects the central clearing market structure and noted that the majority of initial margin that a covered company receives from a client for the client's cleared derivative transactions is passed through to the CCP.

After reviewing these comments, the agencies are adopting the treatment of assets provided to a CCP's mutualized loss sharing arrangement and initial margin provided by a covered company for derivative transactions as proposed.

The final rule assesses a covered company's funding profile for its derivative activities on an aggregate net basis based on its current contractual positions. In addition, the final rule generally does not consider the range of potential activities that covered companies or counterparties may take in the future.[215] For example, the standardized initial margin component is applied consistently to all covered companies and does not take into account an individual covered company's ability to adjust its level of cleared derivative activities or the probability of individual CCP's usage of a covered company's contributions to a default fund upon a member default. Additionally, an individual covered company may face challenges in meaningfully reducing its derivative exposures and initial margin requirements without impacting its customer relationships and intermediation. Moreover, during periods of market volatility, initial margin requirements may increase, which would increase a covered company's funding needs related to initial margin assets.

The final rule does not incorporate more granular assignments of RSF factors to initial margin provided by a covered company based on the maturity of the underlying derivative transactions. As discussed above, the final rule's treatment of initial margin provided is consistent with the overall approach taken in the rule to utilize an aggregate portfolio framework with respect to derivative transactions that does not take into account the scheduled maturity of individual transactions. For the reasons discussed, while there may be some benefits to a more granular approach, the agencies have determined that a change from the proposal is not justified because such an approach would unnecessarily increase the complexity of the measure and require reliance on covered companies' internal modeling, which is contrary to the NSFR's design as a standardized measure.

Specifically, the final rule assigns an RSF factor of 85 percent to the fair value of assets provided to a CCP's mutualized loss sharing arrangement and an RSF factor of at least 85 percent to the fair value of initial margin provided for derivatives transactions. The application of these RSF factors is based on the assumption that a covered company generally must maintain most of its CCP mutualized loss sharing arrangement contributions or initial margin provided in order to continue to support its customers and intermediate in derivative markets. For similar reasons, the treatment applies regardless of whether the contribution or initial margin is included on the covered company's balance sheet. The final rule's assignment of an 85 percent RSF factor reflects a standardized assumption across all derivative transactions based on an assumption of derivatives activities at an aggregate level. In addition, the standardized

[213] *See* 17 CFR 39.13(g).

[214] *See supra* note 188.

[215] *See* section V of this Supplementary Information section.

minimum 85 percent RSF factor reflects the difficulty for covered companies generally to significantly reduce the aggregate level of derivative activity (both principal and client-driven behavior) without damaging their customer relationships or reputations as intermediaries.

Another commenter asked that the agencies clarify whether initial margin provided by a covered company in connection with cleared derivative transactions of a customer that have a remaining maturity of one year or more would be assigned an RSF factor of 100 percent, similar to the proposed treatment of assets encumbered for a period of one year or longer.

Like the proposed rule, § ____.107 of the final rule does not assign an RSF factor to initial margin provided by a covered company acting as agent for a customer's cleared derivative transactions where the covered company does not guarantee the return of the initial margin to the customer. To the extent a covered company includes on its balance sheet any such initial margin provided, this initial margin would instead be assigned an RSF factor pursuant to § ____.106 of the final rule and any corresponding liability would be assigned an ASF factor pursuant to § ____.104.

6. Future Value Component

In addition to the current net value component, which requires a covered company to maintain stable funding relative to its net current derivatives position as of the calculation date, the proposed rule would have required a covered company to maintain stable funding to support potential changes in the valuation of its derivative transactions over the NSFR's one-year horizon (future value component). Specifically, this future value component would have addressed the risk that the covered company may need to provide or return margin or make settlement payments to its counterparties as the net value of its derivatives portfolio fluctuates.

Under the proposed rule, the future value component would have equaled 20 percent of the sum of a covered company's gross derivative values that are liabilities (*i.e.,* liabilities related to each of its derivative transactions not subject to a QMNA and each of its QMNA netting sets that are liabilities prior to consideration of margin, hereinafter gross derivative liabilities), multiplied by an RSF factor of 100 percent. Gross derivative liabilities in this context would have referred to derivative liabilities calculated without recognition of variation margin or settlement payments provided or received based on changes in the value of the covered company's derivative transactions. For example, if the value of a covered company's derivative transaction moves from $0 to a liability position of −$10, the covered company's gross derivative liability value would be $10, even if the covered company has provided $10 of variation margin to cover the change in value.

While some commenters supported addressing funding risk associated with changes in the value of derivative transactions in the final rule, other commenters asserted that this component should not be included in the final rule because the NSFR, as a business-as-usual and point-in-time funding metric, should not take into account funding needs that could result from potential future market changes. One commenter argued that the future value component was unnecessary because the LCR rule already adequately addresses the risks associated with potential valuation changes in a covered company's derivatives portfolio.

The agencies also received a number of comments on the specific design and calibration of the proposed future value component. Many of these commenters asserted that the proposed calibration was overly conservative and was not sufficiently supported by empirical evidence. Commenters also argued that gross derivative liabilities are a poor indicator of a covered company's potential contingent funding obligation. The value of a covered company's derivatives portfolio may fluctuate over time (*e.g.,* due to a covered company having to provide or return margin to its counterparties) in a way that results in a material increase to its funding requirements over the one-year time horizon. It is necessary to address the contingent funding risk associated with derivatives in the final rule in order to adequately ensure the resilience of a covered company's funding profile and to address a funding need not picked up by the current net value component. Covered companies require sufficient stable funding to support margin flows in a range of market conditions, including a stress event.[216]

The current net value component relies on a uniform netting treatment that assumes payment inflows and outflows related to derivatives assets and liabilities would be perfectly offsetting across QMNAs, counterparties, derivative types, and maturities. On its own, this assumption generally benefits covered companies by resulting in a lower funding requirement under the NSFR than might occur in practice. In addition, even if a covered company's payment inflows and outflows under its derivatives are matched, as the first component assumes, the covered company's margin inflows and outflows may not be. For example, even where a covered company has entered into offsetting positions in terms of market risk, its margin rights and obligations (based on changes in the value of its derivatives, contractual triggers such as changes in the covered company's financial condition, or business considerations such as customer requests) may differ. This could occur if it faces different types of counterparties, such as a commercial end-user on one side and a dealer on the other side, for each offsetting position. For covered companies with substantial derivatives activities, margin flows can be a significant source of liquidity risk.

The final rule generally retains the proposed rule's treatment of derivative portfolio potential valuation changes but reduces the weighting of this component from 20 percent to 5 percent of gross derivative liabilities. This revision should reduce the potentially pro-cyclical effects raised by commenters in response to the proposed rule's calibration at 20 percent. To the extent the proposed rule's requirement could have disincentivized covered companies from maintaining longer-dated derivative transactions used by clients for hedging purposes, this change also should reduce such effects. This calibration also ensures covered companies maintain at least a minimum amount of stable funding for funding risks associated with potential valuation changes in derivatives portfolios. In addition, the agencies expect the final rule's reduction of the calibration from 20 percent to 5 percent should lessen the incentive for a covered company to reduce its NSFR funding requirement without meaningfully changing its risk profile by closing out derivative transactions with large gross derivative liabilities and re-entering into equivalent transactions with zero liability exposure. The agencies will monitor this risk through supervisory processes and evaluate the appropriateness of the 5 percent calibration as more data, reflective of a

[216] For example, during the 2007–2009 financial crisis, some covered companies experienced volatility in their derivatives portfolios, which led to margin payments that were a significant drain on liquidity and contributed to systemic instability. Since the 2007–2009 crisis, banking organizations continue to experience funding needs in their net margin flows over time, with the size and impact of the funding needs varying across covered companies depending on the size and composition of their derivatives portfolios.

wider variety of economic conditions, become available.[217]

The final rule relies on gross derivative liabilities as the basis for measuring a covered company's funding risks associated with derivatives portfolio potential valuation changes. Gross derivative liabilities tend to positively correlate with cumulative losses realized over the life of outstanding contracts. Thus, large amounts of gross derivative liabilities are likely to be positively correlated with derivatives portfolios characterized by higher average volatility and collateral and settlement flows. In addition, although gross derivative liabilities may include transactions that are not currently subject to the exchange of variation margin, the agencies note that these transactions may become subject to margin calls or early repayment due to contractual triggers or client requests, for example in response to a change in the covered company's financial condition.

Consistent with the proposed rule, the final rule requires a covered company to treat settlement payments based on changes in the fair value of derivative transactions equivalently to variation margin for purposes of calculating the covered company's gross derivative liabilities. While these settlement payments fully extinguish a covered company's current derivative exposure from an accounting perspective, they do not reduce a derivative transaction's funding risk related to potential valuation changes. Under both the collateralized-to-market and settled-to-market approaches, a covered company may be required to fund equivalent flows of margin or settlement payments based on changes in the value of its derivative transactions. Permitting settlement payments to reduce the gross derivatives liability measure could inappropriately incentivize covered companies to re-characterize variation margin as settlement payments in order to evade the stable funding requirement for potential derivative valuation changes. Therefore, derivative liabilities that have been extinguished from the balance sheet by such settlement payments must still be included in the covered company's calculation of gross derivative liabilities for the purposes of this component. This requirement also should reduce opportunities for evasion.[218]

The agencies also considered a range of alternative approaches for addressing funding risks associated with derivatives portfolio potential valuation changes, including alternative approaches suggested by commenters. The agencies, however, have determined to adopt this component as proposed because the benefits of a simpler measure with less operational costs outweighs its shortcomings. Although many of the alternatives could have increased this component's risk sensitivity, they also would have introduced increased complexity and pro-cyclicality. In addition, the suggested alternative of applying the 20 percent calculation as a floor to the overall NSFR derivatives RSF amount would not reflect the funding risks arising from the other components of the NSFR derivatives treatment.

7. Comments on the Effect on Capital Markets and Commercial End Users

The agencies received a number of comments arguing that the proposed rule would increase the cost to covered companies of engaging in derivative transactions, which commenters argued would harm capital markets and the economy. Some of these commenters asserted that covered companies would pass on increased costs to derivatives end-users, making it more expensive for commercial firms to hedge business risks.

The final rule promotes stable funding by a covered company of derivatives activities and restricts a covered company's ability to fund such activities with unstable liabilities in a manner that could generate undue risks to the safety and soundness of the covered company or impose costs on U.S. businesses, consumers, and taxpayers in the event of a disruption to the U.S. financial system. In addition, in comparison to the proposed rule, certain modifications included in the final rule will reduce the RSF amount in connection with derivative transactions, thereby also reducing any incremental funding cost increases for covered companies that would have resulted from the proposed requirement. Section X of this Supplementary Information section further discusses the expected impacts of the rule, including potential benefits and costs for covered companies and other market participants.

8. Derivatives RSF Amount Calculation

Under the final rule, a covered company must sum the required stable funding amounts calculated under § ____.107 to determine the covered company's derivatives RSF amount. A covered company's derivatives RSF amount includes the following components:

(1) The RSF amount for the current net value component, which is equal to the covered company's NSFR derivatives asset amount, multiplied by an RSF of 100 percent, as described in section VII.E.2 of this Supplementary Information section;

(2) The RSF amount for non-excess variation margin provided by the covered company, which, as described in section VII.E.2 of this Supplementary Information section, equals the carrying value of variation margin provided by the covered company that reduces the covered company's derivatives liability value of the relevant QMNA netting set or derivative transaction not subject to a QMNA netting set, multiplied by an RSF factor of zero percent;

(3) The RSF amount for excess variation margin provided by the covered company, which as described in section VII.E.2 of this Supplementary Information section, equals the sum of the carrying values of each excess variation margin asset provided by the covered company, multiplied by the RSF factor assigned to the asset pursuant to § ____.106;

(4) The RSF amount for variation margin received, which comprises the total of the carrying value of variation margin received by the covered company, multiplied by the RSF factor assigned to each asset comprising the variation margin pursuant to § ____.106, as described in section VII.E.2 of this Supplementary Information section; and

(5) The RSF amount for potential future valuation changes of the covered company's derivatives portfolio, which, as described in section VII.E.6 of this Supplementary Information section, equals 5 percent of the sum of the covered company's gross derivatives liabilities, calculated as if no variation margin had been exchanged and no settlement payments had been made based on changes in the values of the derivative transactions, multiplied by an RSF factor of 100 percent;

(6) The fair value of a covered company's contributions to CCP mutualized loss sharing arrangements, multiplied by an RSF factor of 85 percent, as described in section VII.E.5

[217] Any change to the 5 percent calibration would be subject to the agencies' notice and comment rulemaking process.

[218] As noted above, some commenters argued that the agencies should not include the proposed treatment of variation margin exchanged characterized as settlement payments because the commenters believed such an approach would be more stringent than the Basel NSFR standard. While it is possible that covered companies could be subject to a more stringent requirement with respect to this component of the final rule than banking organizations in foreign jurisdictions that adopt a different approach, the final rule's treatment of settlement payments is necessary to prevent evasion of the final rule's requirements.

of this Supplementary Information section.

(7) The fair value of initial margin provided by the covered company, multiplied by the higher of an RSF factor of 85 percent and the RSF factor assigned to the initial margin asset pursuant to § ____.106, as described in section VII.E.5 of this Supplementary Information section.

9. Derivatives RSF Amount Numerical Example

The following is a numerical example illustrating the calculation of a covered company's derivatives RSF amount under the final rule. Table 5 sets forth the facts of the example, which assumes that: (1) Each transaction is covered by a QMNA between the covered company and each counterparty; (2) any cash and U.S. Treasury securities received as variation margin by the covered company meet the conditions specified in § ____.107(f)(1); (3) variation margin provided by the covered company is not included on the covered company's balance sheet; (4) the covered company has provided U.S. Treasuries as initial margin to its counterparties; and (5) the derivative transactions are not cleared through a CCP.

TABLE 5—DERIVATIVES RSF AMOUNT NUMERICAL EXAMPLE

	Derivatives RSF amount numerical example		
	Asset (liability) value for the covered company, prior to netting variation margin	Variation margin provided (received) by the covered company	Initial margin provided by the covered company
Counterparty A:			
Derivative 1A	10	(1) cash	2
Derivative 2A	(2)	(1) U.S. Treasury securities.	
Counterparty B:			
Derivative 1B	(10)	3 cash	1
Derivative 2B	5		
Counterparty C:			
Derivative 1C	(2)	0	0

Calculation of derivatives assets and liabilities.

(1) The derivatives asset value for counterparty A = (10 − 2) − 2 = 6.

(2) The derivatives liability value for counterparty B = (10 − 5) − 3 = 2.

(3) The derivatives liability value for counterparty C = 2.

Calculation of total derivatives asset and liability amounts.

(1) The covered company's total derivatives asset amount = 6.

(2) The covered company's total derivatives liability amount = 2 + 2 = 4.

Calculation of NSFR derivatives asset or liability amount.

(1) The covered company's NSFR derivatives asset amount = max (0, 6 − 4) = 2.

(2) The covered company's NSFR derivatives liability amount = max (0, 4 − 6) = 0.

Required stable funding relating to derivative transactions.

The covered company's derivatives RSF amount is equal to the sum of the following:

(1) NSFR derivatives asset amount × 100% = 2 × 1.0 = 2;

(2) Non-excess variation margin provided × 0% = 3 × 0.0 = 0;

(3) Excess variation provided × applicable RSF factor(s) = 0;

(4) Variation margin received × applicable RSF factor(s) = 2 × 0.0 = 0;

(5) Gross derivatives liabilities × 5% × 100% = (5+2) × 0.05 × 1.0 = 0.35;

(6) Contributions to CCP mutualized loss-sharing arrangements × 85% = 0 × 0.85 = 0; and

(7) Initial margin provided × higher of 85% or applicable RSF factor(s) = (2+1) × max (0.85, 0.0) = 2.55.

The covered company's derivatives RSF amount = 2 + 0 + 0 + 0 + 0.35 + 0 + 2.55 = 4.90.

F. NSFR Consolidation Limitations

The proposed rule would have required a covered company to calculate its NSFR on a consolidated basis. When calculating its consolidated ASF amount, the proposed rule would have required a covered company to take into account restrictions on the availability of stable funding at a consolidated subsidiary to support assets, derivative exposures, and commitments of the covered company held at entities other than the subsidiary.

To determine a consolidated ASF amount, a covered company would have calculated the contribution to its consolidated ASF and RSF amounts, respectively, associated with each consolidated subsidiary, each as calculated by the covered company for purposes of the covered company's consolidated NSFR (subsidiary ASF contribution and subsidiary RSF contribution). Where a subsidiary's ASF contribution is greater that the subsidiary's RSF contribution, the amounts above the subsidiary RSF contribution would have been considered an ''excess'' ASF amount of the subsidiary, as calculated for the purpose of the consolidated firm (excess ASF amount). The proposed rule would have permitted the covered company to include in its consolidated ASF amount each subsidiary ASF contribution: (1) Up to the subsidiary RSF contribution, as calculated from the covered company's perspective, plus (2) any excess ASF amount above the subsidiary's RSF contribution, only to the extent the consolidated subsidiary could transfer assets to the top-tier entity of the covered company, taking into account statutory, regulatory, contractual, or supervisory restrictions. This approach to calculating a covered company's consolidated ASF amount would have been similar to the approach taken in the LCR rule to calculate a covered company's HQLA amount.

ASF amounts associated with a consolidated subsidiary, in this context, refer to those amounts that would be calculated from the perspective of the covered company. That is, in calculating the ASF amount of a consolidated subsidiary that can be included in the covered company's consolidated ASF amount, the covered company would not include certain transactions between consolidated subsidiaries that are netted under GAAP. For this reason, an ASF amount of a consolidated subsidiary that is included in a covered company's consolidated NSFR calculation may not always be equal to the ASF amount of the consolidated subsidiary when calculated on a standalone basis if the consolidated subsidiary is itself a covered company.

The proposed rule would have required a covered company that includes a consolidated subsidiary's excess ASF amount in its consolidated NSFR to implement and maintain written procedures to identify and monitor restrictions on transferring assets from its consolidated subsidiaries. The covered company would have been required to document the types of transactions, such as loans or dividends, a covered company's consolidated subsidiary could use to transfer assets and how the transactions would comply with applicable restrictions. The proposed rule would have required the covered company to be able to demonstrate to the satisfaction of the appropriate agency that assets may be transferred freely in compliance with statutory, regulatory, contractual, or supervisory restrictions that may apply in any relevant jurisdiction. A covered company that did not include any excess ASF amount from its consolidated subsidiaries in its NSFR would not have been be required to have such procedures in place. The proposal also requested alternative approaches that the agencies should consider regarding the treatment of excess ASF amounts.

Two commenters requested that the agencies clarify how the proposed consolidation provisions would apply to inter-affiliate transactions, including those that qualify as regulatory capital of a covered company's consolidated subsidiary. One commenter supported the proposed rule's treatment of certain inter-affiliate transactions for purposes of determining the subsidiary ASF and RSF contributions because ignoring such inter-affiliate transactions is consistent with the GAAP accounting treatment of such transactions. Another commenter argued that the ASF and RSF contribution amounts of a consolidated subsidiary should reflect the calculation of ASF and RSF from the subsidiary's perspective on a standalone basis. For example, under this approach, the funding raised by a covered company that is downstreamed to a consolidated subsidiary and included as capital at that subsidiary (downstream funding) would be counted as ASF of the subsidiary and part of the subsidiary ASF contribution. In addition, one commenter requested that the agencies clarify whether the consolidation provisions would apply to securitization vehicles that must be consolidated on the covered company's balance sheet in accordance with GAAP.

The agencies also received comments on the calculation of the consolidated NSFR for covered companies that are subject to a reduced NSFR requirement. Several commenters requested that covered companies subject to a reduced NSFR requirement be allowed to automatically include in their consolidated NSFR a subsidiary's ASF contribution up to 100 percent of the subsidiary's RSF contribution, rather than limiting the automatically included amount based on a reduced requirement at the subsidiary. These commenters asserted that the subsidiary's ASF contribution would be available to meet its full RSF contribution without regards to a reduced consolidated requirement and that this approach would be consistent with the Board's originally proposed modified NSFR treatment.

The final rule includes the consolidation provisions as proposed. Consistent with the proposed rule, the final rule permits a covered company to include in its consolidated ASF amount any portion of the subsidiary ASF contribution of a consolidated subsidiary that is less than or equal to the subsidiary RSF contribution because the subsidiary's NSFR liabilities and NSFR regulatory capital elements generating that ASF amount are available as stable funding for the subsidiary's assets, derivative exposures, and commitments. The final rule limits the automatic inclusion of excess ASF amounts, however, because the stable funding at one consolidated subsidiary of the covered company may not always be available to support assets, derivative exposures, and commitments at another consolidated subsidiary.

For example, if a covered company calculates a subsidiary RSF contribution of $90 based on the assets, derivative exposures, and commitments of a consolidated subsidiary and a subsidiary ASF contribution of $100 based on the NSFR regulatory capital elements and NSFR liabilities of the consolidated subsidiary, the consolidated subsidiary would have an excess ASF amount of $10 for purposes of the consolidation provision in the final rule. The covered company may only include an amount of this $10 excess ASF amount in its consolidated ASF amount to the extent the consolidated subsidiary may transfer assets to the top-tier entity of the covered company (for example, through a dividend or loan from the subsidiary to the top-tier covered company), taking into account any statutory, regulatory, contractual, or supervisory restrictions. Examples of restrictions on transfers of assets that a covered company must take into account in calculating its NSFR include sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c and 12 U.S.C. 371c–1); the Board's Regulation W (12 CFR part 223); any restrictions on a consolidated subsidiary by state or Federal law, such as restrictions imposed by a state banking or insurance supervisor; and any restrictions on a consolidated subsidiary or branches of a U.S. entity domiciled outside the United States by a foreign regulatory authority, such as a foreign banking supervisor. This limitation on the excess ASF amount of a consolidated subsidiary includable in a covered company's consolidated NSFR applies to both U.S. and non-U.S. consolidated subsidiaries.

The agencies are not modifying the consolidation provisions, as suggested by one commenter, to require a covered company to determine the excess ASF amount of a consolidated subsidiary based on ASF and RSF amounts of the subsidiary as calculated from the subsidiary's perspective on a standalone basis. The final rule aligns with the netting of exposures under GAAP at the consolidated level, and the final rule's consolidation provisions would not require a covered company to take into account, in the calculation of the subsidiary ASF contribution, ASF and RSF amounts resulting from transactions between consolidated subsidiaries that are netted under GAAP.

As described in section V of this Supplementary Information section, the NSFR uses carrying value on a covered company's balance sheet where appropriate. The calculation of subsidiary ASF contribution does not include certain inter-affiliate transactions that are eliminated when a covered company constructs its consolidated balance sheet under GAAP. For example, if consolidated subsidiary "A" makes a loan to consolidated subsidiary "B", the loan asset of subsidiary A and the liability of subsidiary B generally would be eliminated when a covered company constructs a consolidated balance sheet in accordance with GAAP. Therefore, in this example, subsidiary B's liability is not included in the calculation of subsidiary B's subsidiary ASF contribution.

The scope of the inter-affiliate transactions that are excluded from the calculation of a subsidiary's excess ASF amount includes transactions between a covered company and its consolidated subsidiary, including where the covered company downstreams funding that is recognized as capital at the consolidated subsidiary. For example, if a subsidiary's ASF contribution equals $110, consisting of $10 of capital placed by the parent and $100 of retail deposits, only the retail deposits would be subject to the excess ASF calculation. If the subsidiary's RSF contribution was $90 (calculated from the perspective of the parent covered company, after excluding inter-affiliate transactions), then there would be $10 of excess ASF.

To the extent a large depository institution subsidiary of a covered company is subject to a stand-alone NSFR requirement under the final rule, the subsidiary's compliance with its stand-alone NSFR requirement could potentially constitute a restriction on the subsidiary's ability to transfer assets to the covered company, depending on the circumstances. Such a restriction would limit the parent covered company's ability to include portions of the depository institution's excess ASF amount (calculated from the perspective of the consolidated parent covered company), but would not change the calculation of the ASF amount of the subsidiary, as calculated on a standalone basis for purposes of its NSFR requirement. Likewise, regulatory capital requirements applicable to a consolidated subsidiary of a covered company could limit the extent to which the covered company may count the excess ASF amount of the subsidiary towards the covered company's consolidated ASF amount, but would not change the calculation of the subsidiary's ASF amount.

Similar to other balance sheet items, the assets and liabilities of securitization vehicles that are consolidated onto a covered company's balance sheet under GAAP are included in the calculation of the consolidated vehicle's ASF contributions and RSF contributions. For example, securities issued by a securitization vehicle that are liabilities on a consolidated covered company's balance sheet, and assets of a securitization vehicle that are included on a covered company's balance sheet are included in the calculation of the ASF contributions and RSF contributions.

In cases where a covered company is subject to a reduced NSFR requirement, the covered company must calculate the subsidiary ASF contribution and subsidiary RSF contribution amount of each consolidated subsidiary from the perspective of the covered company for purposes of its consolidated reduced NSFR requirement. Specifically, a covered company must apply the appropriate adjustment factor to its consolidated subsidiary's RSF contribution amount when determining the amount of the subsidiary RSF contribution for purposes of determining the amount of the consolidated subsidiary's ASF that can automatically be included in the covered company's consolidated ASF amount. Any amount of the consolidated subsidiary's ASF in excess of its adjusted RSF contribution amount, as calculated by the covered company, may only be included in the covered company's consolidated NSFR to the extent the consolidated subsidiary can transfer assets to the covered company, taking into account statutory, regulatory, contractual, or supervisory restrictions. It is important that covered companies consider funding needs across the consolidated entity for the NSFR calculation as required. Accordingly, covered companies must consider the extent to which assets held at a consolidated subsidiary are transferable across the organization and ensure that a minimum level of ASF is positioned or freely available to transfer to meet funding needs at the subsidiary where they are expected to occur. Although ASF contribution amounts at a consolidated subsidiary in excess of its adjusted RSF contribution amount may be available to support that subsidiary during the NSFR's one-year time horizon, permitting the automatic inclusion of such ASF contribution amounts up to 100 percent of the subsidiary's standalone RSF contribution amounts, as requested by commenters, without appropriate consideration of transfer restrictions, may make the consolidated NSFR requirement less effective.

G. Treatment of Certain Facilities

In light of recent disruptions in economic conditions caused by the outbreak of the coronavirus disease 2019 and the stress in U.S. financial markets, the Board, with the approval of the U.S. Secretary of the Treasury, established certain liquidity facilities pursuant to section 13(3) of the Federal Reserve Act.[219]

In order to prevent disruptions in the money markets from destabilizing the financial system, the Board authorized the Federal Reserve Bank of Boston to establish the Money Market Mutual Fund Liquidity Facility (MMLF). Under the MMLF, the Federal Reserve Bank of Boston may extend non-recourse loans to eligible borrowers to purchase assets from money market mutual funds. Assets purchased from money market mutual funds are posted as collateral to the Federal Reserve Bank of Boston. MMLF collateral generally comprises securities and other assets with the same maturity date as the MMLF non-recourse loan.[220]

In order to provide liquidity to small business lenders and the broader credit markets, and to help stabilize the financial system, the Board authorized each of the Federal Reserve Banks to extend credit under the Paycheck Protection Program Liquidity Facility (PPPLF).[221] Under the PPPLF, each of the Federal Reserve Banks may extend non-recourse loans to institutions that are eligible to make Paycheck Protection Program (PPP) covered loans as defined in section 7(a)(36) of the Small Business Act.[222] Under the PPPLF, only PPP covered loans that are guaranteed by the Small Business Administration (SBA) with respect to both principal and accrued interest and that are originated by an eligible institution may be pledged as collateral to the Federal Reserve Banks. The maturity date of the extension of credit under the PPPLF equals the maturity date of the PPP covered loans pledged to secure the extension of credit.[223]

Eligible borrowers under the MMLF and PPPLF include certain banking organizations that are currently subject to the LCR rule and that will be subject to the final rule upon its effective date. Advances from the MMLF and PPPLF facilities are non-recourse, and the maturity of the advance generally aligns with the maturity of the collateral. Accordingly, a covered company is not

[219] 12 U.S.C. 343(3).

[220] The maturity date of a MMLF advance equals the earlier of the maturity date of the eligible collateral pledged to secure the advance and 12 months from the date of the advance.

[221] The Paycheck Protection Program Liquidity Facility was previously known as the Paycheck Protection Program Lending Facility.

[222] 15 U.S.C. 636(a)(36). Congress created the PPP as part of the Coronavirus Aid, Relief, and Economic Security Act and in recognition of the exigent circumstances faced by small businesses. PPP covered loans are fully guaranteed as to principal and accrued interest by the Small Business Administration (SBA) and also afford borrower forgiveness up to the principal amount and accrued interest of the PPP covered loan, if the proceeds of the PPP covered loan are used for certain expenses. Under the PPP, eligible borrowers generally include businesses with fewer than 500 employees or that are otherwise considered to be small by the SBA. The SBA reimburses PPP lenders for any amount of a PPP covered loan that is forgiven. In general, PPP lenders are not held liable for any representations made by PPP borrowers in connection with a borrower's request for PPP covered loan forgiveness. For more information on the Paycheck Protection Program, see *https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program-ppp*.

[223] The maturity date of the loan made under the PPPLF will be accelerated if the underlying PPP covered loan goes into default and the eligible borrower sells the PPP covered loan to the SBA to realize the SBA guarantee. The maturity date of the loan made under the PPPLF also will be accelerated to the extent of any PPP covered loan forgiveness reimbursement received by the eligible borrower from the SBA.

exposed to credit or market risk from the collateral securing the MMLF or PPPLF advance that could otherwise affect the banking organization's ability to settle the loan and generally can use the value of cash received from the collateral to repay the advances at maturity.

To facilitate the use of the MMLF and the PPPLF, on May 6, 2020, the agencies published in the **Federal Register** an interim final rule to require a banking organization subject to the LCR rule to neutralize the effect on its LCR of participation in the MMLF and PPPLF (LCR interim final rule).[224] The LCR interim final rule requires a covered company to neutralize the LCR effects of the advances made by the MMLF and PPPLF together with the assets securing these advances. Specifically, the LCR interim final rule added a new definition to the LCR rule for ''Covered Federal Reserve Facility Funding'' to identify MMLF and PPPLF advances separately from other secured funding transactions under the LCR rule. The LCR interim final rule requires outflow amounts associated with Covered Federal Reserve Facility Funding and inflow amounts associated with the assets securing this funding to be excluded from a covered company's total net cash outflow amount under the LCR rule.[225] The treatment under the LCR interim final rule better aligns the treatment of these advances and collateral under the LCR rule with the liquidity risk associated with funding exposures through these facilities, and to ensure consistent and predictable treatment of covered companies' participation in the facilities under the LCR rule. The agencies received one comment letter, from a trade association, on the LCR interim final rule. The commenter supported the requirements under the LCR interim final rule, arguing that the requirements encourage participation in the facilities, which ultimately provides benefits to small businesses, households, and investors.

For the same reasons that the agencies issued the LCR interim final rule, the agencies are adopting, as final, provisions to better align the treatment of these advances and collateral under the NSFR rule with the liquidity risk associated with funding exposures through these facilities, and to ensure consistent and predictable treatment of covered companies' participation in the facilities under the NSFR rule.[226] Specifically, the final rule adds a new § ____.108 that requires liability and asset amounts associated with Covered Federal Reserve Facility Funding to be excluded from a covered company's NSFR. Consistent with the LCR rule, this new § ____.108 does not apply to the extent the covered company secures Covered Federal Reserve Facility Funding with securities, debt obligations, or other instruments issued by the covered company or its consolidated entity. This arrangement presents liquidity risk due to the asymmetric cash flows of the covered company because the covered company would not have an inflow to offset its cash outflows.

Pursuant to section 553(b)(B) of the APA, general notice and the opportunity for public comment are not required with respect to a rulemaking when an ''agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' The agencies have determined that it is in the public interest to finalize these changes without notice and comment. The MMLF and PPPLF were established in response to urgent and severe economic disruptions, and these changes will provide certainty to covered companies regarding the NSFR treatment of transactions under the facilities, thereby facilitating the continued operation of, and covered companies' participation in the facilities. In addition, the agencies note that it may be unnecessary to provide notice or the opportunity to comment prior to adopting these changes because the public recently had an opportunity to comment on substantively similar changes to the LCR rule, and no adverse comments were submitted to the agencies in connection with those changes.

H. Interdependent Assets and Liabilities

The Basel NSFR standard provides that, subject to strict conditions and in limited circumstances, it may be appropriate for an asset and a liability to be considered interdependent and assigned a zero percent RSF factor and a zero percent ASF factor, respectively.[227] The proposed rule did not include a framework for interdependent assets and liabilities because, as stated in the proposal, the agencies did not identify transactions conducted by U.S. banking organizations that would meet the conditions in the Basel NSFR standard.

As the proposed rule noted, in order for an asset and liability to be considered interdependent, the Basel NSFR standard would require all of the following conditions to be met: (1) The interdependence of the asset and liability must be established on the basis of contractual arrangements, (2) the liability cannot fall due while the asset remains on the balance sheet, (3) the principal payment flows from the asset cannot be used for purposes other than repaying the liability, (4) the liability cannot be used to fund other assets, (5) the individual interdependent asset and liability must be clearly identifiable, (6) the maturity and principal amount of both the interdependent liability and asset must be the same, (7) the bank must be acting solely as a pass-through unit to channel the funding received from the liability into the corresponding interdependent asset, and (8) the counterparties for each pair of interdependent liabilities and assets must not be the same.

The Basel NSFR standard's conditions for establishing interdependence are intended to ensure that the specific liability will, on the basis of contractual terms and under all circumstances, remain for the life of the asset and all cash flows during the life of the asset and at maturity are perfectly matched with cash flows of the liability. Under such conditions, a covered company would face no funding risk or benefit arising from the interdependent asset and liability. For example, the proposed rule noted that if a sovereign entity establishes a program where it provides funding through financial institutions that act as pass-through entities to make loans to third parties, and all the conditions set forth in the Basel NSFR standard are met, the liquidity profile of a financial institution would not be

[224] 85 FR 26835 (May 6, 2020). The agencies also adopted interim final rules to address the capital treatment of participation in the MMLF (85 FR 16232 (Mar. 23, 2020)) and capital treatment of participation in the PPPLF (85 FR 20387 (Apr. 13, 2020)). These interim final rules were adopted as final on September 29, 2020.

[225] *See* 12 CFR 50.34 (OCC); 12 CFR 249.34 (Board); 12 CFR 329.34 (FDIC). Section ____.34 does not apply to the extent the covered company secures Covered Federal Reserve Facility Funding with securities, debt obligations, or other instruments issued by the covered company or its consolidated entity.

[226] The new definition of ''Covered Federal Reserve Facility Funding'' was added into the common definitions section of the LCR and NSFR rules. Consistent with the LCR interim final rule, the final rule does not amend the agencies' definitions of average weighted short-term wholesale funding in the common definitions section of the LCR and NSFR rules and the Board is not amending the calculation of weighted short-term wholesale funding on reporting form FR Y–15 related to § ____.108 of the final rule. Weighted short-term wholesale funding measures a banking organization's typical dependency on certain types of funding and generally does not measure funding risks related to the composition of a banking organization's assets and commitments.

[227] *See supra* note 6 at para 45.

affected by its participation in the program. As such, the assets of the financial institution created through such a program could be considered interdependent with the liabilities that would also be created through the program, and the assets and liabilities could be assigned a zero percent RSF factor and a zero percent ASF factor, respectively. The proposed rule noted that no such programs at that time existed in the United States. Therefore, the proposed rule did not include a provision for assigning zero percent RSF and ASF factors to assets and liabilities that are ''interdependent.'' However, the proposed rule requested comment as to whether any assets and liabilities of covered companies should receive such treatment under the NSFR rule.

Commenters requested that the final rule recognize as interdependent various assets and liabilities. Specifically, commenters requested interdependent treatment in connection with securities borrowing and lending transactions to facilitate client short positions; securities borrowing transactions and covered company short positions; certain client segregated assets and liabilities for client claims on those assets; assets and liabilities arising from derivatives clearing activities on behalf of clients; initial margin received by a covered company under client-facing derivative transactions and used to fund hedge positions for the derivative transactions, and assets and liabilities related to mortgage servicing activities. Commenters asserted that these transactions present no funding risk to covered companies. Discussions below address comments on the treatment of assets and liabilities as interdependent.

As discussed in section V of this Supplementary Information section, the NSFR is a broad measure of the funding profile of the whole balance sheet of a covered company at a point in time and the final rule generally does not apply separate requirements to individual lines of business or to subsets of assets and liabilities of a covered company. The treatment of specific assets and liabilities as interdependent would effectively remove these items from the assessment of the covered company's stable funding profile overall. As discussed in sections VII.C.2.a and VII.D.2.a of this Supplementary Information section, the final rule uses the remaining maturity of assets and liabilities to assess a covered company's funding risks. As a general principle, it would be inconsistent with the purposes and design of the NSFR to provide interdependent treatment to a specific asset and liability where the specified asset can contractually persist on the balance sheet of the covered company after the extinguishment of the specified liability. Additionally, the final rule generally does not consider the range of actions that a covered company may take in the future that would adjust the maturity of an asset in response to the maturity of a liability. Consistent with the purposes and design of the NSFR, as discussed above, the agencies have concluded that it would be inappropriate to recognize any assets and liabilities as interdependent. Additionally, including in the final rule the criteria under which certain transactions could qualify as interdependent would add considerable complexity and undermine the NSFR's design as a simple and standardized measure. In the discussion below, the agencies discuss concerns about why particular transactions suggested by commenters will not qualify as interdependent.

Short Sales

Commenters requested that the agencies reconsider interdependent treatment for transactions conducted by a covered company that facilitate the covered company or its customers entering into short positions. Commenters provided examples of certain secured funding transactions, such as firm shorts or loans of collateral to customers, that they asserted directly fund certain secured lending transactions, such as a reverse repurchase agreement or a securities borrowing transaction. These commenters asserted that the short sale of a security by a covered company represents a liability on its balance sheet. In a similar manner, a client short sale may result in a covered company receiving the cash proceeds as collateral for the security provided to cover the client's short position, increasing the covered company's balance sheet liability to its clients. In each case, the covered company may use the proceeds from its short sale or the cash collateral from the client's short sale to collateralize a secured lending transaction to source the security sold short. The secured lending transaction is recorded as an asset on the covered company's balance sheet.

At the time of terminating its short exposure, the covered company extinguishes its short position liability. Similarly, at the unwind of the client short transaction, the client may return the security to the covered company in return for the cash proceeds of the initial short sale, closing out the covered company's liability to the client. In either case, to close out the asset the covered company may return the security to the securities lender or reverse repurchase agreement counterparty and receive back the cash collateral. Commenters asserted that when either type of short position is unwound, the associated balance sheet liabilities and assets would roll off simultaneously. These commenters argued that such transactions are substantially similar to transactions in which a covered company acts as riskless principal; that the transactions are linked by regulation, internal procedures, and business practices; that the principal amounts of the asset and liability generated by a customer short position are generally the same; and that such treatment would be consistent with the Basel NSFR standard that provides special treatment for securities borrowing transactions. As a result, commenters requested that the agencies assign no funding requirement to the secured lending transaction that sources the security, which is the covered company's balance-sheet asset.

Commenters also noted that certain securities borrowing transactions conducted by a covered company are subject to the Board's Regulation T and requested that the agencies recognize that conducting a stock borrow for a permitted purpose under Regulation T creates a clear link between the liability to the client and the secured lending transaction. One commenter speculated that covered companies would need to raise additional long-term funding to support the stable funding requirement for activities that facilitate short positions and that the cash raised through such issuance may increase a covered company's balance sheet leverage, which in turn may cause the covered company to reduce other financial intermediation activities. One commenter argued that failing to reduce the funding requirement for facilitating short-sale activities would impede market liquidity and cited a report by the Federal Reserve Bank of New York concerning the short-sale ban in the United States from September 18, 2018, to October 8, 2018, as evidence that impeding the short-sale market would damage equities markets.

The agencies have concluded that because there is a risk that the maturities of the assets and liabilities for these transactions may not match, it would be inappropriate to treat these assets and liabilities as interdependent. It is unclear whether the consequence of the maturity of all short sales liabilities on related assets would be the same in practice. For example, the related assets may potentially persist beyond the maturity of the liability. In addition, although there are regulatory requirements that could require broker-dealers to take a capital charge if they do not return securities to a securities lender, these regulations may not subject all potential transactions to capital charges and a covered company could still technically retain a security if it is was willing to incur such capital charges.

Secured funding and lending transactions conducted by a covered company that facilitate the covered company, or its customers, entering into a short exposure contribute to the funding profile of the covered company similar to secured funding and lending transactions conducted for other purposes, such as matched book repurchase and reverse repurchase agreements. Providing interconnected treatment for assets and liabilities related to short positions could incent covered companies to engage in regulatory arbitrage by transforming some matched book repurchase agreements into customer shorts covered by sourcing an asset from a third party. Further, covered companies frequently conduct short-facilitation transactions on an open basis, or with significant embedded optionality, and with highly sophisticated financial counterparties. A covered company may have limited control over the maturity of either the related asset or liability and may be exposed to the asymmetric timing of the maturities or the termination amounts. The decision to terminate the funding received from a short sale may be influenced by a range of factors outside the control of the covered company, such as market volatility or the investment priorities of a covered company's client. In the case of a short exposure covered by a security borrow from a third party, the decision to terminate the secured lending transaction by the covered company may be influenced by the presence of alternative eligible uses for the security borrowed. The secured lending transaction maturity is also dependent upon the capacity of the securities lender to terminate the transaction by returning cash collateral on demand. Conversely, the securities lender may disrupt the symmetry of the transactions by terminating the secured lending transaction prior to the termination of the short. The covered company may not be able to source the securities elsewhere or may not be able to demand additional collateral from the customer but may have to continue facilitating the customer short. As discussed in section VII.D.3.c of this Supplementary Information section, the relatively low RSF factor applied to short-term secured lending transactions with financial counterparties is designed to address uncertainty as to whether assets may persist on the balance sheet. For these reasons, the agencies are not applying interdependent treatment to transactions facilitating short positions.

Assets Held in Certain Customer Protection Segregated Accounts and Associated Liabilities

In another example, commenters requested that the agencies recognize as interdependent assets that are required to be segregated according to regulations and the associated liabilities for client claims on these assets. In particular, a covered company may be required to hold a certain amount of segregated assets in order to comply with regulations applicable to customer funds of a broker-dealer or futures commission merchant. Under the proposed rule, segregated assets that are included on a covered company's balance sheet under GAAP would be assigned RSF factors in the same manner as other assets of the covered company. Commenters asserted that this treatment would overstate the funding requirement associated with these assets since the assets are held for the benefit of clients, covered companies have limited reinvestment rights over the assets, and the assets are funded by associated liabilities to customers. Commenters also argued that the proposed treatment would incentivize covered companies to hold segregated client assets in non-cash form rather than deposit cash with third parties.[228]

Covered companies face funding risk with respect to such segregated accounts due to potential asymmetry between the relevant assets and liabilities. Accordingly, it would be inappropriate to treat such assets and the corresponding liabilities as interdependent. Covered companies have the ability to exercise control over client assets held in segregated accounts, and covered companies may be able to earn a return on those assets depending on reinvestment choices. Additionally, the amount and maturity of segregated assets may not be directly connected to the amount and maturity of liabilities to customers. In cases where a covered company is required to segregate an amount of assets, the determination of the aggregate value segregated may be dependent on many different activities and liabilities to customers, each subject to optionality exercisable at the discretion of the customer. For example, the amount of assets to be segregated for client protection under the SEC's Rule 15c3–3 may be based on a substantial volume of individual customer free credit balances, margin loans extended to customers, and short positions.

Clearing Activities

Commenters requested that the agencies treat clearing activities conducted on behalf of clients as interdependent transactions. Under these transactions, covered companies would guarantee the performance of a client to the CCP and would collect any necessary margin requirements from the client and post them to the CCP on behalf of the client. Commenters argued that these client clearing activities should be considered as interdependent transactions, as the covered company would be acting solely on behalf of the client.

As discussed in section VII.E.4 of this Supplementary Information section, if a covered company is engaged in clearing activities as an agent for a client, it may be that the covered company would record no balance sheet entries associated with such activities. Accordingly, there would be no RSF factor assigned to such activities. Under these circumstances, interdependent treatment would be unnecessary. To the extent that a covered company guarantees the performance of its client or otherwise engages in activities that cause these transactions to be recorded on its balance sheet, it would be inappropriate to de-recognize them for purposes of the NSFR. In some situations, a covered company may continue to face funding risk as the intermediary between its client and the CCP.

Hedges of Derivative Transactions Financed With Initial Margin

Commenters stated that a covered company in certain circumstances can use initial margin that is provided by a client to purchase a security that can then be used to hedge the market risk of a client-facing derivative transaction. In these cases, commenters asserted that a covered company's liability to return initial margin may be viewed as directly funding the hedge security on the covered company's balance sheet. Commenters argued that interdependent treatment is warranted for the assets and liabilities generated by such activity because the covered company acts as an intermediary when using client funds to hedge the risk created by the client-

[228] *See* section VII.D.3.i of this Supplementary Information section, which discusses the assignment of RSF factors to assets held in certain customer protection segregated accounts.

facing derivative. Additionally, the covered company generally sells the hedge asset when the client's derivative position is unwound, regardless of the remaining maturity of the hedge asset. The commenters alternatively recommended that the agencies could limit interdependent treatment in these cases to circumstances where the sale of the hedge asset and the unwind of the derivative (together with the associated liability to return the initial margin) occur simultaneously pursuant to a contract or internal procedures. One commenter argued that contractual provisions and auditable internal policies and procedures create links between assets and liabilities that are sufficiently formal and enforceable such that interdependent treatment is warranted. For example, in the case of initial margin provided by a client and used by a covered company to purchase a security to hedge the customer-facing derivative exposure, one commenter argued that *force majeure* clauses relieve a covered company from returning initial margin to a client when the company is unable to sell the hedge security asset. In this case, the commenter argued that the hedge asset and initial margin liability are linked because the firm will not be required to return the initial margin until it is able to sell the hedge security.

In these cases, commenters requested that the agencies either assign a non-zero ASF factor for rehypothecatable initial margin received by a covered company or reduce the RSF factor assigned to the hedge asset purchased using initial margin provided by a client. Commenters asserted that the proposed rule should provide greater funding value to initial margin received by a covered company from clients and used by the covered company to hedge its derivative position with the client because this source of funding is more closely related to the covered company's derivatives activities than other sources of funding that receive higher ASF factors, like retail deposits. The commenters also expressed the view that failure to give interdependent treatment to initial margin liabilities and related hedge assets under these circumstances effectively punishes covered companies for financing corporate entities, which would adversely impact corporate financing.

While a covered company may be unlikely in practice to continue to hold a hedge asset without a corresponding liability to its client, there is generally no absolute contractual bar against this. A covered company generally could continue to hold an asset formally used as a hedge despite a change in or elimination of a particular client's derivative position. A covered company could, for example, return a client's initial margin but continue to hold the asset purchased as a hedge, if only for a short time. It is not the case that the asset and liability necessarily fall due at the same time. Accordingly, it would not be appropriate to treat these assets and liabilities as interdependent.

Mortgage Servicing

A commenter also suggested that mortgage servicing rights and deposits related to mortgage servicing be granted interdependent treatment. The commenter argued that the asset (mortgage servicing rights) and liability (mortgage borrower deposits consisting of the principal, interest, tax, and insurance payments collected from the borrowers to be remitted to investors, insurers, and state and local governments) are linked and treated as self-funding by the industry. The commenter also argued that deposits arising from mortgage servicing should be considered stable because they have predictable inflow and outflow patterns.

It would be inconsistent with the NSFR's aggregated balance sheet approach to remove from the ratio calculation, through interdependent treatment, an asset and a liability that are not each clearly identifiable or where the maturities and amounts of the asset and the liability do not align. While certain assets and liabilities may be closely linked (such as mortgage servicing rights and borrower liabilities), there is not enough certainty that the size and maturity of these assets and liabilities would always align.

Other Comments on Interdependent Assets and Liabilities

Commenters also submitted several general comments applicable to many types of transactions that they argued should receive interdependent treatment. Commenters suggested that the agencies could impose data reporting requirements to verify that internal policies and procedures are maintaining a link between the various parts of the transactions they believe should be granted interdependent treatment. Another commenter argued that, if covered companies engage in the transactions outlined above in accordance with the BCBS haircut floors for non-centrally cleared securities financing transactions,[229] then the transactions should be treated as interdependent. Several commenters also warned that failure to provide interdependent treatment for the positions described above would significantly reduce liquidity in the relevant markets.

A discussed in section V of this Supplementary Information section, the NSFR is a broad measure of the funding profile of the whole balance sheet of a covered company and the final rule does not apply separate requirements to individual lines of business or to subsets of assets and liabilities of a covered company. The treatment of specific assets and liabilities as interconnected would effectively remove these items from the assessment of the covered company's stable funding profile overall. As a general principle, it would be inconsistent with the purposes and design of the NSFR to provide interdependent treatment to a specific asset and liability where the specified asset can contractually persist on the balance sheet of the covered company after the extinguishment of the specified liability. While internal processes and procedures may increase the probability of such assets and liabilities aligning, it would be impractical to expand the final rule to create or regulate such processes in a manner that would ensure alignment.

VIII. Net Stable Funding Ratio Shortfall

As noted above, the proposed rule would have required a covered company to maintain an NSFR of at least 1.0 on an ongoing basis. The agencies expect circumstances where a covered company has an NSFR below 1.0 to arise rarely. However, given the range of reasons, both idiosyncratic and systemic, a covered company could have an NSFR below 1.0 (for example, a covered company's NSFR might temporarily fall below 1.0 during a period of extreme liquidity stress), the proposed rule would not have prescribed a particular supervisory response to address a violation of the NSFR requirement. Instead, the proposed rule would have provided flexibility for the appropriate Federal banking agency to respond based on the circumstances of a particular case. Potential supervisory responses could include, for example, an informal supervisory action, a cease-and-desist order, or a civil money penalty.

The proposed rule would have required a covered company to notify the appropriate Federal banking agency of an NSFR shortfall or potential shortfall. Specifically, the proposed rule would have required a covered company to notify its appropriate Federal banking agency no later than 10 business days, or such other period as

[229] Basel Committee, *Haircut floors for non-centrally cleared securities financing transactions* (November 2015), *available at http://www.bis.org/bcbs/publ/d340.htm.*

the appropriate Federal banking agency may otherwise require by written notice, following the date that any event has occurred that has caused or would cause the covered company's NSFR to fall below the minimum requirement.

In addition, a covered company would have been required to develop a plan for remediation in the event of an NSFR shortfall. As set forth in the proposed rule, such a plan would have been required to include an assessment of the covered company's liquidity profile, the actions the covered company has taken and will take to achieve full compliance with the proposed rule (including a plan for adjusting the covered company's liquidity profile to comply with the proposed rule's NSFR requirement and a plan for fixing any operational or management issues that may have contributed to the covered company's noncompliance), and an estimated time frame for achieving compliance. The proposed rule would have required a covered company to submit its remediation plan to its appropriate Federal banking agency no later than 10 business days, or such other period as the appropriate Federal banking agency may otherwise require by written notice, after: (1) The covered company's NSFR falls below, or is likely to fall below, the minimum requirement and the covered company has or should have notified the appropriate Federal banking agency, as required under the proposed rule; (2) the covered company's required NSFR disclosures or other regulatory reports or disclosures indicate that its NSFR is below the minimum requirement; or (3) the appropriate Federal banking agency notifies the covered company that it must submit a plan for NSFR remediation and the agency provides a reason for requiring such a plan.

Finally, the covered company would have been required to report to the appropriate Federal banking agency no less than monthly (or other frequency, as required by the agency) on its progress towards achieving full compliance with the proposed rule. These reports would have been mandatory until the firm's NSFR was equal to or greater than 1.0.

The agencies would have retained the authority to take supervisory action against a covered company that fails to comply with the NSFR requirement.[230] Any action taken would have depended on the circumstances surrounding the funding shortfall, including, but not limited to, operational issues at a covered company, the frequency or magnitude of the noncompliance, the nature of the event that caused a shortfall, and whether such an event was temporary or unusual.

The agencies received one comment requesting clarification of how frequently a covered company must calculate its NSFR to meet the proposed rule's requirement to maintain an NSFR of 1.0 on an ''ongoing basis.'' The commenter suggested that the final rule should require a covered company to calculate its NSFR in the same manner as it calculates its regulatory capital levels. The commenter argued that, because the NSFR is a long-term funding metric calculated primarily by reference to a covered company's balance sheet, it would not be possible to calculate a firm's NSFR more frequently than monthly.

The agencies also received two comments related to the proposed rule's shortfall provisions. One commenter asserted that the proposed rule did not have a mechanism similar to the LCR permitting a covered company's NSFR to fall below 1.0. Another commenter responded to the agencies' request for comment as to whether the proposed shortfall framework should include a *de minimis* exception, such that a covered company would not be required to report a shortfall if its NSFR returned to the required minimum within a short grace period. This commenter requested a *de minimis* exception when the cause of an NSFR shortfall is beyond a covered company's control and the shortfall would not be expected to increase systemic risk because of an expected short duration and minimal amount. This commenter also requested that the final rule include a cure period where a shortfall is caused by a merger or acquisition by a covered company. Another commenter requested that the requirement to submit a formal remediation plan should be determined on a case-by-case basis by the covered company's appropriate Federal banking agency. The commenter also requested that the requirement to respond to an NSFR shortfall be calibrated to the materiality and likely persistence of the shortfall.

Consistent with the proposed rule, the final rule requires a covered company to maintain an NSFR of at least 1.0 on an ongoing basis. The NSFR is designed to ensure that covered companies have the ability to serve households and businesses in both normal and adverse economic situations. The agencies would generally support a covered company that chooses to reduce its NSFR during a liquidity stress period in order to continue to lend and undertake other actions to support the broader economy in a safe and sound manner.

While the final rule requires a covered company that is a U.S. depository institution holding company or U.S. intermediate holding company to disclose its NSFR for each quarter on a semi-annual basis,[231] a covered company needs to monitor its funding profile on an ongoing basis to ensure compliance with the NSFR requirement. If a covered company's funding profile materially changes intra-quarter, the agencies expect the company to be able to calculate its NSFR to determine whether it remains compliant with the NSFR requirement, consistent with the notification requirements of § ____.110 of the final rule.[232] The agencies are adopting the shortfall provisions of the final rule as proposed. Consistent with the shortfall framework in the LCR rule, the final rule's shortfall framework provides supervisory flexibility for the appropriate agency to respond to an NSFR shortfall based on the particular circumstances of the shortfall. Depending on the circumstances, an NSFR shortfall would not necessarily result in supervisory action, but, at a minimum, would result in a notification to the appropriate agency and heightened supervisory monitoring through a remediation plan.

The agencies have determined not to include a cure period or *de minimis* exception to the shortfall notification requirement in the final rule. The shortfall notification procedures are intended to help the agencies identify a covered company that has a heightened liquidity risk profile, and identify and evaluate shortfall patterns over time and across covered companies. Timely notification of a shortfall allows the appropriate Federal banking agency to make an informed determination as to the appropriate supervisory response. As a result, the agencies are finalizing the requirement that a covered company must provide such notification no later than 10 business days, or such other period as the appropriate agency may otherwise require by written notice, following the date that any shortfall event has occurred. Similarly, timely submission of a remediation plan

[230] *See* § ____.2(c) of the final rule.

[231] *See* section IX of this Supplementary Information section.

[232] The ability for a covered company to calculate its NSFR at any point in which its funding profile materially changes intra-quarter is similar to the application of minimum capital requirements under the agencies regulatory capital rule. For example, Prompt Corrective Action requires an insured depository institution to provide written notice to its primary supervisor that an adjustment to its capital category may have occurred no later than 15 calendar days following the date that any material event has occurred that would cause the insured depository institution to be placed in a lower capital category. *See* 12 CFR 6.3 (OCC); 12 CFR 208.42 (Board); 12 CFR 324.402 (FDIC).

facilitates evaluation of shortfalls and the efforts undertaken by covered companies to address them, which assists the agencies in determining the appropriate supervisory response. Such supervisory monitoring and response could be hindered if notice were to occur or remediation plans were only submitted after a shortfall persisted in duration or increased in amount.

IX. Disclosure Requirements

A. NSFR Public Disclosure Requirements

The disclosure requirements of the proposed rule would have applied to certain bank holding companies and savings and loan holding companies. The tailoring proposals would have amended the scope of application of the proposed disclosure requirements to apply to domestic top-tier depository institution holding companies and U.S. intermediate holding companies of foreign banking organizations subject to the proposed NSFR rule.[233] The disclosure requirements of the proposed rule would not have applied to depository institutions.[234] The proposed rule would have required public disclosure of a company's NSFR and components, as well as discussion of certain qualitative features to facilitate an understanding of the company's calculation and results. The final rule adopts the public disclosure requirements for domestic top-tier depository institution holding companies and U.S. intermediate holding companies of foreign banking organizations that are subject to the final rule (covered holding companies).

B. Quantitative Disclosure Requirements

The proposals would have required a company subject to the proposed disclosure requirements to publicly disclose the company's NSFR and its components. The proposed NSFR disclosure template would have included components of a company's ASF and RSF calculations (ASF components and RSF components, respectively), as well as the company's ASF amount, RSF amount, and NSFR. For most ASF and RSF components, the proposed rule would have required disclosure of both ''unweighted'' and ''weighted'' amounts.[235] For certain line items in the proposed NSFR disclosure template relating to derivative transactions that include components of multi-step calculations before an ASF or RSF factor is applied, a company would only have been required to disclose a single amount for the component.

Two commenters argued that the proposed NSFR disclosure template should not include certain information that is more granular than, or in addition to, the information specified in the BCBS common template, such as the requirement for additional detail regarding a company's HQLA and certain other assets. One of these commenters asserted that the proposed level of detail of required disclosures could constrain a company's ability to execute its funding and related business strategies because a firm subject to the disclosure requirements would be wary of adjusting its funding structure in a way that would appear to market participants to diverge from the funding structures of peer firms. The commenter also argued this anticipation of a market response would inappropriately force firms with different business models and funding needs to maintain similar funding structures. The commenter acknowledged that these concerns could be mitigated if firms explain the difference between their funding structures and those of other firms in the qualitative portion of the public disclosure, but argued that market participants are likely to pay more attention to the quantitative portion of a firm's disclosure. To address these concerns, the commenter argued that reducing the required granularity of the proposed disclosures would provide the market with sufficient information about a company's liquidity profile without resulting in what the commenter argued would be negative effects of overly detailed disclosures.

Other commenters suggested that the final rule require a company to disclose its average NSFR over the relevant reporting period, rather than the company's NSFR at the end of the quarter. The commenters argued that liquidity positions, and consequently a company's NSFR, can be volatile. Accordingly, disclosing a company's NSFR for the day ending a reporting period could suggest that the company's liquidity position is more volatile than an average of the company's NSFR over the entire reporting period would suggest. One commenter also argued that using an average value would be consistent with the disclosure requirements for the LCR. The final rule retains the quantitative disclosure requirements largely as proposed.[236] However, in a change from the proposal, the final rule requires covered holding companies to use simple daily averages rather than quarter end data in its public disclosures. This change from the proposal will reduce the possibility of ''window dressing'' by covered holding companies and will benefit the public by more accurately reflecting the long term funding profile of the reporting covered holding companies.

Although the final rule requires disclosure of certain liquidity data, it does not require a covered holding company to disclose specific asset-, liability-, or transaction-level details. This should limit the risk that public disclosures will prevent a covered holding company from executing its risk management and business strategies. The disclosure requirements in the final rule are generally consistent with the items specified in the BCBS common template, with some relatively small differences, as described below. By using a standardized tabular format that is generally similar to the BCBS common template, the final rule's NSFR disclosure template enables market participants to compare funding characteristics of covered holding companies in the United States and other banking organizations subject to similar requirements in other jurisdictions.

For most ASF or RSF components, the final rule's NSFR disclosure template, like the proposed NSFR disclosure template, requires separation of the unweighted amount based on maturity categories relevant to the NSFR requirement: Open maturity; less than six months after the calculation date; six months or more, but less than one year after the calculation date; one year or more after the calculation date; and perpetual. While the BCBS common template does not distinguish between the ''open'' and ''perpetual'' maturity categories (grouping them together under the heading ''no maturity''), the final rule requires a company to disclose

[233] The FBO tailoring proposal would have applied NSFR public disclosure requirements to a U.S. intermediate holding company of a foreign banking organization subject to Category II or III liquidity standards, or subject to Category IV liquidity standards with $50 billion or more in weighted short-term wholesale funding. 84 FR at 24320.

[234] The Board noted in the Supplementary Information section of the proposed rule that it may develop a different or modified reporting form that would be required for both depository institutions and depository institution holding companies subject to the proposed rule. The Board stated that it anticipated that it would solicit public comment on any such new reporting form.

[235] The ''unweighted'' amount generally refers to values of ASF or RSF components prior to applying the assigned ASF or RSF factors, whereas the ''weighted'' amount generally refers to the amounts resulting after applying the assigned ASF or RSF factors.

[236] As described in section V.E.3 of this Supplementary Information section, the final rule includes reduced NSFR requirements for certain covered companies. The final rule makes certain adjustments to the NSFR disclosure template in § ____.131 of the final rule to incorporate the reduced requirements.

amounts in the ''open'' and ''perpetual'' maturity categories separately because the categories are on opposite ends of the maturity spectrum for purposes of the final rule. The ''open'' maturity category is meant to identify instruments that do not have a stated contractual maturity and may be closed out on demand, such as demand deposits. The ''perpetual'' category is intended to identify instruments that contractually may never mature and may not be closed out on demand, such as equity securities. The final rule's NSFR disclosure template separates these two categories into different columns to improve the transparency and quality of the disclosure without undermining the ability to compare the NSFR component disclosures of banking organizations in other jurisdictions that utilize the BCBS common template because these two columns can be summed for comparison purposes. For certain ASF and RSF components that represent calculations that do not depend on maturities, such as the NSFR derivatives asset or liability amount, the final rule's NSFR disclosure template, like the proposed NSFR disclosure template, does not require a covered holding company to separate its disclosed amount by maturity category.

As described further below, the final rule, like the proposed rule, identifies the ASF and RSF components that a covered holding company must include in each row of the NSFR disclosure template, including cross-references to the relevant sections of the final rule. In some cases, the final rule's NSFR disclosure template requires instruments that are assigned identical ASF or RSF factors to be disclosed in different rows or columns, and some rows and columns combine disclosure of instruments that are assigned different ASF or RSF factors.

For consistency, the final rule's NSFR disclosure template requires a covered holding company to clearly indicate the as-of date for disclosed amounts and report all amounts on a consolidated basis and expressed in millions of U.S. dollars or as a percentage, as applicable.

1. Disclosure of ASF Components

The proposed rule would have required a company subject to the proposed requirement to disclose its ASF components, separated into the following categories: (1) Capital and securities, which includes NSFR regulatory capital elements and other capital elements and securities; (2) retail funding, which includes stable retail deposits, less stable retail deposits, retail brokered deposits, and other retail funding; (3) wholesale funding, which includes operational deposits and other wholesale funding; and (4) other liabilities, which include the company's NSFR derivatives liability amount and any other liabilities not included in other categories. The Board is adopting the ASF component disclosure categories as proposed.

The final rule's NSFR disclosure template differs from the BCBS common template by including some additional ASF categories that are not separately broken out under the Basel NSFR, such as retail brokered deposits. The final rule's NSFR disclosure template also includes additional information regarding a covered holding company's total derivatives amount. These differences from the BCBS common template provide greater transparency by requiring disclosure of additional information relevant for understanding a covered holding company's liquidity profile. These differences would not impact comparability across jurisdictions, as the more specific line items can be added together to produce a comparable total amount.

2. Disclosure of RSF Components

The proposed disclosure requirements would have required a company to disclose its RSF components, separated into the following categories: (1) Total HQLA and each of its component asset categories (*i.e.,* level 1, level 2A, and level 2B liquid assets); (2) assets other than HQLA that are assigned a zero percent RSF factor; (3) operational deposits; (4) loans and securities, separated into categories including retail mortgages and securities that are not HQLA; (5) other assets, which include commodities, certain components of the company's derivatives RSF amount, and all other assets not included in another category (including nonperforming assets); [237] and (6) undrawn amounts of committed credit and liquidity facilities.

As discussed in section VII.D.3.h of this Supplementary Information section, the proposed rule would have assigned RSF factors to encumbered assets under §§ ____.106(c) and (d). A company subject to the proposed disclosure requirements would have been required to include encumbered assets in a cell of the NSFR disclosure template based on the asset category and asset maturity rather than based on the encumbrance period. Similar treatment would have applied for an asset provided or received by a company as variation margin to which an RSF factor is assigned under § ____.107.

The final rule includes the RSF component disclosure categories as proposed with adjustments to incorporate the reduced requirements under the final rule. The final rule's NSFR disclosure template differs in some respects from the BCBS common template to provide more granular information regarding RSF components without undermining comparability across jurisdictions. For example, the final rule requires disclosure of a covered holding company's level 1, level 2A, and level 2B liquid assets by maturity category, which is not required under the BCBS common template, to assist market participants and other parties in assessing the composition of a covered holding company's HQLA portfolio.[238] Additionally, because some assets that are assigned a zero percent RSF factor under the final rule are not HQLA under the LCR rule, such as currency and coin and certain trade date receivables, the template includes a distinct category for zero percent RSF assets that are not level 1 liquid assets. The NSFR disclosure template also differs from the BCBS common template in its presentation of the components of a covered holding company's NSFR derivatives asset amount, generally to improve the clarity of disclosure by separating components into distinct rows and by including the total derivatives asset amount so that market participants and other parties can better understand a covered holding company's NSFR derivatives asset calculation.

C. Qualitative Disclosure Requirements

A company subject to the proposed disclosure requirements would have been required to provide a qualitative discussion of the company's NSFR and its components sufficient to facilitate an understanding of the calculation and results. The proposed rule would not have prescribed the content or format of a company's qualitative disclosures; rather, it would have allowed flexibility for discussion based on each company's particular circumstances. The proposed rule would, however, have provided guidance through examples of topics

[237] A company would have been required to disclose nonperforming assets as part of the line item for other assets and nonperforming assets, rather than as part of a line item based on the type of asset that has become nonperforming.

[238] The Board notes that the information to be disclosed relating to HQLA is consistent with the design and purpose of the NSFR and is different from disclosures under the LCR rule. The carrying values of the various types of liquid assets at the reporting date, together with their maturity profile, provide additional clarity regarding the structure of the reporting company's balance sheet. In contrast, the LCR rule focuses on the ability to monetize assets in a period of stress and the LCR disclosure template contains averages of market values of eligible HQLA.

that a company may discuss, to the extent they would be significant to the company's NSFR. These examples would have included: (1) The main drivers of the company's NSFR; (2) changes in the company's NSFR over time and the causes of such changes (for example, changes in strategies or circumstances); (3) concentrations of funding sources and changes in funding structure; (4) concentrations of available and required stable funding within a company's corporate structure (for example, across legal entities); and (5) other sources of funding or other factors in the NSFR calculation that the company considers to be relevant to facilitate an understanding of its liquidity profile.

One commenter requested that under the final rule a company only be required to provide a qualitative discussion of items that are ''material'' rather than ''significant'' to the company's NSFR, which the commenter argued would be consistent with disclosure requirements applicable under U.S. federal securities laws and facilitate more effective compliance.

The final rule, like the proposed rule, uses the term ''significant'' to describe the examples of items affecting a covered holding company's NSFR about which a covered holding company should provide a qualitative discussion. However, a covered holding company may determine the relevant qualitative disclosures based on a materiality concept. Information is regarded as material for purposes of the disclosure requirements in the final rule if the information's omission or misstatement could change or influence the assessment or decision of a user relying on that information for the purpose of making investment decisions. This approach is consistent with the disclosure requirements under the Board's regulatory capital rules and the LCR public disclosure requirement.[239]

As noted above, the proposed rule would have required a company to provide a qualitative discussion of its NSFR and included an illustrative list of potentially relevant items that a company could discuss, to the extent relevant to its NSFR. Among the illustrative list of potentially relevant items was an item titled ''Other sources of funding or other factors in the net stable funding ratio calculation that the covered depository institution holding company considers to be relevant to facilitate an understanding of its liquidity profile.'' The Board has determined that this item would have been redundant given the proposed rule's general requirement that a covered holding company must provide a qualitative discussion of its NSFR. For this reason, the final rule eliminates this example.

Disclosure requirements under the LCR rule also include a qualitative disclosure section.[240] Given that the proposed rule and the LCR rule would be complementary quantitative liquidity requirements, a company subject to both disclosure requirements would have been permitted to combine the two qualitative disclosures, as long as the specific qualitative disclosure requirements of each are satisfied. In response to a comment that the Board received on the proposed rule for the LCR public disclosure requirements suggesting that required qualitative disclosures include an exemption for certain confidential or proprietary information, the final LCR public disclosure rule clarified that a firm subject to that rule is not required to include in its qualitative disclosures any information that is proprietary or confidential.[241] Instead, the covered holding company is only required to disclose general information about those subjects and provide a reason why the specific information has not been disclosed. To maintain consistency between the qualitative disclosure requirements of the LCR and final rules, the final rule does not require a covered holding company to include in the qualitative disclosure for its NSFR any information that is proprietary or confidential so long as the company discloses general information about the non-disclosed subject and provides a specific reason why the information is not being disclosed.

D. Frequency and Timing of Disclosure

The proposed rule would have required a company to provide timely public disclosures after each calendar quarter. One commenter argued that the frequency of the required disclosure should be increased to daily because market participants need more timely information to adequately adjust their risk management and business activities based on the liquidity risk of companies. The commenter also argued that quarterly NSFR disclosures could increase market instability relative to more frequent disclosures, because, the commenter argued, large changes in a company's NSFR between quarters would be more disruptive to the market compared to more frequent disclosures that revealed smaller incremental changes to a company's NSFR. Finally, the commenter argued that more frequent disclosure would make it more difficult for a company to engage in ''window dressing'' its NSFR to create the appearance that its liquidity profile is more stable than the company normally maintains.

Like the proposed rule, the final rule requires public disclosures for each calendar quarter. However, in a change from the proposal, the quarterly NSFR disclosures are required to be reported on a semiannual basis for every second and fourth calendar quarter. For example, following the end of the second quarter of 2023, covered holding companies are required to publicly disclose their NSFRs and ASF and RSF components for the first quarter of 2023 and the second quarter of 2023. This approach balances the benefits of quarterly disclosures, which includes allowing market participants and other parties to assess the funding risk profiles of covered holding companies, with the concerns that more frequent disclosure could result in unintended consequences. The Board will continue to assess the potential effects that public disclosures have on the ability of banking organizations to engage in banking activities that support the economy, especially in times of stress. The Board will work with international groups, such as the BCBS, as part of its continuing evaluation of the efficacy of timely public disclosures.

For supervisory purposes, the Board will continue to monitor on a more frequent basis any changes to a covered holding company's liquidity profile through the information submitted on the FR 2052a report.[242]

As noted above, the proposed rule would have required a company subject to the proposed requirements to publicly disclose, in a direct and prominent manner, the required information on its public internet site or in its public financial or other public regulatory reports. The Board requires that the disclosures be readily accessible to the general public for a period of at least five years after the disclosure date.

[239] *See* 12 CFR 217.62, 217.172 and ''Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III, Capital Adequacy, Transition Provisions, Prompt Corrective Action, Standardized Approach for Risk-Weighted Assets, Market Discipline and Disclosure Requirements, Advanced Approaches Risk-Based Capital Rule, and Market Risk Capital Rule,'' 78 FR 62018, 62129 (October 11, 2013); 12 CFR 249.91(d) and ''Liquidity Coverage Ratio: Public Disclosure Requirements; Extension of Compliance Period for Certain Companies to Meet the Liquidity Coverage Ratio Requirements,'' 81 FR 94922, 94926 (December 27, 2016).

[240] 81 FR 94922.

[241] 81 FR at 94926.

[242] The Board will issue a separate proposal for notice and comment to amend its information collection under its FR 2052a to collect information and data related to the requirements of the final rule.

The Board received no comments on this aspect of the proposed rule and are including it in the final rule without modification.

Under the proposed rule, the first reporting period for which a company would have been required to disclose its NSFR and its components would have been the calendar quarter that begins on the date the company becomes subject to the proposed NSFR requirement. Several commenters suggested that companies be given additional time to comply with disclosure and reporting requirements after becoming subject to the final rule. In addition, one commenter suggested that the disclosure requirements not be effective until at least two years after a final NSFR rule is adopted. Some argued that companies need additional time to build and implement the data collection systems necessary to meet the NSFR disclosure requirements. Other commenters argued that companies need additional time to align their existing liquidity data reporting processes under the FR 2052a and the LCR public disclosure requirements with those required for the NSFR rule. Another commenter also argued that additional time is necessary to allow the Board to clarify, through interpretation, the definitions of various terms used in the LCR rule and the proposed NSFR, and to allow companies to modify their compliance systems consistent with such interpretations.

To allow covered holding companies sufficient time to modify their reporting and compliance systems, the final rule does not require covered holding companies to provide public NSFR disclosures until the first calendar quarter that includes the date that is 18 months after the covered holding company becomes subject to the NSFR requirement.[243] This means that covered holding companies that are subject to the final rule beginning on the effective date of July 1, 2021, are required to make public disclosures for the first and second quarters of 2023 approximately 45 days after the end of the second quarter of 2023.

As discussed in the Supplementary Information section of the proposed rule, the timing of disclosures required under the Federal banking laws may not always coincide with the timing of disclosures required under other Federal laws, including disclosures required under the Federal securities laws. For calendar quarters that do not correspond to a company's fiscal year or quarter end, under the proposals the Board would have considered those disclosures that are made within 45 days of the end of the calendar quarter (or within 60 days for the limited purpose of the company's first reporting period in which it is subject to the proposed rule's disclosure requirements) as timely. In general, where a company's fiscal year end coincides with the end of a calendar quarter, the Board would have considered disclosures to be timely if they are made no later than the applicable SEC disclosure deadline for the corresponding Form 10–K annual report. In cases where a company's fiscal year end does not coincide with the end of a calendar quarter, the Board would have considered the timeliness of disclosures on a case-by-case basis.

This approach to timely disclosures is consistent with the approach to public disclosures that the Board has taken in the context of other regulatory reporting and disclosure requirements. For example, the Board has used the same indicia of timeliness with respect to the public disclosures required under its regulatory capital rules and the LCR public disclosure requirements.[244] The Board did not receive any comments regarding this aspect of the proposed rule, and the final rule includes it as proposed.

X. Impact Assessment

A. Impact on Funding

The agencies analyzed the potential impact of the final rule on the funding structure of covered companies and estimated the potential increase in funding costs for covered companies. In addition, the impact analysis considered the potential costs and benefits of an alternative policy of incorporating a small RSF requirement for level 1 liquid assets and certain short-term secured lending transactions with financial sector counterparties secured by level 1 liquid assets. Finally, this section presents responses to impact-related comments received on the NSFR proposed rule.

The agencies used bank funding data from the second quarter of 2020 to obtain the latest available view of the impact of the final rule. While the second quarter of 2020 represents a period of macroeconomic stress as a result of economic disruptions related to the COVID–19 pandemic, the banking system was healthy and bank funding markets remained open and functioning, partly due to the establishment of facilities by the Board that supported market functioning and provision of credit to households and businesses.[245] The impact of the final rule could vary through the economic and credit cycle based on the liquidity profile of a covered company's assets and appetite for funding risk. However, the agencies expect the impact of the final rule to be broadly similar if estimated using assets, commitments, and liabilities data from periods immediately preceding the onset of the COVID–19 pandemic.

The agencies approximated ASF and RSF amounts at the consolidated level for covered companies that would be subject to the full or reduced NSFR requirement, as applicable, to estimate stable funding shortfalls and excesses. These estimates were based on confidential supervisory data collected on the FR 2052a report and publicly available data from the FR Y–9C. As the available regulatory reports do not correspond perfectly to the final rule's categories of assets, commitments, and liabilities to which RSF and ASF factors are assigned, the estimation entailed the use of staff judgment, which may introduce some measurement error and hence, uncertainty into the estimates.

The scope of application for the final rule includes 20 banking organizations, 11 of which would be Category III banking organizations subject to a reduced NSFR requirement.[246] Additionally, 27 depository institutions with $10 billion or more in total consolidated assets that are consolidated subsidiaries of the 20 banking organizations described above are also covered by the final rule. The initial proposal would have included a broader set of covered companies, but the agencies subsequently established a modified scope as part of their recent efforts to tailor regulations for domestic and foreign banks to more closely match their risk profiles.[247] The final rule

[243] The LCR rule similarly does not require covered holding companies to provide public LCR disclosures until the first calendar quarter that includes the date that is 18 months after the covered holding company becomes subject to the LCR rule. 12 CFR 249.90(b).

[244] *See* 78 FR 62018, 62129 (capital); 12 CFR 249.94 (LCR).

[245] Short-term funding markets experienced a period of significant stress in March 2020 that was alleviated by financial and economic policy interventions.

[246] Eleven banking organizations that would be subject to Category III standards that have less than $75 billion in average weighted short-term wholesale funding and would be subject to a reduced NSFR requirement calibrated at 85 percent.

[247] As described above in Supplementary Information section III, the tailoring proposals would have modified the scope of application of the LCR rule and the proposed NSFR rule to apply to certain U.S. banking organizations and U.S. intermediate holding companies of foreign banking organizations, each with $100 billion or more in total consolidated assets, together with certain of their depository institution subsidiaries. In 2019, the agencies adopted a tailoring final rule that amended the scope of the LCR rule. See ''Changes to Applicability Thresholds for Regulatory Capital and Liquidity Requirements,'' 84 FR 59230.

aligns its scope of application with the LCR rule.

Using the approach described above, and assuming uncertainty of 5 percent in the NSFR due to measurement errors and management buffers, the agencies estimate that nearly all of these covered companies would be in compliance with the applicable NSFR requirement in the second quarter of 2020. The agencies estimate that a small number of GSIBs subject to the full NSFR could face an expected NSFR shortfall. The total shortfall is estimated to be $10 to $31 billion of stable funding. The agencies' estimates of shortfalls at these individual covered companies range from a negligible amount to 8 percent of the company's current level of ASF of their estimated NSFR. Beyond this small number of companies with shortfalls, the additional change in stable funding necessary to comply with the final rule at other covered companies, including all depository institution subsidiaries, is zero. Considering all banking organizations that would be subject to the final rule, the agencies estimate that there is a total ASF of $8.5 trillion, a $1.3 trillion surplus over the total RSF.

As the final rule has differential effects on the use of funding of different tenors, the agencies studied the effect of the final rule on overall bank funding costs. The agencies do not expect most covered companies to incur an increase in funding costs to comply with the NSFR requirements. Across the companies with possible NSFR shortfalls, the agencies estimate that the annual funding costs of raising additional stable funding ranges from $80 to $250 million. For the individual companies, estimates of the funding costs range from a negligible amount to about 3 percent of net income from the third quarter of 2019 to the second quarter of 2020. The cost estimate assumes companies with a shortfall would elect to eliminate it by replacing liabilities that are assigned a lower ASF factor with longer maturity liabilities that are assigned a higher ASF factor. This cost is based on an estimated difference in relative interest expense between 90 day AA-rated commercial paper (assigned a zero percent ASF factor) and unsecured debt that matures in one year (assigned a 100 percent ASF factor). The estimated difference is approximately 80 basis points, based on the average cost difference between these two sources of funding from January 2002 to February 2020.

Covered companies have multiple avenues by which to adjust their funding sources to increase their NSFRs, such as raising more retail deposits, raising capital, or lengthening funding terms. In general, covered companies would be expected to adjust to changes in regulation in a manner that provides the most favorable tradeoff between revenues and the cost of compliance. For this analysis, the agencies assumed that covered companies would resolve any NSFR shortfall by increasing their use of 12-month term funding, which is the shortest term that qualifies for a 100 percent ASF factor, and thus is a good proxy for the lowest cost way of resolving an NSFR shortfall through additional funding.

Instead of changing their funding mix to increase available stable funding, covered companies with a stable funding shortfall could instead change their asset mix to reduce their required stable funding. Covered companies may do so if the forgone revenues from such assets are smaller than the cost of raising additional stable funding. In this scenario, the costs incurred by covered companies would be even smaller than the agencies' estimates. Due to the depth and competitiveness of U.S. financial markets, such portfolio changes, if they were to occur, would likely have little knock-on effects on households and businesses.

Maintaining stable funding requirements may reduce the risk of covered company failure and the vulnerability of the financial system more broadly. To assess this, the agencies examined measures of stable funding for financial institutions leading up to and during the 2007–2009 financial crisis. The agencies found that, during the crisis, financial institutions that held low amounts of stable funding were significantly more likely to fail, be resolved, or receive liquidity and funding assistance from federal programs such as the FDIC's Temporary Liquidity Guarantee Program. This analysis indicates that the final rule is likely to increase the overall resilience of the banking system.

To assess changes since the financial crisis, the agencies examined broad measures of funding stability, including the loans-to-deposits ratio and an approximation of the NSFR that, unlike the more precise measure used to estimate the shortfall, can be calculated back to the mid-2000's. These measures show clear improvement since the mid-2000's. Much of this improvement appeared soon after the financial crisis, potentially reflecting the combined effects of the post-crisis regulatory reforms as well as the release of the BCBS's draft NSFR standard in 2010. These broader improvements in funding stability suggest that the total adjustments that banking organizations have made in response to the NSFR standard and proposed rule may be greater than the stable funding shortfalls suggested by the most recent data.

To assess changes in stable funding since the NSFR notice of proposed rulemaking, the agencies compared the stable funding shortfall under the proposed rule, estimated at the time of the proposed rule (December 2015), and the stable funding shortfall under the final rule. Under the proposed rule, the agencies estimated an aggregate stable funding shortfall of $39 billion as of December 2015. The agencies estimate that, as of June 2020 under the final rule, the shortfall is between $10 and $31 billion, or a difference of $8 to $29 billion from the proposed rule in December 2015.[248] This difference is similar to the difference in stable funding requirements caused by the changes in the RSF factors in the final rule for level 1 high quality liquid assets and gross derivative liabilities from the proposal. The agencies estimate that the aggregate required stable funding needed by banking organizations to comply with the NSFR would have been $28 to $65 billion had these changes not been implemented. The comparable figures suggest that the change in the shortfall from the proposal to the final rule is comparable to the isolated impact of the changes implemented in the final rule. More broadly, the historical perspective suggests that the final rule will help lock in the gains in funding stability made since the financial crisis.

B. Costs and Benefits of an RSF Factor for Level 1 HQLA, Both Held Outright and as Collateral for Short-Term Lending Transactions

The final rule establishes a zero percent RSF factor for level 1 liquid assets held outright and short-term secured lending transactions with financial sector counterparties that are secured by level 1 high quality liquid assets. The agencies analyzed the costs and benefits of an alternate policy of a 5 percent RSF factor for such assets. As discussed above, the agencies estimated that the marginal cost of additional stable funding is about 80 basis points.[249] Based on this estimate, the

[248] The agencies have explored the methodological differences between the proposal and final rule estimates and concluded these differences likely would not substantially affect the estimates.

[249] The agencies also analyzed the costs and benefits of a 10 percent RSF factor for short-term secured lending transactions to financial sector counterparties, and came to the same conclusion as with the 5 percent RSF factor. This reflects the fact that a higher RSF factor on these assets increases both the associated costs and benefits,

agencies predict that covered companies with an NSFR shortfall would have to incur an annual cost of about four basis points for each dollar of level 1 liquid assets needed to comply with a 5 percent stable funding requirement.[250] For such a covered company, the increase in funding costs due to a 5 percent RSF factor on level 1 liquid assets would offset about 3 percent of interest revenues on U.S. Treasury and Agency securities and about 2 percent of interest revenues on reverse repurchase agreements.

By reducing the profitability of holding these assets, the funding cost of a non-zero RSF factor on level 1 liquid assets could discourage intermediation in U.S. Treasury and repo markets by covered companies that have an NSFR close to or below 100 percent or are concerned that they could have an NSFR below 100 percent under stress. To the extent that higher costs discourage private sector intermediation in these markets, these costs could reduce intermediation activity. Robust intermediation activity is seen as beneficial to the smooth functioning of these key components of the financial system. During past periods of significant market stress or impaired liquidity, the Federal Reserve has taken actions to support the smooth functioning of the markets for Treasury securities and short-term U.S. dollar funding markets. These actions have been taken to prevent strains in the Treasury market from impeding the flow of credit in the economy or to mitigate the risk that money market pressures could adversely affect monetary policy implementation.

In addition, a non-zero RSF factor for level 1 liquid assets would make it more costly for covered companies to hold level 1 liquid assets than to hold central bank reserves, which have a zero percent RSF factor. The differential treatment of these assets, which count equally towards HQLA requirements under the LCR rule, may increase demand for central bank reserves relative to other level 1 liquid assets. Having a range of high-quality assets that can serve as near substitutes for each other allows more flexibility in monetary policy implementation and supports banking organizations' ability to manage liquidity risks efficiently as the supply of these different asset types varies over time, further supporting smooth market functioning.

[250] A stable funding requirement of 5 percent multiplied by an 80 basis points stable funding annual premium equals an annual cost of four basis points.

The agencies identified two benefits of a small RSF requirement on level 1 liquid assets. The first benefit is that the stable funding requirement would help insulate covered companies against sharp price declines of level 1 liquid assets. Such price declines might put liquidity pressure on covered companies by triggering collateral and margin calls, and, in more severe cases, fire sales. Although level 1 liquid assets are less volatile and more liquid than other securities, selling large quantities of them in a short period can depress their price further. In particular, using BrokerTec data, the agencies estimated that the price impact of selling $100 million of on-the-run U.S. Treasury securities ranges from 2 to 13 basis points during financial market stress. A small RSF requirement on level 1 liquid assets would ensure that covered companies fund a small portion of these securities from stable sources, which could ease the liquidity pressure caused by price declines and thus potentially reduce the need for Federal Reserve liquidity support in times of stress.

The second benefit of a small RSF requirement is that it would insulate covered companies against the systemic risk associated with the interconnectedness of short-term financing positions secured by level 1 liquid assets. In particular, covered companies may want to provide short-term financing to counterparties during financial market stress to preserve client relationships, thus maintaining a set of interconnected positions. In the event of counterparty default, covered companies might be forced to sell the level 1 liquid asset collateral securing these positions to be able to perform on their short-term obligations. However, unwinding such interconnected positions could potentially put further liquidity stress on both covered companies and short-term financing markets, especially during periods of stress. Importantly, the agencies found that, over the last 15 years, there were several episodes where the typical 1 to 2 percent haircuts used in U.S. Treasury repurchase agreements did not provide sufficient protection against day-to-day losses on U.S. Treasury securities. A small RSF requirement would incentivize covered companies to fund level 1 liquid assets with more stable funding, which would reduce the risks associated with interconnected short-term financing positions.

After considering the above costs and benefits, importantly including the concern that a small RSF requirement could interfere with the functioning of U.S. Treasury and repo markets by disincentivizing covered companies from acting as intermediaries, the agencies are adopting as part of the final rule a zero percent RSF factor for level 1 liquid assets held as securities and for short-term secured lending transactions secured by level 1 liquid assets.

C. Response to Comments

The agencies received many comments concerning the potential impact of the proposal, most of which argued that the cost of the proposal would have been greater than predicted by the agencies. Commenters argued the impact of the NSFR alone and together with other more recently finalized regulations would have adverse impacts on banking activities, markets, and the real economy. For example, one commenter argued that the NSFR would further reduce the ability of covered companies to act as financial intermediaries, extend credit, promote price discovery, and conduct segregation and custody of client assets, which the commenters argued has already been reduced by recent regulation, including the SLR rule and the GSIB capital surcharge rule. This commenter also argued that the NSFR would reduce liquidity in the markets for securities, raise costs for derivatives end-users, make pricing less efficient, and result in a sunk cost to covered companies in the form of a liquidity buffer. The commenter further argued that the increase in costs to covered companies stemming from the NSFR could be passed on to a covered company's clients. The commenters noted that the predicted cost of the Basel NSFR standard has been cited by other jurisdictions as justification to change the standard, and that the agencies should consider changes to reduce the costs of the proposal.

In regard to commenters' concerns that the proposal would decrease financial intermediation, reduce market liquidity, and increase costs to customers, the estimates from the analysis demonstrated that nearly all covered companies are already in compliance with their NSFR requirements, and there is a substantial surplus of ASF in excess of RSF across covered companies at an aggregate level. The agencies also studied the effect of the final rule on overall bank funding costs and do not expect most covered companies to incur an increase in funding costs to comply with the final NSFR requirements. As such, the final rule would not require further changes by most covered companies to comply with the rule, limiting adverse effects on financial intermediation or market liquidity.

In developing the final rule, the agencies considered commenters' concerns regarding potential costs of specific aspects of the NSFR, and in some cases have made certain targeted changes that reduce potential negative impacts on covered companies. For example, the proposal set the RSF factors for level 1 liquid asset securities held outright and short-term reverse repos secured by level 1 liquid assets to 5 percent and 10 percent, respectively. The final rule establishes a zero percent RSF factor for both level 1 liquid asset securities held outright and short-term reverse repos secured by level 1 liquid assets, in part to avoid disincentivizing covered companies from U.S. Treasury and repo market intermediation. The proposal also required a 20 percent RSF add-on factor for gross derivatives liabilities. Many commenters expressed concerns that this treatment would reduce the willingness of covered companies to act as derivatives counterparties and could thus aggravate financial market liquidity stress. The final rule establishes a 5 percent RSF add-on factor for gross derivatives liabilities to take these concerns into account. The change in the RSF factor from 20 percent to 5 percent reduces estimated aggregate RSF by $77 billion, or 1 percent of the estimated total RSF.

Commenters also asserted that the agencies had insufficient data to estimate the impact of the NSFR on covered companies. The agencies note that the impact analysis for the final rule used publicly available FR Y–9C report data and confidential data from the FR 2052a report data from the second quarter of 2020, which is the most up-to-date and comprehensive information on covered companies.[251] Although the confidential supervisory and publicly available data in the analysis does not perfectly correspond to the categories of assets, commitments, and liabilities used in the final rule, the data is sufficient to construct informative estimates in the impact analysis.

The agencies also received comments suggesting that a point-in-time estimate of the amount of ASF relative to RSF, as provided above, is an inadequate measure of the economic effect of the NSFR. In particular, the commenters argued that the NSFR fluctuates over the business cycle because categories with high RSF factors, such as nonperforming assets and gross derivatives liabilities, tend to increase during economic downturns. The commenters expressed concerns that, as a result, the NSFR requirement could have pro-cyclical effects. The agencies partly address this concern by reducing the RSF factor for gross derivative liabilities from 20 percent to 5 percent. In addition, the agencies note that the NSFR of nearly all covered companies increased over the first half of 2020, while nonperforming assets and gross derivative liabilities increased for most covered companies. Notably, this increase in the NSFR was partly driven by the inflow of retail deposits at covered companies, which was similar to the inflow of retail deposits during the global financial crisis of 2007–2009. Therefore, the available empirical evidence currently available suggests that retail deposit inflows can partially counteract the potential pro-cyclicality of the NSFR requirement on covered companies during economic downturns.

One commenter agreed with the agencies' statement in the Supplementary Information section to the proposal that even a slight reduction in the probability of another financial crisis would far outweigh the additional costs of the proposal. This commenter cites a study showing that the estimated cost of the 2007–2009 financial crisis was greater than $20 trillion.[252] The BCBS finds banking crises typically have smaller but still very large cumulative discounted costs of 20 to 60 percent of GDP, which translates to a total cost of $4 to $12 trillion.[253] The final rule promotes safety and soundness by protecting covered companies against an extended period of liquidity and market stress by mandating a minimum amount of stable funding commensurate to the liquidity risks of their assets and certain contingent exposures.

Several commenters questioned whether the impact assessment in the proposal adequately accounts for costs to the intermediate holding companies of foreign banking organizations, noting that the impact assessment was developed prior to the finalization of the requirement that certain foreign banking organizations form an intermediate holding company in the United States under the Board's enhanced prudential standards rule. The commenters asserted that this timing likely resulted in the impact assessment in the proposal not including or underestimating the impact to intermediate holding companies. The impact analysis in the final rule considered all covered companies, including intermediate holding companies, using data from the second quarter of 2020.

XI. Effective Dates and Transitions

A. Effective Dates

Under the proposed rule, the NSFR requirement would have been effective as of January 1, 2018. At the time the proposal was issued in April 2016, the agencies set this effective date to provide covered companies with sufficient time to adjust to the requirements of the proposal, including to make any changes to ensure their assets, derivative exposures, and commitments are stably funded and to adjust information systems to calculate and monitor their NSFR ratios. The NSFR is a balance-sheet metric and its calculations would generally be based on the carrying value, as determined under GAAP, of a covered company's assets, liabilities, and equity. As a result, covered companies should generally be able to leverage current financial reporting systems to comply with the NSFR requirement.

Under the proposed rule, the updated definitions were set to become effective for purposes of the LCR rule at the beginning of the calendar quarter after finalization of the proposed NSFR rule, instead of on January 1, 2018. The agencies proposed that revisions to definitions in the LCR rule become effective sooner than the proposed NSFR effective date because they would enhance the clarity of certain definitions used in the LCR rule. Several commenters requested additional time to adjust the revised LCR definitions into their liquidity compliance systems. One commenter requested at least 180 days after the final rule is published for the revised LCR definitions to be effective. Another commenter requested that the Board issue additional guidance on how the revised definitions should be incorporated into FR 2052a reporting requirements prior to implementation of the final rule, particularly the definitions of ''secured funding'' and ''secured lending.''

Many commenters requested that the January 1, 2018 effective date be delayed to provide covered companies additional time to achieve compliance with the NSFR requirement. For example, one commenter requested that the effective date be delayed to at least January 2020. One commenter argued that the agencies should take additional time to better understand the multiple new regulatory initiatives, including

[251] The impact analysis reported in the proposal used a different data collection that was less comprehensive in its coverage of banking companies covered by the NSFR, and less detailed in its description of balance sheet items.

[252] Better Markets, *The Cost of the Crisis: $20 Trillion and Counting* (2015).

[253] The Basel Committee on Banking Supervision, *an Assessment of the Long-Term Economic Impact of Stronger Capital and Liquidity Requirements* (2010).

proposed and potential total loss absorbing capacity requirements, before introducing a new NSFR requirement. Commenters argued that covered companies should be given additional time to build and update internal reporting systems and comply with public disclosure requirements given their ongoing work to implement existing requirements under the LCR rule and the Board's FR 2052a reporting form.[254] These commenters asserted that covered companies required additional time beyond 2018 to develop necessary staffing, management, compliance, and information technology resources. Some commenters also noted that certain covered companies would likely require additional time to make structural adjustments to their balance sheets to be in compliance with the NSFR requirement and other pending rulemakings. One commenter suggested that the final rule should be implemented in three transitional phrases consisting of a study of the cumulative impacts of existing post-crisis regulatory reforms on the economy, finalizing the NSFR with an initial ratio of ASF to RSF of 0.70, and adjusting the NSFR requirement to 1.0 only for certain of the largest banking organizations.[255] The commenter also suggested that the agencies should not implement beyond the first phase if they find that economic impacts are not minimal or the rule is found to be ineffective. Another commenter suggested that the treatment for derivatives should be instituted through a phased-in transition to better align with the agencies' margin requirements for non-cleared swaps.[256]

In response to commenters' concerns and in light of the revised date on which the agencies are finalizing the NSFR rule, the agencies are revising the final rule to require covered companies to maintain an NSFR of 1.0 beginning on July 1, 2021. This effective date provides sufficient time for covered companies to take into account the new requirement and, as necessary, to make infrastructure and operational adjustments that may be required to comply with the final rule. To the extent a covered company is required to change its funding profile to comply with the final rule, the effective date should be sufficient to allow the firm to assess the prevailing market conditions to achieve optimal results.

The final rule also adopts an effective date of July 1, 2021 for revisions to definitions currently used in the LCR rule. The effective date for revisions to the definitions in the LCR rule is appropriate, as the revisions will provide additional clarity on the meaning of such terms. In addition, covered companies will be able to modify their compliance systems to incorporate the revised definitions by the effective date, especially since the revisions will likely require covered companies to make adjustments to their existing systems and not require covered companies to develop entirely new systems.

B. Transitions

1. Initial Transitions for Banking Organizations That Become Subject to NSFR Rule After the Effective Date

Under the tailoring proposals, a banking organization that would have become subject to the LCR rule or proposed rule after the effective date of the final rule would have been required to comply with the LCR rule or proposed rule on the first day of the second quarter after the banking organization became subject to it (newly covered banking organizations), consistent with the amount of time previously provided under the LCR rule or proposed rule.

Some commenters requested additional time to comply with the LCR rule, and the tailoring final rule provided an additional quarter to comply for newly covered banking organizations to comply with the LCR rule. Consistent with the LCR rule, the final rule provides an additional quarter to comply with the final rule, such that a newly covered company will be required to comply with these requirements on the first day of the third quarter after becoming subject to these requirements. A covered company becomes subject to the NSFR based on its category of applicable standards. A covered company's category is determined based on risk-based indicators as reported on its Call Report, FR Y–9LP or FR Y–15, or on averages of such reported items.

2. Transitions for Changes to an NSFR Requirement

Under the tailoring proposals, a banking organization subject to the LCR rule or proposed rule that becomes subject to a higher outflow or required stable funding adjustment percentage would have been able to continue using a lower calibration for one quarter. A banking organization that becomes subject to a lower outflow or required stable funding adjustment percentage at a quarter end would have been able to use the lower percentage immediately, as of the first day of the subsequent quarter. Some commenters requested longer transitions before a banking organization is required to meet an increased LCR requirement.

The tailoring final rule provided an additional quarter in the LCR rule to continue to use a lower outflow adjustment percentage after a banking organization becomes subject to a higher outflow adjustment percentage, but retained the one quarter transition period for a banking organization that transitions to a lower outflow adjustment percentage. Consistent with the LCR rule, the final rule allows a covered company an additional quarter to continue using a lower required stable funding adjustment percentage after becoming subject to a higher required stable funding adjustment percentage.[257] The agencies are finalizing the transition period for a banking organization that transitions to a lower required stable funding adjustment percentage as proposed. A depository institution subsidiary with $10 billion or more in total consolidated assets must begin complying on the same dates as its top-tier banking organization.[258]

[254] On November 17, 2015, the Board adopted the revised FR 2052a report to collect quantitative information on selected assets, liabilities, funding activities, and contingent liabilities from certain large banking organizations.

[255] *https://www.federalreserve.gov/bankinforeg/large-institution-supervision.htm.*

[256] *See* 12 CFR 45.1(e) (OCC); 12 CFR 237.1(e) (Board); 12 CFR 349.1(e) (FDIC).

[257] Section ____.105 of the final rule assigns required stable funding adjustment percentages to banking organizations based on their category of standards and amount of average weighted short-term wholesale funding. A banking organization's category and average weighted short-term wholesale funding are deemed to change during the quarter in which the banking organization files the reporting form demonstrating it meets the definition of a new category or its level of average weighted short-term wholesale funding triggers an increased or decreased required stable funding adjustment percentage under section ____.105 of the final rule. Accordingly, the banking organization is deemed to be subject to a new required stable funding adjustment percentage in the quarter during which the relevant information (used to determine category eligibility or level of average weighted short-term wholesale funding) is reported. For example, if a banking organization subject to Category III standards and an 85 percent required stable funding adjustment percentage subsequently files an FR Y–15 during the fourth quarter of a calendar year (representing a September 30 as-of reporting date) that reports an amount of weighted short-term wholesale funding such that the banking organization's average weighted short-term wholesale funding is $75 billion or more, the banking organization would be deemed to be subject to the higher required stable funding adjustment percentage (100 percent) as of the fourth quarter of that calendar year. Such a banking organization would have a two-quarter transition period and be required to comply with the higher adjustment percentage by the first day of the third calendar quarter of the next calendar year (July 1st).

[258] *See supra* note 19.

TABLE 6—EXAMPLE DATES FOR CHANGES TO AN NSFR REQUIREMENT

	Continue to apply prior required stable funding adjustment percentage	Apply new required stable funding adjustment percentage
Example 1:		
Banking organization that becomes subject to a higher required stable funding adjustment percentage as of December 31, 2023,[259] as a result of having an average weighted-short-term wholesale funding level of greater than $75 billion based on the four prior calendar quarters.	1st and 2nd quarter of 2024	Beginning July 1, 2024.
Example 2:		
Covered subsidiary depository institution of banking organization that moves from Category IV to another category as of December 31, 2023.	No prior requirement	Comply with required stable funding adjustment percentage applicable to new category beginning July 1, 2024.
Example 3:		
Banking organization that becomes subject to a lower required stable funding adjustment percentage as of December 31, 2023, as a result of having an average weighted-short-term wholesale funding level of less than $75 billion based on the four prior calendar quarters.	1st quarter of 2024	Beginning April 1, 2024.

3. Reservation of Authority To Extend Transitions

The final rule includes a reservation of authority that provides the agencies with the flexibility to extend transitions for banking organizations where warranted by events and circumstances. There may be limited circumstances where a banking organization needs a longer transition period. For example, an extension may be appropriate when unusual or unforeseen circumstances, such as a merger with another entity, cause a banking organization to become subject to an NSFR requirement for the first time. However, the agencies expect that this authority would be exercised in limited situations, consistent with prior practice.

4. Cessation of Applicability

Under the tailoring proposals, once a banking organization became subject to an LCR or proposed NSFR requirement, it would have remained subject to the rule until the appropriate agency determined that application of the rule would not be appropriate in light of the banking organization's asset size, level of complexity, risk profile, or scope of operations. The tailoring final rule repealed this provision in the LCR rule because the revised scope of application framework made this cessation provision unnecessary. Consistent with the LCR rule, the agencies are repealing this provision in the final rule. A banking organization that no longer meets the relevant criteria for being subject to the final rule will not be required to comply with the final rule.

XII. Administrative Law Matters

A. Congressional Review Act

For purposes of the Congressional Review Act, the Office of Management and Budget (OMB) makes a determination as to whether a final rule constitutes a ''major'' rule.[260] If a rule is deemed a ''major rule'' by the OMB, the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.[261]

The Congressional Review Act defines a ''major rule'' as any rule that the Administrator of the Office of Information and Regulatory Affairs of the OMB finds has resulted in or is likely to result in (A) an annual effect on the economy of $100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.[262]

As required by the Congressional Review Act, the agencies will submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.

B. Plain Language

Section 722 of the Gramm-Leach-Bliley Act,[263] requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The agencies sought to present the final rule in a simple and straightforward manner and did not receive any comments on the use of plain language in the proposed rule.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act[264] (RFA) generally requires an agency to either provide a regulatory flexibility analysis with a final rule or to certify that the final rule will not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration (SBA) establishes size standards that define which entities are small businesses for purposes of the RFA.[265] Except as otherwise specified below, the size standard to be considered a small business for banking entities subject to the final rule is $600 million or less in consolidated assets.[266] In accordance with section 3(a) of the RFA, the Board is publishing a regulatory flexibility analysis with respect to the final rule. The OCC and FDIC are certifying that

[259] That is, the banking organization filed reports in the 4th quarter of 2023 (as of September 30 report date) demonstrating that it had an average weighted-short-term wholesale funding level of greater than $75 billion during the four prior calendar quarters.

[260] 5 U.S.C. 801 *et seq.*

[261] 5 U.S.C. 801(a)(3).

[262] 5 U.S.C. 804(2).

[263] Public Law 106–102, sec. 722, 113 Stat. 1338, 1471 (1999), 12 U.S.C. 4809.

[264] 5 U.S.C. 601 *et seq.*

[265] U.S. SBA, Table of Small Business Size Standards Matched to North American Industry Classification System Codes, *available at https://www.sba.gov/document/support-table-size-standards.*

[266] *See id.* Pursuant to SBA regulations, the asset size of a concern includes the assets of the concern whose size is at issue and all of its domestic and foreign affiliates. 13 CFR 121.103(6).

the final rule will not have a significant economic impact on a substantial number of small entities.

Board

Based on its analysis and for the reasons stated below, the Board believes that the final rule will not have a significant economic impact on a substantial number of small entities.

The final rule is intended to implement a quantitative liquidity requirement applicable for certain bank holding companies, savings and loan holding companies, and state member banks.

Under regulations issued by the Small Business Administration, a ''small entity'' includes firms within the ''Finance and Insurance'' sector with total assets of $600 million or less.[267] The Board believes that the Finance and Insurance sector constitutes a reasonable universe of firms for these purposes because such firms generally engage in activities that are financial in nature. Consequently, bank holding companies, savings and loan holding companies, and state member banks with asset sizes of $600 million or less are small entities for purposes of the RFA.

As discussed in section V.E of this Supplementary Information section, the final rule will generally apply to certain Board-regulated institutions with $100 billion or more total consolidated assets, and certain of their depository institution subsidiaries with $10 billion or more in total assets.

Companies that are subject to the final rule therefore substantially exceed the $600 million asset threshold at which a banking entity is considered a ''small entity'' under SBA regulations. Because the final rule does not apply to any company with assets of $600 million or less, the final rule is not expected to apply to any small entity for purposes of the RFA. As discussed in the Supplementary Information section, including section V of the Supplementary Information section, the Board does not believe that the final rule duplicates, overlaps, or conflicts with any other Federal rules. In light of the foregoing, the Board does not believe that the final rule will have a significant economic impact on a substantial number of small entities.

OCC

The OCC considered whether the final rule is likely to have a significant economic impact on a substantial number of small entities, pursuant to the RFA. The OCC currently supervises approximately 745 small entities. Because the final rule will only apply to OCC-regulated entities that have $10 billion or more in assets, the OCC concludes the rule will not have a significant economic impact on a substantial number of small OCC-regulated entities.

FDIC

The RFA generally requires an agency, in connection with a final rule, to prepare and make available for public comment a final regulatory flexibility analysis that describes the impact of a final rule on small entities.[268] However, a regulatory flexibility analysis is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The SBA has defined ''small entities'' to include banking organizations with total assets of less than or equal to $600 million that are independently owned and operated or owned by a holding company with less than $600 million in total assets.[269] Generally, the FDIC considers a significant effect to be a quantified effect in excess of 5 percent of total annual salaries and benefits per institution, or 2.5 percent of total noninterest expenses. The FDIC believes that effects in excess of these thresholds typically represent significant effects for FDIC-supervised institutions. For the reasons described below and under section 605(b) of the RFA, the FDIC certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

The FDIC supervises 3,270 institutions,[270] of which 2,492 are considered small entities for the purposes of the RFA.[271]

The final rule applies the full NSFR requirement to companies that are subject to the Category I and Category II liquidity standards. Companies subject to the Category III liquidity standards with $75 billion or more in average weighted short-term wholesale funding are also subject to the full NSFR requirement. All other companies subject to the Category III standards, and companies subject to the Category IV standards with $50 billion or more in average weighted short-term wholesale funding, are subject to a reduced NSFR requirement calibrated at 85 percent and 70 percent, respectively. Depository institution subsidiaries of companies subject to the Category I, II, or III liquidity standards are subject to the same NSFR requirement as their top tier holding company if the depository institution subsidiary has total consolidated assets of $10 billion or more. Depository institution subsidiaries of companies subject to Category IV liquidity standards are not subject to the NSFR.

As of June 30, 2020, the FDIC supervises four depository institutions that would be subject to an NSFR requirement calibrated at 85 percent.[272] No depository institutions that are subject to the NSFR requirements would be considered small entities for the purposes of the RFA because the NSFR requirements apply only to depository institutions with at least $10 billion in total consolidated assets, and whose parent company is subject to the Category I, II, or III liquidity standards and, therefore, has least $100 billion in total consolidated assets.[273]

Because this rule does not apply to any FDIC-supervised institutions that would be considered small entities for the purposes of the RFA, the FDIC certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

D. Riegle Community Development and Regulatory Improvement Act of 1994

Section 302(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA)[274] requires that each Federal banking agency, in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of

[267] 13 CFR 121.201.

[268] 5 U.S.C. 601 *et seq.*

[269] The SBA defines a small banking organization as having $600 million or less in assets, where ''a financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' *See* 13 CFR 121.201 (as amended, effective August 19, 2019). ''SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates.'' *See* 13 CFR 121.103. Following these regulations, the FDIC uses a covered entity's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the covered entity is ''small'' for the purposes of RFA.

[270] FDIC-supervised institutions are set forth in 12 U.S.C. 1813(q)(2).

[271] Call Report data, June 30, 2020.

[272] Call Report data, June 30, 2020.

[273] No companies with less than $100 billion in total consolidated assets would be subject to the capital and liquidity standards set forth in the agencies' tailoring rule. *See* 84 FR 59230, 59235 (November 1, 2019).

[274] 12 U.S.C. 4802(a).

such regulations. The agencies have considered comments on these matters in other sections of this Supplementary Information section.

In addition, under section 302(b) of the RCDRIA, new regulations that impose additional reporting, disclosures, or other new requirements on insured depository institutions generally must take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.[275] Therefore, the final rule will be effective on July 1, 2021, the first day of the third calendar quarter of 2021.

E. Paperwork Reduction Act

Certain provisions of the final rule contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521). In accordance with the requirements of the PRA, the agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OMB control numbers are 1557–0323 for the OCC, 7100–0367 for the Board, and 3064–0197 for the FDIC. These information collections will be extended for three years, with revision. The information collection requirements contained in this final rule have been submitted by the OCC and FDIC to OMB for review and approval under section 3507(d) of the PRA (44 U.S.C. 3507(d)) and section 1320.11 of the OMB's implementing regulations (5 CFR part 1320). The Board reviewed the final rule under the authority delegated to the Board by OMB. The agencies did not receive any specific public comments on the PRA analysis.

The agencies have a continuing interest in the public's opinions of information collections. At any time, commenters may submit comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to the addresses listed in the **ADDRESSES** section. All comments will become a matter of public record. A copy of the comments may also be submitted to the OMB desk officer for the agencies: By mail to U.S. Office of Management and Budget, 725 17th Street NW, #10235, Washington, DC 20503; by facsimile to (202) 395–5806; or by email to: *oira_submission@omb.eop.gov,* Attention, Federal Banking Agency Desk Officer.

[275] 12 U.S.C. 4802(b).

Proposed Revision, With Extension, of the Following Information Collections

Title of information collection and OMB control number: Reporting and Recordkeeping Requirements Associated with Liquidity Coverage Ratio: Liquidity Risk Measurement, Standards, and Monitoring (1557–0323 for the OCC); Reporting, Recordkeeping, and Disclosure Requirements Associated with Liquidity Risk Measurement Standards (7100–0367 for the Board); and Liquidity Coverage Ratio: Liquidity Risk Measurement, Standards, and Monitoring (LCR) (3064–0197 for the FDIC).

Frequency of Response: Biannually, quarterly, monthly, and event generated.

Affected Public: Businesses or other for-profit.

Respondents:

OCC: National banks and federal savings associations.

Board: Insured state member banks, bank holding companies, and savings and loan holding companies, and U.S intermediate holding companies of foreign banking organizations.

FDIC: State nonmember banks and state savings associations.

Current actions: The reporting requirements in the final rule are found in section ____.110, the recordkeeping requirements are found in sections ____.108(b) and ____.110(b), and the disclosure requirements are found in sections ____.130 and ____.131. The disclosure requirements are only for Board supervised entities. Since the burden estimates for the NSFR revisions were inadvertently included in the November 1, 2019, tailoring final rule (84 FR 59230), the burden estimates will not change for this submission with the exception of the FDIC's burden estimates which have been updated to reflect the addition of two additional supervised institutions.

Section ____.110 requires a covered company to take certain actions following any NSFR shortfall. A covered company would be required to notify its appropriate Federal banking agency of the shortfall no later than 10 business days (or such other period as the appropriate Federal banking agency may otherwise require by written notice) following the date that any event has occurred that would cause or has caused the covered company's NSFR to be less than 1.0. It must also submit to its appropriate Federal banking agency its plan for remediation of its NSFR to at least 1.0, and submit at least monthly reports on its progress to achieve compliance.

Section ____.108(b) provides that if an institution includes an ASF amount in excess of the RSF amount of the consolidated subsidiary, it must implement and maintain written procedures to identify and monitor applicable statutory, regulatory, contractual, supervisory, or other restrictions on transferring assets from the consolidated subsidiaries. These procedures must document which types of transactions the institution could use to transfer assets from a consolidated subsidiary to the institution and how these types of transactions comply with applicable statutory, regulatory, contractual, supervisory, or other restrictions. Section ____.110(b) requires preparation of a plan for remediation to achieve an NSFR of at least equal to 1.0, as required under § ____.100.

Section ____.130 requires that a depository institution holding company subject to the NSFR publicly disclose on a biannual basis its NSFR calculated for each of the two immediately preceding calendar quarters, in a direct and prominent manner on its public internet site or in its public financial or other public regulatory reports. These disclosures must remain publicly available for at least five years after the date of disclosure. Section ____.131 specifies the quantitative and qualitative disclosures required and provides the disclosure template to be used.

Estimated average hour per response:

Reporting

Sections ____.40(a) and ____.110(a) (filed monthly)—0.5 hours.

Sections ____.40(b) and ____.110(b)—0.5 hours.

Sections ____.40(b)(3)(iv) and ____.110(b) (filed quarterly)—0.5 hours.

Recordkeeping

Sections ____.22(a)(2), ____.22(a)(5), and ____.108(b)—40 hours.

Sections ____.40(b) and ____.110(b)—200 hours.

Disclosure (Board only)

Sections 249.90, 249.91, 249.130, and 249.131 (filed biannually)—24 hours.

OCC:

OMB control number: 1557–0323.

Number of Respondents: 13.

Total Estimated Annual Burden: 4,722 hours.

Board:

OMB control number: 7100–0367.

Number of Respondents: 19 for Recordkeeping Sections 249.22(a)(2), 249.22(a)(5), and 249.108(b) and Disclosure Sections 249.90, 249.91, 249.130, and 249.131; 1 for all other rows.

Total Estimated Annual Burden: 2,793 hours.

FDIC:

OMB control number: 3064–0197.

Number of Respondents: 4.

Total Estimated Annual Burden: 994 hours.

F. OCC Unfunded Mandates Reform Act of 1995 Determination

The Unfunded Mandates Reform Act requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more, adjusted for inflation (currently $157 million), in any one year. The OCC interprets ''expenditure'' to mean assessment of costs (*i.e.,* this part of our UMRA analysis assesses the costs of a rule on OCC-supervised entities, rather than the overall impact). The OCC's estimate of banks' operational costs to comply with mandates is approximately $26 million in the first year. In addition to these operational expenditures, the OCC anticipates that in order to comply with the final rule, banks may have to substitute lower RSF-factor assets for higher yielding assets that have higher RSF factors. The OCC estimates the impact of this substitution may cost two affiliated banks approximately $240 million per year. The total UMRA cost is approximately $266 million ($26 million in compliance related expenditures + $240 million in shortfall funding). Therefore, consistent with the UMRA, the OCC has concluded that the final rule will result in private sector costs that exceed the threshold for a significant regulatory action. When the final rule is published in the **Federal Register**, the OCC's UMRA written statement will be available at: *http://www.regulations.gov,* Docket ID OCC–2014–0029.

Text of Common Rule

■ (All agencies)

PART [ ]—LIQUIDITY RISK MEASUREMENT, STANDARDS, AND MONITORING

Subpart K—Net Stable Funding Ratio

Sec.

Subpart L—Net Stable Funding Shortfall

Subpart K—Net Stable Funding Ratio

§ ____.100 Net stable funding ratio.

(a) *Minimum net stable funding ratio requirement.* A [BANK] must maintain a net stable funding ratio that is equal to or greater than 1.0 on an ongoing basis in accordance with this subpart.

(b) *Calculation of the net stable funding ratio.* For purposes of this part, a [BANK]'s net stable funding ratio equals:

(1) The [BANK]'s available stable funding (ASF) amount, calculated pursuant to § ____.103, as of the calculation date; divided by

(2) The [BANK]'s required stable funding (RSF) amount, calculated pursuant to § ____.105, as of the calculation date.

§ ____.101 Determining maturity.

For purposes of calculating its net stable funding ratio, including its ASF amount and RSF amount, under subparts K through N, a [BANK] shall assume each of the following:

(a) With respect to any NSFR liability, the NSFR liability matures according to § ____.31(a)(1) of this part without regard to whether the NSFR liability is subject to § ____.32;

(b) With respect to an asset, the asset matures according to § ____.31(a)(2) of this part without regard to whether the asset is subject to § ____.33 of this part;

(c) With respect to an NSFR liability or asset that is perpetual, the NSFR liability or asset matures one year or more after the calculation date;

(d) With respect to an NSFR liability or asset that has an open maturity, the NSFR liability or asset matures on the first calendar day after the calculation date, except that in the case of a deferred tax liability, the NSFR liability matures on the first calendar day after the calculation date on which the deferred tax liability could be realized; and

(e) With respect to any principal payment of an NSFR liability or asset, such as an amortizing loan, that is due prior to the maturity of the NSFR liability or asset, the payment matures on the date on which it is contractually due.

§ ____.102 Rules of construction.

(a) *Balance-sheet metric.* Unless otherwise provided in this subpart, an NSFR regulatory capital element, NSFR liability, or asset that is not included on a [BANK]'s balance sheet is not assigned an RSF factor or ASF factor, as applicable; and an NSFR regulatory capital element, NSFR liability, or asset that is included on a [BANK]'s balance sheet is assigned an RSF factor or ASF factor, as applicable.

(b) *Netting of certain transactions.* Where a [BANK] has secured lending transactions, secured funding transactions, or asset exchanges with the same counterparty and has offset the gross value of receivables due from the counterparty under the transactions by the gross value of payables under the transactions due to the counterparty, the receivables or payables associated with the offsetting transactions that are not included on the [BANK]'s balance sheet are treated as if they were included on the [BANK]'s balance sheet with carrying values, unless the criteria in [§ ____.10(c)(4)(ii)(E)(1) through (3) of the AGENCY SUPPLEMENTARY LEVERAGE RATIO RULE] are met.

(c) *Treatment of Securities Received in an Asset Exchange by a Securities Lender.* Where a [BANK] receives a security in an asset exchange, acts as a securities lender, includes the carrying value of the received security on its balance sheet, and has not rehypothecated the security received:

(1) The security received by the [BANK] is not assigned an RSF factor; and

(2) The obligation to return the security received by the [BANK] is not assigned an ASF factor.

§ ____.103 Calculation of available stable funding amount.

A [BANK]'s ASF amount equals the sum of the carrying values of the [BANK]'s NSFR regulatory capital elements and NSFR liabilities, in each case multiplied by the ASF factor applicable in § ____.104 or § ____.107(c) and consolidated in accordance with § ____.109.

§ ____.104 ASF factors.

(a) *NSFR regulatory capital elements and NSFR liabilities assigned a 100 percent ASF factor.* An NSFR regulatory capital element or NSFR liability of a [BANK] is assigned a 100 percent ASF factor if it is one of the following:

(1) An NSFR regulatory capital element; or

(2) An NSFR liability that has a maturity of one year or more from the calculation date, is not described in paragraph (d)(9) of this section, and is not a retail deposit or brokered deposit provided by a retail customer or counterparty.

(b) *NSFR liabilities assigned a 95 percent ASF factor.* An NSFR liability of a [BANK] is assigned a 95 percent ASF factor if it is one of the following:

(1) A stable retail deposit (regardless of maturity or collateralization) held at the [BANK]; or

(2) A sweep deposit that:

(i) Is deposited in accordance with a contract between the retail customer or counterparty and the [BANK], a controlled subsidiary of the [BANK], or a company that is a controlled subsidiary of the same top-tier company of which the [BANK] is a controlled subsidiary;

(ii) Is entirely covered by deposit insurance; and

(iii) The [BANK] demonstrates to the satisfaction of the [AGENCY] that a withdrawal of such deposit is highly unlikely to occur during a liquidity stress event.

(c) *NSFR liabilities assigned a 90 percent ASF factor.* An NSFR liability of a [BANK] is assigned a 90 percent ASF factor if it is funding provided by a retail customer or counterparty that is:

(1) A retail deposit (regardless of maturity or collateralization) other than a stable retail deposit or brokered deposit;

(2) A brokered reciprocal deposit where the entire amount is covered by deposit insurance;

(3) A sweep deposit that is deposited in accordance with a contract between the retail customer or counterparty and the [BANK], a controlled subsidiary of the [BANK], or a company that is a controlled subsidiary of the same top-tier company of which the [BANK] is a controlled subsidiary, where the sweep deposit does not meet the requirements of paragraph (b)(2) of this section; or

(4) A brokered deposit that is not a brokered reciprocal deposit or a sweep deposit, that is not held in a transactional account, and that matures one year or more from the calculation date.

(d) *NSFR liabilities assigned a 50 percent ASF factor.* An NSFR liability of a [BANK] is assigned a 50 percent ASF factor if it is one of the following:

(1) Unsecured wholesale funding that:

(i) Is not provided by a financial sector entity, a consolidated subsidiary of a financial sector entity, or a central bank;

(ii) Matures less than one year from the calculation date; and

(iii) Is not a security issued by the [BANK] or an operational deposit placed at the [BANK];

(2) A secured funding transaction with the following characteristics:

(i) The counterparty is not a financial sector entity, a consolidated subsidiary of a financial sector entity, or a central bank;

(ii) The secured funding transaction matures less than one year from the calculation date; and

(iii) The secured funding transaction is not a collateralized deposit that is an operational deposit placed at the [BANK];

(3) Unsecured wholesale funding that:

(i) Is provided by a financial sector entity, a consolidated subsidiary of a financial sector entity, or a central bank;

(ii) Matures six months or more, but less than one year, from the calculation date; and

(iii) Is not a security issued by the [BANK] or an operational deposit;

(4) A secured funding transaction with the following characteristics:

(i) The counterparty is a financial sector entity, a consolidated subsidiary of a financial sector entity, or a central bank;

(ii) The secured funding transaction matures six months or more, but less than one year, from the calculation date; and

(iii) The secured funding transaction is not a collateralized deposit that is an operational deposit;

(5) A security issued by the [BANK] that matures six months or more, but less than one year, from the calculation date;

(6) An operational deposit placed at the [BANK];

(7) A brokered deposit provided by a retail customer or counterparty that is not described in paragraphs (c) or (e)(2) of this section;

(8) A sweep deposit provided by a retail customer or counterparty that is not described in paragraphs (b) or (c) of this section;

(9) An NSFR liability owed to a retail customer or counterparty that is not a deposit and is not a security issued by the [BANK]; or

(10) Any other NSFR liability that matures six months or more, but less than one year, from the calculation date and is not described in paragraphs (a) through (c) or (d)(1) through (d)(9) of this section.

(e) *NSFR liabilities assigned a zero percent ASF factor.* An NSFR liability of a [BANK] is assigned a zero percent ASF factor if it is one of the following:

(1) A trade date payable that results from a purchase by the [BANK] of a financial instrument, foreign currency, or commodity that is contractually required to settle within the lesser of the market standard settlement period for the particular transaction and five business days from the date of the sale;

(2) A brokered deposit provided by a retail customer or counterparty that is not a brokered reciprocal deposit or sweep deposit, is not held in a transactional account, and matures less than six months from the calculation date;

(3) A security issued by the [BANK] that matures less than six months from the calculation date;

(4) An NSFR liability with the following characteristics:

(i) The counterparty is a financial sector entity, a consolidated subsidiary of a financial sector entity, or a central bank;

(ii) The NSFR liability matures less than six months from the calculation date or has an open maturity; and

(iii) The NSFR liability is not a security issued by the [BANK] or an operational deposit placed at the [BANK]; or

(5) Any other NSFR liability that matures less than six months from the calculation date and is not described in paragraphs (a) through (d) or (e)(1) through (4) of this section.

§ ____.105 Calculation of required stable funding amount.

(a) *Required stable funding amount.* A [BANK]'s RSF amount equals the [BANK's] required stable funding adjustment percentage as determined under paragraph (b) of this section multiplied by the sum of:

(1) The carrying values of a [BANK]'s assets (other than amounts included in the calculation of the derivatives RSF amount pursuant to § ____.107(b)) and the undrawn amounts of a [BANK]'s credit and liquidity facilities, in each case multiplied by the RSF factors applicable in § ____.106; and

(2) The [BANK]'s derivatives RSF amount calculated pursuant to § ____.107(b).

(b) *Required stable funding adjustment percentage.* A [BANK's] required stable funding adjustment percentage is determined pursuant to Table 1 to this paragraph (b).

TABLE 1 TO PARAGRAPH (b)—REQUIRED STABLE FUNDING ADJUSTMENT PERCENTAGES

Required stable funding adjustment percentage	Percent
Global systemically important BHC or GSIB depository institution	100
Category II [BANK]	100

TABLE 1 TO PARAGRAPH (b)—REQUIRED STABLE FUNDING ADJUSTMENT PERCENTAGES—Continued

Required stable funding adjustment percentage	Percent
Category III [BANK] with $75 billion or more in average weighted short-term wholesale funding and Category III [BANK] that is a consolidated subsidiary of such a [BANK]	100
Category III [BANK] with less than $75 billion in average weighted short-term wholesale funding and any Category III [BANK] that is a consolidated subsidiary of such a Category III [BANK]	85
Category IV [BANK] with $50 billion or more in average weighted short-term wholesale funding	70

(c) *Transition into a different required stable funding adjustment percentage.* (1) A [BANK] whose required stable funding adjustment percentage increases from a lower to a higher required stable funding adjustment percentage may continue to use its previous lower required stable funding adjustment percentage until the first day of the third calendar quarter after the required stable funding adjustment percentage increases.

(2) A [BANK] whose required stable funding adjustment percentage decreases from a higher to a lower required stable funding adjustment percentage must continue to use its previous higher required stable funding adjustment percentage until the first day of the first calendar quarter after the required stable funding adjustment percentage decreases.

§ ____.106 RSF factors.

(a) *Unencumbered assets and commitments.* All assets and undrawn amounts under credit and liquidity facilities, unless otherwise provided in § ____.107(b) relating to derivative transactions or paragraphs (b) through (d) of this section, are assigned RSF factors as follows:

(1) *Unencumbered assets assigned a zero percent RSF factor.* An asset of a [BANK] is assigned a zero percent RSF factor if it is one of the following:

(i) Currency and coin;

(ii) A cash item in the process of collection;

(iii) A Reserve Bank balance or other claim on a Reserve Bank that matures less than six months from the calculation date;

(iv) A claim on a foreign central bank that matures less than six months from the calculation date;

(v) A trade date receivable due to the [BANK] resulting from the [BANK]'s sale of a financial instrument, foreign currency, or commodity that is required to settle no later than the market standard, without extension, for the particular transaction, and that has yet to settle but is not more than five business days past the scheduled settlement date;

(vi) Any other level 1 liquid asset not described in paragraphs (a)(1)(i) through (a)(1)(v) of this section; or

(vii) A secured lending transaction with the following characteristics:

(A) The secured lending transaction matures less than six months from the calculation date;

(B) The secured lending transaction is secured by level 1 liquid assets;

(C) The borrower is a financial sector entity or a consolidated subsidiary thereof; and

(D) The [BANK] retains the right to rehypothecate the collateral provided by the counterparty for the duration of the secured lending transaction.

(2) *Unencumbered assets and commitments assigned a 5 percent RSF factor.* An undrawn amount of a committed credit facility or committed liquidity facility extended by a [BANK] is assigned a 5 percent RSF factor. For the purposes of this paragraph (a)(2), the undrawn amount of a committed credit facility or committed liquidity facility is the entire unused amount of the facility that could be drawn upon within one year of the calculation date under the governing agreement.

(3) *Unencumbered assets assigned a 15 percent RSF factor.* An asset of a [BANK] is assigned a 15 percent RSF factor if it is one of the following:

(i) A level 2A liquid asset; or

(ii) A secured lending transaction or unsecured wholesale lending with the following characteristics:

(A) The asset matures less than six months from the calculation date;

(B) The borrower is a financial sector entity or a consolidated subsidiary thereof; and

(C) The asset is not described in paragraph (a)(1)(vii) of this section and is not an operational deposit described in paragraph (a)(4)(iii) of this section.

(4) *Unencumbered assets assigned a 50 percent RSF factor.* An asset of a [BANK] is assigned a 50 percent RSF factor if it is one of the following:

(i) A level 2B liquid asset;

(ii) A secured lending transaction or unsecured wholesale lending with the following characteristics:

(A) The asset matures six months or more, but less than one year, from the calculation date;

(B) The borrower is a financial sector entity, a consolidated subsidiary thereof, or a central bank; and

(C) The asset is not an operational deposit described in paragraph (a)(4)(iii) of this section;

(iii) An operational deposit placed by the [BANK] at a financial sector entity or a consolidated subsidiary thereof; or

(iv) An asset that is not described in paragraphs (a)(1) through (a)(3) or (a)(4)(i) through (a)(4)(iii) of this section that matures less than one year from the calculation date, including:

(A) A secured lending transaction or unsecured wholesale lending where the borrower is a wholesale customer or counterparty that is not a financial sector entity, a consolidated subsidiary thereof, or a central bank; or

(B) Lending to a retail customer or counterparty.

(5) *Unencumbered assets assigned a 65 percent RSF factor.* An asset of a [BANK] is assigned a 65 percent RSF factor if it is one of the following:

(i) A retail mortgage that matures one year or more from the calculation date and is assigned a risk weight of no greater than 50 percent under subpart D of [AGENCY CAPITAL REGULATION]; or

(ii) A secured lending transaction, unsecured wholesale lending, or lending to a retail customer or counterparty with the following characteristics:

(A) The asset is not described in paragraphs (a)(1) through (a)(5)(i) of this section;

(B) The borrower is not a financial sector entity or a consolidated subsidiary thereof;

(C) The asset matures one year or more from the calculation date; and

(D) The asset is assigned a risk weight of no greater than 20 percent under subpart D of [AGENCY CAPITAL REGULATION].

(6) *Unencumbered assets assigned an 85 percent RSF factor.* An asset of a [BANK] is assigned an 85 percent RSF factor if it is one of the following:

(i) A retail mortgage that matures one year or more from the calculation date and is assigned a risk weight of greater than 50 percent under subpart D of [AGENCY CAPITAL REGULATION];

(ii) A secured lending transaction, unsecured wholesale lending, or lending to a retail customer or counterparty with the following characteristics:

(A) The asset is not described in paragraphs (a)(1) through (a)(6)(i) of this section;

(B) The borrower is not a financial sector entity or a consolidated subsidiary thereof;

(C) The asset matures one year or more from the calculation date; and

(D) The asset is assigned a risk weight of greater than 20 percent under subpart D of [AGENCY CAPITAL REGULATION];

(iii) A publicly traded common equity share that is not HQLA;

(iv) A security, other than a publicly traded common equity share, that matures one year or more from the calculation date and is not HQLA; or

(v) A commodity for which derivative transactions are traded on a U.S. board of trade or trading facility designated as a contract market under sections 5 and 6 of the Commodity Exchange Act (7 U.S.C. 7 and 8) or on a U.S. swap execution facility registered under section 5h of the Commodity Exchange Act (7 U.S.C. 7b–3) or on another exchange, whether located in the United States or in a jurisdiction outside of the United States.

(7) *Unencumbered assets assigned a 100 percent RSF factor.* An asset of a [BANK] is assigned a 100 percent RSF factor if it is not described in paragraphs (a)(1) through (a)(6) of this section, including a secured lending transaction or unsecured wholesale lending where the borrower is a financial sector entity or a consolidated subsidiary thereof and that matures one year or more from the calculation date.

(b) *Nonperforming assets.* An RSF factor of 100 percent is assigned to any asset that is past due by more than 90 days or nonaccrual.

(c) *Encumbered assets.* An encumbered asset, unless otherwise provided in § ____.107(b) relating to derivative transactions, is assigned an RSF factor as follows:

(1)(i) *Encumbered assets with less than six months remaining in the encumbrance period.* For an encumbered asset with less than six months remaining in the encumbrance period, the same RSF factor is assigned to the asset as would be assigned if the asset were not encumbered.

(ii) *Encumbered assets with six months or more, but less than one year, remaining in the encumbrance period.* For an encumbered asset with six months or more, but less than one year, remaining in the encumbrance period:

(A) If the asset would be assigned an RSF factor of 50 percent or less under paragraphs (a)(1) through (a)(4) of this section if the asset were not encumbered, an RSF factor of 50 percent is assigned to the asset.

(B) If the asset would be assigned an RSF factor of greater than 50 percent under paragraphs (a)(5) through (a)(7) of this section if the asset were not encumbered, the same RSF factor is assigned to the asset as would be assigned if it were not encumbered.

(iii) *Encumbered assets with one year or more remaining in the encumbrance period.* For an encumbered asset with one year or more remaining in the encumbrance period, an RSF factor of 100 percent is assigned to the asset.

(2) *Assets encumbered for period longer than remaining maturity.* If an asset is encumbered for an encumbrance period longer than the asset's maturity, the asset is assigned an RSF factor under paragraph (c)(1) of this section based on the length of the encumbrance period.

(3) *Segregated account assets.* An asset held in a segregated account maintained pursuant to statutory or regulatory requirements for the protection of customer assets is not considered encumbered for purposes of this paragraph solely because such asset is held in the segregated account.

(d) *Off-balance sheet rehypothecated assets.* When an NSFR liability of a [BANK] is secured by an off-balance sheet asset or results from the [BANK] selling an off-balance sheet asset (for instance, in the case of a short sale), other than an off-balance sheet asset received by the [BANK] as variation margin under a derivative transaction:

(1) If the [BANK] received the off-balance sheet asset under a lending transaction, an RSF factor is assigned to the lending transaction as if it were encumbered for the longer of:

(i) The remaining maturity of the NSFR liability; and

(ii) Any other encumbrance period applicable to the lending transaction;

(2) If the [BANK] received the off-balance sheet asset under an asset exchange, an RSF factor is assigned to the asset provided by the [BANK] in the asset exchange as if the provided asset were encumbered for the longer of:

(i) The remaining maturity of the NSFR liability; and

(ii) Any other encumbrance period applicable to the provided asset; or

(3) If the [BANK] did not receive the off-balance sheet asset under a lending transaction or asset exchange, an RSF factor is assigned to the on-balance sheet asset resulting from the rehypothecation of the off-balance sheet asset as if the on-balance sheet asset were encumbered for the longer of:

(i) The remaining maturity of the NSFR liability; and

(ii) Any other encumbrance period applicable to the transaction through which the off-balance sheet asset was received.

§ ____.107 Calculation of NSFR derivatives amounts.

(a) *General requirement.* A [BANK] must calculate its derivatives RSF amount and certain components of its ASF amount relating to the [BANK]'s derivative transactions (which includes cleared derivative transactions of a customer with respect to which the [BANK] is acting as agent for the customer that are included on the [BANK]'s balance sheet under GAAP) in accordance with this section.

(b) *Calculation of required stable funding amount relating to derivative transactions.* A [BANK]'s derivatives RSF amount equals the sum of:

(1) *Current derivative transaction values.* The [BANK]'s NSFR derivatives asset amount, as calculated under paragraph (d)(1) of this section, multiplied by an RSF factor of 100 percent;

(2) *Variation margin provided.* The carrying value of variation margin provided by the [BANK] under each derivative transaction not subject to a qualifying master netting agreement and each QMNA netting set, to the extent the variation margin reduces the [BANK]'s derivatives liability value under the derivative transaction or QMNA netting set, as calculated under paragraph (f)(2) of this section, multiplied by an RSF factor of zero percent;

(3) *Excess variation margin provided.* The carrying value of variation margin provided by the [BANK] under each derivative transaction not subject to a qualifying master netting agreement and each QMNA netting set in excess of the amount described in paragraph (b)(2) of this section for each derivative transaction or QMNA netting set, multiplied by the RSF factor assigned to each asset comprising the variation margin pursuant to § ____.106;

(4) *Variation margin received.* The carrying value of variation margin received by the [BANK], multiplied by the RSF factor assigned to each asset comprising the variation margin pursuant to § ____.106;

(5) *Potential valuation changes.* (i) An amount equal to 5 percent of the sum of the gross derivative values of the [BANK] that are liabilities, as calculated under paragraph (b)(5)(ii) of this section, for each of the [BANK]'s derivative transactions not subject to a qualifying master netting agreement and each of its QMNA netting sets, multiplied by an RSF factor of 100 percent;

(ii) For purposes of paragraph (5)(i) of this section, the gross derivative value of a derivative transaction not subject to a qualifying master netting agreement or of a QMNA netting set is equal to the value to the [BANK], calculated as if no variation margin had been exchanged and no settlement payments had been made based on changes in the value of the derivative transaction or QMNA netting set.

(6) *Contributions to central counterparty mutualized loss sharing arrangements.* The fair value of a [BANK]'s contribution to a central counterparty's mutualized loss sharing arrangement (regardless of whether the contribution is included on the [BANK]'s balance sheet), multiplied by an RSF factor of 85 percent; and

(7) *Initial margin provided.* The fair value of initial margin provided by the [BANK] for derivative transactions (regardless of whether the initial margin is included on the [BANK]'s balance sheet), which does not include initial margin provided by the [BANK] for cleared derivative transactions with respect to which the [BANK] is acting as agent for a customer and the [BANK] does not guarantee the obligations of the customer's counterparty to the customer under the derivative transaction (such initial margin would be assigned an RSF factor pursuant to § ____.106 to the extent the initial margin is included on the [BANK]'s balance sheet), multiplied by an RSF factor equal to the higher of 85 percent or the RSF factor assigned to each asset comprising the initial margin pursuant to § ____.106.

(c) *Calculation of available stable funding amount relating to derivative transactions.* The following amounts of a [BANK] are assigned a zero percent ASF factor:

(1) The [BANK]'s NSFR derivatives liability amount, as calculated under paragraph (d)(2) of this section; and

(2) The carrying value of NSFR liabilities in the form of an obligation to return initial margin or variation margin received by the [BANK].

(d) *Calculation of NSFR derivatives asset or liability amount.*

(1) A [BANK]'s NSFR derivatives asset amount is the greater of:

(i) Zero; and

(ii) The [BANK]'s total derivatives asset amount, as calculated under paragraph (e)(1) of this section, less the [BANK]'s total derivatives liability amount, as calculated under paragraph (e)(2) of this section.

(2) A [BANK]'s NSFR derivatives liability amount is the greater of:

(i) Zero; and

(ii) The [BANK]'s total derivatives liability amount, as calculated under paragraph (e)(2) of this section, less the [BANK]'s total derivatives asset amount, as calculated under paragraph (e)(1) of this section.

(e) *Calculation of total derivatives asset and liability amounts.*

(1) A [BANK]'s total derivatives asset amount is the sum of the [BANK]'s derivatives asset values, as calculated under paragraph (f)(1) of this section, for each derivative transaction not subject to a qualifying master netting agreement and each QMNA netting set.

(2) A [BANK]'s total derivatives liability amount is the sum of the [BANK]'s derivatives liability values, as calculated under paragraph (f)(2) of this section, for each derivative transaction not subject to a qualifying master netting agreement and each QMNA netting set.

(f) *Calculation of derivatives asset and liability values.* For each derivative transaction not subject to a qualifying master netting agreement and each QMNA netting set:

(1) The derivatives asset value is equal to the asset value to the [BANK], after taking into account:

(i) Any variation margin received by the [BANK] that is in the form of cash and meets the following conditions:

(A) The variation margin is not segregated;

(B) The variation margin is received in connection with a derivative transaction that is governed by a QMNA or other contract between the counterparties to the derivative transaction, which stipulates that the counterparties agree to settle any payment obligations on a net basis, taking into account any variation margin received or provided;

(C) The variation margin is calculated and transferred on a daily basis based on mark-to-fair value of the derivative contract; and

(D) The variation margin is in a currency specified as an acceptable currency to settle obligations in the relevant governing contract; and

(ii) Any variation margin received by the [BANK] that is in the form of level 1 liquid assets and meets the conditions of paragraph (f)(1)(i) of this section provided the [BANK] retains the right to rehypothecate the asset for the duration of time that the asset is posted as variation margin to the [BANK]; or

(2) The derivatives liability value is equal to the liability value of the [BANK], after taking into account any variation margin provided by the [BANK].

§ ____.108 Funding related to Covered Federal Reserve Facility Funding.

(a) *Treatment of Covered Federal Reserve Facility Funding.* Notwithstanding any other section of this part and except as provided in paragraph (b) of this section, available stable funding amounts and required stable funding amounts related to Covered Federal Reserve Facility Funding and the assets securing Covered Federal Reserve Facility Funding are excluded from the calculation of a [BANK]'s net stable funding ratio calculated under § ____.100(b).

(b) *Exception.* To the extent the Covered Federal Reserve Facility Funding is secured by securities, debt obligations, or other instruments issued by the [BANK] or one of its consolidated subsidiaries, the Covered Federal Reserve Facility Funding and assets securing the Covered Federal Reserve Facility Funding are not subject to paragraph (a) of this section and the available stable funding amount and required stable funding amount must be included in the [BANK]'s net stable funding ratio calculated under § ____.100(b).

§ ____.109 Rules for consolidation.

(a) *Consolidated subsidiary available stable funding amount.* For available stable funding of a legal entity that is a consolidated subsidiary of a [BANK], including a consolidated subsidiary organized under the laws of a foreign jurisdiction, the [BANK] may include the available stable funding of the consolidated subsidiary in its ASF amount up to:

(1) The RSF amount of the consolidated subsidiary, as calculated by the [BANK] for the [BANK]'s net stable funding ratio under this part; plus

(2) Any amount in excess of the RSF amount of the consolidated subsidiary, as calculated by the [BANK] for the [BANK]'s net stable funding ratio under this part, to the extent the consolidated subsidiary may transfer assets to the top-tier [BANK], taking into account statutory, regulatory, contractual, or supervisory restrictions, such as sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c and 12 U.S.C. 371c–1) and Regulation W (12 CFR part 223).

(b) *Required consolidation procedures.* To the extent a [BANK] includes an ASF amount in excess of the RSF amount of the consolidated subsidiary, the [BANK] must implement and maintain written procedures to identify and monitor applicable statutory, regulatory, contractual, supervisory, or other restrictions on transferring assets from any of its consolidated subsidiaries. These procedures must document which types of transactions the [BANK] could use to transfer assets from a consolidated subsidiary to the [BANK] and how these types of transactions comply with applicable statutory, regulatory, contractual, supervisory, or other restrictions.

Subpart L—Net Stable Funding Shortfall

§ ____.110 NSFR shortfall: Supervisory framework.

(a) *Notification requirements.* A [BANK] must notify the [AGENCY] no later than 10 business days, or such other period as the [AGENCY] may otherwise require by written notice, following the date that any event has occurred that would cause or has caused the [BANK]'s net stable funding ratio to be less than 1.0 as required under § ____.100.

(b) *Liquidity Plan.* (1) A [BANK] must within 10 business days, or such other period as the [AGENCY] may otherwise require by written notice, provide to the [AGENCY] a plan for achieving a net stable funding ratio equal to or greater than 1.0 as required under § ____.100 if:

(i) The [BANK] has or should have provided notice, pursuant to § ____.110(a), that the [BANK]'s net stable funding ratio is, or will become, less than 1.0 as required under § ____.100;

(ii) The [BANK]'s reports or disclosures to the [AGENCY] indicate that the [BANK]'s net stable funding ratio is less than 1.0 as required under § ____.100; or

(iii) The [AGENCY] notifies the [BANK] in writing that a plan is required and provides a reason for requiring such a plan.

(2) The plan must include, as applicable:

(i) An assessment of the [BANK]'s liquidity profile;

(ii) The actions the [BANK] has taken and will take to achieve a net stable funding ratio equal to or greater than 1.0 as required under § ____.100, including:

(A) A plan for adjusting the [BANK]'s liquidity profile;

(B) A plan for remediating any operational or management issues that contributed to noncompliance with subpart K of this part; and

(iii) An estimated time frame for achieving full compliance with § ____.100.

(3) The [BANK] must report to the [AGENCY] at least monthly, or such other frequency as required by the [AGENCY], on progress to achieve full compliance with § ____.100.

(c) *Supervisory and enforcement actions.* The [AGENCY] may, at its discretion, take additional supervisory or enforcement actions to address noncompliance with the minimum net stable funding ratio and other requirements of subparts K through N of this part (see also § ____.2(c)).

[End of Proposed Common Rule Text]

List of Subjects

12 CFR Part 50

Administrative practice and procedure, Banks, Banking, Liquidity, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 249

Administrative practice and procedure, Banks, Banking, Federal Reserve System, Holding companies, Liquidity, Reporting and recordkeeping requirements.

12 CFR Part 329

Administrative practice and procedure, Banks, Banking, Federal Deposit Insurance Corporation, FDIC, Liquidity, Reporting and recordkeeping requirements, Savings associations.

Adoption of the Common Rule Text

The proposed adoption of the common rules by the agencies, as modified by agency-specific text, is set forth below:

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons set forth in the common preamble, part 50 of chapter I of title 12 of the Code of Federal Regulations is amended as follows:

PART 50—LIQUIDITY RISK MEASUREMENT STANDARDS

■ 1. The authority citation for part 50 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.,* 93a, 481, 1818, 1828, and 1462 *et seq.*

■ 2. Amend § 50.1 by revising paragraphs (a) and (b)(1) introductory text to read as follows:

§ 50.1 Purpose and applicability.

(a) *Purpose.* This part establishes a minimum liquidity standard and a minimum stable funding standard for certain national banks and Federal savings associations on a consolidated basis, as set forth herein.

(b) *Applicability.* (1) A national bank or Federal savings association is subject to the minimum liquidity standard, minimum stable funding standard, and other requirements of this part if:

* * * * *

■ 3. Amend § 50.2 by redesignating paragraph (b) as paragraph (c), adding new paragraph (b), and revising newly redesignated paragraph (c) to read as follows:

§ 50.2 Reservation of authority.

* * * * *

(b) The OCC may require a national bank or Federal savings association to maintain an amount of available stable funding greater than otherwise required under this part, or to take any other measure to improve the national bank's or Federal savings association's stable funding, if the OCC determines that the national bank's or Federal savings association's stable funding requirements as calculated under this part are not commensurate with the national bank's or Federal savings association's funding risks. In making determinations under this section, the OCC will apply notice and response procedures as set forth in 12 CFR 3.404.

(c) Nothing in this part limits the authority of the OCC under any other provision of law or regulation to take supervisory or enforcement action, including action to address unsafe or unsound practices or conditions, deficient liquidity levels, deficient stable funding levels, or violations of law.

■ 4. Amend § 50.3 by:

■ a. Removing the definition for ''*Brokered sweep deposit*'', ''*Covered nonbank company*'', and ''*Reciprocal brokered deposit*'';

■ b. Adding definitions for ''*Brokered reciprocal deposit*'', ''*Carrying value*'', ''*Encumbered*'', ''*NSFR liability*'', ''*NSFR regulatory capital element*'', ''*QMNA netting set*'', ''*Sweep deposit*'', ''*Unconditionally cancelable*'', and ''*Unsecured wholesale lending*''; and

■ c. Revising definitions for ''*Brokered deposit*'', ''*Calculation date*'', ''*Collateralized deposit*'', ''*Committed*'', ''*Operational deposit*'', ''*Secured funding transaction*'', ''*Secured lending transaction*'', and ''*Unsecured wholesale funding.*''

The additions and revisions, in alphabetical order, read as follows:

§ 50.3 Definitions.

* * * * *

Brokered deposit means any deposit held at the national bank or Federal savings association that is obtained, directly or indirectly, from or through the mediation or assistance of a deposit broker as that term is defined in section 29 of the Federal Deposit Insurance Act

(12 U.S.C. 1831f(g)) and the Federal Deposit Insurance Corporation's regulations.

Brokered reciprocal deposit means a brokered deposit that a national bank or Federal savings association receives through a deposit placement network on a reciprocal basis, such that:

(1) For any deposit received, the national bank or Federal savings association (as agent for the depositors) places the same amount with other depository institutions through the network; and

(2) Each member of the network sets the interest rate to be paid on the entire amount of funds it places with other network members.

Calculation date means, for subparts B through J of this part, any date on which a national bank or Federal savings association calculates its liquidity coverage ratio under § 50.10, and for subparts K through M of this part, any date on which a national bank or Federal savings association calculates its net stable funding ratio under § 50.100.

* * * * *

Carrying value means, with respect to an asset, NSFR regulatory capital element, or NSFR liability, the value on the balance sheet of the national bank or Federal savings association, each as determined in accordance with GAAP.

* * * * *

Collateralized deposit means:

(1) A deposit of a public sector entity held at the national bank or Federal savings association that is required to be secured under applicable law by a lien on assets owned by the national bank or Federal savings association and that gives the depositor, as holder of the lien, priority over the assets in the event the national bank or Federal savings association enters into receivership, bankruptcy, insolvency, liquidation, resolution, or similar proceeding;

(2) A deposit of a fiduciary account awaiting investment or distribution held at the national bank or Federal savings association for which the national bank or Federal savings association is a fiduciary and is required under 12 CFR 9.10(b) (national banks) or 12 CFR 150.300 through 150.320 (Federal savings associations) to set aside assets owned by the national bank or Federal savings association as security, which gives the depositor priority over the assets in the event the national bank or Federal savings association enters into receivership, bankruptcy, insolvency, liquidation, resolution, or similar proceeding; or

(3) A deposit of a fiduciary account awaiting investment or distribution held at the national bank or Federal savings association for which the national bank's or Federal savings association's affiliated insured depository institution is a fiduciary and where the national bank or Federal savings association under 12 CFR 9.10(c) (national banks), 12 CFR 150.310 (Federal savings associations), or applicable state law (state member and nonmember banks, and state savings associations) has set aside assets owned by the national bank or Federal savings association as security, which gives the depositor priority over the assets in the event the national bank or Federal savings association enters into receivership, bankruptcy, insolvency, liquidation, resolution, or similar proceeding.

Committed means, with respect to a credit or liquidity facility, that under the terms of the facility, it is not unconditionally cancelable.

* * * * *

Encumbered means, with respect to an asset, that the asset:

(1) Is subject to legal, regulatory, contractual, or other restriction on the ability of the national bank or Federal savings association to monetize the asset; or

(2) Is pledged, explicitly or implicitly, to secure or to provide credit enhancement to any transaction, not including when the asset is pledged to a central bank or a U.S. government-sponsored enterprise where:

(i) Potential credit secured by the asset is not currently extended to the national bank or Federal savings association or its consolidated subsidiaries; and

(ii) The pledged asset is not required to support access to the payment services of a central bank.

* * * * *

NSFR liability means any liability or equity reported on a national bank's or Federal savings association's balance sheet that is not an NSFR regulatory capital element.

NSFR regulatory capital element means any capital element included in a national bank's or Federal savings association's common equity tier 1 capital, additional tier 1 capital, and tier 2 capital, in each case as defined in 12 CFR 3.20, prior to application of capital adjustments or deductions as set forth in 12 CFR 3.22, excluding any debt or equity instrument that does not meet the criteria for additional tier 1 or tier 2 capital instruments in 12 CFR 3.22 and is being phased out of tier 1 capital or tier 2 capital pursuant to subpart G of 12 CFR part 3.

Operational deposit means short-term unsecured wholesale funding that is a deposit, unsecured wholesale lending that is a deposit, or a collateralized deposit, in each case that meets the requirements of § 50.4(b) with respect to that deposit and is necessary for the provision of operational services as an independent third-party intermediary, agent, or administrator to the wholesale customer or counterparty providing the deposit.

* * * * *

QMNA netting set means a group of derivative transactions with a single counterparty that is subject to a qualifying master netting agreement and is netted under the qualifying master netting agreement.

* * * * *

Secured funding transaction means any funding transaction that is subject to a legally binding agreement that gives rise to a cash obligation of the national bank or Federal savings association to a wholesale customer or counterparty that is secured under applicable law by a lien on securities or loans provided by the national bank or Federal savings association, which gives the wholesale customer or counterparty, as holder of the lien, priority over the securities or loans in the event the national bank or Federal savings association enters into receivership, bankruptcy, insolvency, liquidation, resolution, or similar proceeding. Secured funding transactions include repurchase transactions, securities lending transactions, other secured loans, and borrowings from a Federal Reserve Bank. Secured funding transactions do not include securities.

Secured lending transaction means any lending transaction that is subject to a legally binding agreement that gives rise to a cash obligation of a wholesale customer or counterparty to the national bank or Federal savings association that is secured under applicable law by a lien on securities or loans provided by the wholesale customer or counterparty, which gives the national bank or Federal savings association, as holder of the lien, priority over the securities or loans in the event the counterparty enters into receivership, bankruptcy, insolvency, liquidation, resolution, or similar proceeding. Secured lending transactions include reverse repurchase transactions and securities borrowing transactions. Secured lending transactions do not include securities.

* * * * *

Sweep deposit means a deposit held at the national bank or Federal savings association by a customer or counterparty through a contractual feature that automatically transfers to the national bank or Federal savings association from another regulated financial company at the close of each business day amounts identified under the agreement governing the account from which the amount is being transferred.

* * * * *

Unconditionally cancelable means, with respect to a credit or liquidity facility, that a national bank or Federal savings association may, at any time, with or without cause, refuse to extend credit under the facility (to the extent permitted under applicable law).

Unsecured wholesale funding means a liability or general obligation of the national bank or Federal savings association to a wholesale customer or counterparty that is not a secured funding transaction. Unsecured wholesale funding includes wholesale deposits. Unsecured wholesale funding does not include asset exchanges.

Unsecured wholesale lending means a liability or general obligation of a wholesale customer or counterparty to the national bank or Federal savings association that is not a secured lending transaction or a security. Unsecured wholesale lending does not include asset exchanges.

* * * * *

■ 5. Amend § 50.22 by revising paragraph (b)(1) to read as follows:

§ 50.22 Requirements for eligible high-quality liquid assets.

* * * * *

(b) * * *

(1) The assets are not encumbered.

* * * * *

■ 6. In § 50.30, amend paragraph (b)(3) to read as follows:

§ 50.30 Total net cash outflow amount.

* * * * *

(b) * * *

(3) Other than the transactions identified in § 50.32(h)(2), (h)(5), or (j) or § 50.33(d) or (f), the maturity of which is determined under § 50.31(a), transactions that have an open maturity are not included in the calculation of the maturity mismatch add-on.

* * * * *

■ 7. In § 50.31, amend paragraphs (a)(1) introductory text, (a)(2) introductory text, and (a)(4) to read as follows:

§ 50.31 Determining maturity.

(a) * * *

(1) With respect to an instrument or transaction subject to § 50.32, on the earliest possible contractual maturity date or the earliest possible date the transaction could occur, taking into account any option that could accelerate the maturity date or the date of the transaction, except that when considering the earliest possible contractual maturity date or the earliest possible date the transaction could occur, the national bank or Federal savings association should exclude any contingent options that are triggered only by regulatory actions or changes in law or regulation, as follows:

* * * * *

(2) With respect to an instrument or transaction subject to § 50.33, on the latest possible contractual maturity date or the latest possible date the transaction could occur, taking into account any option that could extend the maturity date or the date of the transaction, except that when considering the latest possible contractual maturity date or the latest possible date the transaction could occur, the national bank or Federal savings association may exclude any contingent options that are triggered only by regulatory actions or changes in law or regulation, as follows:

* * * * *

(4) With respect to a transaction that has an open maturity, is not an operational deposit, and is subject to the provisions of § 50.32(h)(2), (h)(5), (j), or (k) or § 50.33(d) or (f), the maturity date is the first calendar day after the calculation date. Any other transaction that has an open maturity and is subject to the provisions of § 50.32 shall be considered to mature within 30 calendar days of the calculation date.

* * * * *

§ 50.32 [Amended]

■ 8. Amend § 50.32 by:

■ a. Removing the phrase ‘‘reciprocal brokered deposits’’ and adding the phrase ‘‘brokered reciprocal deposits’’ in its place wherever it appears.

■ b. Removing the phrase ‘‘brokered sweep deposits’’ and adding the phrase ‘‘sweep deposits’’ in its place wherever it appears.

* * * * *

Subpart G through J [Added and Reserved]

■ 9. Add and reserve subparts G through J to part 50.

Subparts K and L [Added]

■ 10. Amend part 50 by adding subparts K and L as set forth at the end of the common preamble.

Subparts K and L [Amended]

■ 11. Amend subparts K and L of part 50 by:

■ a. Removing ‘‘[AGENCY]’’ and adding ‘‘OCC’’ in its place wherever it appears.

■ b. Removing ‘‘[AGENCY CAPITAL REGULATION]’’ and adding ‘‘12 CFR part 3’’ in its place wherever it appears.

■ c. Removing ‘‘[§ ____.10(c)(4)(ii)(E)(1) through (3) of the AGENCY SUPPLEMENTARY LEVERAGE RATIO RULE]’’ and adding ‘‘12 CFR 3.10(c)(2)(v)(A) through (C)’’ in its place wherever it appears.

■ d. Removing ‘‘[BANK]’s’’ and adding ‘‘national bank's or Federal savings association's’’ in its place wherever it appears.

■ e. Removing ‘‘[BANK]’’ and adding ‘‘national bank or Federal savings association’’ in its place wherever it appears.

■ f. Amending § 50.105 by revising paragraph (b) to read as follows:

§ 50.105 Calculation of required stable funding amount.

* * * * *

(b) *Required stable funding adjustment percentage.* A national bank's or Federal savings association's required stable funding adjustment percentage is determined pursuant to Table 1 to this paragraph (b).

TABLE 1 TO PARAGRAPH (b)—REQUIRED STABLE FUNDING ADJUSTMENT PERCENTAGES

GSIB depository institution that is a national bank or Federal savings association	100
Category II national bank or Federal savings association	100
Category III national bank or Federal savings association that:	100
(1) Is a consolidated subsidiary of (a) a covered depository institution holding company or U.S. intermediate holding company identified as a Category III banking organization pursuant to 12 CFR 252.5 or 12 CFR 238.10 or (b) a depository institution that meets the criteria set forth in paragraphs (2)(ii)(A) and (B) of the definition of Category III national bank or Federal savings association in this part, in each case with $75 billion or more in average weighted short-term wholesale funding; or	

TABLE 1 TO PARAGRAPH (b)—REQUIRED STABLE FUNDING ADJUSTMENT PERCENTAGES—Continued

(2) Has $75 billion or more in average weighted short-term wholesale funding and is not a consolidated subsidiary of (a) a covered depository institution holding company or U.S. intermediate holding company identified as a Category III banking organization pursuant to 12 CFR 252.5 or 12 CFR 238.10 or (b) a depository institution that meets the criteria set forth in paragraphs (2)(ii)(A) and (B) of the definition of Category III national bank or Federal savings association in this part.	
Category III national bank or Federal savings association that:	85
(1) Is a consolidated subsidiary of (a) a covered depository institution holding company or U.S. intermediate holding company identified as a Category III banking organization pursuant to 12 CFR 252.5 or 12 CFR 238.10 or (b) a depository institution that meets the criteria set forth in paragraphs (2)(ii)(A) and (B) of the definition of Category III national bank or Federal savings association in this part, in each case with less than $75 billion in average weighted short-term wholesale funding; or	
(2) Has less than $75 billion in average weighted short-term wholesale funding and is not a consolidated subsidiary of (a) a covered depository institution holding company or U.S. intermediate holding company identified as a Category III banking organization pursuant to 12 CFR 252.5 or 12 CFR 238.10 or (b) a depository institution that meets the criteria set forth in paragraphs (2)(ii)(A) and (B) of the definition of Category III national bank or Federal savings association in this part.	

■ 12. Amend part 50 by adding subpart M to read as follows:

Subpart M—Transitions

§ 50.120 Transitions.

(a) *Initial application.* (1) A national bank or Federal savings association that initially becomes subject to the minimum net stable funding requirement under § 50.1(b)(1)(i) after July 1, 2021, must comply with the requirements of subparts K through M of this part beginning on the first day of the third calendar quarter after which the national bank or Federal savings association becomes subject to this part.

(2) A national bank or Federal savings association that becomes subject to the minimum net stable funding requirement under § 50.1(b)(1)(ii) must comply with the requirements of subparts K through M of this part subject to a transition period specified by the OCC.

(b) *Transition to a different required stable funding adjustment percentage.*

(1) A national bank or Federal savings association whose required stable funding adjustment percentage changes is subject to the transition periods as set forth in § 50.105(c).

(2) A national bank or Federal savings association institution that is no longer subject to the minimum stable funding requirement of this part pursuant to § 50.1(b)(1)(i) based on the size of total consolidated assets, cross-jurisdictional activity, total nonbank assets, weighted short-term wholesale funding, or off-balance sheet exposure calculated in accordance with the Call Report, or instructions to the FR Y–9LP, the FR Y–15, or equivalent reporting form, as applicable, for each of the four most recent calendar quarters may cease compliance with the requirements of subparts K through M of this part as of the first day of the first calendar quarter after it is no longer subject to § 50.1(b).

(c) *Reservation of authority.* The OCC may extend or accelerate any compliance date of this part if the OCC determines such extension or acceleration is appropriate. In determining whether an extension or acceleration is appropriate, the OCC will consider the effect of the modification on financial stability, the period of time for which the modification would be necessary to facilitate compliance with the requirements of subparts K through M of this part, and the actions the national bank or Federal savings association is taking to come into compliance with the requirements of subparts K through M of this part.

Board of Governors of the Federal Reserve System

12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the common preamble, part 249 of chapter II of title 12 of the Code of Federal Regulations is amended as follows:

PART 249—LIQUIDITY RISK MEASUREMENT, STANDARDS, AND MONITORING (REGULATION WW)

■ 13. The authority citation for part 249 continues to read as follows:

Authority: 12 U.S.C. 248(a), 321–338a, 481–486, 1467a(g)(1), 1818, 1828, 1831p–1, 1831o–1, 1844(b), 5365, 5366, 5368.

■ 14. Revise the heading for part 249 as set forth above.

■ 15. Revise § 249.1 to read as follows:

§ 249.1 Purpose and applicability.

(a) *Purpose.* This part establishes a minimum liquidity standard and a minimum stable funding standard for certain Board-regulated institutions on a consolidated basis, as set forth herein.

(b) *Applicability.* (1) A Board-regulated institution is subject to the minimum liquidity standard and a minimum stable funding standard, and other requirements of this part if:

(i) It is a:

(A) Global systemically important BHC;

(B) GSIB depository institution;

(C) Category II Board-regulated institution;

(D) Category III Board-regulated institution; or

(E) Category IV Board-regulated institution with $50 billion or more in average weighted short-term wholesale funding;

(ii) It is a covered nonbank company; or

(iii) The Board has determined that application of this part is appropriate in light of the Board-regulated institution's asset size, level of complexity, risk profile, scope of operations, affiliation with foreign or domestic covered entities, or risk to the financial system.

(2) This part does not apply to:

(i) A bridge financial company as defined in 12 U.S.C. 5381(a)(3), or a subsidiary of a bridge financial company; or

(ii) A new depository institution or a bridge depository institution, as defined in 12 U.S.C. 1813(i).

(3) In making a determination under paragraph (b)(1)(iii) of this section, the Board will apply, as appropriate, notice and response procedures in the same manner and to the same extent as the notice and response procedures set forth in 12 CFR 263.202.

(c) *Covered nonbank companies.* The Board will establish a minimum liquidity standard and minimum stable funding standard and other requirements for a designated company under this part by rule or order. In establishing such standards, the Board will consider the factors set forth in sections 165(a)(2) and (b)(3) of the Dodd-Frank Act and may tailor the application of the requirements of this part to the designated company based on the nature, scope, size, scale, concentration, interconnectedness, mix of the activities of the designated company, or any other risk-related factor that the Board determines is appropriate.

■ 16. Amend § 249.2, by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 249.2 Reservation of authority.

* * * * *

(b) The Board may require a Board-regulated institution to maintain an amount of available stable funding greater than otherwise required under this part, or to take any other measure to improve the Board-regulated institution's stable funding, if the Board determines that the Board-regulated institution's stable funding requirements as calculated under this part are not commensurate with the Board-regulated institution's funding risks. In making determinations under this section, the Board will apply notice and response procedures as set forth in 12 CFR 263.202.

(c) Nothing in this part limits the authority of the Board under any other provision of law or regulation to take supervisory or enforcement action, including action to address unsafe or unsound practices or conditions, deficient liquidity levels, deficient stable funding levels, or violations of law.

■ 17. Amend § 249.3 by:

■ a. Adding the definitions for ''*Brokered reciprocal deposit*'', ''*Carrying value*'', ''*Encumbered*'', ''*NSFR liability*'', ''*NSFR regulatory capital element*'', ''*QMNA netting set*'', ''*Sweep deposit*'', ''*Unconditionally cancelable*'', and ''*Unsecured wholesale lending*''.

■ b. Revising the definitions for ''*Brokered deposit*'', ''*Calculation date*'', ''*Collateralized deposit*'', ''*Committed*'', ''*Covered nonbank company*'', ''*Operational deposit*'', ''*Secured funding transaction*'', ''*Secured lending transaction*'', and ''*Unsecured wholesale funding*''.

■ c. Removing the definitions for ''*Reciprocal brokered deposit*'' and ''*Brokered sweep deposit*''.

The additions and revisions, in alphabetical order, read as follows:

§ 249.3 Definitions.

* * * * *

Brokered deposit means any deposit held at the Board-regulated institution that is obtained, directly or indirectly, from or through the mediation or assistance of a deposit broker as that term is defined in section 29 of the Federal Deposit Insurance Act (12 U.S.C. 1831f(g)) and the Federal Deposit Insurance Corporation's regulations.

Brokered reciprocal deposit means a brokered deposit that a Board-regulated institution receives through a deposit placement network on a reciprocal basis, such that:

(1) For any deposit received, the Board-regulated institution (as agent for the depositors) places the same amount with other depository institutions through the network; and

(2) Each member of the network sets the interest rate to be paid on the entire amount of funds it places with other network members.

Calculation date means, for subparts B through J of this part, any date on which a Board-regulated institution calculates its liquidity coverage ratio under § 249.10, and for subparts K through N of this part, any date on which a Board-regulated institution calculates its net stable funding ratio under § 249.100.

* * * * *

Carrying value means, with respect to an asset, NSFR regulatory capital element, or NSFR liability, the value on the balance sheet of the Board-regulated institution, each as determined in accordance with GAAP.

* * * * *

Collateralized deposit means:

(1) A deposit of a public sector entity held at the Board-regulated institution that is required to be secured under applicable law by a lien on assets owned by the Board-regulated institution and that gives the depositor, as holder of the lien, priority over the assets in the event the Board-regulated institution enters into receivership, bankruptcy, insolvency, liquidation, resolution, or similar proceeding;

(2) A deposit of a fiduciary account awaiting investment or distribution held at the Board-regulated institution for which the Board-regulated institution is a fiduciary and is required under 12 CFR 9.10(b) (national banks), 12 CFR 150.300 through 150.320 (Federal savings associations), or applicable state law (state member and nonmember banks, and state savings associations) to set aside assets owned by the Board-regulated institution as security, which gives the depositor priority over the assets in the event the Board-regulated institution enters into receivership, bankruptcy, insolvency, liquidation, resolution, or similar proceeding; or

(3) A deposit of a fiduciary account awaiting investment or distribution held at the Board-regulated institution for which the Board-regulated institution's affiliated insured depository institution is a fiduciary and where the Board-regulated institution under 12 CFR 9.10(c) (national banks), 12 CFR 150.310 (Federal savings associations), or applicable state law (state member and nonmember banks, state savings associations) has set aside assets owned by the Board-regulated institution as security, which gives the depositor priority over the assets in the event the Board-regulated institution enters into receivership, bankruptcy, insolvency, liquidation, resolution, or similar proceeding.

Committed means, with respect to a credit or liquidity facility, that under the terms of the facility, it is not unconditionally cancelable.

* * * * *

Covered nonbank company means a designated company that the Board of Governors of the Federal Reserve System has required by separate rule or order to comply with the requirements of 12 CFR part 249.

* * * * *

Encumbered means, with respect to an asset, that the asset:

(1) Is subject to legal, regulatory, contractual, or other restriction on the ability of the Board-regulated institution to monetize the asset; or

(2) Is pledged, explicitly or implicitly, to secure or to provide credit enhancement to any transaction, not including when the asset is pledged to a central bank or a U.S. government-sponsored enterprise where:

(i) Potential credit secured by the asset is not currently extended to the Board-regulated institution or its consolidated subsidiaries; and

(ii) The pledged asset is not required to support access to the payment services of a central bank.

* * * * *

NSFR liability means any liability or equity reported on a Board-regulated institution's balance sheet that is not an NSFR regulatory capital element.

NSFR regulatory capital element means any capital element included in a Board-regulated institution's common equity tier 1 capital, additional tier 1 capital, and tier 2 capital, in each case as defined in § 217.20 of Regulation Q (12 CFR part 217), prior to application of capital adjustments or deductions as set forth in § 217.22 of Regulation Q (12 CFR part 217), excluding any debt or equity instrument that does not meet the criteria for additional tier 1 or tier 2 capital instruments in § 217.22 of Regulation Q (12 CFR part 217) and is being phased out of tier 1 capital or tier 2 capital pursuant to subpart G of Regulation Q (12 CFR part 217).

Operational deposit means short-term unsecured wholesale funding that is a deposit, unsecured wholesale lending that is a deposit, or a collateralized deposit, in each case that meets the requirements of § 249.4(b) with respect to that deposit and is necessary for the provision of operational services as an independent third-party intermediary, agent, or administrator to the wholesale customer or counterparty providing the deposit.

* * * * *

QMNA netting set means a group of derivative transactions with a single counterparty that is subject to a qualifying master netting agreement and is netted under the qualifying master netting agreement.

* * * * *

Secured funding transaction means any funding transaction that is subject to a legally binding agreement that gives rise to a cash obligation of the Board-regulated institution to a wholesale customer or counterparty that is secured under applicable law by a lien on securities or loans provided by the Board-regulated institution, which gives the wholesale customer or counterparty, as holder of the lien, priority over the securities or loans in the event the Board-regulated institution enters into receivership, bankruptcy, insolvency, liquidation, resolution, or similar proceeding. Secured funding transactions include repurchase transactions, securities lending transactions, other secured loans, and borrowings from a Federal Reserve Bank. Secured funding transactions do not include securities.

Secured lending transaction means any lending transaction that is subject to a legally binding agreement that gives rise to a cash obligation of a wholesale customer or counterparty to the Board-regulated institution that is secured under applicable law by a lien on securities or loans provided by the wholesale customer or counterparty, which gives the Board-regulated institution, as holder of the lien, priority over the securities or loans in the event the counterparty enters into receivership, bankruptcy, insolvency, liquidation, resolution, or similar proceeding. Secured lending transactions include reverse repurchase transactions and securities borrowing transactions. Secured lending transactions do not include securities.

* * * * *

Sweep deposit means a deposit held at the Board-regulated institution by a customer or counterparty through a contractual feature that automatically transfers to the Board-regulated institution from another regulated financial company at the close of each business day amounts identified under the agreement governing the account from which the amount is being transferred.

* * * * *

Unconditionally cancelable means, with respect to a credit or liquidity facility, that a Board-regulated institution may, at any time, with or without cause, refuse to extend credit under the facility (to the extent permitted under applicable law).

Unsecured wholesale funding means a liability or general obligation of the Board-regulated institution to a wholesale customer or counterparty that is not a secured funding transaction. Unsecured wholesale funding includes wholesale deposits. Unsecured wholesale funding does not include asset exchanges.

Unsecured wholesale lending means a liability or general obligation of a wholesale customer or counterparty to the Board-regulated institution that is not a secured lending transaction or a security. Unsecured wholesale lending does not include asset exchanges.

* * * * *

■ 18. Amend § 249.22 by revising paragraph (b)(1) to read as follows:

§ 249.22 Requirements for eligible high-quality liquid assets.

* * * * *

(b) * * *

(1) The assets are not encumbered.

* * * * *

■ 19. In § 249.30, revise paragraph (b)(3) to read as follows:

§ 249.30 Total net cash outflow amount.

(b) * * *

(3) Other than the transactions identified in § 249.32(h)(2), (h)(5), or (j) or § 249.33(d) or (f), the maturity of which is determined under § 249.31(a), transactions that have an open maturity are not included in the calculation of the maturity mismatch add-on.

* * * * *

■ 20. In § 249.31, revise paragraphs (a)(1) introductory text, (a)(2) introductory text, and (a)(4) to read as follows:

§ 249.31 Determining maturity.

(a) * * *

(1) With respect to an instrument or transaction subject to § 249.32, on the earliest possible contractual maturity date or the earliest possible date the transaction could occur, taking into account any option that could accelerate the maturity date or the date of the transaction, except that when considering the earliest possible contractual maturity date or the earliest possible date the transaction could occur, the Board-regulated institution should exclude any contingent options that are triggered only by regulatory actions or changes in law or regulation, as follows:

* * * * *

(2) With respect to an instrument or transaction subject to § 249.33, on the latest possible contractual maturity date or the latest possible date the transaction could occur, taking into account any option that could extend the maturity date or the date of the transaction, except that when considering the latest possible contractual maturity date or the latest possible date the transaction could occur, the Board-regulated institution may exclude any contingent options that are triggered only by regulatory actions or changes in law or regulation, as follows:

* * * * *

(4) With respect to a transaction that has an open maturity, is not an operational deposit, and is subject to the provisions of § 249.32(h)(2), (h)(5), (j), or (k) or § 249.33(d) or (f), the maturity date is the first calendar day after the calculation date. Any other transaction that has an open maturity and is subject to the provisions of § 249.32 shall be considered to mature within 30 calendar days of the calculation date.

* * * * *

§ 249.32 [Amended]

■ 21. Amend § 249.32 by:

■ a. Removing the phrase ''reciprocal brokered deposits'' and adding the phrase ''brokered reciprocal deposits'' in its place wherever it appears.

■ b. Removing the phrase ''brokered sweep deposits'' and adding the phrase ''sweep deposits'' in its place wherever it appears.

Subparts K and L [Added]

■ 22. Amend part 249 by adding subparts K and L as set forth at the end of the common preamble.

Subparts K and L [Amended]

■ 23. Amend subparts K and L of part 249 by:

■ a. Removing ''[AGENCY]'' and adding ''Board'' in its place wherever it appears.

■ b. Removing ''[AGENCY CAPITAL REGULATION]'' and adding ''Regulation Q (12 CFR part 217)'' in its place wherever it appears.

■ c. Removing ''[§ ____.10(c)(4)(ii)(E)(1) through (3) of the AGENCY SUPPLEMENTARY LEVERAGE RATIO RULE]'' and adding ''12 CFR 217.10(c)(2)(v)(A) through (C)'' in its place wherever it appears.

■ d. Removing ''[BANK]'' and adding ''Board-regulated institution'' in its place wherever it appears.

■ e. Removing ''[BANK]'s'' and adding ''Board-regulated institution's'' in its place wherever it appears.

■ 24. Amend part 249 by adding subparts M and N to read as follows:

Subpart M—Transitions.

§ 249.120 Transitions.

(a) *Initial application.* (1) A Board-regulated institution that initially becomes subject to the minimum net stable funding requirement under § 249.1(b)(1)(i) or (ii) after July 1, 2021, must comply with the requirements of subparts K through N of this part beginning on the first day of the third calendar quarter after which the Board-regulated institution becomes subject to this part.

(2) A Board-regulated institution that becomes subject to the minimum net stable funding requirement under § 249.1(b)(1)(iii) must comply with the requirements of subparts K through N of this part subject to a transition period specified by the Board.

(b) *Transition to a different required stable funding adjustment percentage.* (1) A Board-regulated institution whose required stable funding adjustment percentage changes is subject to the transition periods as set forth in § 249.105(c).

(2) A Board-regulated institution that is no longer subject to the minimum stable funding requirement of this part pursuant to § 249.1(b)(1)(i) or (ii) based on the size of total consolidated assets, cross-jurisdictional activity, total nonbank assets, weighted short-term wholesale funding, or off-balance sheet exposure calculated in accordance with the Call Report, or instructions to the FR Y–9LP, the FR Y–15, or equivalent reporting form, as applicable, for each of the four most recent calendar quarters may cease compliance with the requirements of subparts K through N of this part as of the first day of the first calendar quarter after it is no longer subject to § 249.1(b).

(c) *Reservation of authority.* The Board may extend or accelerate any compliance date of this part if the Board determines such extension or acceleration is appropriate. In determining whether an extension or acceleration is appropriate, the Board will consider the effect of the modification on financial stability, the period of time for which the modification would be necessary to facilitate compliance with the requirements of subparts K through N of this part, and the actions the Board-regulated institution is taking to come into compliance with the requirements of subparts K through N of this part.

Subpart N—NSFR Public Disclosure

§ 249.130 Timing, method, and retention of disclosures.

(a) *Applicability.* A covered depository institution holding company, U.S. intermediate holding company, or covered nonbank company that is subject to the minimum stable funding requirement in § 249.100 of this part must publicly disclose the information required under this subpart.

(b) *Timing of disclosure.* (1) A covered depository institution holding company, U.S. intermediate holding company, or covered nonbank company that is subject to the minimum stable funding requirement in § 249.100 of this part must provide timely public disclosures every second and fourth calendar quarter of all of the information required under this subpart for each of the two immediately preceding calendar quarters.

(2) A covered depository institution holding company, U.S. intermediate holding company, or covered nonbank holding company that is subject to this subpart must provide the disclosures required by this subpart beginning with the first calendar quarter that includes the date that is 18 months after the covered depository institution holding company, U.S. intermediate holding company, or covered nonbank company first became subject to the minimum stable funding requirement in § 249.100 of this part.

(c) *Disclosure method.* A covered depository institution holding company, U.S. intermediate holding company, or covered nonbank company must publicly disclose, in a direct and prominent manner, the information required under this subpart on its public internet site or in its public financial or other public regulatory reports.

(d) *Availability.* The disclosures provided under this subpart must remain publicly available for at least five years after the initial disclosure date.

§ 249.131 Disclosure requirements.

(a) *General.* A covered depository institution holding company, U.S. intermediate holding company, or covered nonbank company must publicly disclose the information required by this subpart in the format provided in Table 1 to this paragraph:

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Table 1 to Paragraph (a) – Disclosure Template

Quarter ended XX/XX/XXXX In millions of U.S. dollars		Average Unweighted Amount					Average Weighted Amount
		Open Maturity	< 6 months	6 months to < 1 year	≥ 1 year	Perpetual	
ASF ITEM							
1	Capital and securities:						
2	NSFR regulatory capital elements						
3	Other capital elements and securities						
4	Retail funding:						
5	Stable deposits						
6	Less stable deposits						
7	Sweep deposits, brokered reciprocal deposits, and brokered deposits						
8	Other retail funding						
9	Wholesale funding:						
10	Operational deposits						
11	Other wholesale funding						
	Other liabilities:						
12	NSFR derivatives liability amount						
13	Total derivatives liability amount						
14	All other liabilities not included in categories 1 through 13 of this table						
15	**TOTAL ASF**						
RSF ITEM							
16	Total high-quality liquid assets (HQLA)						
17	Level 1 liquid assets						
18	Level 2A liquid assets						
19	Level 2B liquid assets						
20	Zero percent RSF assets that are not level 1 liquid assets or loans to financial sector entities or their consolidated subsidiaries						

Quarter ended XX/XX/XXXX In millions of U.S. dollars		**Average Unweighted Amount**					**Average Weighted Amount**
		Open Maturity	**< 6 months**	**6 months to < 1 year**	**≥ 1 year**	**Perpetual**	
21	Operational deposits placed at financial sector entities or their consolidated subsidiaries						
22	Loans and securities:						
23	Loans to financial sector entities secured by level 1 liquid assets						
24	Loans to financial sector entities secured by assets other than level 1 liquid assets and unsecured loans to financial sector entities						
25	Loans to wholesale customers or counterparties that are not financial sector entities and loans to retail customers or counterparties						
26	Of which: With a risk weight no greater than 20 percent under Regulation Q (12 CFR part 217)						
27	Retail mortgages						
28	Of which: With a risk weight of no greater than 50 percent under Regulation Q (12 CFR part 217)						
29	Securities that do not qualify as HQLA						
	Other assets:						
30	Commodities						

Quarter ended XX/XX/XXXX In millions of U.S. dollars		Average Unweighted Amount: Open Maturity	< 6 months	6 months to < 1 year	≥ 1 year	Perpetual	Average Weighted Amount
31	Assets provided as initial margin for derivative transactions and contributions to CCPs' mutualized loss-sharing arrangements						
32	NSFR derivatives asset amount						
33	Total derivatives asset amount						
34	RSF for potential derivatives portfolio valuation changes						
35	All other assets not included in the categories 16-33 of this table, including nonperforming assets						
36	Undrawn commitments						
37	**TOTAL RSF prior to application of required stable funding adjustment percentage**						
38	**Required stable funding adjustment percentage**						
39	**TOTAL adjusted RSF**						
40	**NET STABLE FUNDING RATIO**						

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(b) *Calculation of disclosed average amounts*—(1) *General.* (i) A covered depository institution holding company, U.S. intermediate holding company, or covered nonbank company must calculate its disclosed amounts:

(A) On a consolidated basis and presented in millions of U.S. dollars or as a percentage, as applicable; and

(B) As simple averages of daily amounts for each calendar quarter.

(ii) A covered depository institution holding company, U.S. intermediate holding company, or covered nonbank company must disclose the beginning date and end date for each calendar quarter.

(2) *Calculation of unweighted amounts.* (i) For each component of a covered depository institution holding company's, U.S. intermediate holding company's, or covered nonbank company's ASF amount calculation, other than the NSFR derivatives liability amount and total derivatives liability amount, the "unweighted amount" means the sum of the carrying values of the covered depository institution holding company's, U.S. intermediate holding company's, or covered nonbank company's NSFR regulatory capital elements and NSFR liabilities, as applicable, determined before applying the appropriate ASF factors, and subdivided into the following maturity categories, as applicable: Open maturity; less than six months after the calculation date; six months or more, but less than one year, after the calculation date; one year or more after the calculation date; and perpetual.

(ii) For each component of a covered depository institution holding company's, U.S. intermediate holding company's, or covered nonbank company's RSF amount calculation, other than amounts included in paragraphs (c)(2)(xvi) through (xix) of this section, the "unweighted amount" means the sum of the carrying values of the covered depository institution holding company's, U.S. intermediate holding company's, or covered nonbank company's assets and undrawn amounts of committed credit facilities and committed liquidity facilities extended by the covered depository institution holding company, or U.S. intermediate holding company, or covered nonbank company, as applicable, determined before applying the appropriate RSF factors, and subdivided by maturity into the following maturity categories, as applicable: Open maturity; less than six months after the calculation date; six months or more, but less than one year, after the calculation date; one year or more after the calculation date; and perpetual.

(3) *Calculation of weighted amounts.* (i) For each component of a covered depository institution holding company's, U.S. intermediate holding company's, or covered nonbank company's ASF amount calculation, other than the NSFR derivatives liability amount and total derivatives liability amount, the ''weighted amount'' means the sum of the carrying values of the covered depository institution holding company's, U.S. intermediate holding company's, or covered nonbank company's NSFR regulatory capital elements and NSFR liabilities, as applicable, multiplied by the appropriate ASF factors.

(ii) For each component of a covered depository institution holding company's, U.S. intermediate holding company's, or covered nonbank company's RSF amount calculation, other than amounts included in paragraphs (c)(2)(xvi) through (xix) of this section, the ''weighted amount'' means the sum of the carrying values of the covered depository institution holding company's, U.S. intermediate holding company's, or covered nonbank company's assets and undrawn amounts of committed credit facilities and committed liquidity facilities extended by the covered depository institution holding company, U.S. intermediate holding company, or covered nonbank company, multiplied by the appropriate RSF factors.

(c) *Quantitative disclosures.* A covered depository institution holding company, U.S. intermediate holding company, or covered nonbank company must disclose all of the information required under Table 1 to paragraph (a) of this section including:

(1) Disclosures of ASF amount calculations:

(i) The sum of the average weighted amounts and, for each applicable maturity category, the sum of the average unweighted amounts of paragraphs (c)(1)(ii) and (iii) of this section (row 1);

(ii) The average weighted amount and, for each applicable maturity category, the average unweighted amount of NSFR regulatory capital elements described in § 249.104(a)(1) (row 2);

(iii) The average weighted amount and, for each applicable maturity category, the average unweighted amount of securities described in §§ 249.104(a)(2), 249.104(d)(5), and 249.104(e)(3) (row 3);

(iv) The sum of the average weighted amounts and, for each applicable maturity category, the sum of the average unweighted amounts of paragraphs (c)(1)(v) through (viii) of this section (row 4);

(v) The average weighted amount and, for each applicable maturity category, the average unweighted amount of stable retail deposits and sweep deposits held at the covered depository institution holding company, U.S. intermediate holding company, or covered nonbank company described in § 249.104(b) (row 5);

(vi) The average weighted amount and, for each applicable maturity category, the average unweighted amount of retail deposits other than stable retail deposits or brokered deposits, described in § 249.104(c)(1) (row 6);

(vii) The average weighted amount and, for each applicable maturity category, the average unweighted amount of sweep deposits, brokered reciprocal deposits, and brokered deposits provided by a retail customer or counterparty described in §§ 249.104(c)(2), 249.104(c)(3), 249.104(c)(4), 249.104(d)(7), 249.104(d)(8) and 249.104(e)(2) (row 7);

(viii) The average weighted amount and, for each applicable maturity category, the average unweighted amount of other funding provided by a retail customer or counterparty described in § 249.104(d)(9) (row 8);

(ix) The sum of the average weighted amounts and, for each applicable maturity category, the sum of the average unweighted amounts of paragraphs (c)(1)(x) and (xi) of this section (row 9);

(x) The average weighted amount and, for each applicable maturity category, the average unweighted amount of operational deposits placed at the covered depository institution holding company, U.S. intermediate holding company, or covered nonbank company described in § 249.104(d)(6) (row 10);

(xi) The average weighted amount and, for each applicable maturity category, the average unweighted amount of other wholesale funding described in §§ 249.104(a)(2), 249.104(d)(1), 249.104(d)(2), 249.104(d)(3), 249.104(d)(4), 249.104(d)(10), and 249.104(e)(4) (row 11);

(xii) In the ''unweighted'' cell, the average amount of the NSFR derivatives liability amount described in § 249.107(d)(2) (row 12);

(xiii) In the ''unweighted'' cell, the average amount of the total derivatives liability amount described in § 249.107(e)(2) (row 13);

(xiv) The average weighted amount and, for each applicable maturity category, the average unweighted amount of all other liabilities not included in amounts disclosed under paragraphs (c)(1)(i) through (xiii) of this section (row 14);

(xv) The average amount of the ASF amount described in § 249.103 (row 15);

(2) Disclosures of RSF amount calculations, including to reflect any encumbrances under §§ 249.106(c) and 249.106(d):

(i) The sum of the average weighted amounts and the sum of the average unweighted amounts of paragraphs (c)(2)(ii) through (iv) of this section (row 16);

(ii) The average weighted amount and, for each applicable maturity category, the average unweighted amount of level 1 liquid assets described in §§ 249.106(a)(1) (row 17);

(iii) The average weighted amount and, for each applicable maturity category, the average unweighted amount of level 2A liquid assets described in § 249.106(a)(3)(i) (row 18);

(iv) The average weighted amount and, for each applicable maturity category, the average unweighted amount of level 2B liquid assets described in § 249.106(a)(4)(i) (row 19);

(v) The average weighted amount and, for each applicable maturity category, the average unweighted amount of assets described in § 249.106(a)(1), other than level 1 liquid assets included in amounts disclosed under paragraph (c)(2)(ii) of this section or secured lending transactions included in amounts disclosed under paragraph (c)(2)(viii) of this section (row 20);

(vi) The average weighted amount and, for each applicable maturity category, the average unweighted amount of operational deposits placed at financial sector entities or consolidated subsidiaries thereof described in § 249.106(a)(4)(iii) (row 21);

(vii) The sum of the average weighted amounts and, for each applicable maturity category, the sum of the average unweighted amounts of paragraphs (c)(2)(viii), (ix), (x), (xii), and (xiv) of this section (row 22);

(viii) The average weighted amount and, for each applicable maturity category, the average unweighted amount of secured lending transactions where the borrower is a financial sector entity or a consolidated subsidiary of a financial sector entity and the secured lending transaction is secured by level 1 liquid assets, described in §§ 249.106(a)(1)(vii), 249.106(a)(3)(ii), 249.106(a)(4)(ii), and 249.106(a)(7) (row 23);

(ix) The average weighted amount and, for each applicable maturity category, the average unweighted amount of secured lending transactions that are secured by assets other than level 1 liquid assets and unsecured wholesale lending, in each case where the borrower is a financial sector entity or a consolidated subsidiary of a financial sector entity, described in §§ 249.106(a)(3)(ii), 249.106(a)(4)(ii), and 249.106(a)(7) (row 24);

(x) The average weighted amount and, for each applicable maturity category, the average unweighted amount of secured lending transactions and unsecured wholesale lending to wholesale customers or counterparties that are not financial sector entities or consolidated subsidiaries thereof, and lending to retail customers and counterparties other than retail mortgages, described in §§ 249.106(a)(4)(iv), 249.106(a)(5)(ii), and 249.106(a)(6)(ii) (row 25);

(xi) The average weighted amount and, for each applicable maturity category, the average unweighted amount of secured lending transactions, unsecured wholesale lending, and lending to retail customers or counterparties that are assigned a risk weight of no greater than 20 percent under subpart D of Regulation Q (12 CFR part 217) described in §§ 249.106(a)(4)(ii), 249.106(a)(4)(iv), and 249.106(a)(5)(ii) (row 26);

(xii) The average weighted amount and, for each applicable maturity category, the average unweighted amount of retail mortgages described in §§ 249.106(a)(4)(iv), 249.106(a)(5)(i), and 249.106(a)(6)(i) (row 27);

(xiii) The average weighted amount and, for each applicable maturity category, the average unweighted amount of retail mortgages assigned a risk weight of no greater than 50 percent under subpart D of Regulation Q (12 CFR part 217) described in §§ 249.106(a)(4)(iv) and 249.106(a)(5)(i) (row 28);

(xiv) The average weighted amount and, for each applicable maturity category, the average unweighted amount of publicly traded common equity shares and other securities that are not HQLA and are not nonperforming assets described in §§ 249.106(a)(6)(iii), and 249.106(a)(6)(iv) (row 29);

(xv) The average weighted amount and average unweighted amount of commodities described in §§ 249.106(a)(6)(v) and 249.106(a)(7) (row 30);

(xvi) The average unweighted amount and average weighted amount of the sum of (A) assets contributed by the covered depository institution holding company to a central counterparty's mutualized loss-sharing arrangement described in § 249.107(b)(6) (in which case the ''unweighted amount'' shall equal the fair value and the ''weighted amount'' shall equal the unweighted amount multiplied by 85 percent) and (B) assets provided as initial margin by the covered depository institution holding company, U.S. intermediate holding company, or covered nonbank company for derivative transactions described in § 249.107(b)(7) (in which case the ''unweighted amount'' shall equal the fair value and the ''weighted amount'' shall equal the unweighted amount multiplied by the higher of 85 percent or the RSF factor assigned to the asset pursuant to § 249.106) (row 31);

(xvii) In the ''unweighted'' cell, the covered depository institution holding company's, U.S. intermediate holding company's, or covered nonbank company's average amount of the NSFR derivatives asset amount under § 249.107(d)(1) and in the ''weighted'' cell, the covered depository institution holding company's, U.S. intermediate holding company's, or covered nonbank company's average amount of the NSFR derivatives asset amount under § 249.107(d)(1) multiplied by 100 percent (row 32);

(xviii) In the ''unweighted'' cell, the covered depository institution holding company's, U.S. intermediate holding company's, or covered nonbank company's average amount of the total derivatives asset amount described in § 249.107(e)(1) (row 33);

(xix) (A) In the ''unweighted'' cell, the average amount of the sum of the gross derivative liability values of the covered depository institution holding company, U.S. intermediate holding company, or covered nonbank company that are liabilities for each of its derivative transactions not subject to a qualifying master netting agreement and each of its QMNA netting sets, described in § 249.107(b)(5), and (B) in the ''weighted'' cell, such sum multiplied by 5 percent, as described in § 249.107(b)(5) (row 34);

(xx) The average weighted amount and, for each applicable maturity category, the average unweighted amount of all other asset amounts not included in amounts disclosed under paragraphs (c)(2)(i) through (xix) of this section, including nonperforming assets (row 35);

(xxi) The average weighted and unweighted amount of undrawn credit and liquidity facilities described in § 249.106(a)(2) (row 36);

(xxii) The average amount of the RSF amount as calculated in § 249.105(a) prior to the application of the applicable required stable funding adjustment percentage in § 249.105(b) (row 37);

(xxiii) The applicable required stable funding adjustment percentage described in Table 1 to § 249.105(b) (row 38);

(xxiv) The average amount of the RSF amount as calculated under § 249.105 (row 39);

(3) The average of the net stable funding ratios as calculated under § 249.100(b) (row 40);

(d) *Qualitative disclosures.* (1) A covered depository institution holding company, U.S. intermediate holding company, or covered nonbank company must provide a qualitative discussion of the factors that have a significant effect on its net stable funding ratio, which may include the following:

(i) The main drivers of the net stable funding ratio;

(ii) Changes in the net stable funding ratio results over time and the causes of such changes (for example, changes in strategies and circumstances);

(iii) Concentrations of funding sources and changes in funding structure; or

(iv) Concentrations of available and required stable funding within a covered company's corporate structure (for example, across legal entities).

(2) If a covered depository institution holding company, U.S. intermediate holding company, or covered nonbank company subject to this subpart believes that the qualitative discussion required in paragraph (d)(1) of this section would prejudice seriously its position by resulting in public disclosure of specific commercial or financial information that is either proprietary or confidential in nature, the covered depository institution holding company, U.S. intermediate holding company, or covered nonbank company is not required to include those specific items in its qualitative discussion, but must provide more general information about the items that had a significant effect on its net stable funding ratio, together with the fact that, and the reason why, more specific information was not discussed.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the common preamble, part 329 of chapter III of title 12 of the Code of Federal Regulations is amended as follows:

PART 329—LIQUIDITY RISK MEASUREMENT STANDARDS

■ 25. The authority citation for part 329 continues to read as follows:

Authority: 12 U.S.C. 1815, 1816, 1818, 1819, 1828, 1831p–1, 5412.

■ 26. Amend § 329.1 by revising paragraphs (a) and (b)(1) introductory text to read as follows:

§ 329.1 Purpose and applicability.

(a) *Purpose.* This part establishes a minimum liquidity standard and a minimum stable funding standard for certain FDIC-supervised institutions on a consolidated basis, as set forth herein.

(b) * * *

(1) An FDIC-supervised institution is subject to the minimum liquidity standard, minimum stable funding standard, and other requirements of this part if:

* * * * *

■ 27. Amend § 329.2 by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 329.2 Reservation of authority.

* * * * *

(b) The FDIC may require an FDIC-supervised institution to maintain an amount of available stable funding greater than otherwise required under this part, or to take any other measure to improve the FDIC-supervised institution's stable funding, if the FDIC determines that the FDIC-supervised institution's stable funding requirements as calculated under this part are not commensurate with the FDIC-supervised institution's funding risks. In making determinations under this section, the FDIC will apply notice and response procedures as set forth in 12 CFR 324.5.

(c) Nothing in this part limits the authority of the FDIC under any other provision of law or regulation to take supervisory or enforcement action, including action to address unsafe or unsound practices or conditions, deficient liquidity levels, deficient stable funding levels, or violations of law.

■ 28. Amend § 329.3 by:

■ a. Removing the definitions for ''*Brokered sweep deposit*'', ''*Covered nonbank company*'', and ''*Reciprocal brokered deposit*'';

■ b. Adding definitions for ''*Brokered reciprocal deposit*'', ''*Carrying value*'', ''*Encumbered*'', ''*NSFR liability*'', ''*NSFR regulatory capital element*'', ''*QMNA netting set*'', ''*Sweep deposit*'', ''*Unconditionally cancelable*'', and ''*Unsecured wholesale lending*''; and

■ c. Revising definitions for ''*Brokered deposit*'', ''*Calculation date*'', ''*Collateralized deposit*'', ''*Committed*'', ''*Operational deposit*'', ''*Secured funding transaction*'', ''*Secured lending transaction*'', and ''*Unsecured wholesale funding.*''

The additions and revisions, in alphabetical order, read as follows:

§ 329.3 Definitions.

* * * * *

Brokered deposit means any deposit held at the FDIC-supervised institution that is obtained, directly or indirectly, from or through the mediation or assistance of a deposit broker as that term is defined in section 29 of the Federal Deposit Insurance Act (12 U.S.C. 1831f(g)) and the Federal Deposit Insurance Corporation's regulations.

Brokered reciprocal deposit means a brokered deposit that an FDIC-supervised institution receives through a deposit placement network on a reciprocal basis, such that:

(1) For any deposit received, the FDIC-supervised institution (as agent for the depositors) places the same amount with other depository institutions through the network; and

(2) Each member of the network sets the interest rate to be paid on the entire amount of funds it places with other network members.

Calculation date means, for subparts B through J of this part, any date on which an FDIC-supervised institution calculates its liquidity coverage ratio under § 329.10, and for subparts K through M of this part, any date on which an FDIC-supervised institution calculates its net stable funding ratio under § 329.100.

* * * * *

Carrying value means, with respect to an asset, NSFR regulatory capital element, or NSFR liability, the value on the balance sheet of the FDIC-supervised institution, each as determined in accordance with GAAP.

* * * * *

Collateralized deposit means:

(1) A deposit of a public sector entity held at the FDIC-supervised institution that is required to be secured under applicable law by a lien on assets owned by the FDIC-supervised institution and that gives the depositor, as holder of the lien, priority over the assets in the event the FDIC-supervised institution enters into receivership, bankruptcy, insolvency, liquidation, resolution, or similar proceeding;

(2) A deposit of a fiduciary account awaiting investment or distribution held at the FDIC-supervised institution for which the FDIC-supervised institution is a fiduciary and is required under applicable state law to set aside assets owned by the FDIC-supervised institution as security, which gives the depositor priority over the assets in the event the FDIC-supervised institution enters into receivership, bankruptcy, insolvency, liquidation, resolution, or similar proceeding; or

(3) A deposit of a fiduciary account awaiting investment or distribution held at the FDIC-supervised institution for which the FDIC-supervised institution's affiliated insured depository institution is a fiduciary and where the FDIC-supervised institution under 12 CFR 9.10(c) (national banks), 12 CFR 150.310 (Federal savings associations), or applicable state law (state member and nonmember banks, and state savings associations) has set aside assets owned by the FDIC-supervised institution as security, which gives the depositor priority over the assets in the event the FDIC-supervised institution enters into receivership, bankruptcy, insolvency, liquidation, resolution, or similar proceeding.

Committed means, with respect to a credit or liquidity facility, that under the terms of the facility, it is not unconditionally cancelable.

* * * * *

Encumbered means, with respect to an asset, that the asset:

(1) Is subject to legal, regulatory, contractual, or other restriction on the ability of the FDIC-supervised institution to monetize the asset; or

(2) Is pledged, explicitly or implicitly, to secure or to provide credit enhancement to any transaction, not including when the asset is pledged to a central bank or a U.S. government-sponsored enterprise where:

(i) Potential credit secured by the asset is not currently extended to the FDIC-supervised institution or its consolidated subsidiaries; and

(ii) The pledged asset is not required to support access to the payment services of a central bank.

* * * * *

NSFR liability means any liability or equity reported on an FDIC-supervised institution's balance sheet that is not an NSFR regulatory capital element.

NSFR regulatory capital element means any capital element included in an FDIC-supervised institution's common equity tier 1 capital, additional tier 1 capital, and tier 2 capital, in each case as defined in 12 CFR 324.20, prior to application of capital adjustments or deductions as set forth in 12 CFR 324.22, excluding any debt or equity instrument that does not meet the criteria for additional tier 1 or tier 2 capital instruments in 12 CFR 324.22 and is being phased out of tier 1 capital or tier 2 capital pursuant to subpart G of 12 CFR part 324.

Operational deposit means short-term unsecured wholesale funding that is a deposit, unsecured wholesale lending that is a deposit, or a collateralized deposit, in each case that meets the requirements of § 329.4(b) with respect to that deposit and is necessary for the provision of operational services as an independent third-party intermediary, agent, or administrator to the wholesale customer or counterparty providing the deposit.

* * * * *

QMNA netting set means a group of derivative transactions with a single counterparty that is subject to a qualifying master netting agreement and is netted under the qualifying master netting agreement.

* * * * *

Secured funding transaction means any funding transaction that is subject to a legally binding agreement that gives rise to a cash obligation of the FDIC-supervised institution to a wholesale customer or counterparty that is secured under applicable law by a lien on securities or loans provided by the FDIC-supervised institution, which gives the wholesale customer or counterparty, as holder of the lien, priority over the securities or loans in the event the FDIC-supervised institution enters into receivership, bankruptcy, insolvency, liquidation, resolution, or similar proceeding. Secured funding transactions include repurchase transactions, securities lending transactions, other secured loans, and borrowings from a Federal Reserve Bank. Secured funding transactions do not include securities.

Secured lending transaction means any lending transaction that is subject to a legally binding agreement that gives rise to a cash obligation of a wholesale customer or counterparty to the FDIC-supervised institution that is secured under applicable law by a lien on securities or loans provided by the wholesale customer or counterparty, which gives the FDIC-supervised institution, as holder of the lien, priority over the securities or loans in the event the counterparty enters into receivership, bankruptcy, insolvency, liquidation, resolution, or similar proceeding. Secured lending transactions include reverse repurchase transactions and securities borrowing transactions. Secured lending transactions do not include securities.

* * * * *

Sweep deposit means a deposit held at the FDIC-supervised institution by a customer or counterparty through a contractual feature that automatically transfers to the FDIC-supervised institution from another regulated financial company at the close of each business day amounts identified under the agreement governing the account from which the amount is being transferred.

* * * * *

Unconditionally cancelable means, with respect to a credit or liquidity facility, that an FDIC-supervised institution may, at any time, with or without cause, refuse to extend credit under the facility (to the extent permitted under applicable law).

Unsecured wholesale funding means a liability or general obligation of the FDIC-supervised institution to a wholesale customer or counterparty that is not a secured funding transaction. Unsecured wholesale funding includes wholesale deposits. Unsecured wholesale funding does not include asset exchanges.

Unsecured wholesale lending means a liability or general obligation of a wholesale customer or counterparty to the FDIC-supervised institution that is not a secured lending transaction or a security. Unsecured wholesale lending does not include asset exchanges.

* * * * *

■ 29. Amend § 329.22, by revising paragraph (b)(1) to read as follows:

§ 329.22 Requirements for eligible high-quality liquid assets.

* * * * *

(b) * * *

(1) The assets are not encumbered.

* * * * *

■ 30. Amend § 329.30, by revising paragraph (b)(3) to read as follows:

§ 329.30 Total net cash outflow amount.

* * * * *

(b) * * *

(3) Other than the transactions identified in § 329.32(h)(2), (h)(5), or (j) or § 329.33(d) or (f), the maturity of which is determined under § 329.31(a), transactions that have an open maturity are not included in the calculation of the maturity mismatch add-on.

* * * * *

■ 31. Amend § 329.31, by revising paragraphs (a)(1) introductory text, (a)(2) introductory text, and (a)(4) to read as follows:

§ 329.31 Determining maturity.

(a) * * *

(1) With respect to an instrument or transaction subject to § 329.32, on the earliest possible contractual maturity date or the earliest possible date the transaction could occur, taking into account any option that could accelerate the maturity date or the date of the transaction, except that when considering the earliest possible contractual maturity date or the earliest possible date the transaction could occur, the FDIC-supervised institution should exclude any contingent options that are triggered only by regulatory actions or changes in law or regulation, as follows:

* * * * *

(2) With respect to an instrument or transaction subject to § 329.33, on the latest possible contractual maturity date or the latest possible date the transaction could occur, taking into account any option that could extend the maturity date or the date of the transaction, except that when considering the latest possible contractual maturity date or the latest possible date the transaction could occur, the FDIC-supervised institution may exclude any contingent options that are triggered only by regulatory actions or changes in law or regulation, as follows:

* * * * *

(4) With respect to a transaction that has an open maturity, is not an operational deposit, and is subject to the provisions of § 329.32(h)(2), (h)(5), (j), or (k) or § 329.33(d) or (f), the maturity date is the first calendar day after the calculation date. Any other transaction that has an open maturity and is subject to the provisions of § 329.32 shall be considered to mature within 30 calendar days of the calculation date.

* * * * *

§ 329.32 [Amended]

■ 32. Amend § 329.32 by:

■ a. Removing the phrase ''reciprocal brokered deposits'' and adding the phrase ''brokered reciprocal deposits'' in its place wherever it appears.

■ b. Removing the phrase ''brokered sweep deposits'' and adding the phrase ''sweep deposits'' in its place wherever it appears.

Subparts G through J [Added and Reserved]

■ 33. Add and reserve subparts G through J to part 329.

Subparts K and L [Added]

■ 34. Amend part 329 by adding subparts K and L as set forth at the end of the common preamble.

Subparts K and L [Amended]

■ 35. Subparts K and L to part 329 are amended by:

■ a. Removing ''[AGENCY]'' and adding ''FDIC'' in its place wherever it appears.

■ b. Removing ''[AGENCY CAPITAL REGULATION]'' and adding ''12 CFR part 324'' in its place wherever it appears.

■ c. Removing ''A [BANK]'' and adding ''An FDIC-supervised institution'' in its place wherever it appears.

■ d. Removing ''a [BANK]'' and add ''an FDIC-supervised institution'' in its place wherever it appears.

■ e. Removing ''[BANK]'' and adding ''FDIC-supervised institution'' in its place wherever it appears.

■ f. Removing ''[§ ____.10(c)(4)(ii)(E)(1) through (3) of the AGENCY SUPPLEMENTARY LEVERAGE RATIO RULE]'' and adding ''12 CFR 324.10(c)(2)(v)(A) through (C)'' in its place wherever it appears.

■ g. Amending § 329.105, by revising paragraph (b) to read as follows:

§ 329.105 Calculation of required stable funding amount.

* * * * *

(b) *Required stable funding adjustment percentage.* An FDIC-supervised institution's required stable funding adjustment percentage is determined pursuant to Table 1 to this paragraph (b).

TABLE 1 TO PARAGRAPH (b)—REQUIRED STABLE FUNDING ADJUSTMENT PERCENTAGES

GSIB depository institution supervised by the FDIC	100
Category II FDIC-supervised institution	100
Category III FDIC-supervised institution that: (1) Is a consolidated subsidiary of (a) a covered depository institution holding company or U.S. intermediate holding company identified as a Category III banking organization pursuant to 12 CFR 252.5 or 12 CFR 238.10 or (b) a depository institution that meets the criteria set forth in paragraphs (2)(ii)(A) and (B) of the definition of Category III FDIC-supervised institution in this part, in each case with $75 billion or more in average weighted short-term wholesale funding; or (2) Has $75 billion or more in average weighted short-term wholesale funding and is not a consolidated subsidiary of (a) a covered depository institution holding company or U.S. intermediate holding company identified as a Category III banking organization pursuant to 12 CFR 252.5 or 12 CFR 238.10 or (b) a depository institution that meets the criteria set forth in paragraphs (2)(ii)(A) and (B) of the definition of Category III FDIC-supervised institution in this part.	100
Category III FDIC-supervised institution that: (1) Is a consolidated subsidiary of (a) a covered depository institution holding company or U.S. intermediate holding company identified as a Category III banking organization pursuant to 12 CFR 252.5 or 12 CFR 238.10 or (b) a depository institution that meets the criteria set forth in paragraphs (2)(ii)(A) and (B) of the definition of Category III FDIC-supervised institution in this part, in each case with less than $75 billion in average weighted short-term wholesale funding; or (2) Has less than $75 billion in average weighted short-term wholesale funding and is not a consolidated subsidiary of (a) a covered depository institution holding company or U.S. intermediate holding company identified as a Category III banking organization pursuant to 12 CFR 252.5 or 12 CFR 238.10 or (b) a depository institution that meets the criteria set forth in paragraphs (2)(ii)(A) and (B) of the definition of Category III FDIC-supervised institution in this part.	85

■ 36. Amend part 329 by adding subpart M to read as follows:

Subpart M—Transitions

§ 329.120 Transitions.

(a) *Initial application.* (1) An FDIC-supervised institution that initially becomes subject to the minimum net stable funding requirement under § 329.1(b)(1)(i) after July 1, 2021, must comply with the requirements of subparts K through M of this part beginning on the first day of the third calendar quarter after which the FDIC-supervised institution becomes subject to this part.

(2) An FDIC-supervised institution that becomes subject to the minimum net stable funding requirement under § 329.1(b)(1)(ii) must comply with the requirements of subparts K through M of this part subject to a transition period specified by the FDIC.

(b) *Transition to a different required stable funding adjustment percentage.* (1) An FDIC-supervised institution whose required stable funding adjustment percentage changes is subject to the transition periods as set forth in § 329.105(c).

(2) An FDIC-supervised institution that is no longer subject to the minimum stable funding requirement of this part pursuant to § 329.1(b)(1)(i) based on the size of total consolidated assets, cross-jurisdictional activity, total nonbank assets, weighted short-term wholesale funding, or off-balance sheet exposure calculated in accordance with the Call Report, or instructions to the FR Y–9LP, the FR Y–15, or equivalent reporting form, as applicable, for each of the four most recent calendar quarters may cease compliance with the requirements of subparts K through M of this part as of the first day of the first calendar quarter after it is no longer subject to § 329.1(b).

(c) *Reservation of authority.* The FDIC may extend or accelerate any compliance date of this part if the FDIC determines such extension or acceleration is appropriate. In determining whether an extension or acceleration is appropriate, the FDIC will consider the effect of the modification on financial stability, the period of time for which the modification would be necessary to facilitate compliance with the requirements of subparts K through M of this part, and the actions the FDIC-supervised institution is taking to come into compliance with the requirements of subparts K through M of this part.

Brian P. Brooks,

Acting Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System.

Ann Misback,

Secretary of the Board,

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on October 20, 2020.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2020–26546 Filed 2–4–21; 4:15 pm]

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Part III

Commodity Futures Trading Commission

17 CFR Part 37

Swap Execution Facilities; Final Rule

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 37

RIN 3038–AE25

Swap Execution Facilities

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is adopting final rules (''Final Rules'') addressing operational issues facing swap execution facilities (''SEF'') and their market participants in connection with the Commission's regulatory requirements for a SEF's audit trail data, financial resources, and chief compliance officer (''CCO'').

DATES: This rule is effective May 12, 2021.

FOR FURTHER INFORMATION CONTACT: Nancy Markowitz, Deputy Director, (202) 418–5453, *NMarkowitz@cftc.gov;* Jonathan Lave, Associate Director, (202) 418–5983, Division of Market Oversight; Eliezer Mishory, Special Counsel, (202) 418–5609, *EMishory@cftc.gov,* Division of Data; or Michael Penick, Senior Economist, (202) 418–5279, *mpenick@cftc.gov,* Office of the Chief Economist, Commodity Futures Trading Commission, Three Lafayette Centre, 1151 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

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I. Background and Introduction

A. Statutory and Regulatory History

Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'') [1] amended the Commodity Exchange Act (''CEA'' or ''Act'') [2] to establish a comprehensive new swaps regulatory framework that includes the registration and oversight of SEFs.[3] As amended, CEA section 1a(50) defines a SEF as a trading system or platform that allows multiple participants to execute or trade swaps with multiple participants through any means of interstate commerce.[4] CEA section 5h(a)(1) requires an entity to register as a SEF prior to operating a facility for the trading or processing of swaps.[5] CEA section 5h(f) requires registered SEFs to comply with fifteen core principles.[6] Further, CEA section 2(h)(8) provides that swap transactions subject to the clearing requirement in CEA section 2(h)(1)(A) [7] must be executed on a designated contract market (''DCM''), SEF, or a SEF that is exempt from registration pursuant to CEA section 5h(g),[8] unless (i) no DCM or SEF [9] ''makes the swap available to trade'' or (ii) the transaction is subject to a clearing requirement exception pursuant to CEA section 2(h)(7).[10]

Pursuant to its discretionary rulemaking authority in CEA sections 5h(f)(1) and 8a(5), the Commission identified the relevant areas in which the statutory SEF framework would benefit from additional rules or regulations.[11] Accordingly, in 2013, the Commission adopted part 37 of its regulations to implement a regulatory framework for SEFs and for the trading and execution of swaps on such facilities (''2013 SEF Rules'').[12]

Subsequently, a number of SEFs and their market participants requested relief from certain part 37 requirements they found in practice to be operationally unworkable or unnecessarily burdensome. A number of SEFs indicated that some of those requirements are impractical or unachievable due to technology limitations, or are incompatible with existing market practices. For example, as discussed further below, a number of SEFs stated that the requirement to include post-execution allocation information in audit trail data under § 37.205 is operationally difficult and impractical to implement.[13] Even where SEFs were able to comply with certain requirements, they asserted that (i) the compliance costs are high, and (ii)

[1] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, title VII, 124 Stat. 1376 (2010) (codified as amended in various sections of 7 U.S.C.), *https://www.cftc.gov/sites/default/files/idc/groups/public/@lrfederalregister/documents/file/2013-12242a.pdf.*

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

[3] 7 U.S.C. 7b–3 (adding CEA section 5h to establish a registration requirement and regulatory regime for SEFs).

[4] 7 U.S.C. 1a(50).

[5] CEA section 5h(a)(1) states that no person may operate a facility for the trading or processing of swaps unless the facility is registered as a SEF or as a DCM under section 5h. 7 U.S.C. 7b–3(a)(1).

[6] 7 U.S.C. 7b–3(f). From herein, the term ''SEFs'' refers to registered SEFs, unless otherwise indicated.

[7] Section 723(a)(3) of the Dodd-Frank Act added a CEA section 2(h) to establish the clearing requirement for swaps. 7 U.S.C. 2(h). CEA section 2(h)(1)(A) provides that it is unlawful for any person to engage in a swap unless that person submits such swap for clearing to a derivatives clearing organization that is registered under the CEA or a derivatives clearing organization that is exempt from registration under the CEA if the swap is required to be cleared. 7 U.S.C. 2(h)(1)(A). CEA section 2(h)(2) specifies the process for the Commission to review and determine whether a swap, group, category, type, or class of swap should be subject to the clearing requirement. 7 U.S.C. 2(h)(2). The Commission further implemented the clearing determination process under part 50, which also specifies the swaps currently subject to the requirement. 17 CFR part 50.

[8] CEA section 2(h)(8)(A)(ii) contains a typographical error that specifies CEA section 5h(f), rather than CEA section 5h(g), as the provision that allows the Commission to exempt a SEF from registration. Where appropriate, this reference is corrected in the discussion herein.

[9] CEA section 2(h)(8)(A)(i)–(ii) provides, with respect to transactions involving swaps subject to the clearing requirement that counterparties shall execute the transaction on a board of trade designated as a contract market under section 5; or execute the transaction on a swap execution facility registered under section 5h or a swap execution facility that is exempt from registration under section 5h(g) of the CEA. Given this reference in CEA section 2(h)(8)(A)(ii), the Commission accordingly interprets ''swap execution facility'' in CEA section 2(h)(8)(B) to include a swap execution facility that is exempt from registration pursuant to CEA section 5h(g).

[10] 7 U.S.C. 2(h)(8). This is referred to as the ''trade execution requirement.''

[11] To implement the SEF core principles, Core Principle 1 provides that the Commission may, in its discretion, determine by rule or regulation the manner in which SEFs comply with the core principles. 7 U.S.C. 7b–3(f)(1)(B).

[12] Core Principles and Other Requirements for Swap Execution Facilities, 78 FR 33476 (Jun. 4, 2013) (''SEF Core Principles Final Rule''); Process for a Designated Contract Market or Swap Execution Facility to Make a Swap Available to Trade, Swap Transaction Compliance and Implementation Schedule, and Trade Execution Requirement Under the Commodity Exchange Act, 78 FR 33606 (Jun. 4, 2013).

[13] 17 CFR 37.205; *see* Section II, *infra.*

compliance is unnecessary to satisfy their self-regulatory obligations and the statutory SEF core principles. For instance, SEFs noted that the financial resources requirements imposed by Core Principle 13 regulations are capital-intensive and broader than the specific costs of compliance with SEF regulatory obligations.[14] In response to concerns regarding the financial resources requirement and other requirements operationally difficult and impractical to implement, Commission staff issued a combination of no-action relief and guidance in the months and years following the adoption of part 37.[15]

In November 2018, the Commission issued a notice of proposed rulemaking under CEA sections 5h(f)(1) and 8a(5), seeking to address these issues by codifying relevant staff no-action relief or otherwise resolving the concerns of SEFs and market participants.[16] The proposed rules (''Proposed Rules'') also set forth structural reforms to the SEF regime beyond these operational fixes. In particular, the Proposed Rules would have removed existing limitations on swap execution methods,[17] while expanding both the categories of swaps that must be executed on a SEF, and the types of entities that must register as SEFs. Commenters to the Proposed Rules uniformly favored adopting certain of the narrower operational proposals.[18] By contrast, the Proposed Rules' broader market reforms elicited a number of comments expressing hesitation regarding the expansive scope of the proposed changes and recommending the Commission instead focus on more targeted improvements to the existing swap trading regulatory regime.[19]

Accordingly, the Final Rules implement certain operationally-focused proposals that received limited and generally positive feedback from commenters—namely, targeted changes to requirements for a SEF's audit trail data, financial resources, CCO governance, and timing of CCO reports.

B. Summary of Final Rules

In summary, the Final Rules make the following changes to the SEF regulatory regime:

(1) *Audit trail data.* The Final Rules eliminate the requirement of a SEF to capture and retain post-execution allocation information in its audit trail data.

(2) *Financial resources.* The Final Rules apply the existing Core Principle 13 financial resources requirements to SEF operations in a less burdensome manner, including through amendments to the existing six-month liquidity requirement and the addition of new acceptable practices providing further guidelines to SEFs for making a reasonable calculation of their projected operating costs.

(3) *CCO.* The Final Rules streamline requirements for the CCO position, allow SEF management to exercise greater discretion in CCO oversight, and simplify the preparation and submission of the required annual compliance report (''ACR'').

II. Audit Trail Requirements Related to Post-Execution Allocation Information

A. Background and Proposed Rules

Existing § 37.205(a) requires a SEF to capture and retain all audit trail data necessary to detect, investigate, and prevent customer and market abuses.[20] This audit trail data must permit a SEF to track a customer order from the time of receipt through fill, allocation, or other disposition.[21] Commission regulation 37.205(b)(2)(iv) requires a SEF's audit trail program to include an electronic transaction history database that identifies, among other things, each account to which order fills are allocated.[22]

During the SEF registration process starting fall 2013 through spring 2016, numerous SEFs indicated that post-execution allocations are made away from SEFs and typically occur between the clearing firm or the customer and the derivatives clearing organization (''DCO'') or at the middleware provider.[23] Those SEFs represented they typically do not have access to post-execution allocation information and are unable to obtain this data from third parties, such as DCOs and swap data repositories, due to confidentiality concerns. Based on these representations, Commission staff issued no-action relief from this requirement.[24]

Recognizing the practical difficulties SEFs face in obtaining information regarding allocations occurring away from the SEF after a trade has been executed, the Commission proposed to eliminate the requirements in

[14] *See* Comment Letter from Wholesale Markets Brokers' Association, Americas (''WMBAA''), Swap Execution Facility Regulations, Made Available to Trade Determinations, and Swap Trading Requirements at 5 (Mar. 11, 2016), *http://www.wmbaa.com/wp-content/uploads/2016/06/WMBAA_Letter_to_CFTC_031116.pdf.*

[15] *See, e.g.,* CFTC Staff Letter No. 17–54, Re: No-Action Relief for Swap Execution Facilities from Certain Audit Trail Requirements in Commission Regulation 37.205 Related to Post-Execution Allocation Information at 2 (Oct. 31, 2017) (''CFTC Staff Letter No. 17–54''); CFTC Staff Letter No. 15–26, Division of Market Oversight Guidance on Calculating Projected Operating Costs by Swap Execution Facilities (Apr. 23, 2015) (''CFTC Staff Letter No. 15–26''); and CFTC Staff Letter No. 17–25, Division of Market Oversight Guidance on Calculating Projected Operating Costs By Designated Contract Markets and Swap Execution Facilities (Apr. 28, 2017) (''CFTC Staff Letter No. 17–25''); CFTC Staff Letter No. 17–61, Re: No-Action Relief for Swap Execution Facilities from Compliance with the Timing Requirements of Commission Regulation 37.1501(f)(2) Relating to Chief Compliance Officer Annual Compliance Reports and Commission Regulation 37.1306(d) Relating to Fourth Quarter Financial Reports at 2–3 (Nov. 20, 2017) (''CFTC Staff Letter No. 17–61'').

[16] Swap Execution Facilities and Trade Execution Requirement, 83 FR 61946 (Nov. 30, 2018).

[17] Under § 37.9(a), any transaction involving a swap subject to the trade execution requirement in section 2(h)(8) of the Act (''Required Transactions'') must be executed in accordance with (i) an Order Book as defined in § 37.3(a)(3); or (ii) a request for quote (''RFQ'') to no fewer than three market participants in conjunction with an Order Book. 17 CFR 37.9(a). Transactions not subject to the trade execution requirement (''Permitted Transactions'') may trade via any execution method.

[18] *See, e.g.,* Comment Letter from Bloomberg at A–6 (Mar. 15, 2019) (expressing support for proposed changes to financial resources liquidity requirement) (''Bloomberg Letter''); Comment Letter from Refinitiv at 11, 13–14 (Mar. 13, 2019) (''Refinitiv Letter'') (expressing support for proposed changes to financial resources and audit trail requirements); Comment Letter from WMBAA (Mar. 15, 2019) (''2019 WMBAA Letter'') (expressing support for proposed changes to financial resources, audit trail, and CCO requirements).

[19] *See, e.g.,* Comment Letter from the Alternative Investment Management Association at 1–2 (Feb. 25, 2019) (urging the CFTC ''to approach any change to swap execution facilities and trade execution in a phased and targeted manner, rather than adopt a wholesale package of changes in a single rulemaking''); Comment Letter from Managed Funds Association at 2–3 (Mar. 15, 2019) (expressing concern with the breadth of the Proposed Rules and recommending targeted rather than comprehensive changes to the swap trading framework); Comment Letter from IATP at 3–4 (Mar. 15, 2019) (same); Comment Letter from Securities Industry and Financial Markets Association at 1 (Mar. 15, 2019) (''SIFMA Letter'') (same); Comment Letter from SIFMA Asset Management Group at 1 (Mar. 15, 2019) (same); Comment Letter from Tradeweb Markets LLC at 1–2 (Mar. 14, 2019) (same); Comment Letter from Wellington Management Company LLP at 1 (Mar. 15, 2019). *See also* Comment Letter from Futures Industry Association at 7–9 (Mar. 15, 2019) (stating proposed market reforms ''would present tall operational challenges and impose substantial costs on all market participants''); Comment Letter from Commodity Markets Council at 2 (Mar. 15, 2019) (same).

[20] 17 CFR 37.205(a). Such audit trail data must be sufficient to reconstruct all indications of interest, RFQs, orders, and trades.

[21] *Id.*

[22] 17 CFR 37.205(b)(2)(iv).

[23] CFTC Staff Letter No. 15–68, Re: No-Action Relief for Swap Execution Facilities from Certain Audit Trail Requirements in Commission Regulation 37.205 Related to Post-Execution Allocation Information (Dec. 22, 2015) at 2. As stated therein, ''[e]ven if SEFs could obtain the information from DCOs, swap data repositories, or middleware providers, or alternatively, from the counterparties to the swap, the infrastructure necessary to securely transmit the post-execution allocation information, such as an application-programming interface or secure file transfer protocol site, is currently not in place.''

[24] *Id.;* CFTC Staff Letter No. 17–54.

§ 37.205(a) and (b)(2) that a SEF capture post-execution allocation information in its audit trail.[25] Instead, the Proposed Rules only require a SEF to capture and retain in its audit trail information through the execution of a trade on the SEF.[26] The Commission noted that this change would be consistent with current swap market practices.[27]

B. Summary of Comments

Commenters support the proposal to eliminate the requirement to capture and retain post-execution allocation information.[28] According to Refinitiv and WMBAA, SEFs remain unable to obtain post-execution allocation information.[29] WMBAA believes ''SEFs cannot and should not be responsible for collecting trade allocation information when the allocations occur away from the SEF'' and the proposed changes ''more accurately reflect the capabilities of SEFs to capture audit trail data.'' [30] In WMBAA's view, the proposed changes to SEF audit trail requirements ''will [not] lead to degradation of the ability to reconstruct a trade and the environment in which it is traded.'' [31]

C. Final Rules

The Commission has determined, based on representations from SEFs, that SEFs are unable to obtain post-execution allocation information and is adopting the amendments to § 37.205(a) and (b)(2) as proposed. Moreover, the Commission is able to obtain post-execution allocation information from other registered entities and market participants, and is not aware that SEFs' reliance on the relief from collecting and retaining post-execution allocation has raised any regulatory concerns.

As commenters noted, post-execution allocation generally takes place between the clearing firm or the customer and the DCO, or at the middleware provider. DCOs are required to maintain records of all information necessary to record allocation of bunched orders for cleared swaps.[32] In addition, under § 1.35 managers of accounts eligible for post-execution allocation must maintain records sufficient to permit the reconstruction of the handling of the order from the time of placement by the account manager to the allocation to individual accounts, and introducing brokers, futures commission merchants, and SEF members must similarly maintain records of each order subject to post-execution allocation and the accounts to which the orders are allocated.[33] These required records must be made available to the Commission upon request.[34] Accordingly, the Commission expects that it will continue to have access to post-execution allocation information from these registered entities and market participants even after SEFs are no longer required to capture this information.

III. Financial Resources Requirements

A. Background and Overview of Proposed Rules

Core Principle 13 requires a SEF to have adequate financial, operational, and managerial resources to discharge each of its responsibilities.[35] To achieve financial resource adequacy, a SEF must maintain financial resources sufficient to cover its operating costs for a period of at least one year, calculated on a rolling basis.[36] The Commission implemented Core Principle 13 by adopting §§ 37.1301 through 37.1307 to specify (i) the eligible types of financial resources that may be counted toward compliance (§ 37.1302); (ii) the computation of projected operating costs (§ 37.1303); (iii) asset valuation requirements (§ 37.1304); (iv) a liquidity requirement for required financial resources equal to six months of a SEF's operating costs (§ 37.1305); and (v) reporting obligations (§ 37.1306).[37]

These regulations are intended to ensure that a SEF has financial strength sufficient to discharge its responsibilities, maintain market continuity, and withstand unpredictable market events.[38] Since the adoption of part 37 in 2013, the Commission received feedback from several SEFs noting the existing requirements impose impractical and unnecessary financial and operating burdens.[39] Among other things, SEFs contended the amount of financial resources a SEF is required to maintain has proven to be unnecessary and shackles resources that otherwise could be used towards operational growth and further innovation.[40] To address some of these concerns, Commission staff issued two guidance documents regarding the calculation of operating costs.[41]

Based on the Commission's experience with overseeing the financial resources requirements, feedback previously received from SEFs, and the Commission staff's experience with administering guidance on operating costs, the Proposed Rules set forth several amendments to the Core Principle 13 regulations, including the addition of acceptable practices to Core Principle 13 in Appendix B to part 37.[42] The intent of the proposed amendments was to achieve a better balance between ensuring SEF financial stability and promoting SEF growth and innovation and reducing unnecessary costs.[43]

As discussed in greater detail below, the Proposed Rules included: (i) Clarification of the scope of operating costs that a SEF must cover with adequate financial resources; (ii) acceptable practices for calculating projected operating costs; (iii) amendments to the existing six-month liquidity requirement for financial resources held by a SEF; and (iv) streamlined and flexible requirements with respect to financial reports filed with the Commission.

B. § 37.1301—General Requirements [44]

Existing § 37.1301(a) requires a SEF to maintain financial resources sufficient to enable it *to perform its functions in compliance* with the SEF core principles set forth in section 5h of the Act (emphasis added).[45] Existing § 37.1301(c) specifies that a SEF's financial resources shall be considered sufficient if their value is ''at least equal

[25] 83 FR at 62005.

[26] *Id.*

[27] *Id.*

[28] Refinitiv Letter at 11 (''Refinitiv SEF supports the elimination of the requirement to be able to track an order through fill, allocation or other disposition, because SEFs generally do not have access to most post-execution information.''); 2019 WMBAA Letter at 12–13 (''The WMBAA supports the Commission's proposal regarding audit trail requirements.'').

[29] Refinitiv Letter at 11; 2019 WMBAA Letter at 12.

[30] 2019 WMBAA Letter at 12.

[31] *Id.* at 12–13.

[32] 17 CFR 39.20(a)(2).

[33] 17 CFR 1.35(b)(5).

[34] *See* 17 CFR 1.31(d), 1.35(b)(5).

[35] 7 U.S.C. 7b–3(f)(13).

[36] *Id.*

[37] 17 CFR 37.1301 through 37.1307.

[38] When the Commission adopted § 37.1301(a), it recognized that a SEF's financial strength is vital to ensure that the SEF can discharge its core principle responsibilities. SEF Core Principles Final Rule at 33538–33539.

[39] *See, e.g.,* WMBAA, Re: Project KISS at 5 (Sept. 29, 2017) (''2017 WMBAA Letter'') *https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=61415&SearchText=.*

[40] *Id.* at 5.

[41] CFTC Staff Letter No. 17–25; CFTC Staff Letter No. 15–26.

[42] 83 FR at 62025–62030.

[43] *Id.* at 62025.

[44] In addition to finalizing the proposed amendments to § 37.1301(a) and (c), the Commission also proposed amendments to § 37.1301(b), which requires a SEF also operating as a DCO to comply with the financial resource requirements for DCOs under § 39.11. Specifically, the Commission proposed to amend § 37.1301(b) to permit a SEF that also operates as a DCO to file a single financial report under § 39.11 that covers both the SEF and DCO. The Commission is continuing to consider this proposed change and, therefore, is not finalizing it as part of the Final Rules.

[45] 17 CFR 37.1301(a).

to'' the SEF's operating costs for a one-year period, calculated on a rolling basis.[46]

Certain SEFs expressed concerns that existing § 37.1301(a), when read in conjunction with existing § 37.1301(c), requires that SEFs include operational costs in the financial resources calculation, even if those costs relate to functions that are not germane to discharging SEF core principle responsibilities.[47] According to those SEFs, the requirement that SEFs maintain capital to cover such costs unnecessarily prevents SEFs from allocating that capital to operational growth and innovation.[48]

1. Proposed Rules

In the notice of proposed rulemaking, the Commission acknowledged some SEF operational costs may not be necessary to comply with a SEF core principle or Commission regulation and, therefore, should not be included when calculating the adequacy of the SEF's financial resources.[49] For example, a SEF may incur costs related to product research, business development, and advertising. Incurring costs to engage in these activities is unrelated to compliance with a SEF core principle or Commission regulation. Accordingly, the Commission proposed to eliminate § 37.1301(c), and instead amend § 37.1301(a) to require a SEF to maintain adequate financial resources to cover the operating costs of activities needed to ''comply'' with the SEF core principles, rather than ''perform its functions in compliance with'' the core principles.[50]

The Commission also proposed to amend § 37.1301(a) to require a SEF to maintain financial resources adequate to comply with ''applicable Commission regulations.'' This amendment was intended to clarify that a SEF's obligation to maintain adequate financial resources extends to those resources necessary to comply with any additional regulatory requirements the Commission has promulgated.[51] The Commission noted SEFs already are complying with this clarification in practice.[52]

Under proposed § 37.1301(a), a SEF need not maintain financial resources to cover the costs of activities (*e.g.,* product research, business development, or advertising) unrelated to compliance with a core principle or Commission regulation. The Commission stated the proposed rule offers a better and more balanced regulatory approach to implementing Core Principle 13 requirements, noting that under the proposed rule, SEFs would be able to allocate capital to other areas, thereby furthering the goals of promoting SEF growth and innovation.[53] Thus, the Commission concluded, the proposed rule would achieve a better balance between ensuring that a SEF is financially stable and providing the SEF discretion to allocate its limited resources towards growth and innovation.[54] Further, in proposing this rule, the Commission aimed to remove a potential barrier for new SEF entrants that might be deterred by the relatively higher capital costs required under existing regulations.[55]

The Commission also proposed several technical changes in order to align proposed § 37.1301(a) with Core Principle 13's requirements. Core Principle 13's requirements are ongoing, prompting the Commission to propose requiring a SEF to maintain adequate financial resources on an ''ongoing basis.'' The Commission also proposed to replace the word ''sufficient'' with ''adequate'' while adopting additional language to specify a SEF's financial resources are ''adequate'' if their value ''exceeds,'' rather than is ''at least equal to,'' one year's worth of operating costs,[56] calculated on a rolling basis pursuant to the requirements for calculating such costs under proposed § 37.1303.

2. Summary of Comments

Refinitiv and WMBAA support the proposed changes to the general financial resource requirements.[57] They believe financial resources for certain SEF personnel and activities are not necessary for compliance with the SEF core principles or Commission regulations and the costs associated with these personnel and activities could be appropriately excluded in calculating projected operating costs.[58] WMBAA also believes the amendments will encourage SEF innovation and lower barriers to entry for new entities seeking to operate as SEFs.[59]

WMBAA requested the Commission allow a SEF to use a credit facility to meet the general financial resources requirement.[60] In addition, WMBAA stated the statutory requirement a SEF maintain adequate financial resources to cover one year of operating costs is unnecessary and burdensome.[61] According to WMBAA, this amount of resources is not needed for a SEF to wind down its operations. Unlike futures contracts that are proprietary to, and traded exclusively on, a particular exchange, swaps of a particular type can and do trade on multiple SEFs, making it relatively easy to transfer trading to another SEF in the event of a wind-down.[62]

3. Final Rule

The Commission is adopting the amendments to § 37.1301(a) and eliminating § 37.1301(c) as proposed. The Commission believes it is unnecessary to require a SEF to maintain financial resources for activities beyond those required to comply with a SEF core principle or Commission regulation. Limiting the financial resources requirement to the costs of activities necessary to comply with the SEF core principles and Commission regulations is expected to reduce barriers to growth, innovation, and entry. The Commission believes this approach strikes an appropriate balance between ensuring a SEF's financial stability and allowing the SEF discretion in allocating resources.[63]

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46 17 CFR 37.1301(c).

47 *See* 2017 WMBAA Letter at 6 (stating the financial resource requirements should focus on fixed costs required for compliance, rather than variable costs and staff-related costs that are not essential).

48 *Id.*

49 83 FR at 62025–62026.

50 The Proposed Rules consolidated existing § 37.1301(a) and (c) into a single amended § 37.1301(a).

51 This requirement is currently in effect, and the proposed rules simply clarified the requirement without substantively expanding it. Under Core Principle 1, a SEF must comply with any rule or regulation promulgated by the Commission pursuant to section 8a(5) of the Act. 17 CFR 37.100. For a SEF to discharge its responsibilities pursuant to Core Principle 13, which include complying with the SEF core principles, it is required to ensure that its financial resources are adequate to comply with those rules or regulations.

52 83 FR 62026.

53 *Id.*

54 *Id.*

55 *Id.*

56 The Commission also proposed an amendment to refer to ''projected operating costs'' instead of ''operating costs'' to conform to existing § 37.1303, 17 CFR 37.1303, and § 37.1307, 17 CFR 37.1307, both of which refer to ''projected operating costs.'' During informal discussions, Commission staff and SEFs generally have referred to SEFs' ''projected operating costs.''

57 Refinitiv Letter at 13; 2019 WMBAA Letter at 21.

58 *Id.*

59 2019 WMBAA Letter at 21.

60 *Id.* In the preamble to the 2013 SEF Core Principles Final Rule, the Commission stated a SEF is allowed to include a credit facility to comply with the six-month liquid resources requirement (where its liquid assets on hand are insufficient) under § 37.1305, 17 CFR 37.1305, but otherwise is not allowed to include such a facility to demonstrate compliance with the one-year general requirement. 2013 SEF Core Principles Final Rule at 33540.

61 2019 WMBAA Letter at 21.

62 *Id.*

63 This approach is consistent with the discretion granted to SEFs in the statutory core principles

Continued

The Commission views WMBAA's request to permit the use of a credit facility to meet the general financial resources requirement as a substantive amendment to its regulations that is beyond the scope of the Proposed Rules. As a result, the Commission is not addressing the request in the Final Rules. However, the Commission may take the request into consideration for future rulemakings.

The Final Rules do not address WMBAA's comment that it is unnecessary and burdensome for a SEF to maintain financial resources covering a full year's operating costs, as this is a requirement set forth in the Act.[64]

C. § 37.1302—Types of Financial Resources

Existing § 37.1302 sets forth the types of financial resources available to a SEF to satisfy the general financial resources requirement.[65] These resources include the SEF's own capital, meaning its assets minus liabilities calculated in accordance with U.S. generally accepted accounting principles (''U.S. GAAP''), and any other financial resources deemed acceptable by the Commission.[66]

1. Proposed Rules

The Commission proposed to amend the current regulation to refer to generally accepted accounting principles ''in the United States'' in order to conform to the proposed amendments to § 37.1306 described further below.

2. Summary of Comments

The Commission received no comments on the proposed changes.

3. Final Rules

The Commission is adopting the amendment to § 37.1302 as proposed. This change will conform to the adopted amendments to § 37.1306 described further below.

D. § 37.1303—Liquidity of Financial Resources

Existing § 37.1305 requires a SEF to maintain unencumbered, liquid financial assets, *i.e.,* cash and/or highly liquid securities, equal to at least six months of a SEF's operating costs.[67] If any portion of a SEF's financial resources is not sufficiently liquid, a SEF is permitted to take into account a committed line of credit or similar facility to meet this requirement.[68] In adopting this rule in 2013, the Commission explained that the liquidity requirement is intended to ensure that a SEF could continue to operate and wind down its operations in an orderly fashion, if necessary.[69] The Commission also determined that a six-month period would be an accurate assessment of how long it would take for a SEF to wind down in an orderly manner, absent support for alternative time frames.[70]

1. Proposed Rules

Since the adoption of part 37, many SEFs have maintained that a six-month minimum liquidity requirement is more than is necessary and some of their liquid assets could be better applied toward growth of the SEFs.[71] Consistent with that feedback, the Commission observed that the wind-downs and ownership changes of several registered trading platforms, including SEFs and DCMs, were completed within much shorter time frames.[72] Based on this experience, the Commission acknowledged the existing six-month requirement is not necessary in all circumstances and a SEF may be better-positioned to determine the amount of liquid financial resources required to continue its operations and to conduct an orderly winddown.

In light of this experience, the Commission proposed to renumber § 37.1305 as § 37.1303 and amend the minimum liquid assets requirement to equal the greater of (i) three months of projected operating costs, calculated on a rolling basis; or (ii) the projected costs needed to wind down the swap execution facility's operations.[73] While recognizing that it rejected a three-month requirement in the SEF Core Principles Final Rule absent support for a shorter time frame,[74] the Commission stated it had since come to believe, based on its experience and the feedback discussed above, that the potentially shorter proposed time frame would be sufficient to fulfill the goal of ensuring a SEF can continue to operate and, if necessary, wind down its SEF operations in an orderly fashion.[75]

The Commission further noted that under the proposed change, SEFs would be able to use the resources previously allocated to the liquid asset requirement to invest in other areas of SEF operations.[76] Accordingly, compared to the existing static six-month requirement, the Commission stated a liquid resources requirement of the ''greater of'' either (i) three months of projected operating costs or (ii) projected wind-down costs better ensures an orderly wind down for SEFs and a more efficient allocation of resources for SEFs estimating a wind-down period less than six months.[77] The Commission further stated requiring SEFs to maintain the greater of three months of projected operating costs or the SEF's projected costs for an orderly wind down of its business better protects against the risk of failure in the unlikely event that a SEF requires a wind-down period of longer than six months.[78]

The Commission also proposed an amendment to clarify that a SEF can overcome any deficiency in satisfying this requirement by obtaining a committed line of credit or similar facility in an amount at least equal to the deficiency.

2. Summary of Comments

Refinitiv and Bloomberg support the proposed rule and believe the proposed three-month minimum liquid asset requirement better reflects a SEF's liquidity needs for day-to-day operations and, if necessary, for winding down operations.[79] Refinitiv supports focusing the liquid financial resources requirement on the cost of unwinding the SEF in an orderly

framework and other aspects of the Commission's financial resource requirements for SEFs. *See* 7 U.S.C. 7b–3(f)(1)(B) (granting a SEF reasonable discretion in establishing the manner in which it complies with the SEF core principles, unless the Commission provides otherwise by rule); 17 CFR 37.1303 (granting a SEF reasonable discretion in calculating its projected operating costs for purposes of 17 CFR 37.1301).

[64] 7 U.S.C. 7b–3(f)(13)(B) (providing that the financial resources of a swap execution facility shall be considered to be adequate if the value of the financial resources exceeds the total amount that would enable the swap execution facility to cover the operating costs of the swap execution facility for a 1-year period, as calculated on a rolling basis).

[65] 17 CFR 37.1302.

[66] *Id.*

[67] 17 CFR 37.1305.

[68] *Id.*

[69] The Commission stated that the purpose of the liquidity requirement is so that all SEFs have liquid financial assets to allow them to continue to operate and to wind down in an orderly fashion and that the Commission viewed a six-month period as appropriate for a wind-down period. SEF Core Principles Final Rule at 33540.

[70] *Id.*

[71] *See* 2017 WMBAA Letter at 5 (arguing a shorter liquidity requirement would allow for a SEF to allocate capital for innovation).

[72] For example, the Commission noted that the DCM Green Exchange LLC had its designation vacated and ceased operations. Similarly, the DCM Kansas City Board of Trade was acquired by CME Group Inc. and had its designation vacated; it ultimately ceased operations. In each case, the Commission observed a relatively expeditious process.

[73] 83 FR at 62027.

[74] SEF Core Principles Final Rule at 33540.

[75] 83 FR at 62027.

[76] *Id.*

[77] *Id.*

[78] *Id.*

[79] Refinitiv Letter at 13; Bloomberg Letter at A–6.

manner.[80] Bloomberg believes a SEF's wind-down period will generally be no more than three months and that the revised liquidity requirement ''will release capital that can be deployed by a SEF to promote innovation, while also promoting stability by ensuring that a SEF retains sufficient capital on reserve.'' [81]

WMBAA requested the Commission allow SEFs to count all commissions receivable, aged less than three months, towards their liquid financial resources calculation.[82] WMBAA believes permitting the use of liquid receivables would not impair a SEF's ability to perform its core functions, but would enable a SEF to avoid locking up cash unnecessarily. According to WMBAA, payment of these commissions typically occurs within one to two months, and thus would be available to cover operating costs or a wind-down.[83] WMBAA also urged the Commission to allow revolving subordinated debt as a liquid asset in the financial resource requirement.[84]

3. Final Rules

The Commission is adopting § 37.1303 as proposed. Requiring a SEF to maintain liquid financial resources equal to the greater of three months of projected operating costs or its projected wind-down costs will ensure that SEFs have sufficient resources for day-to-day operations as well as winding down operations if needed, while freeing capital for innovation and expansion in the SEF's business where appropriate.

The Commission notes that under existing § 37.1303, amended as § 37.1304, the Commission may review the methodologies used in the calculation of a SEF's projected costs needed to wind down the swap execution facility's operations and may require changes as appropriate. Some examples a SEF may use to support its conclusion include: The tenor of the contracts listed on the facility, the listing of the SEF's contracts on other facilities, the ability of participants to close out positions and trade on a different SEF and, in the event the SEF's swaps are cleared, the ability of participants to clear swaps at the same DCO as they currently utilized if they had to trade on a different facility.

Finally, WMBAA's requests to include additional types of resources as liquid assets are beyond the scope of this rulemaking. The Commission may consider including additional types of liquid assets in a future rulemaking.

E. § 37.1304—Computation of Costs To Meet Financial Resources Requirement [85]

Existing § 37.1303 requires a SEF to make a reasonable calculation of its projected operating costs, each fiscal quarter over a twelve-month period, to determine the amount of financial resources needed to comply with the financial resource requirement.[86] The rule further provides a SEF reasonable discretion to determine the methodology to compute its projected operating costs, although the Commission may review the SEF's methodology and require the SEF to make changes as appropriate.[87]

1. Proposed Rules and Acceptable Practices

The Commission proposed to renumber § 37.1303 as § 37.1304 and amend the rule to add the requirement that a SEF make a reasonable calculation of projected wind-down costs, providing discretion in adopting the methodology for calculating such costs. The Commission stated the proposed amendment is consistent with the reasonable discretion already provided for calculating projected operating costs and corresponds to proposed § 37.1303, which incorporates the calculation of a SEF's wind-down costs into the liquidity determination.[88] The Commission proposed two additional amendments to § 37.1303. First, the Commission proposed to add a reference to amended § 37.1303 to require that a SEF calculate projected operating costs to determine how to comply with the liquidity requirement. Second, the Commission proposed to eliminate the reference to the twelve-month requirement, given that proposed § 37.1301(a) establishes that the financial resource requirement applies on a one-year, rolling basis.

The Commission also proposed to include acceptable practices to Core Principle 13 in Appendix B associated with proposed § 37.1304. The proposed acceptable practices expound upon the reasonable discretion that SEFs have for computing projected operating costs in determining their financial resource requirements, consistent with existing guidance provided by Commission staff.[89] Among other things, these acceptable practices further explain which operating costs are not necessary to comply with the SEF core principles and the Commission's regulations and therefore need not be considered in a SEF's financial resources calculation under revised § 37.1301.

Specifically, the proposed acceptable practices state that calculations of projected operating costs, *i.e.,* those that are necessary for a SEF to comply with the SEF core principles and applicable Commission regulations, should be based on the SEF's current business model and anticipated business volume. The proposed acceptable practices specify that a SEF may exclude certain expenses in making a ''reasonable'' calculation of projected operating costs. These include, among others, the following expenses: Marketing and development costs; variable commissions paid to SEF trading specialists, the payment of which is contingent on whether the SEF collects associated revenue from transactions on its systems or platforms; [90] and costs for SEF personnel who are not necessary to enable a SEF to comply with the core principles and Commission regulations.[91] Further, a SEF may exclude any non-cash costs, including depreciation and amortization. The exclusion of these expenses is consistent with the financial resource and liquidity requirements in proposed § 37.1301 because these expenses are not necessary for a SEF to comply with the SEF core principles or Commission regulations.

In addition, the proposed acceptable practices specify that a SEF in calculating projected operating costs may prorate, but not exclude, certain expenses. The Commission recognizes some costs may be only partially attributable to a SEF's compliance with the SEF core principles and regulatory requirements. Therefore, only those attributed costs need to be included in a SEF's projected operating costs. Accordingly, a SEF may prorate

[80] Refinitiv Letter at 13.

[81] Bloomberg Letter at A–6.

[82] 2019 WMBAA Letter at 21.

[83] *Id.*

[84] *Id.*

[85] The Commission is renaming this section, previously titled ''Computation of Projected Operating Costs to Meet Financial Resource Requirement,'' to reflect the requirement to calculate wind-down costs as well as operating costs.

[86] 17 CFR 37.1303.

[87] *Id.*

[88] 83 FR 62028.

[89] The proposed acceptable practices to Core Principle 13 in Appendix B are based, in part, upon existing Division of Market Oversight (''DMO'') staff guidance. *See* CFTC Staff Letter No. 15–26 and CFTC Staff Letter No. 17–25.

[90] *See* CFTC Staff Letter No. 17–25.

[91] For example, if a SEF requires a certain number of SEF trading specialists to operate a voice-based or voice-assisted trading system or platform, but hires additional personnel to enhance its operations to benefit market participants, then the SEF would only need to include the minimum number of trading specialists required to operate the trading system or platform based on its current business volume and take into account any projected increase or decrease in business volume in its projected operating cost calculations.

expenses shared with affiliates, *e.g.,* the costs of administrative staff or seconded employees the SEF shares with affiliates. Further, a SEF may also prorate expenses that are attributable, in part, to operational aspects of the SEF business that are not required to comply with the SEF core principles, *e.g.,* costs of a SEF's office space, to the extent that it is also used to house marketing personnel. In prorating any such expense, however, a SEF must document and justify those prorated expenses pursuant to proposed requirements under proposed § 37.1306, discussed further below.[92]

2. Summary of Comments

WMBAA supports the proposed acceptable practices.[93] Refinitiv concurs with the Commission's understanding that many SEF expenses are shared with affiliates or are partly attributable to activities not necessary for compliance with the SEF core principles and Commission regulations and supports allowing SEFs to prorate such expenses.[94]

3. Final Rules and Acceptable Practices

The Commission is adopting § 37.1304 and the acceptable practices as proposed. The requirement to calculate wind-down costs corresponds to the amendments the Commission is adopting in amended § 37.1303 discussed above, which incorporate the calculation of a SEF's wind-down costs into the liquidity requirement. The reasonable discretion provided for calculation of wind-down costs is already provided to SEFs for their calculations of projected operating costs.

The Commission believes the acceptable practices added to Appendix B to part 37 will assist SEFs in complying with amended § 37.1304.[95]

These acceptable practices are consistent with the Final Rules' amendments to § 37.1301, which focus a SEF's financial resource requirement on covering the costs of compliance with SEF statutory and regulatory obligations, rather than the costs of *all* operations of a SEF or operations of its affiliates.

F. § 37.1305—Valuation of Financial Resources

Existing § 37.1304—''Valuation of financial resources''—requires a SEF, at least once each fiscal quarter, to compute the current market value of each financial resource used to meet its financial resources requirement under § 37.1301.[96] The requirement is designed to address the need to update valuations when there may have been material fluctuations in market value that could affect a SEF's ability to satisfy its financial resource requirement.[97] When valuing a financial resource, the SEF must reduce the value, as appropriate, to reflect any market or credit risk specific to that particular resource, *i.e.,* apply a haircut.[98]

1. Proposed Rules

The Commission proposed to renumber existing § 37.1304 as § 37.1305 and amend the provision to add a reference to the liquidity requirement under amended § 37.1303. This would clarify that compliance with amended § 37.1303 requires a SEF to utilize the current market value of the applicable financial resources as computed pursuant to § 37.1304.

2. Summary of Comments

The Commission did not receive any comments on this amendment.

3. Final Rules

The Commission is adopting § 37.1305 as proposed, confirming that compliance with the liquidity requirement under amended § 37.1303 requires a SEF to utilize the current market value of the applicable financial resources.

G. § 37.1306—Reporting to the Commission

1. § 37.1306(a)

Existing § 37.1306 establishes a SEF's financial reporting requirements.[99] Commission regulation 37.1306(a)(1) provides that at the end of each fiscal quarter or upon Commission request, a SEF must report to the Commission (i) the amount of financial resources necessary to meet the financial resources requirement of § 37.1301, and (ii) the value of each financial resource available to meet those requirements as calculated under § 37.1304.[100] Commission regulation 37.1306(a)(2) additionally requires a SEF to provide the Commission each fiscal quarter with a financial statement, including a balance sheet, income statement, and statement of the cash flows of the SEF or its parent company.[101] In lieu of submitting its own financial statements, a SEF may submit the financial statements of its parent company.[102]

i. Proposed Rules

The Commission proposed several amendments to § 37.1306(a). First, the Commission proposed to require a SEF to prepare its financial statements in accordance with U.S. GAAP. For a SEF that is not domiciled in the U.S., and is not otherwise required to prepare its financial statements in accordance with U.S. GAAP, the Proposed Rules allowed the SEF to prepare its statements in accordance with either the International Financial Reporting Standards issued by the International Accounting Standards Board, or such comparable international standard as the Commission may accept in its discretion. The Commission noted the quality and transparency of SEF financial reports submitted under the current reporting requirement have varied and stated the U.S. GAAP-based requirement would promote consistency and better ensure a minimum reporting standard across financial submissions.[103]

The Commission also proposed to require a SEF to provide its own financial statements, rather than allow a SEF the option of submitting the statements of its parent company. The Commission noted it may lack jurisdiction over a SEF's parent company or its affiliates, and in such instances, the Commission could not consider the parent company's financial resources in determining whether the

[92] The proposed acceptable practices also allowed a SEF offering more than one bona fide execution method to include the costs of only one of those methods in calculating projected operating costs, with the goal of mitigating disincentives for SEFs to offer a multiplicity of execution methods. This proposed change was intended to be consistent with the Proposed Rule's removal of existing limitations on execution methods for Required Transactions. Because the Final Rules are not implementing the Proposed Rule's expansion of permissible execution methods for Required Transactions, the Commission is not finalizing this proposed acceptable practice at this time.

[93] 2019 WMBAA Letter at 22. WMBAA requested that the Commission clarify the meaning of ''bona fide'' execution method for purposes of calculating operating costs of SEF execution methods. As noted above, the Commission at this time is not finalizing the proposed acceptable practice regarding treatment of operating costs for multiple execution methods.

[94] *See* Refinitiv Letter at 13–14.

[95] As noted, the Commission at this time is not finalizing the proposed acceptable practice allowing a SEF offering multiple bona fide execution methods to count the costs of only one execution method toward its projected operating costs, for the reasons stated above. *See* note 92, *supra.*

[96] 17 CFR 37.1304.

[97] SEF Core Principles Final Rule at 33539.

[98] A ''haircut'' is a deduction taken from the value of an asset to reserve for potential future adverse price movement in such asset. *Id.* at 33539 n.772.

[99] 17 CFR 37.1306.

[100] 17 CFR 37.1306(a)(1).

[101] 17 CFR 37.1306(a)(2).

[102] *Id.*

[103] 83 FR 62029.

SEF alone possesses adequate financial resources.[104] The Commission stated a separate SEF financial statement would more clearly demonstrate evidence of the SEF's compliance with Core Principle 13.[105]

The Commission also proposed revisions to § 37.1306(a)(1) to add appropriate references to amended § 37.1303 and amended § 37.1305. In addition to specifying the amount of financial resources necessary to comply with § 37.1301, a SEF's quarterly report would have to include the amount of financial resources necessary to comply with the liquidity requirement in amended § 37.1303. Further, the amounts specified in the report would have to be based on the current market value of each financial resource and computed as reasonable calculations of the SEF's projected operating costs and wind-down costs.

The Proposed Rules also posed several questions to commenters on reporting requirements for SEFs. These included whether a SEF's financial reports should be required to be audited and whether financial reporting should be required on a semiannual rather than a quarterly basis.

ii. Summary of Comments

WMBAA supports requiring a SEF's financial statements be prepared in accordance with U.S. GAAP or its equivalent for non-U.S. SEFs, concurring with the Commission's view that such a requirement would promote comparability across SEFs.[106]

WMBAA objects to requiring a SEF's financial reports be audited, contending audited reports would not improve oversight. WMBAA reasoned that an auditing firm would not provide a complete assessment because it likely would be unable or unwilling to opine on certain unique aspects of a SEF's financial resources calculations, including projection of costs based on historical or estimated costs.[107] Further, WMBAA argued the costs associated with an audited report are high and would pose a barrier to entry for new SEFs.[108]

WMBAA also believes the current reporting requirement—quarterly financial reports—is sufficient to ensure capital adequacy, but that a semi-annual and annual report would also be adequate to achieve the goal of Commission oversight.[109] According to WMBAA, if the Commission adopts less frequent financial reporting, a SEF should be required to maintain all related documents and support for further inspection.[110] However, WMBAA asserted a SEF should not be required to maintain, in between each report, the supplemental documents required under existing § 37.1306(c).[111] Rather, WMBAA contends a SEF should be able to maintain a balance sheet with financial resources and liquidity calculations based on the most recent filing.[112]

The Commission did not receive any comments on its proposal to require SEFs to submit their own financial statements rather than those of their parent entities.

iii. Final Rules

The Commission is adopting the proposal requiring financial statements submitted as part of a SEF's quarterly financial reports to conform to U.S. GAAP or comparable foreign standards. As supported by commenters' feedback, the Commission continues to believe conforming financial statements to U.S. GAAP or comparable foreign standards will enhance the quality and transparency of SEFs' financial reporting and facilitate assessments of SEFs' financial conditions.

The Commission is adopting, as proposed, the requirement for a SEF to provide its own financial statements (including balance sheet), rather than the financial statements of its parent. This change will provide the Commission with a more accurate picture of the SEFs' assets to ensure a SEF has adequate financial resources.[113]

The Commission will not adopt the requirement that financial statements be audited. As noted by commenters, the Commission has the ability to request additional information from a SEF if warranted, and the Commission does not believe the benefits of a blanket auditing requirement would justify the costs to SEF operators at this time.

Finally, the Commission will retain the existing quarterly reporting requirement for SEFs, rather than moving to a semiannual reporting requirement. Quarterly reports are necessary for the Commission to remain current with the SEF's financial condition in a manner that semiannual reports would not. Timely financial information will be particularly important to the Commission as it monitors the transition to a relatively less stringent liquidity requirement for SEFs' financial resources under the Final Rules.[114]

2. § 37.1306(c) [115]

Existing § 37.1306(c) sets forth documentation requirements for a SEF's financial reporting obligations.[116] Commission regulation 37.1306(c)(1) requires a SEF to provide the Commission with sufficient documentation explaining the methodology used to calculate its financial resource requirements under § 37.1301.[117] Commission regulation 37.1306(c)(2) requires a SEF to provide sufficient documentation explaining the basis for its valuation and liquidity determinations.[118] To provide such documentation, § 37.1306(c)(3) requires SEFs to provide copies of certain agreements that evidence or otherwise support its conclusions.[119]

i. Proposed Rules

Based on the proposed amendments to the Core Principle 13 regulations described above, the Commission proposed conforming amendments to § 37.1306(c) that would require a SEF to specify the methodology used to compute its financial resources and liquidity requirements. Proposed § 37.1306(c)(1) requires documentation to be sufficient to enable the Commission to determine whether the SEF has made reasonable calculations of projected operating and wind-down costs under § 37.1303. Proposed § 37.1306(c)(2)(i) through (iv) [120] requires the SEF, at a minimum, to (i) list all of its expenses, without

[104] *Id.*

[105] *Id.*

[106] WMBAA Letter at 23.

[107] *Id.* at 22. WMBAA also stated that an auditing firm would be unlikely to opine on whether an execution method is ''bona fide'' for purposes of the proposed acceptable practices related to § 37.1303. As noted above, the meaning of ''bon fide'' is not relevant since the Commission is not finalizing the proposed acceptable practice regarding the calculation of costs of different execution methods.

[108] *Id.*

[109] *Id.* at 22–23.

[110] *Id.* at 22.

[111] Existing § 37.1306(c) requires a SEF to provide the Commission with supplemental documentation to its quarterly reports, including documentation used to calculate its financial requirements; documentation showing the basis for financial resource valuations and liquidity requirements; and copies of relevant agreements supporting the SEF's calculations.

[112] WMBAA Letter at 22.

[113] The Commission is finalizing the amendments to § 37.1306(a)(1) as proposed.

[114] *See* Section III.D., *supra.*

[115] Existing § 37.1306(b), 17 CFR 37.1306(b), requires a SEF to make its financial resource calculations on the last business day of its fiscal quarter. The Commission proposed an amendment to § 37.1306(b) adding the word ''applicable'' before ''fiscal quarter'' in the existing rule text. The Commission is finalizing this amendment as proposed.

[116] 17 CFR 37.1306(c).

[117] 17 CFR 37.1306(c)(1).

[118] 17 CFR 37.1306(c)(2).

[119] 17 CFR 37.1306(c)(3).

[120] The Commission proposed to consolidate § 37.1306(c)(1) through (3) into § 37.1306(c)(1) through (2) and adopt the proposed requirements as described.

exclusion; (ii) identify all of those expenses the SEF excluded or prorated in its projected operating cost calculations and explain the basis for excluding or prorating any expenses; (iii) include documentation related to any committed line of credit or similar facility used to meet the liquidity requirement; [121] and (iv) identify estimates of all of the costs and the projected amount of time required for any wind down of operations, including the basis for those estimates.

The proposed requirement would create regulatory certainty by codifying the no-action relief, permitting SEFs to maintain their existing practices and avoid legal exposure arising out of a SEF's inability to comply with regulations.[122] The proposed requirements would ensure that a SEF can establish that it has sufficient financial resources, particularly in light of the discretion provided to SEFs to compute projected operating costs and wind-down costs. The Commission noted its belief that maintaining the general obligation for each SEF to identify all of its expenses in its financial report, including those corresponding to activities not needed for compliance or otherwise are excluded or prorated from projected operating costs, is appropriate on an ongoing basis.[123]

The Commission further stated proposed § 37.1306(c)(2)(i) through (iv) would address the current lack of adequate documentation or insufficient identification of excluded or prorated expenses by some SEFs in submitting their projected operating costs based on Commission staff guidance.[124] The Commission predicted that adding greater specificity to the existing requirement would mitigate the time and resources required to determine a SEF's compliance with the financial resources requirements.[125]

ii. Summary of Comments

The Commission did not receive any comments on the proposed amendments to § 37.1306(c).

iii. Final Rules

The Commission is adopting the amendments to § 37.1306(c) as proposed. The enhanced specificity in documentation requirements will save time and effort for both Commission and SEF personnel by reducing the need for multiple iterations of communications and submissions in order to assess a SEF's compliance with the financial resources requirements. The requirement to provide documentation of projected wind-down costs corresponds to the incorporation under the revised rules of wind-down costs into a SEF's liquidity requirement and the requirement to compute such costs in addition to operating costs.

3. § 37.1306(d)

Existing § 37.1306(d) requires a SEF to file its financial report no later than 40 calendar days after the end of each of the SEF's first three fiscal quarters, and no later than 60 calendar days after the end of the SEF's fourth fiscal quarter, or at such later time as the Commission may permit.[126] Multiple SEFs noted difficulties in meeting the 60-day deadline for the fourth-quarter report, explaining: ''[a]t year end, finance departments are required to prepare annual and quarterly reports for all entities within a particular group. This requires information gathering from numerous sources, preparation of a consolidated audit, complying with various statutory reporting requirements, as well as budgeting and forecasting for the pending year.'' [127] Noting the difficulties SEFs face in meeting their obligation to submit an annual compliance report concurrently with the fourth-quarter financial report, Commission staff provided no-action relief allowing 30 additional days for submission of a SEF's fourth-quarter financial report and its annual compliance report.[128]

i. Proposed Rules

The Commission proposed to extend the due date for SEFs' fourth-quarter report from 60 to 90 days following the end of the quarter. The revised due date would conform to the proposed revisions to the due date for the SEF annual compliance report under proposed § 37.1501(e)(2), discussed below. The Commission recognized that preparing multiple year-end reports for concurrent submission, including a fourth-quarter financial report and an annual compliance report, imposes resource constraints on SEFs.[129] The Commission stated such potential constraints justify an additional 30 days to prepare and concurrently file the SEF's fourth-quarter financial report along with its annual compliance report.[130]

ii. Summary of Comments

The Commission did not receive any comments on the proposed extension of the deadline for submission of the fourth-quarter financial report.

iii. Final Rules

The extended deadline for fourth-quarter financial reports is being adopted as proposed. The Commission continues to believe the resource constraints facing SEFs at year-end justify an additional 30 days to prepare the fourth-quarter financial report. The Commission has not experienced difficulties in monitoring SEFs' financial condition as a result of the 30-day extension currently available under Commission staff no-action relief.

4. § 37.1306(e)

i. Proposed Rules

The Commission proposed to add a new § 37.1306(e) requiring each SEF to provide notice to the Commission of its noncompliance with the financial resource requirements no later than 48 hours after the SEF knows or reasonably should know of its noncompliance.[131] The Commission noted that in some instances, the Commission has not been informed of a SEF's noncompliance with the financial resource requirements until the filing of a quarterly financial report. Prompt notification of noncompliance is necessary for the Commission to conduct proper market oversight and ensure market stability on an ongoing basis.[132] The proposed requirement would ensure the necessary prompt notification.

[121] The Commission also proposed to eliminate the language in existing § 37.1306(c)(3) regarding copies of insurance coverage or other arrangements evidencing or otherwise supporting the SEF's conclusions. The Commission noted that proposed § 37.1306(c) requires a SEF to provide sufficient documentation explaining the methodology used to compute its financial resource requirements. Therefore, if insurance coverage or other arrangements are necessary to explain a SEF's methodology, then the SEF must submit such documentation. The Commission noted, however, that such documentation may not be required in all cases; proposed § 37.1306(c)(2) provides minimum requirements.

[122] *See* CFTC Staff Letter No. 17–25 at 4.

[123] 83 FR 62030.

[124] *Id.*

[125] *Id.*

[126] 17 CFR 37.1306(d).

[127] CFTC Staff Letter No. 17–61 (Nov. 20, 2017) (quoting no-action relief request letter from 360 Trading Networks, Inc.; Cboe SEF, LLC (f/d/b/a Bats Hotspot SEF, LLC); Chicago Mercantile Exchange, Inc.; GTX SEF, LLC; LatAm SEF, LLC; LedgerX LLC; Tradition SEF, Inc.; and trueEX LLC).

[128] *Id.*

[129] 83 FR 62030.

[130] *Id.*

[131] For example, if a SEF knows or reasonably should know that its assets will no longer cover its projected operating costs for the next twelve months, as calculated on a rolling basis, the SEF would be required to notify the Commission within 48 hours.

[132] 83 FR 62030.

ii. Summary of Comments

The Commission did not receive any comments on proposed § 37.1306(e).

iii. Final Rules

The Commission is adopting § 37.1306(e) as proposed. The Commission continues to believe prompt notification of noncompliance is necessary for it to perform its oversight functions and ensure market stability.

H. § 37.1307—Delegation of Authority

Existing § 37.1307(a) delegates authority to the Director of DMO, or other staff as the Director may designate, to perform certain functions that are reserved to the Commission under the Core Principle 13 regulations, including reviewing the methodology used to compute projected operating costs.[133]

1. Proposed Rules

The Commission proposed to amend § 37.1307(a)(2) to additionally delegate the authority to review and make changes to the methodology used by a SEF to determine the market value of its financial resources under amended § 37.1304 and the methodology that SEFs use to determine their wind-down costs under amended § 37.1305. Further, the Commission would delegate the ability to request and receive the additional documentation related to calculation methodologies required under § 37.1306(c) and receive required notifications of noncompliance under § 37.1306(e). The proposed amendments also include several additional technical amendments based on the proposed amendments to Core Principle 13 regulations, as described above.

2. Summary of Comments

The Commission did not receive any comments on the proposed delegations of authority.

3. Final Rules

The Commission is adopting the additional provisions for delegation of authority as proposed. These delegation provisions will facilitate prompt and efficient determinations of the adequacy of SEF financial resources, consistent with the existing delegation authority under § 37.1307(a).

IV. Chief Compliance Officer Requirements

A. Background and Overview of Proposed Rules

Statutory Core Principle 15 requires each SEF to designate a CCO and sets forth its corresponding duties.[134] Among other responsibilities, the CCO is required to ensure that the SEF complies with the CEA and applicable rules and regulations, and is required to establish and administer required policies and procedures.[135] Core Principle 15 also requires the CCO to prepare and file an ACR to the Commission.[136] The Commission promulgated requirements under § 37.1501 to implement these requirements.[137]

The Proposed Rules set forth several amendments to § 37.1501 based on the Commission's experience since the part 37 implementation. These amendments streamline CCO requirements, allow SEF management to exercise discretion in CCO oversight, and simplify the preparation and submission of the ACR.

B. § 37.1501(a)—Definitions

Core Principle 15 requires the CCO to report directly to the SEF's ''board [of directors]'' or ''senior officer'' [138] and consult either to resolve conflicts of interest.[139] Existing § 37.1501(a) defines ''board of directors'' [140] but does not define ''senior officer.'' [141] In the SEF Core Principles Final Rule, the Commission stated it would not adopt a definition of ''senior officer,'' but noted the statutory term would only include the most senior executive officer of the legal entity registered as a SEF.[142]

1. Proposed Rules

The Commission proposed to relabel paragraph (a) as ''Definitions,'' and define ''senior officer'' as the chief executive officer or other equivalent officer of the SEF. The Commission stated defining ''senior officer'' would clarify the permissible reporting lines for the CCO and provide specificity to the Commission's proposed amendments to the Core Principle 15 regulations, as described below.[143] The Commission also proposed additional, technical changes.

2. Summary of Comments

WMBAA supports the proposed amendments to add a definition of senior officer.[144]

3. Final Rules

The Commission is adopting § 37.1501(a) as proposed. The Commission continues to believe the definition of senior officer will clarify a CCO's permissible reporting lines consistent with Core Principle 15.

C. § 37.1501(b)—Chief Compliance Officer

Existing §§ 37.1501(b)–(c) set forth certain baseline requirements for the SEF CCO position. Commission regulation 37.1501(b)—''Designation and qualifications of chief compliance officer''— requires a SEF to designate an individual to serve as the CCO; requires the CCO to have the authority and resources to help fulfill the SEF's statutory and regulatory duties, including supervisory authority over compliance staff; and establishes minimum qualifications for the designated CCO.[145] Commission regulation 37.1501(c)—''Appointment, supervision, and removal of chief compliance officer''—establishes the respective authorities of the SEF board of directors and senior officer to designate, supervise, and remove a CCO; and requires the CCO to meet with the SEF's board of directors and regulatory oversight committee (''ROC'') on an annual and quarterly basis, respectively, and provide them with information as requested.[146]

1. Proposed Rules

The Commission proposed to amend, clarify, or eliminate various existing requirements under § 37.1501(b) and (c) and consolidate the remaining provisions into § 37.1501(b). The Commission proposed to eliminate rules that are duplicative of Core Principle 15, including requirements that a SEF designate a CCO [147] and the CCO report directly to the board of directors or the senior officer.[148] The Commission also proposed to eliminate the existing ROC-related requirements from part 37.[149]

[133] 17 CFR 37.1307(a).

[134] 7 U.S.C. 7b–3(f)(15). The Commission codified Core Principle 15 under § 37.1500. 17 CFR 37.1500.

[135] 7 U.S.C. 7b–3(f)(15)(B)(iv) through (v).

[136] 7 U.S.C. 7b–3(f)(15)(D).

[137] 17 CFR 37.1501.

[138] 7 U.S.C. 7b–3(f)(15)(B)(i).

[139] 7 U.S.C. 7b–3(f)(15)(B)(iii).

[140] Section 37.1501(a) defines ''board of directors'' as the board of directors of a SEF, or for those SEFs whose organizational structure does not include a board of directors, a body performing a function similar to a board of directors. 17 CFR 37.1501(a).

[141] 17 CFR 37.1501(a). The CEA likewise does not define the term ''senior officer'' in this context.

[142] SEF Core Principles Final Rule at 33544.

[143] 83 FR 62023.

[144] 2019 WMBAA Letter at 23.

[145] 17 CFR 37.1501(b).

[146] 17 CFR 37.1501(c).

[147] The Commission proposed to eliminate this requirement under existing § 37.1501(b)(1), which the Commission proposed to retitle ''Authority of chief compliance officer'' from ''Chief compliance officer required.''

[148] The Commission proposed to eliminate this requirement under existing § 37.1501(c)(2) because it is duplicative of statutory Core Principle 15.

[149] These requirements include a mandatory quarterly meeting with the ROC under existing

Continued

Core Principle 15 does not require a SEF to establish a ROC and the Commission has not finalized a rule that establishes requirements for a ROC.

Consistent with Core Principle 15, which requires a CCO to report to the SEF's board of directors or senior officer, the Commission proposed amendments under § 37.1501(b) to allow a SEF's senior officer to have the same oversight responsibilities over the CCO as the board of directors. First, the Commission proposed to allow a CCO to consult with the board of directors or senior officer of the SEF as the CCO develops the SEF's policies and procedures.[150] Second, the Commission proposed to allow a CCO to meet with the senior officer of the SEF on an annual basis, in lieu of an annual meeting with the board of directors.[151] Third, the Commission proposed to allow a CCO to provide self-regulatory program information to the SEF's senior officer, in addition to the board of directors.[152]

The Commission further proposed to eliminate the limitations on authority to remove a CCO, which currently restricts CCO removal authority to a majority of the board, or in the absence of a board, a senior officer.[153] Instead, the Commission proposed a simplified requirement under proposed § 37.1501(b) to establish that (i) the board or the senior officer may appoint or remove a CCO;[154] and (ii) the SEF must notify the Commission within two business days of the appointment or removal (on an interim or permanent basis) of a CCO.[155] Based on its experience, the Commission recognized that in many instances, the senior officer may be better positioned than the board of directors to provide day-to-day oversight of the SEF and the CCO, as well as to determine whether to remove a CCO.[156] Therefore, consistent with Core Principle 15, the Commission believes a SEF's senior officer should have equivalent CCO oversight authority as the SEF's board of directors. This proposed amendment is consistent with Core Principle 15, which does not mandate a voting percentage to approve or remove a CCO. The Commission also believes these proposed amendments would allow a SEF to more appropriately designate, appoint, supervise, and remove a CCO based on the SEF's particular corporate structure, size, and complexity, and also continue to ensure a level of independence for a CCO consistent with Core Principle 15.[157]

Based on the proposed consolidation of existing § 37.1501(b) and (c), the Commission also proposed several technical amendments to the remaining provisions under proposed § 37.1501(b), including the renumbering of certain existing provisions.[158]

2. Proposed Acceptable Practice

The Commission proposed to adopt a new acceptable practice to Core Principle 15 in Appendix B providing, in determining whether the background and skills of a potential CCO are appropriate for fulfilling the responsibilities of the role of the CCO, a SEF has the discretion to base its determination on the totality of the qualifications of the potential CCO, including, but not limited to, compliance experience, related career experience, training, and any other relevant factors related to the position. The Commission stated a non-exclusive list provides the clarity that SEFs sought regarding a CCO's requisite qualifications, and also provides a board of directors and senior officer reasonable flexibility in appointing a CCO.[159] The proposed acceptable practice also states a SEF should be especially vigilant regarding potential conflicts of interest when appointing a CCO.

3. Summary of Comments

WMBAA supports the proposed amendments to § 37.1501(b) and (c). According to WMBAA, the Commission's revised rules should eliminate duplicative or unnecessary requirements, streamline existing provisions, and thereby allow SEFs to meet their statutory and regulatory obligations in a more effective and less burdensome manner.[160]

4. Final Rules and Acceptable Practice

The Commission is adopting the amendments to § 37.1501(b) and (c) as proposed. These changes will mitigate potential confusion by removing requirements that are duplicative of provisions in Core Principle 15 and references to governance structures, such as the ROC, that are not required by statute or regulation. The Commission believes the amendments granting the SEF's senior officer additional oversight authority over the CCO better reflects the reality that the senior officer is often better-positioned than the board of directors to facilitate a CCO's effectiveness on a day-to-day basis, while still maintaining the CCO's independence to an appropriate degree.

Further, the acceptable practice on qualifications of a CCO will provide SEFs with additional clarity on appropriate considerations in selecting a CCO, without limiting permissible considerations to the enumerated list. As stated in the acceptable practice, the Commission continues to stress the importance of considering potential conflicts of interest in appointing a CCO.

D. § 37.1501(c)—Duties of Chief Compliance Officer[161]

Existing § 37.1501(d)—''Duties of chief compliance officer''— requires a CCO, at a minimum, to: (i) Oversee and review the SEF's compliance with the Act and Commission regulations;[162] (ii) resolve any conflicts of interest that may

§ 37.1501(c)(1)(iii), and the requirement that the CCO provide self-regulatory program information to the ROC under existing § 37.1501 (c)(1)(iv).

[150] The Commission proposed the amendment under proposed § 37.1501(b)(1)(i).

[151] The Commission proposed to renumber existing § 37.1501(c)(1)(iii) to § 37.1501(b)(5), based on the proposed consolidation of existing paragraphs (b) and (c), amend the requirement as described, and title the paragraph ''Annual meeting with the chief compliance officer.''

[152] The Commission proposed to renumber existing § 37.1501(c)(1)(iv) to § 37.1501(b)(6), based on the proposed consolidation of existing paragraphs (b) and (c), amend the requirement as described, title the paragraph ''Information requested of the chief compliance officer,'' and make additional, technical changes.

[153] The Commission proposed to eliminate this requirement under existing § 37.1501(c)(3). In addition to the changes discussed herein, the Commission proposed to renumber existing § 37.1501(c)(1)(ii) to § 37.1501(b)(4) and title the paragraph ''Compensation of the chief compliance officer.''

[154] The Commission proposed to consolidate and amend the requirements under existing § 37.1501(c)(1)(i) in part, which addresses the appointment of a CCO by the board or senior officer, with existing § 37.1501(c)(3)(i), which currently addresses the removal of a CCO. Based on the proposed consolidation of existing paragraphs (b) and (c), the Commission proposed to renumber this consolidated provision to paragraph (b)(3), retitle the consolidated provision to ''Appointment and removal of chief compliance officer,'' and make additional, technical changes.

[155] The Commission notes that notification to the Commission of the appointment and removal of a CCO is currently required under existing § 37.1501(c)(1)(i) and existing § 37.1501(c)(3)(ii), respectively. Based on the proposed consolidation of existing paragraphs (b) and (c), the Commission proposed to consolidate and amend these notification requirements, and renumber the consolidated requirement to § 37.1501(b)(3)(i).

[156] 83 FR 62033.

[157] *Id.*

[158] The Commission proposed to renumber the requirements under existing § 37.1501(b)(2)— ''Qualifications of chief compliance officer''—to proposed § 37.1501(b)(2)(i) and (ii). The Commission also proposed to retitle existing § 37.1501(c)(1)(ii), which specifies that the board or the senior officer must approve the CCO's compensation, to ''Compensation of the chief compliance officer.'' Based on the proposed consolidation of existing § 37.1501(b) and (c), the Commission proposed to renumber this requirement to § 37.1501(b)(4).

[159] 83 FR 62033.

[160] 2019 WMBAA Letter at 24.

[161] The Commission is renumbering existing § 37.1501(d) to § 37.1501(c).

[162] 17 CFR 37.1501(d)(1).

arise, including in certain enumerated circumstances;[163] (iii) establish and administer written policies and procedures reasonably designed to prevent violations of the Act and Commission regulations;[164] (iv) take reasonable steps to ensure compliance with the Act and Commission regulations;[165] (v) establish procedures for the remediation of noncompliance issues identified by the CCO through certain specified protocols;[166] (vi) establish and follow appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues;[167] (vii) establish and administer a compliance manual and a written code of ethics;[168] (viii) supervise a SEF's self-regulatory program;[169] and (ix) supervise the effectiveness and sufficiency of any regulatory services provided to the SEF in accordance with § 37.204.[170]

1. Proposed Rules

The Commission proposed to consolidate certain existing provisions of § 37.1501(d) (to be renumbered as § 37.1501(c)), specify a CCO may identify noncompliance matters through ''any means'' in addition to the currently prescribed means, and clarify that the procedures followed to address noncompliance issues must be ''reasonably designed'' by the CCO to handle, respond, remediate, retest, and resolve noncompliance issues identified by the CCO.[171] The Proposed Rules acknowledged that a CCO may not be able to design procedures that detect all possible noncompliance issues and noted that a CCO may utilize a variety of resources to identify noncompliance issues beyond a limited set of means.

The Commission also proposed to amend the CCO's duty to resolve conflicts of interest.[172] First, the CCO would be required to take ''reasonable steps'' to resolve ''material'' conflicts of interest that may arise.[173] This proposed amendment reflects the Commission's view that the current requirement is overly broad and impractical because a CCO cannot be reasonably expected to successfully resolve every potential conflict of interest that may arise. The Commission further proposed to eliminate the existing enumerated conflicts of interest to avoid any inference that they are an exhaustive list of conflicts that a CCO must address.[174]

The Commission stated these proposed amendments would not weaken the CCO's statutory duty to address conflicts of interest, but rather reflect the CCO's practical ability to detect and resolve conflicts.[175] Moreover, the proposed amendments reflected the Commission's belief that a CCO should have discretion to determine the conflicts that are material to the SEF's ability to comply with the Act and the Commission's regulations.[176]

2. Summary of Comments

WMBAA supports the proposed changes to the CCO's duties.[177]

3. Final Rules

The amendments are being finalized as proposed, with one exception. The Commission notes the list of potential conflicts that a CCO should resolve under existing § 37.1500(d)(2) does not create an inference that they are an exhaustive list of conflicts that a CCO must address but, instead, provides useful examples, and the list will not be eliminated as proposed.[178] The Commission continues to believe the amendments do not weaken the CCO's duties to identify and address conflicts of interest. Rather, the amendments reflect the practical reality that, in the Commission's experience, a CCO cannot be reasonably expected to successfully detect and resolve every potential conflict of interest that may arise.

E. § 37.1501(d)—Preparation of Annual Compliance Report[179]

Existing § 37.1501(e)—''Preparation of annual compliance report''—requires the CCO to annually prepare and sign an ACR that, at a minimum, (i) describes the SEF's written policies and procedures, including the code of ethics and conflicts of interest policies;[180] (ii) reviews the SEF's compliance with the Act and Commission regulations in conjunction with the SEF's policies and procedures;[181] (iii) provides a self-assessment of the effectiveness of the SEF's policies and procedures, including areas of improvement and related recommendations for the SEF's compliance program or resources;[182] (iv) lists material changes to the policies and procedures;[183] (v) describes the SEF's financial, managerial, and operational resources, including compliance program staffing and resources, a catalogue of investigations and disciplinary actions, and a review of the disciplinary committee's performance;[184] (vi) describes any material compliance matters identified through certain enumerated mechanisms (*e.g.,* compliance office review or lookback), and explains how they were resolved;[185] and (vii) certifies that, to the best of the CCO's knowledge and reasonable belief and under penalty of law, the ACR report is accurate and complete.[186]

After part 37 was implemented, the Commission gained experience and received feedback on the ACR requirements. The Commission determined that some of the required ACR content provides it with minimal meaningful insight into a SEF's compliance program. For example, some of the content is duplicative of information obtained by the Commission from other reporting channels, such as the system-related information that a SEF must file pursuant to Core Principle 14 and rule certifications filed pursuant to part 40 of

[163] 17 CFR 37.1501(d)(2). A CCO is specifically required to address conflicts between (i) business considerations and compliance requirements; (ii) business considerations and the requirement that the SEF provide fair, open, and impartial access under § 37.202; and (iii) a SEF's management and board members. 17 CFR 37.1501(d)(2)(i) through (iii).

[164] 17 CFR 37.1501(d)(3).

[165] 17 CFR 37.1501(d)(4).

[166] 17 CFR 37.1501(d)(5).

[167] 17 CFR 37.1501(d)(6).

[168] 17 CFR 37.1501(d)(7).

[169] 17 CFR 37.1501(d)(8).

[170] 17 CFR 37.1501(d)(9).

[171] Existing paragraph § 37.1501(d)(5) requires a CCO to establish procedures for remediation of noncompliance issues identified through a compliance office review, look-back, internal or external audit finding, self-reported error, or validated complaint. Existing paragraph § 37.1501(d)(6) requires a CCO to establish and follow appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues. The Commission proposed to consolidate and amend these requirements, and renumber the consolidated requirement to paragraph § 37.1501(c)(5).

[172] The Commission proposed to renumber existing § 37.1501(d)(2), which addresses the CCO's duty to resolve conflicts of interest, to § 37.1501(c)(2) and amend the requirement as described.

[173] The Commission also proposed to eliminate ''a body performing a function similar to the board of directors'' under proposed § 37.1501(c)(2) (existing § 37.1501(d)(2)), as this phrase is already included in the definition of ''board of directors'' under § 37.1501(a).

[174] These provisions are currently set forth under existing § 37.1501(d)(2)(i) through (iii). The Commission also proposed additional, technical changes to existing § 37.1501(d), (d)(1), d(7) and d(8), to renumber them as § 37.1501(c), (c)(1), (c)(6) and (c)(7), respectively and to renumber existing paragraph § 37.1501(c)(9) as § 37.1501(c)(8).

[175] 84 FR 62034.

[176] *Id.*

[177] 2019 WMBAA Letter at 25.

[178] The list will be re-designated as § 37.1501(c)(2)(i) through (iv).

[179] The Commission is renumbering existing § 37.1501(e) to § 37.1501(d).

[180] 17 CFR 37.1501(e)(1).

[181] 17 CFR 37.1501(e)(2)(i).

[182] 17 CFR 37.1501(e)(2)(ii) through (iii).

[183] 17 CFR 37.1501(e)(3).

[184] 17 CFR 37.1501(e)(4).

[185] 17 CFR 37.1501(e)(5).

[186] 17 CFR 37.1501(e)(6).

the Commission's regulations.[187] Various SEF CCOs also have provided feedback that certain ACR content requires substantial time to prepare and includes some information that does not change frequently.[188] SEFs requested that the Commission simplify those requirements and provide additional time to file the reports. To this end, the Commission notes many SEFs have not provided sufficient assessments whether their respective policies and procedures (*e.g.,* rulebooks, compliance manuals, conflict of interest policies, codes of ethics, governance documentation, and third-party service agreements) comply with the Act and Commission regulations.

1. Proposed Rules

Based upon its experience in reviewing ACRs, the Commission proposed certain amendments to eliminate duplicative or unnecessary information requirements and streamline existing requirements, thereby reducing unnecessary regulatory burdens and compliance costs associated with certain aspects of ACRs. The Commission also proposed certain amendments to enhance the usefulness of ACRs by enabling the Commission to better assess the effectiveness of a SEF's compliance and self-regulatory programs.

Under the proposed approach, a SEF would no longer need to include in its ACR either a review of all the Commission regulations applicable to a SEF or an identification of the written policies and procedures designed to ensure compliance with the Act and Commission regulations.[189] Instead, under proposed § 1501(d)(1), a SEF would be required to include in the ACR a description and self-assessment of the effectiveness of the SEF's written policies and procedures to ''reasonably ensure'' compliance with the Act and applicable Commission regulations. The Commission stated its belief that this approach is more closely aligned with the corresponding provisions of Core Principle 15 and would still allow the Commission to properly assess the SEF's compliance and self-regulatory programs.[190] Similarly, the Commission also proposed to eliminate a required discussion of the SEF's compliance staffing and structure; a catalogue of investigations and disciplinary actions taken over the last year; and a review of disciplinary committee and panel performance.[191] A SEF would continue to be required to describe in its ACR the SEF's financial, managerial, and operational resources set aside for compliance.[192] By refining the scope of information a SEF would be required to include in its ACR, the Commission intended to allow SEFs to devote their resources to providing more detailed—and ultimately better-quality—information that will better facilitate assessments of compliance.

To enhance the Commission's ability to assess a SEF's written policies and procedures regarding compliance matters, the Commission also proposed to require a SEF to discuss only material noncompliance matters and explain the corresponding actions taken to resolve such matters.[193] The Commission stated requiring SEFs to focus on describing material noncompliance matters, rather than describing *all* compliance matters in similar depth, would streamline this requirement and provide more useful information to the Commission.[194] Further, the Commission proposed to eliminate the enumerated mechanisms for identifying noncompliance issues, conforming to the ability of a CCO to establish procedures to identify noncompliance issues through ''any means,'' as described above.[195]

Consistent with these proposed amendments, the Commission also proposed to limit a SEF CCO's certification of an ACR's accuracy and completeness to ''all material respects'' of the report.[196] The Commission recognized CCOs have been hesitant to certify that an entire ACR is accurate and complete under the penalty of the law, without regard to whether a potential inaccuracy or omission would be a material error or not. The Commission believed the proposed change would appropriately address SEF CCOs' concerns regarding potential liability while ensuring the material accuracy of an ACR submitted to the Commission.[197]

2. Summary of Comments

Refinitiv and WMBAA support the proposed amendments to the preparation of the ACR.[198] Refinitiv believes the ACR is unduly burdensome to prepare in its current form in comparison to the regulatory benefits of much of the information required to be provided; and the proposed amendments would more closely harmonize a SEF's ACR requirements with ACR requirements for a swap dealers or futures commission merchants. Refinitiv supports the proposal to eliminate the requirement to include a chart identifying a specific policy or procedure reasonably designed to ensure compliance with each individual regulation and paragraph of a regulation. In Refinitiv's view, the proposed requirements regarding CCO reports would ensure a proper compliance review on an annual basis without the unnecessary costs incurred in connection with producing such a chart.

3. Final Rules

The Commission is adopting the amended requirements for preparation of an ACR as proposed. The streamlined content requirements will allow SEF CCOs to focus on providing complete and accurate information on the compliance matters that are most critical to the Commission's oversight of SEFs, and allow the Commission to conduct a more efficient and effective

[187] Among other information required to be submitted to the Commission pursuant to part 40, a SEF is required to provide the Commission with amendments to its rulebook and compliance manual.

[188] *See* CFTC Staff Letter No. 17–61 (citing testimonials from SEFs that the preparation of an ACR requires an extensive information-gathering process, including review and documentation of information gathered on an entity-wide basis).

[189] The Commission proposed to eliminate these requirements in the introductory language of existing § 1501(e)(2) and § 1501(e)(2)(i).

[190] 83 FR 62035. As proposed, a SEF would continue to be required to describe the SEF's written policies and procedures, consistent with Core Principle 15. In addition to the required description, the Commission proposed to consolidate and amend existing § 37.1501(e)(2)(ii), which requires a SEF to provide in the ACR a self-assessment as to the effectiveness of its policies and procedures, with existing § 37.1501(e)(1), and renumber the consolidated requirement to § 37.1501(d)(1). Further, the Commission proposed to consolidate and amend existing § 37.1501(e)(2)(iii), which requires an ACR to discuss areas for improvement and recommend potential or prospective changes or improvements to a SEF's compliance program and resources, with existing § 37.1501(e)(3) and renumber the consolidated requirement to § 37.1501(d)(2). The Commission expects the CCO will provide more nuanced and in-depth discussions through these consolidated provisions, rather than merely providing generalized responses.

[191] The Commission proposed to eliminate these requirements under existing § 37.1501(e)(4).

[192] The Commission proposed to renumber the remaining requirements under existing § 37.1501(e)(4) to § 37.1501(d)(3) and adopt technical amendments.

[193] The Commission proposed to renumber this requirement under existing § 37.1501(e)(5) to § 37.1501(d)(4) and adopt the amendments as described above and additional, technical changes.

[194] 83 FR 62035.

[195] *See* Section IV.D., *supra.* The Commission proposed to eliminate these enumerated mechanisms from the ACR requirements under existing paragraph (e)(5).

[196] The Commission proposed to renumber existing § 37.1501(e)(6) to § 37.1501(d)(5) and amend the requirement as described.

[197] 83 FR 62035.

[198] 2019 WMBAA Letter at 25–26; Refinitiv Letter at 14.

review of an ACR and assessment of a SEF's compliance.

F. § 37.1501(e)—Submission of Annual Compliance Report and Related Matters [199]

Existing § 37.1501(f)(1) requires a CCO to provide the ACR to the board or, in the absence of a board, the senior officer for review.[200] The board of directors and senior officer may not require the CCO to change the ACR.[201] The SEF's board minutes, or a similar written record, must reflect the submission of the ACR to the board of directors or senior officer and any subsequent discussion of the report.[202] Additionally, the SEF must concurrently file the ACR and the fourth-quarter financial statements with the Commission within 60 calendar days of the end of the SEF's fiscal year end.[203] The CCO must certify and promptly file an amended ACR with the Commission upon the discovery of any material error or omission in the report.[204] A SEF may request an extension of the ACR filing deadline based on substantial, undue hardship in filing the ACR on time.[205]

1. Proposed Rules

The Commission proposed several amendments to the ACR submission procedures. First, the Commission proposed to provide SEFs with an additional 30 days to file the ACR with the Commission, but no later than 90 calendar days after a SEF's fiscal year end.[206] The Commission recognized that in addition to the ACR, SEFs have other reporting obligations, such as the fourth-quarter financial report required to be submitted under Core Principle 13 and other year-end reports; and SEFs have indicated that these multiple reporting obligations present resource constraints on SEFs and their CCOs.[207] In addition to an extended deadline, the Commission proposed to replace the ''substantial and undue hardship'' standard required for filing ACR extensions with a ''reasonable and valid'' standard.[208] Further, the Commission proposed to eliminate the requirement that each SEF must document the submission of the ACR to the SEF's board of directors or senior officer in board minutes or some other similar written record,[209] noting that the Core Principle 15 recordkeeping requirement under proposed § 37.1501(f), discussed below, would incorporate this requirement.[210] The Commission also proposed to require the CCO to submit an amended ACR to the SEF's board of directors—or, in the absence of a board of directors, the senior officer of the SEF—for review prior to submitting the amended ACR to the Commission; this approach is the same as the requirements that exist for submitting an initial ACR.[211]

2. Summary of Comments

WMBAA supports the proposed amendments to the ACR submission requirements.[212]

3. Final Rules

The amendments to the ACR submission requirements are being finalized as proposed. Given other relevant end-of-year reporting requirements, including the SEF's required fourth-quarter financial report (as well as any reporting required of the SEF's affiliates under other regulatory regimes), the Commission continues to believe a 30-day extension of the submission timeline and a less stringent ''reasonable and valid'' standard for further extensions will facilitate more accurate and useful reporting to the Commission.[213] The additional requirements for board of directors or senior officer review of an amended ACR will likewise foster increased accuracy and precision in regulatory reporting.

G. § 37.1501(f)—Recordkeeping [214]

Existing § 37.1501(g)(1) requires a SEF to maintain a copy of written policies and procedures adopted in furtherance of compliance with the Act and the Commission's regulations;[215] copies of all materials created in furtherance of the CCO's duties under existing § 37.1501(d)(8) and (9);[216] copies of all materials in connection with the review and submission of the ACR;[217] and any records relevant to the ACR.[218] Existing § 37.1501(g)(2) requires the SEF to maintain these records in accordance with § 1.31 and part 45 of the Commission's regulations.[219]

1. Proposed Rules

The Commission proposed to streamline the recordkeeping requirements that pertain to the CCO's duties and the preparation and submission of the ACR. Specifically, the Commission proposed to revise § 37.1501(f) to require a SEF to keep all records demonstrating compliance with the duties of the CCO and the preparation and submission of the ACR consistent with the recordkeeping requirements under §§ 37.1000 and 37.1001.[220]

2. Summary of Comments

The Commission did not receive any comments on the proposed amendments to the CCO's recordkeeping requirements.

3. Final Rules

The Commission is adopting the recordkeeping requirements as proposed. The Commission believes the simplified requirements will better ensure access to relevant compliance information.

[199] The Commission is renumbering existing § 37.1501(f) to § 37.1501(e).

[200] 17 CFR 37.1501(f)(1).

[201] *Id.*

[202] *Id.*

[203] 17 CFR 37.1501(f)(2).

[204] 17 CFR 37.1501(f)(3).

[205] 17 CFR 37.1501(f)(4).

[206] The Commission proposed to renumber existing § 37.1501(f)(2) to § 37.1501(e)(2), amend the requirement as described, and adopt additional, technical amendments to the existing language. The Commission also proposed to add a title to this paragraph—''Submission of annual compliance report to the Commission.''

[207] 83 FR 62036.

[208] The Commission proposed to renumber existing § 37.1501(f)(4) to § 37.1501(e)(4) and amend the provision as described. The Commission also proposed to add a title—''Request for extension.''

[209] The Commission proposed to eliminate this requirement under existing paragraph (f)(1).

[210] Existing § 37.1501(g) sets forth recordkeeping requirements for SEFs related to the CCO's duties. As discussed below, the Commission is amending those requirements.

[211] The Commission proposed to renumber existing § 37.1501(f)(3) to § 37.1501(e)(3) and add a title—''Amendments to annual compliance report.'' The Commission proposed to adopt this requirement under § 37.1501(e)(3)(i). Under proposed § 37.1501(e)(3)(ii), an amended ACR would be subject to the amended certification requirement, *i.e.,* a CCO must certify that the ACR is accurate and complete in all material respects. The Commission also proposed to renumber existing § 37.1501(f) to § 37.1501(e) and change the title to ''Submission of annual compliance report and related matters.'' The Commission also proposed to renumber existing § 37.1501(f)(1) to § 37.1501(e)(1), adopt additional, technical amendments to the existing language, and add a title—''Furnishing the annual compliance report prior to submission to the Commission.''

[212] 2019 WMBAA Letter at 27.

[213] A SEF requesting an extension must identify the circumstances creating a reasonable and valid need for the extension. The Commission—and, when exercising the delegated authority discussed below, the Director of the Division of Market Oversight—reserves the discretion to determine that the rationale proffered by the SEF is not objectively reasonable and valid.

[214] The Commission is renumbering existing paragraph (g) to paragraph (f).

[215] 17 CFR 37.1501(g)(1)(i).

[216] 17 CFR 37.1501(g)(1)(ii).

[217] 17 CFR 37.1501(g)(1)(iii).

[218] 17 CFR 37.1501(g)(1)(iv).

[219] 17 CFR 37.1501(g)(2).

[220] 17 CFR 37.1501(f); 17 CFR 37.1000 and 37.1001.

H. § 37.1501(g)—Delegation of Authority [221]

Existing § 37.1501(h)—''Delegation of authority''—delegates the authority to grant or deny a SEF's request for an extension of time to file its ACR to the Director of DMO.[222] In addition to renumbering this provision based on the amendments described above, the Commission proposed to adopt additional, technical amendments that conform to the proposed amendments to the Core Principle 15 regulations discussed above. The Commission received no comments on the proposal and is adopting the amendments as proposed.

V. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') requires federal agencies, in promulgating rules, to consider the impact of those rules on small entities.[223] The Commission has previously established certain definitions of ''small entities'' to be used by the Commission in evaluating the impact of its rules on small entities in accordance with the RFA.[224] The changes to part 37 adopted herein would have a direct effect on the operations of SEFs. The Commission has previously certified that SEFs [225] are not small entities for purpose of the RFA. Accordingly, the Commission does not believe the Final Rules will have a significant economic impact on a substantial number of small entities. Therefore, the Chairman, on behalf of the Commission, pursuant to 5 U.S.C. 605(b), hereby certifies that the Final Rules will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

1. Background

The Paperwork Reduction Act of 1995 (''PRA'') [226] imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring a collection of information as defined by the PRA. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number issued by the Office of Management and Budget (''OMB'').

The rule amendments adopted herein will result in the revision of a collection of information for which the Commission has previously received a control number from OMB: OMB Control Number 3038–0074, Core Principles and Other Requirements for Swap Execution Facilities. The responses to this collection of information are mandatory.

The Commission did not receive any comments regarding its PRA burden analysis in the preamble to the notice of proposed rulemaking. The Commission is revising information collection number 3038–0074 to reflect the adoption of amendments to part 37 of its regulations, as discussed below, but does not believe the regulations as adopted impose any other new collections of information that require approval of OMB under the PRA.

2. New Information Collection Requirements and Related Burden Estimates [227]

Currently, there are approximately 19 SEFs registered with the Commission that may be impacted by this rulemaking and, in particular, the collection of information contained herein and discussed below.

i. Audit Trail Requirements Related to Post-Execution Allocation Information

Existing § 37.205(a) requires a SEF to capture and retain all audit trail data necessary to detect, investigate, and prevent customer and market abuses. Existing § 37.205(b)(2)(iv) requires a SEF's audit trail program to include an electronic transaction history database that identifies, among other things, each account to which order fills are allocated. The Commission proposed to eliminate the requirements in § 37.205(a) and (b)(2)(iv) that a SEF capture post-execution allocation information in its audit trail. Instead, the Commission proposed to require that SEFs capture in their audit trail information only through execution on the SEF. The Commission is adopting the amendments as proposed.

As noted in the Proposed Rules, to the extent that the Commission is providing SEFs with greater discretion in fulfilling their information collection obligations with respect to audit trail requirements under § 37.205, the Commission estimates and assumes SEFs will continue to fulfill their information collection burdens in a manner similar to the status quo. Accordingly, amended § 37.205(a) and (b) will not substantively or materially affect a SEF's total information collection burden hours. With respect to § 37.205(a), the Commission's proposal to eliminate such information collections will not result in a net change to a SEF's aggregate burden hours because the 2016 Part 37 PRA Renewal already considered such relief and non-compliance with such requirements in its revised estimate.

ii. Financial Resources Requirements

Core Principle 13 requires a SEF to have adequate financial, operational, and managerial resources to discharge its responsibilities. To achieve financial resource adequacy, a SEF must maintain financial resources sufficient to cover its operating costs for a period of at least one year, calculated on a rolling basis. The Commission implemented Core Principle 13 by adopting §§ 37.1301 through 37.1307 to specify: (i) The eligible types of financial resources that may be counted toward compliance (§ 37.1302); (ii) the computation of projected operating costs (§ 37.1303); (iii) valuation requirements (§ 37.1304); (iv) a liquidity requirement for those financial resources that is equal to six months of a SEF's operating costs (§ 37.1305); and (v) reporting obligations (§ 37.1306). These regulations are intended to ensure that a SEF has financial strength sufficient to discharge its responsibilities, maintain market continuity, and withstand unpredictable market events.

The Commission proposed several amendments to the Core Principle 13 regulations to achieve a better balance between ensuring SEF financial stability, promoting SEF growth and innovation, and reducing unnecessary costs. The proposed rules: (i) Clarify the scope of operating costs that a SEF must cover with adequate financial resources; (ii) set forth acceptable practices, based on existing Commission staff guidance, that address the discretion that a SEF has when calculating projected operating costs pursuant to proposed § 37.1304; (iii) amend the existing six-month liquidity requirement for financial resources held by a SEF; and (iv) streamline requirements with respect to financial reports filed with

[221] The Commission is renumbering existing § 37.1501(h) to § 37.1501(g).

[222] 17 CFR 37.1501(h).

[223] *See* 5 U.S.C. 601 *et seq.*

[224] *See* Policy Statement and Establishment of ''Small Entities'' for purposes of the Regulatory Flexibility Act, 47 FR 18618 (Apr. 30, 1982).

[225] Core Principles and Other Requirements for Swap Execution Facilities, 78 FR 33476, 33548 (June 4, 2013).

[226] 44 U.S.C. 3501 *et seq.*

[227] This discussion does not include information collection requirements that are included under other Commission regulations and related OMB control numbers. Specifically, the discussion does not include OMB control number 3038–0052, which covers, among other things, information collections arising in part 38 (other than the information collections related to § 38.12) or OMB control number 3038–0099, which covers the information collections related to the ''available to trade'' determination (MAT determination) process under §§ 37.10 and 38.12.

the Commission. The Commission also proposed amendments to clarify certain existing requirements, including the renumbering of several provisions to present the requirements in a more cohesive manner.

The Commission is adopting the amendments to §§ 37.1301 through 37.1307 as proposed. With respect to two questions posed in the notice of proposed rulemaking, the Commission will not adopt the requirement that financial statements be audited, and the Commission will retain the existing quarterly reporting requirement for SEFs, rather than moving to a semiannual reporting requirement.

As stated in the notice of proposed rulemaking, the Commission estimates the amendment to § 37.1301(b) will decrease the annual recurring information collection burden hours by five burden hours; the amendment to § 37.1306 will increase the annual recurring information collection burden hours by 10 burden hours and not impose an initial, non-recurring burden; and the amendment to § 37.1306(c) will impose an initial, non-recurring information collection of 20 burden hours and five annual recurring information collection burden hours after the initial year to update the information. Other than as discussed above, the Commission believes the amendment to § 37.1306(c) will not impose new information collection burdens on SEFs or substantively or materially modify existing burdens.

iii. Chief Compliance Officer Requirements

Statutory Core Principle 15 requires each SEF to designate a CCO and sets forth its corresponding duties. Among other responsibilities, the CCO is required to ensure the SEF complies with the CEA and applicable rules and regulations, and to establish and administer required policies and procedures. Core Principle 15 also requires the CCO to prepare and file an ACR to the Commission. The Commission promulgated requirements under § 37.1501 to implement these requirements.

The Commission proposed several amendments to § 37.1501 based on the Commission's experience since the part 37 implementation. These amendments streamline CCO requirements; allow SEF management to exercise discretion in CCO oversight; and simplify the preparation and submission of the ACR. Specifically, the proposed changes: (i) Add the definition of ''senior officer;'' (ii) eliminate the existing ROC-related requirements; (iii) allow the SEF's senior officer to have the same oversight responsibilities over the CCO as the board; (iv) eliminate the limitations on authority to remove the CCO, which currently restricts that removal authority to a majority of the board, or in the absence of a board, the senior officer; (v) add a new acceptable practice to Core Principle 15 in Appendix B associated with § 37.1501(b)(2)(i), which requires the CCO to have the background and skills appropriate to the position and states that a SEF should be especially vigilant regarding potential conflicts of interest when appointing the CCO; (vi) adopt several amendments to clarify and streamline the CCO's duties, including refining the scope of the CCO's duty to taking only ''reasonable steps'' to resolve ''material'' conflicts of interest that may arise; and (vii) make other amendments, including elimination of duplicative rules and renumbering and consolidation of existing provisions. The amendments are being finalized as proposed, with one exception. The Commission is not eliminating the list of potential conflicts that the CCO should resolve under existing § 37.1501(d)(2).

With respect to the ACR, existing § 37.1501(e) requires the CCO to prepare and sign annually an ACR that, at a minimum: (i) Describes the SEF's written policies and procedures; (ii) reviews the SEF's compliance with the Act and Commission regulations; (iii) provides a self-assessment of the effectiveness of the SEF's policies and procedures; (iv) lists material changes to the policies and procedures; (v) describes the SEF's financial, managerial, and operational resources; (vi) describes any material compliance matters identified through certain enumerated mechanisms and explains how they were resolved; and (vii) certifies that, to the best of the CCO's knowledge and reasonable belief and under penalty of law, the ACR is accurate and complete.

The Commission proposed several amendments to simplify the ACR submission procedures including: Providing SEFs with an additional 30 days to file the ACR with the Commission, but no later than 90 calendar days after a SEF's fiscal year end, and requiring the CCO to submit an amended ACR to the SEF's board or, in the absence of a board, the senior officer of the SEF, for review prior to submitting the amended ACR to the Commission. The proposed rules also would streamline the recordkeeping requirements that pertain to the CCO's duties and the preparation and submission of the ACR. The amendments to the ACR preparation, submission and recordkeeping requirements are being adopted and finalized as proposed.

As stated in the notice of proposed rulemaking, the Commission estimates the amendment to § 37.1501(d) will reduce annual recurring information collection burden hours by approximately 10 burden hours per SEF. The amendment to § 37.1501(d)(3) will reduce annual recurring information collection burden hours by approximately five burden hours per SEF. The amendment to § 37.1501(d)(4) will reduce annual recurring information collection burden hours per SEF by three burden hours. The amendment to § 37.1501(d)(5) will reduce annual recurring information collection burden hours per SEF/CCO by 10 burden hours.

C. Cost-Benefit Considerations

1. Introduction

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 or issuing certain orders.[228] 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: (i) Protection of market participants and the public; (ii) efficiency, competitiveness, and financial integrity of futures markets; (iii) price discovery; (iv) sound risk management practices; and (v) other public interest considerations.

2. Background

The Commission is finalizing several of the Proposed Rules. First, the Final Rules eliminate the requirement that a SEF capture post-execution allocation information in its audit trail data. Second, regarding financial resources, the Final Rules finalize amendments to the existing six-month liquidity requirement and add new acceptable practices that provide further guidance to SEFs for making a reasonable calculation of their projected operating costs. Finally, the Final Rules streamline requirements for the CCO position; allow SEF management to exercise discretion in CCO oversight; and simplify the preparation and submission of the required ACR.

The baseline against which the Commission considers the costs and benefits of the Final Rules is the statutory and regulatory requirements of the CEA and Commission regulations now in effect, in particular CEA section

[228] 7 U.S.C. 19(a).

2(h)(8) and certain rules in part 37 of the Commission's regulations. The Commission, however, notes that as a practical matter, SEFs have adopted some current practices included in the Final Rules based upon no-action relief and guidance provided by Commission staff that is time-limited in nature.[229] As such, to the extent that SEFs and market participants have relied on relevant Commission staff no-action relief or Commission staff guidance, the actual costs and benefits of the Final Rules may not be as significant.

In some instances, it is not reasonably feasible to quantify the costs and benefits with respect to certain factors, for example, price discovery or market integrity. Notwithstanding these limitations, however, the Commission otherwise identifies and considers the costs and benefits of these rules in qualitative terms. The Commission did not receive any comments from commenters which quantified or attempted to quantify the costs and benefits of these rules.

The following consideration of costs and benefits is organized according to the rules and rule amendments finalized in this rulemaking. For each rule, the Commission summarizes the Final Rules, and identifies and discusses the costs and benefits attributable to each rule. The Commission, where applicable, then considers the costs and benefits of the Final Rules in light of the five public interest considerations set out in section 15(a) of the CEA.

The Commission notes that this consideration of costs and benefits is based on the understanding that the swaps market functions internationally, with many transactions involving U.S. firms taking place across international boundaries, with some Commission registrants being organized outside of the U.S., with leading industry members typically conducting operations both within and outside the U.S., and with industry members commonly following substantially similar business practices wherever located. Where the Commission does not specifically refer to matters of location, the discussion of costs and benefits below refers to the effects of the Final Rules on all swaps activity subject to the final new and amended regulations, whether by virtue of the activity's physical location in the U.S. or by virtue of the activity's connection with activities in, or effect on, U.S. commerce under CEA section 2(i).[230]

3. Audit Trail

i. Overview

Existing § 37.205(a) requires a SEF to capture and retain all audit trail data necessary to detect, investigate and prevent customer and market abuses.[231] This audit trail data must permit a SEF to track a customer order from the time of receipt through fill, allocation, or other disposition.[232] Existing § 37.205(b)(2)(iv) requires a SEF's audit trail program to include an electronic transaction history database that identifies, among other things, each account to which order fills are allocated.[233]

Recognizing the practical difficulties that SEFs face in obtaining information regarding allocations that occur away from the SEF after a trade has been executed, the Commission is eliminating the requirements in § 37.205(a) and (b)(2)(iv) that a SEF capture post-execution allocation information in its audit trail.[234] Instead, the Final Rules require a SEF to capture in its audit trail information only through execution on the SEF.[235] The Commission has noted that this change would be consistent with current swap market practice.[236]

ii. Benefits

Post-execution allocations are made away from SEFs and typically occur between the clearing firm or the customer and the DCO, or at the middleware provider.[237] In general, SEFs do not have access to post-execution allocation information and are unable to obtain such data from third parties, such as DCOs and swap data repositories, due to confidentiality concerns. Commission staff has issued no-action relief from this requirement.[238] This rulemaking creates regulatory certainty by codifying the no-action relief, which will permit SEFs to maintain their existing practice and avoid any legal exposure due to a SEF's inability to comply with regulations.

iii. Costs

The changes to the existing audit trail requirements may reduce the scope of information captured in a SEF's audit trail, but the Commission believes that these changes are not likely to affect materially the protection of market participants and the public. The Commission notes that post-execution allocation information has generally not been captured because SEFs have operated under no-action relief, which was provided by Commission staff due to the general inability of SEFs to access this information. Thus, although the elimination of the requirement to capture and retain post-execution allocation information is a regulatory change, it should not have a material effect on the status quo.

iv. Section 15(a) Factors

(1) Protection of Market Participants and the Public

The Commission believes the revised audit trail requirements provide a nearly identical level of protection to market participants and the public as provided under the existing rules. As noted above, SEFs generally do not capture post-execution allocation information in their audit trail because SEFs have operated under no-action relief, which was provided by Commission staff due to the general inability of SEFs to access this information. Moreover, the Commission is able to obtain post-execution allocation information from other registered entities and is not aware that SEFs' reliance on the relief from collecting post-execution allocation information has raised any regulatory concerns. Thus, elimination of the requirement that SEFs capture and retain post-execution allocation information should not have a material effect on the level of protection for market participants and the public relative to the status quo, although it is a regulatory change.

(2) Efficiency, Competitiveness, and Financial Integrity of the Markets

The Commission believes that there will be no substantive change to the efficiency, competitiveness, and financial integrity of markets because

[229] CFTC Staff Letter No. 17–54 (post-execution allocation data); CFTC Staff Letter No. 17–61 (timing of the ACR submission).

[230] Section 2(i)(1) applies the swaps provisions of both the Dodd-Frank Act and Commission regulations promulgated under those provisions to activities outside the United States that have a direct and significant connection with activities in, or effect on, commerce of the United States. 7 U.S.C. 2(i). Section 2(i)(2) makes them applicable to activities outside the United States that contravene Commission rules promulgated to prevent evasion of the Dodd-Frank Act.

[231] 17 CFR 37.205(a). Such audit trail data must be sufficient to reconstruct all indications of interest, RFQs, orders, and trades.

[232] *Id.*

[233] 17 CFR 37.205(b)(2)(iv).

[234] 83 FR at 62005.

[235] *Id.*

[236] *Id.*

[237] CFTC Staff Letter No. 17–54. SEFs have noted that even if they could obtain the information from DCOs, swap data repositories, or middleware providers, or alternatively, from the counterparties to the swap, the infrastructure necessary to securely transmit the post-execution allocation information, such as an application-programming interface or secure file transfer protocol site, is currently not in place.

[238] *Id.*

SEFs will continue to capture information through execution in the audit trail and the Commission has the ability to obtain post-execution allocation information from other registrants. Further, the amendments to § 37.205 will not change the current status quo in the markets.

(3) Price Discovery

The Commission believes these rules will have no effect on price discovery because they affect only how SEFs track and audit trades and do not change what information is disclosed to market participants. Further, the amendments to § 37.205 will not change the current status quo in the markets.

(4) Sound Risk Management Practices

The Commission believes these rules will have no material effect on sound risk management practices because they do not change the status quo and the Commission is not aware that SEFs' reliance on the no-action relief from collecting post-execution allocation information has raised any regulatory concerns.

(5) Other Public Interest Considerations

The Commission has not identified any effects that these rules will have on public interest considerations other than those enumerated above, nor did any commenter suggest one.

v. Consideration of Alternatives and Comments

Commenters support the proposal to eliminate the requirement to capture and retain post-execution allocation information because SEFs remain unable to obtain the information.[239] Further, in WMBAA's view, the proposal ''will [not] lead to degradation of the ability to reconstruct a trade and the environment in which it is traded.'' [240]

4. Financial Resources

i. Overview

The Final Rules improve on the existing rules to apply the existing Core Principle 13 financial resources requirements to SEF operations in a more practical manner, including through amendments to the existing six-month liquidity requirement and the addition of new acceptable practices that provide further guidance to SEFs for making a reasonable calculation of their projected operating costs.

Amended § 37.1301 requires a SEF to maintain financial resources in an amount adequate to cover only those projected operating costs necessary to enable the SEF to comply with its core principle obligations under section 5h of the Act and any applicable Commission regulation for a one-year period, calculated on a rolling basis.[241] In contrast, existing § 37.1301 requires a SEF to maintain sufficient financial resources to cover all of its operations for a one-year period, calculated on a rolling basis, regardless of whether such operating costs are necessary for the SEF to comply with its core principle or other applicable Commission regulations.

Pursuant to existing § 37.1303, a SEF has reasonable discretion to determine its financial obligations under § 37.1301.[242] The Commission is adopting acceptable practices in Appendix B to Part 37 that offer guidance on the costs that a SEF may exclude in its reasonable discretion when determining its projected operating costs under § 37.1301(a). The acceptable practices are based upon financial resources guidance that was provided to the public by Commission staff and discuss the scope of a SEF's reasonable discretion for determining its obligations under §§ 37.1301 and 37.1303, as amended.

Specifically, the financial resources guidance provides that a SEF may reasonably exclude from its projected operating costs certain expenses, including: (i) Costs attributable solely to sales, marketing, business development, or recruitment; [243] (ii) compensation and related taxes and benefits for SEF employees whose functions are not necessary to meet the SEF's regulatory responsibilities; [244] (iii) costs for acquiring and defending patents and trademarks for SEF products and related intellectual property; (iv) magazine, newspaper, and online periodical subscription fees; (v) tax preparation and audit fees; (vi) to the extent not covered by item (ii) above, the variable commissions that a voice-based SEF may pay to its employee-brokers, calculated as a percentage of transaction revenue generated by the voice-based SEF; and (vii) any non-cash costs, including depreciation and amortization. The Commission similarly is incorporating this list with certain conforming changes into the acceptable practices as costs that the Commission believes may be reasonable for a SEF to exclude from its projected operating cost calculations.[245] Further, based on the financial resources guidance, the acceptable practices clarify that in order to determine its obligations under amended § 37.1301(a), a SEF may prorate, but not exclude, certain expenses in calculating projected operating costs.[246] In prorating these expenses, however, a SEF needs to document, identify, and justify its decision to prorate such expenses.

Amended § 37.1303 requires a SEF to maintain liquid assets in an amount equal to the greater of (i) three months of projected operating costs necessary to enable the SEF to comply with its core principle obligations and applicable Commission regulations, or (ii) the SEF's projected wind-down costs. In contrast, under existing rules, a SEF

[239] Refinitiv Letter at 11 (''Refinitiv SEF supports the elimination of the requirement to be able to track an order through fill, allocation or other disposition, because SEFs generally do not have access to most post-execution information.''); 2019 WMBAA Letter at 12–13 (''The WMBAA supports the Commission's proposal regarding audit trail requirements.'').

[240] 2019 WMBAA Letter at 12–13.

[241] 37 CFR 37.1301.

[242] Existing § 37.1303 provides a SEF has reasonable discretion in determining the methodology used to compute its projected operating costs in order to determine the amount needed to meet its requirements under § 37.1301. Because the liquidity requirement in existing § 37.1305 is based upon a SEF's financial requirement under § 37.1301, the SEF's application of its reasonable discretion also implicitly determines its liquidity obligation under amended § 37.1303. The Commission is adopting additional, technical changes to § 37.1302. The Commission is renumbering § 37.1304 to § 37.1305 and is not adopting substantive changes to the provision.

[243] The costs listed in this item (i) also include costs for travel, entertainment, events and conferences to the extent that such costs are not necessary to meet the SEF's regulatory responsibilities.

[244] For example, if a SEF requires a certain number of voice brokers to run its voice/hybrid platform but hires additional voice brokers to provide enhanced customer service, the SEF will need to include only the minimum number of voice brokers to run its voice/hybrid platform based on its current business volume, and taking into account any projected increase or decrease in business volume, in its projected operating cost calculations.

[245] In order to conform to the change to § 37.1301(a), the Commission is slightly altering the wording of item (ii) to provide that a SEF may exclude the costs of a SEF's employees that are not necessary ''to *comply with* the core principles set forth in section 5h of the Act and any applicable Commission regulations[.]'' (emphasis added). Similarly, the financial resources guidance provides that a reasonable calculation of projected operating expenses must include all expenses necessary for a SEF ''to discharge its responsibilities as a . . . SEF in compliance with the CEA, the Commission's regulations, and the . . . SEF's rulebooks,'' which is consistent with existing § 37.1301(a). However, in order to conform with amended § 37.1301(a), the acceptable practices instead provide that a SEF must include all expenses necessary for the SEF ''to comply'' with the core principles and any applicable Commission regulations.

[246] For example, a SEF will be permitted to prorate expenses that are shared with affiliates, *e.g.,* the costs of administrative staff or seconded employees that a SEF shares with affiliates. Further, a SEF is also permitted to prorate expenses that are attributable in part to activities that are not required to comply with the SEF core principles, *e.g.,* costs of a SEF's office space to the extent it also houses personnel whose costs may be excludable under items (i) or (ii).

must maintain sufficient liquid assets to cover six months of projected operating costs. As discussed above, the Commission is adopting acceptable practices to provide further guidance on the costs that a SEF, based on its reasonable discretion, may exclude from its projected operating costs when determining its financial obligations under amended § 37.1303.

Amended § 37.1306(a) requires a SEF's quarterly financial submissions to conform to U.S. GAAP, or in the case of a non-U.S. domiciled SEF that is not otherwise required to prepare U.S. GAAP-compliant statements, to prepare its statements in accordance with either the International Financial Reporting Standards issued by the International Accounting Standards Board, or a comparable international standard that the Commission may accept in its discretion. Amended § 37.1306(c) provides that a SEF's quarterly financial statements must explicitly: (i) Identify all the SEF's expenses without any exclusions; (ii) identify all expenses and corresponding amounts that the SEF excluded or prorated when it determined its projected operating costs; (iii) explain why the SEF excluded or prorated any expenses; and (iv) identify and explain all costs necessary to wind down the SEF's operations. Amended § 37.1306(d) extends the deadline for a SEF's fourth-quarter financial statement from 60 to 90 days after the end of such fiscal quarter to conform to the extended deadline for a SEF's annual compliance report. Amended § 37.1306(e) is a new rule that requires a SEF to provide notice no later than 48 hours after it knows or reasonably should know it no longer meets its financial resources obligations.

ii. Benefits

The Commission expects amended § 37.1301(a) to reduce the total financial assets that most SEFs must maintain because a SEF will only be required to maintain sufficient resources to cover its operations necessary to comply with its core principle obligations and applicable Commission regulations, rather than all of its operating costs as is required by existing § 37.1301(a). With respect to § 37.1301(a), the acceptable practices provide further guidance regarding the scope of a SEF's reasonable discretion when determining the SEF's financial requirements under amended § 37.1301(a) to exclude certain expenses from its projected operating cost calculations, thereby reducing the amount of total financial assets that a SEF must maintain under amended § 37.1301(a). To the extent that the acceptable practices generally adopt the Commission staff's existing financial resources guidance, SEFs may already have realized the benefits associated with reduced financial resources requirements.

The liquidity requirement in amended § 37.1303 significantly reduces the amount of liquid financial assets that must be maintained by most SEFs. Currently, a SEF must maintain liquid financial assets equal to six months of projected operating costs, while amended § 37.1303 only requires most SEFs to maintain three months of projected operating costs. As a result, amended § 37.1303 is expected to reduce the liquidity requirement for most SEFs by 50 percent.[247] In addition, a SEF currently must maintain liquid assets equal to six months of operating costs even if the SEF's actual wind-down costs are greater. For certain SEFs with wind-down costs that exceed six months of operating costs, amended § 37.1303 augments market integrity for such SEFs by requiring them to maintain additional liquid assets to cover their wind-down costs, even if the SEF's wind-down would exceed six months, but in no event would a SEF be permitted to maintain less than three months of operating costs.

Amended § 37.1304 provides that a SEF must make a reasonable calculation of projected wind-down costs, but has reasonable discretion in adopting the methodology for calculating such costs. The finalized acceptable practices expound upon the reasonable discretion that a SEF has for computing its projected operating costs to exclude certain expenses from its projected three months of operating cost calculations.

The Commission believes the Final Rules provide SEFs with greater flexibility in terms of establishing their financial resources. This, in turn, may lead to greater efficiencies in terms of financing and capital allocation and investment. However, the Commission acknowledges, as discussed below, this flexibility may increase the level of financial risk at the SEF.

Amended §§ 37.1306(a) and (c) will increase transparency and augment the Commission's oversight by requiring SEFs to provide standardized, U.S. GAAP-compliant financial submissions that explicitly identify any cost a SEF has excluded or prorated in determining its projected operating costs. In its experience conducting ongoing SEF oversight, Commission staff has devoted additional effort to obtain appropriate clarity and sufficient documentation from SEFs. Therefore, the Commission believes that establishing the minimum documentation that a SEF must provide will mitigate the time and resources required both by Commission staff in conducting its oversight and by SEFs in responding to Commission staff's requests for additional information. Final § 37.1306(e) benefits market integrity by ensuring that the Commission is aware of any non-compliance 48 hours after a SEF knows or reasonably should know that it fails to satisfy its financial resources obligations rather than when the SEF submits its quarterly financial statement under § 37.1306(a), increasing the Commission's ability to promptly respond.

iii. Costs

Amended § 37.1301(a) reduces the amount of financial resources a SEF must maintain to an amount that will enable the SEF to comply with its core principle obligations and applicable Commission regulations for a one-year period, calculated on a rolling basis, rather than in an amount necessary to cover all of the SEF's operations as required under existing § 37.1301(a). The acceptable practices provide guidance on the costs that a SEF may exclude when determining its obligations under amended § 37.1301(a). As a result, amended § 37.1301(a) as supplemented by the acceptable practices likely will induce SEFs to reduce the current level of total financial resources that they maintain under § 37.1301. In turn, this could decrease market participants' confidence and could harm a SEF's stability during adverse market conditions because the SEF may not have adequate financial resources to cover its costs. However, the Commission believes the potential harm to a SEF's financial stability and to the market is minimal because amended § 37.1301(a) addresses only the amount of a SEF's total financial assets, which includes illiquid assets, rather than focusing only on a SEF's liquid assets. The Commission notes that illiquid assets are less important compared to the amount of liquid financial assets that a SEF must maintain under amended § 37.1303 since it is more difficult for a SEF to timely liquidate its illiquid assets to cover its operating

[247] The Commission notes that the current liquidity requirement in existing § 37.1305, as well as amended § 37.1303, permits a SEF to acquire a ''committed line of credit'' to satisfy the liquidity requirement. However, the Commission notes that most SEFs satisfy this requirement through maintaining liquid assets rather than obtaining a line of credit. Accordingly, as a practical matter, the Commission expects amended § 37.1303 to reduce the amount of liquid assets that a SEF must maintain. Moreover, the Commission notes that there would be additional associated costs if a SEF were to obtain a committed line of credit.

costs, especially during periods of market instability. Accordingly, the Commission believes a SEF's liquid financial assets, which the Commission addresses in amended § 37.1303 below, is more important for sustaining a SEF's financial health and continuing operations.

Amended § 37.1303 may require some SEFs to maintain additional liquid financial assets, compared to the current liquidity requirement, where a SEF's wind-down costs exceed six months of operating costs. However, as explained above in the discussion of benefits, the Commission believes most SEFs do not have wind-down costs that exceed six months of operating costs. Accordingly, amended § 37.1303 should not increase the liquidity requirement for most SEFs.

Amended § 37.1304 requires a SEF to incur an additional marginal cost to calculate its wind-down costs, in addition to its projected operating costs as currently required, in order to determine its financial resources obligations under §§ 37.1301 and 37.1303. The Commission estimates this change will impose an initial, minimal, one-time cost for each SEF related to determining the length of time and associated costs associated with an orderly wind down.

The Commission anticipates amended § 37.1306(a) will impose greater costs on a SEF. Specifically, amended § 37.1306(a) requires a SEF to submit U.S. GAAP-compliant quarterly reports. Because U.S. GAAP-compliant financial statements generally require additional effort compared to financial statements that are not U.S. GAAP-compliant, the Commission estimates the proposed change will increase annual costs for each SEF required to create U.S. GAAP-compliant financial reports.

The Commission does not believe amended § 37.1306(c) will increase costs. Under existing § 37.1306(c), a SEF must provide sufficient documentation explaining the methodology it used to compute its financial resources requirements; accordingly, amended § 37.1306(c) is merely clarifying the type of information that is already required.[248] Similarly, the Commission does not believe amended § 37.1306(e) will materially increase costs since a SEF currently is required to maintain continuous compliance with its financial resources obligations. By requiring a SEF to notify the Commission within 48 hours of non-compliance, rather than informing the Commission through a SEF's quarterly financial submission, amended § 37.1306(e) could impose a *de minimis* cost to prepare a notice from a non-compliant SEF.

[248] *See* § 37.1306(c).

iv. Section 15(a) Factors

(1) Protection of Market Participants and the Public

The Commission previously noted that the financial resources requirements protect market participants and the public by establishing uniform standards and a system of Commission oversight that ensures trading occurs on a financially stable facility, which in turn, mitigates the risk of market disruptions, financial losses, and system problems that could arise from a SEF's failure to maintain adequate financial resources.[249] In the event that a SEF must wind down its operations, amended § 37.1303 explicitly requires a SEF to maintain sufficient liquid financial resources to conduct an orderly wind down of its operations, or three months of operating costs if greater than the SEF's wind-down costs.[250] The Commission believes the amended SEF financial requirements are better calibrated to the inherent risks of a SEF, and should result in greater efficiencies, but should not diminish the financial integrity of the SEF.

Moreover, under amended § 37.1306(e), a SEF is required to provide notice no later than 48 hours after it knows or reasonably should know that it no longer satisfies its financial resources obligations, ensuring that the Commission can take prompt action to protect market participants and the public. In contrast, the Commission currently is notified of non-compliance in a SEF's quarterly financial statements. Lastly, a SEF is required to submit U.S. GAAP-compliant quarterly financial submissions under amended § 37.1306(c) that explicitly identify the costs a SEF has excluded or prorated in determining its projected operating costs. As a result, the Commission will more easily be able to compare SEFs' financial health and take proactive steps to protect market participants and the public if the Commission identifies a SEF with weak financial health or the development of negative financial trends among SEFs that could endanger market participants or the public.

[249] *See* Core Principles Final Rule at 33580.

[250] As the Commission previously noted, a SEF with sufficient amounts of liquid financial resources would be better positioned to close out trading in a manner not disruptive to market participants or to members of the public who rely on SEF prices. *See* Core Principles Final Rule at 33580.

(2) Efficiency, Competitiveness, and Financial Integrity of the Markets

Amended § 37.1301(a) and § 37.1303, as further supplemented through the acceptable practices, together should benefit market efficiency by reducing capital costs since SEFs are no longer required to maintain an excessive amount of financial resources. Accordingly, a SEF should be able to more efficiently allocate its financial resources, which in turn should encourage market growth and innovation. For example, as noted above, in the case of amended § 37.1303, the Commission expects most SEFs will need to hold approximately 50 percent less liquid financial assets as reserve capital to cover operating costs. The existing financial resources requirements can pose a burden to a SEF that wishes to innovate, because they will impose higher capital requirements if the SEF wishes to offer new or experimental technology, execution methods, or related products and services. This is especially so if such business lines, products, or services are not expected to be immediately profitable or would have low margins.

The existing regulations may also discourage a SEF from offering more capital intensive activities, such as execution methods that involve human brokers compared to fully electronic trading that is less capital intensive. Accordingly, the Commission believes the amended financial resources requirements will be more neutral with respect to a SEF's chosen technology and business model, and therefore should encourage a greater variety of execution methods and related services and products in the market place.

Reducing capital costs may promote the entry of new entrants into the market by reducing start-up costs and initial capital requirements, thereby further encouraging competition and innovation. The increase in competition and innovation would depend on the extent to which potential new entrants respond to this encouragement.

Amended § 37.1306(e) should improve the financial integrity of markets by requiring a SEF to notify the Commission within 48 hours after it knows or reasonably should know that it no longer satisfies its financial resources obligations, ensuring that the Commission can take prompt action to protect market integrity. Lastly, amended § 37.1306(c) improves SEF financial submissions by requiring U.S. GAAP-compliant statements as well as clarifying that a SEF must explicitly identify any costs that it has excluded or prorated in determining its projected operating costs. These changes should improve the Commission's ability to conduct its oversight responsibilities to protect market integrity.

(3) Price Discovery

The Commission has not identified any effects of these rules on price discovery.

(4) Sound Risk Management Practices

By establishing specific standards with respect to how SEFs should assess and monitor the adequacy of their financial resources, the financial resources rules should promote sound risk management practices by SEFs. As noted above, amended § 37.1303 requires a SEF to identify its wind-down costs and associated timing and ensure it has sufficient liquid assets to maintain an orderly wind down. Similarly, amended § 37.1306(c) requires a SEF to explain the basis of its determination for its estimate of its wind-down costs and timing. Amended § 37.1306(e) requires a SEF to notify the Commission no later than 48 hours after it knows or reasonably should know it no longer satisfies its financial resources obligations. As a result, SEFs will be required to ensure they maintain the necessary procedures to identify, and to notify the Commission of, any non-compliance.

(5) Other Public Interest Considerations

The Commission has not identified any effects that these rules will have on public interest considerations other than those enumerated above, nor did any commenter suggest one.

v. Consideration of Alternatives and Comments

The Proposed Rule included requests for comment regarding possible alternatives to the proposed reporting requirements for SEFs. These included whether to require that a SEF's financial reports be audited, and whether financial reporting should be required on a semiannual rather than a quarterly basis.

WMBAA objected to the alternative of requiring that a SEF's financial reports be audited, contending, as discussed further above, that auditing reports would not improve oversight (*i.e.,* would not provide benefits).[251] WMBAA also argued the costs associated with an audited report are high and would pose a barrier to entry for new SEFs.[252] The Commission has determined not to adopt a requirement that SEF financial reports be audited.

Regarding the frequency of reports, WMBAA stated the current reporting requirement of quarterly financial reports is sufficient for ensuring capital adequacy, but that a semi-annual or annual report would also be adequate if a SEF is required to maintain all related documents and support for further inspection.[253] The Commission received no further comments comparing the costs and benefits of quarterly reporting to those of less frequent reporting. The Commission has determined to retain the existing quarterly reporting requirement for SEFs so that the Commission can remain abreast of a SEF's financial condition in a timely manner.

As noted above, commenters generally supported the proposed financial resources rules and offered no relevant alternatives other than those discussed above.[254] Accordingly, the Commission is generally finalizing the financial resources rules as proposed. However, there are two proposed provisions that the Commission has determined not to include in the Final Rules.

First, the Proposed Rule included amendments to § 37.1301(b), which requires a SEF that also operates as a DCO to also comply with the financial resource requirements for DCOs under § 39.11. Specifically, the Commission proposed to amend § 37.1301(b) to permit SEFs that also operate as DCOs to file a single financial report under § 39.11 that covers both the SEF and DCO. The Commission is not finalizing this proposed change as part of the Final Rules but is continuing to consider it.

Second, the proposed acceptable practices included a provision that would have allowed a SEF offering more than one bona fide execution method to include the costs of only one of those methods in calculating projected operating costs, with the goal of mitigating the burden for SEFs wishing to offer multiple execution methods. This proposed change was intended to be consistent with the Proposed Rule's removal of existing limitations on execution methods for Required Transactions. The Final Rules are not implementing the Proposed Rule's expansion of permissible execution methods for Required Transactions, nor is it eliminating the minimum trading functionality requirement that a SEF maintain an Order Book as one of its execution methods. Accordingly, the Commission is not finalizing this particular proposed acceptable practice at this time.

5. Chief Compliance Officer

i. Overview

The Commission is adopting several amendments to the CCO regulations. First, the Commission is allowing the senior officer[255] of a SEF to have the same oversight responsibilities with respect to the CCO as the SEF's board of directors. Specifically, the Commission is (i) amending existing § 37.1501(b)(1)(i) to allow a CCO to consult with either the board of directors or senior officer of the SEF as the CCO develops the SEF's policies and procedures; (ii) amending existing § 37.1501(c)(1)(iii)[256] to allow a CCO to meet with either the senior officer of the SEF or the board of directors on an annual basis; (iii) amending existing § 37.1501(c)(1)(iv)[257] to allow a CCO to provide self-regulatory program information to the SEF's senior officer or to the board of directors; and (iv) eliminating the restriction under existing § 37.1501(c)(3) that removal of the CCO requires approval of a majority of the board of directors or the senior officer if the SEF does not have a board of directors, and instead permitting the board of directors or the senior officer to remove the CCO under § 37.1501(b)(3)(i).

Second, the Commission is consolidating and amending existing § 37.1501(d)(5) and (6)[258] to allow a CCO to identify noncompliance matters through ''any means,'' in addition to the currently prescribed detection methods, and to clarify that the procedures followed to address noncompliance issues must be ''reasonably designed'' by the CCO to handle, respond, remediate, retest, and resolve noncompliance issues identified by the CCO. The Commission is also amending the CCO's duty to resolve conflicts of interest under existing § 37.1501(d)(2).[259] The Commission is refining the scope of the CCO's duty to take ''reasonable steps'' to resolve ''material'' conflicts of interest that may arise.

[251] 2019 WMBAA Letter at 21.

[252] *Id.*

[253] *Id.*

[254] Commenters did suggest several possible rules that, as discussed above, are beyond the scope of this rulemaking. Should the Commission propose any of these alternatives in the future, it will consider their costs and benefits at that time.

[255] As discussed below, the Commission proposes to define senior officer to mean the chief executive officer or other equivalent officer of the SEF.

[256] This requirement is in amended § 37.1501(b).

[257] This requirement is in amended § 37.1501(b)(6).

[258] This requirement is in amended § 37.1501(c)(5).

[259] This requirement is in amended § 37.1501(c)(2).

Third, the Commission is making certain amendments to the ACR regulations in existing § 37.1501(e) [260] in order to remove duplicative or unnecessary information requirements and streamline existing requirements. The Commission is removing existing § 37.1501(e)(2)(i), which requires a SEF to include in the ACR a review of all of the Commission regulations applicable to the SEF and identify the written policies and procedures designed to ensure compliance with the Act and Commission regulations. The Commission is also eliminating certain specific content required under existing § 37.1501(e)(4).[261] The Commission is amending existing § 37.1501(e)(5) [262] to require a SEF to only discuss material noncompliance matters and explain the corresponding actions taken to resolve such matters, rather than describing all compliance matters. The Commission is amending existing § 37.1501(e)(6) [263] to limit a SEF CCO's certification of an ACR's accuracy and completeness to ''all material respects'' of the report, rather than the entire report. The Commission is streamlining and reorganizing the remaining ACR content requirements, including consolidating the CCO's required description of the SEF's policies and procedures under existing § 37.1501(e)(1) [264] with the CCO's required assessment of the effectiveness of these policies and procedures under existing § 37.1501(e)(2)(ii), and consolidating the CCO's required narrative of any material changes made during the prior year along with any recommended potential or prospective changes and areas of improvement to the compliance program as required under existing § 37.1501(e)(3) and existing § 37.1501(e)(2)(iii),[265] respectively.

The Commission is finalizing several amendments to simplify the ACR submission procedures. The Commission is amending existing § 37.1501(f)(2) [266] to provide SEFs with an additional 30 days to file the ACR with the Commission. Additionally, the Commission is eliminating the ''substantial and undue hardship'' standard required for ACR extension requests and replacing it with a ''reasonable and valid'' standard set forth in existing § 37.1501(f)(4).[267] The Commission is amending existing § 37.1501(f)(3) [268] to require that the CCO submit an amended ACR to the SEF's board of directors or, in the absence of a board of directors, the senior officer of the SEF, for review prior to submitting the amended ACR to the Commission.

In addition to these substantive changes, the Commission is adopting a number of conforming, clarifying, and streamlining changes that would not impose new costs or result in new benefits and are not discussed below. The Commission is eliminating the CCO's obligations to the ROC, including existing § 37.1501(c)(1)(iii), which requires a quarterly meeting with the ROC and existing § 37.1501(c)(1)(iv), which requires the CCO to provide self-regulatory program information to the ROC. The Final Rule will not impact SEFs as there is no requirement that a SEF have a ROC.

Additionally, the Commission is consolidating existing § 37.1501(b) and (c) into final § 37.1501(b). The Commission is eliminating existing § 37.1501(b)(1), which requires a SEF to designate a CCO and existing § 37.1501(c)(2), which requires the CCO to report directly to the board of directors or the senior officer of the SEF, as these requirements are already contained under § 37.1500.

The Commission is eliminating the requirement under existing § 37.1501(f)(1) that a SEF document the submission of the ACR to the SEF's board of directors or senior officer in the board minutes or some other similar written record. This requirement is already covered in the general recordkeeping requirements in amended § 37.1501(f), which is existing § 37.1501(g).

The Commission is finalizing an amendment to § 37.1501(a)(2) to define a ''senior officer'' as ''the chief executive officer or other equivalent officer of the swap execution facility.'' [269] Finally, the Commission is adopting a new acceptable practice to Core Principle 15 in Appendix B that provides a non-exclusive list of factors that a SEF may consider when evaluating an individual's qualifications to be a CCO.[270] This acceptable practice will provide a safe harbor and not impose new obligations.

ii. Benefits

The amendments give the senior officer the same authority as the board of directors to oversee the CCO and provide SEFs with greater opportunity to structure the management and oversight of the CCO based on the SEF's particular corporate structure, size, and complexity. This could increase efficiency and reduce costs. Additionally, the quality of oversight of the CCO could improve if the senior officer is better positioned than the board of directors to provide day-to-day oversight of the CCO.

The amendments permit a CCO to use any means to identify noncompliance issues and are less prescriptive than the existing rule, which could increase efficiency and reduce costs. The amendment to § 37.1501(d) refines the scope of the required information in an ACR and should make the ACR process more efficient and reduce costs. The removal of § 37.1501(e)(2)(i) and certain specific content set forth under § 37.1501(e)(4) should reduce the amount of time that a CCO and his or her staff spend preparing the ACR.

Amended § 37.1501(d)(4), which requires SEFs to focus on describing material non-compliance matters, rather than describing all compliance matters, should streamline the ACR requirement and provide more useful information to the Commission. Additionally, the clarification under § 37.1501(e)(3) that the CCO must submit an amended ACR to the SEF's board of directors or, in the absence of a board of directors, the senior officer of the SEF, should reduce the need for extensive follow-up discussions.

Finally, the amendment allowing SEFs more time to submit their ACRs should reduce the time and resource burden on CCOs and SEFs' compliance departments. This additional time should allow SEFs to fully complete their ACRs and meet their other end-of-year reporting obligations such as the fourth-quarter financial report. However, the Commission understands that those SEFs that already may rely on Commission staff no-action relief for an extra 30 days to complete the ACR may have already availed themselves of the benefits associated with the extended reporting deadline.

[260] This requirement is in amended § 37.1501(d).

[261] This requirement is in amended § 37.1501(d)(3). The eliminated provisions currently require a discussion of the SEF's compliance staffing and structure, a catalogue of investigations and disciplinary actions taken over the last year, and a review of disciplinary committee and panel performance.

[262] This requirement is in amended § 37.1501(d)(4).

[263] This requirement is in amended § 37.1501(d)(5).

[264] This requirement is in amended § 37.1501(d)(1).

[265] This requirement is in amended § 37.1501(d)(2).

[266] This requirement is in amended § 37.1501(e)(2).

[267] This requirement is in amended § 37.1501(e)(4).

[268] This requirement is in amended § 37.1501(e)(3).

[269] In the SEF Core Principles Final Rule, the Commission did not adopt a definition of ''senior officer,'' but noted that the statutory term would only include the most senior executive officer of the legal entity registered as a SEF. *See* SEF Core Principles Final Rule at 33544.

[270] 17 CFR part 37 app. B.

iii. Costs

The amendments to § 37.1501(b) that authorize the senior officer to oversee the CCO could impair the independence of the CCO, and as a result, the CCO's oversight of the SEF. However, the Commission believes this concern is mitigated by the Commission's review of annual ACRs and its examination program.

The amendments eliminate requirements that the CCO identify noncompliance matters using certain specified detection methods, design procedures that detect and resolve all possible noncompliance issues, and eliminate all potential conflicts of interest. These requirements are replaced by more flexible standards, which could potentially allow for some impairment of a CCO's oversight of the SEF's compliance in some circumstances. However, the Commission believes the resulting costs (in the form of potential adverse consequences) will not be material because the amendments require a CCO to focus on material aspects of the compliance program (*e.g.,* material breaches and material conflicts of interest). The Commission believes placing the focus on material compliance issues, rather than all compliance issues, will not adversely impact SEF compliance.

The amendments to § 37.1501(e) that reduce the information required in an ACR could make it more difficult for the Commission to assess a SEF's compliance and self-regulatory programs. However, the Commission does not anticipate that these changes will materially impact the Commission's assessment, as the Commission already receives or has access to such information from other sources. For example, the Commission approves the SEF's compliance staffing and structure as part of the SEF's registration or rule submission, and annual updates provide minimal additional information, at best. In addition, SEFs report finalized disciplinary actions to the NFA,[271] and the Commission is able to access this information through its oversight of the NFA.

Finally, the amendment providing SEFs more time to submit their ACRs could delay the Commission recognizing and addressing a SEF compliance issue. However, the Commission anticipates that such risk is mitigated to the extent that SEFs submit ACRs on the timeline set forth in the Final Rules. The Commission's experience has not indicated that delayed reporting pursuant to Commission staff no-action relief has adversely impacted its ability to recognize and address compliance issues in a timely manner.

iv. Section 15(a) Factors

(1) Protection of Market Participants and the Public

The Commission believes the changes to the existing SEF CCO requirements are likely to better enable the Commission to protect market participants and the public. Specifically, the Commission should be better able to assess whether a SEF's policies and procedures adversely impact a SEF's operations or its ability to comply with the core principles or Commission's regulations, which are intended in part to protect market participants.

The changes to the ACR requirements under amended § 37.1501(d) should better enable the Commission to assess the effectiveness of a SEF's compliance and self-regulatory programs; this assessment is intended, in part, to protect market participants. The amendments will remove some of the duplicative and unnecessary content requirements and require the ACR to focus on describing material non-compliance matters. The Commission believes the new requirements will streamline the ACR and provide more useful information to the Commission. Removing these information requirements, *e.g.,* requirements to review all Commission regulations applicable to a SEF and to identify the written policies and procedures enacted to foster compliance, will likely reduce the amount of information in an ACR. However, the Commission has determined, based on its experience with the existing requirements, that this information generally does not enhance the usefulness of the ACR.

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

The Commission is promoting the efficiency and integrity of a SEF's market by allowing a more streamlined compliance approach that does not require the board of directors to assume primary oversight responsibility for the CCO. This streamlined approach should, in many circumstances, permit CCOs to more efficiently make changes to the regulatory program in response to potential trading violations, which should aid in protecting the financial integrity of the market. Furthermore, the focus of CCOs' duties on reasonably designed procedures to address noncompliance issues and material conflicts of interest should improve CCOs' effectiveness by specifying that this is the appropriate standard. This increased effectiveness should permit CCOs to better allocate resources to focus on detecting and deterring material rule violations, which otherwise may harm the market's efficiency, competitiveness, and integrity.

(3) Price Discovery

The Commission believes the changes to the CCO requirements will not impede a CCO's ability to ensure compliance and are unlikely to have a substantial impact on price discovery.

(4) Sound Risk Management Practices

The Commission believes the new CCO rules should promote sound risk management practices. The gains in this regard will depend on the quality and effective implementation of the policies and practices that SEFs currently have in place and the new policies and procedures that they will adopt due to the proposed amendments.

(5) Other Public Interest Considerations

The Commission has not identified any effects that these rules will have on public interest considerations other than those enumerated above, nor did any commenter suggest one.

v. Consideration of Alternatives and Comments

Commenters support the proposed changes. WMBAA supports the amendments to add a definition of senior officer,[272] to amend the CCO's duties,[273] to the preparation of the ACR,[274] and to the ACR submission requirements.[275] Refinitiv supports the amendments to the preparation of the ACR.[276] The Commission did not receive any comments on the proposed amendments to the CCO's recordkeeping requirements.

The Commission also proposed to eliminate the existing enumerated conflicts of interest to avoid any inference that they are an exhaustive list of conflicts that a CCO must address. The Commission has determined that the list of potential conflicts that a CCO should resolve under existing § 37.1500(d)(2) does not create

[271] *See* § 9.11 (which states that whenever an exchange decision pursuant to which a disciplinary action or access denial action is to be imposed has become final, the exchange must, within 30 days thereafter, provide written notice of such action to the person against whom the action was taken and notice to the National Futures Association). 17 CFR 9.11.

[272] 2019 WMBAA Letter at 23.

[273] *Id.* at 25.

[274] *Id.* at 26.

[275] *Id.* at 27.

[276] Refinitiv Letter at 14.

confusion, but instead provides useful examples, and the list will not be eliminated as proposed.

D. Antitrust Considerations

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.[277] In the notice of proposed rulemaking, the Commission requested comments on whether: (1) The proposed rulemaking implicates any other specific public interest to be protected by the antitrust laws; (2) the proposed rulemaking is anticompetitive; and (3) there are less anticompetitive means of achieving the relevant purposes of the CEA.

The Commission does not anticipate that the amendments to part 37 that it is adopting in this rule will result in anticompetitive behavior. The Commission received no comments on the antitrust considerations of the proposed rules finalized herein.

List of Subjects in 17 CFR Part 37

Swap execution facilities.

For the reasons stated in the preamble, the Commodity Futures Trading Commission amends 17 CFR part 37 as follows:

PART 37—SWAP EXECUTION FACILITIES

■ 1. The authority citation for Part 37 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 5, 6, 6c, 7, 7a–2, 7b–3, and 12a, as amended by Titles VII and VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376.

■ 2. Amend § 37.205 by revising paragraph (a) and removing paragraph (b)(2)(iv), the revision to read as follows:

§ 37.205 Audit trail.

(a) *Audit trail required.* A swap execution facility shall capture and retain all audit trail data necessary to detect, investigate, and prevent customer and market abuses. Such data shall be sufficient to reconstruct all indications of interest, requests for quotes, orders, and trades within a reasonable period of time and to provide evidence of any violations of the rules of the swap execution facility. An acceptable audit trail shall also permit the swap execution facility to track a customer order from the time of receipt through execution on the swap execution facility.

* * * * *

■ 3. Revise subpart N to read as follows:

Subpart N—Financial Resources

§ 37.1300 Core Principle 13—Financial resources.

(a) *In general.* The swap execution facility shall have adequate financial, operational, and managerial resources to discharge each responsibility of the swap execution facility.

(b) *Determination of resource adequacy.* The financial resources of a swap execution facility shall be considered to be adequate if the value of the financial resources exceeds the total amount that would enable the swap execution facility to cover the operating costs of the swap execution facility for a one-year period, as calculated on a rolling basis.

§ 37.1301 General requirements.

(a) A swap execution facility shall maintain financial resources on an ongoing basis that are adequate to enable it to comply with the core principles set forth in section 5h of the Act and any applicable Commission regulations. Financial resources shall be considered adequate if their value exceeds the total amount that would enable the swap execution facility to cover its projected operating costs necessary for the swap execution facility to comply with section 5h of the Act and applicable Commission regulations for a one-year period, as calculated on a rolling basis pursuant to § 37.1304.

(b) An entity that operates as both a swap execution facility and a derivatives clearing organization shall also comply with the financial resource requirements of § 39.11 of this chapter.

§ 37.1302 Types of financial resources.

Financial resources available to satisfy the requirements of § 37.1301 may include:

(a) The swap execution facility's own capital, meaning its assets minus its liabilities calculated in accordance with generally accepted accounting principles in the United States; and

(b) Any other financial resource deemed acceptable by the Commission.

§ 37.1303 Liquidity of financial resources.

The financial resources allocated by the swap execution facility to meet the ongoing requirements of § 37.1301 shall include unencumbered, liquid financial assets (*i.e.,* cash and/or highly liquid securities) equal to at least the greater of three months of projected operating costs, as calculated on a rolling basis, or the projected costs needed to wind down the swap execution facility's operations, in each case as determined under § 37.1304. If a swap execution facility lacks sufficient unencumbered, liquid financial assets to satisfy its obligations under this section, the swap execution facility may satisfy this requirement by obtaining a committed line of credit or similar facility in an amount at least equal to such deficiency.

§ 37.1304 Computation of costs to meet financial resources requirement.

A swap execution facility shall each fiscal quarter, make a reasonable calculation of its projected operating costs and wind-down costs in order to determine its applicable obligations under §§ 37.1301 and 37.1303. The swap execution facility shall have reasonable discretion in determining the methodologies used to compute such amounts. The Commission may review the methodologies and require changes as appropriate.

§ 37.1305 Valuation of financial resources.

No less than each fiscal quarter, a swap execution facility shall compute the current market value of each financial resource used to meet its obligations under §§ 37.1301 and 37.1303. Reductions in value to reflect market and credit risk (''haircuts'') shall be applied as appropriate.

§ 37.1306 Reporting to the Commission.

(a) Each fiscal quarter, or at any time upon Commission request, a swap execution facility shall provide a report to the Commission that includes:

(1) The amount of financial resources necessary to meet the requirements of §§ 37.1301 and 37.1303, computed in accordance with the requirements of § 37.1304, and the market value of each available financial resource, computed in accordance with the requirements of § 37.1305; and

(2) Financial statements, including the balance sheet, income statement, and statement of cash flows of the swap execution facility.

(i) The financial statements shall be prepared in accordance with generally accepted accounting principles in the United States, prepared in English, and denominated in U.S. dollars.

[277] 7 U.S.C. 19(b).

(ii) The financial statements of a swap execution facility that is not domiciled in the United States, and is not otherwise required to prepare financial statements in accordance with generally accepted accounting principles in the United States, may satisfy the requirement in paragraph (a)(2)(i) of this section if such financial statements are prepared in accordance with either International Financial Reporting Standards issued by the International Accounting Standards Board, or a comparable international standard as the Commission may otherwise accept in its discretion.

(b) The calculations required by paragraph (a) of this section shall be made as of the last business day of the swap execution facility's applicable fiscal quarter.

(c) With each report required under paragraph (a) of this section, the swap execution facility shall also provide the Commission with sufficient documentation explaining the methodology used to compute its financial requirements under §§ 37.1301 and 37.1303. Such documentation shall:

(1) Allow the Commission to reliably determine, without additional requests for information, that the swap execution facility has made reasonable calculations pursuant to § 37.1304; and

(2) Include, at a minimum:

(i) A total list of all expenses, without any exclusion;

(ii) All expenses and the corresponding amounts, if any, that the swap execution facility excluded or prorated when determining its operating costs, calculated on a rolling basis, required under §§ 37.1301 and 37.1303, and the basis for any determination to exclude or prorate any such expenses;

(iii) Documentation demonstrating the existence of any committed line of credit or similar facility relied upon for the purpose of meeting the requirements of § 37.1303 (*e.g.,* copies of agreements establishing or amending a credit facility or similar facility); and

(iv) All costs that a swap execution facility would incur to wind down the swap execution facility's operations, the projected amount of time for any such wind-down period, and the basis of its determination for the estimation of its costs and timing.

(d) The reports and supporting documentation required by this section shall be filed not later than 40 calendar days after the end of the swap execution facility's first three fiscal quarters, and not later than 90 calendar days after the end of the swap execution facility's fourth fiscal quarter, or at such later time as the Commission may permit, in its discretion, upon request by the swap execution facility.

(e) A swap execution facility shall provide notice to the Commission no later than 48 hours after it knows or reasonably should know that it no longer meets its obligations under § 37.1301 or 37.1303.

§ 37.1307 Delegation of authority.

(a) The Commission hereby delegates, until it orders otherwise, to the Director of the Division of Market Oversight or such other employee or employees as the Director may designate from time to time, authority to:

(1) Determine whether a particular financial resource under § 37.1302 may be used to satisfy the requirements of § 37.1301;

(2) Review and make changes to the methodology used to compute projected operating costs and wind-down costs under § 37.1304 and the valuation of financial resources under § 37.1305;

(3) Request reports, in addition to those required in § 37.1306, or additional documentation or information under § 37.1306(a), (c), and (e); and

(4) Grant an extension of time to file fiscal quarter reports under § 37.1306(d).

(b) The Director may submit to the Commission for its consideration any matter that has been delegated in this section. Nothing in this section prohibits the Commission, at its election, from exercising the authority delegated in this section.

■ 4. Revise § 37.1501 to read as follows:

§ 37.1501 Chief compliance officer.

(a) *Definitions.* For purposes of this part, the term—

Board of directors means the board of directors of a swap execution facility, or for those swap execution facilities whose organizational structure does not include a board of directors, a body performing a function similar to a board of directors.

Senior officer means the chief executive officer or other equivalent officer of the swap execution facility.

(b) *Chief compliance officer*—(1) *Authority of chief compliance officer.* (i) The position of chief compliance officer shall carry with it the authority and resources to develop, in consultation with the board of directors or senior officer, the policies and procedures of the swap execution facility and enforce such policies and procedures to fulfill the duties set forth for chief compliance officers in the Act and Commission regulations.

(ii) The chief compliance officer shall have supervisory authority over all staff acting at the direction of the chief compliance officer.

(2) *Qualifications of chief compliance officer.* (i) The individual designated to serve as chief compliance officer shall have the background and skills appropriate for fulfilling the responsibilities of the position.

(ii) No individual disqualified from registration pursuant to sections 8a(2) or 8a(3) of the Act may serve as a chief compliance officer.

(3) *Appointment and removal of chief compliance officer.* (i) Only the board of directors or the senior officer may appoint or remove the chief compliance officer.

(ii) The swap execution facility shall notify the Commission within two business days of the appointment or removal, whether interim or permanent, of a chief compliance officer.

(4) *Compensation of the chief compliance officer.* The board of directors or the senior officer shall approve the compensation of the chief compliance officer.

(5) *Annual meeting with the chief compliance officer.* The chief compliance officer shall meet with the board of directors or senior officer of the swap execution facility at least annually.

(6) *Information requested of the chief compliance officer.* The chief compliance officer shall provide any information regarding the self-regulatory program of the swap execution facility as requested by the board of directors or the senior officer.

(c) *Duties of chief compliance officer.* The duties of the chief compliance officer shall include, but are not limited to, the following:

(1) Overseeing and reviewing compliance of the swap execution facility with section 5h of the Act and any related rules adopted by the Commission;

(2) Taking reasonable steps, in consultation with the board of directors or the senior officer of the swap execution facility, to resolve any material conflicts of interest that may arise, including, but not limited to:

(i) Conflicts between business considerations and compliance requirements;

(ii) Conflicts between business considerations and the requirement that the swap execution facility provide fair, open, and impartial access as set forth in § 37.202; and;

(iii) Conflicts between a swap execution facility's management and members of the board of directors;

(3) Establishing and administering written policies and procedures reasonably designed to prevent violations of the Act and the rules of the Commission;

(4) Taking reasonable steps to ensure compliance with the Act and the rules of the Commission;

(5) Establishing procedures reasonably designed to handle, respond, remediate, retest, and resolve noncompliance issues identified by the chief compliance officer through any means, including any compliance office review, look-back, internal or external audit finding, self-reported error, or validated complaint;

(6) Establishing and administering a compliance manual designed to promote compliance with the applicable laws, rules, and regulations and a written code of ethics for the swap execution facility designed to prevent ethical violations and to promote honesty and ethical conduct by personnel of the swap execution facility;

(7) Supervising the self-regulatory program of the swap execution facility with respect to trade practice surveillance; market surveillance; real time market monitoring; compliance with audit trail requirements; enforcement and disciplinary proceedings; audits, examinations, and other regulatory responsibilities (including taking reasonable steps to ensure compliance with, if applicable, financial integrity, financial reporting, sales practice, recordkeeping, and other requirements); and

(8) Supervising the effectiveness and sufficiency of any regulatory services provided to the swap execution facility by a regulatory service provider in accordance with § 37.204.

(d) *Preparation of annual compliance report.* The chief compliance officer shall, not less than annually, prepare and sign an annual compliance report that covers the prior fiscal year. The report shall, at a minimum, contain:

(1) A description and self-assessment of the effectiveness of the written policies and procedures of the swap execution facility, including the code of ethics and conflict of interest policies, to reasonably ensure compliance with the Act and applicable Commission regulations;

(2) Any material changes made to compliance policies and procedures during the coverage period for the report and any areas of improvement or recommended changes to the compliance program;

(3) A description of the financial, managerial, and operational resources set aside for compliance with the Act and applicable Commission regulations;

(4) Any material non-compliance matters identified and an explanation of the corresponding action taken to resolve such non-compliance matters; and

(5) A certification by the chief compliance officer that, to the best of his or her knowledge and reasonable belief, and under penalty of law, the annual compliance report is accurate and complete in all material respects.

(e) *Submission of annual compliance report and related matters*—(1) *Furnishing the annual compliance report prior to submission to the Commission.* Prior to submission to the Commission, the chief compliance officer shall provide the annual compliance report for review to the board of directors of the swap execution facility or, in the absence of a board of directors, to the senior officer of the swap execution facility. Members of the board of directors and the senior officer shall not require the chief compliance officer to make any changes to the report.

(2) *Submission of annual compliance report to the Commission.* The annual compliance report shall be submitted electronically to the Commission not later than 90 calendar days after the end of the swap execution facility's fiscal year. The swap execution facility shall concurrently file the annual compliance report with the fourth-quarter financial report pursuant to § 37.1306.

(3) *Amendments to annual compliance report.* (i) Promptly upon discovery of any material error or omission made in a previously filed annual compliance report, the chief compliance officer shall file an amendment with the Commission to correct the material error or omission. The chief compliance officer shall submit the amended annual compliance report to the board of directors, or in the absence of a board of directors, to the senior officer of the swap execution facility, pursuant to paragraph (e)(1) of this section.

(ii) An amendment shall contain the certification required under paragraph (d)(5) of this section.

(4) *Request for extension.* A swap execution facility may request an extension of time to file its annual compliance report from the Commission. Reasonable and valid requests for extensions of the filing deadline may be granted at the discretion of the Commission.

(f) *Recordkeeping.* The swap execution facility shall maintain all records demonstrating compliance with the duties of the chief compliance officer and the preparation and submission of annual compliance reports consistent with §§ 37.1000 and 37.1001.

(g) *Delegation of authority.* The Commission hereby delegates, until it orders otherwise, to the Director of the Division of Market Oversight or such other employee or employees as the Director may designate from time to time, the authority to grant or deny a request for an extension of time for a swap execution facility to file its annual compliance report under paragraph (e)(4) of this section. The Director may submit to the Commission for its consideration any matter that has been delegated in this paragraph. Nothing in this paragraph prohibits the Commission, at its election, from exercising the authority delegated in this paragraph.

■ 5. Amend Appendix B to Part 37 by:

■ a. Under the heading ''Core Principle 13 of Section 5h of the Act—Financial Resources,'' adding paragraph (b); and

■ b. Under the heading ''Core Principle 15 of Section 5h of the Act—Designation of Chief Compliance Officer,'' adding paragraph (b).

The additions read as follows:

Appendix B to Part 37—Guidance on, and Acceptable Practices in, Compliance With Core Principles

* * * * *

Core Principle 13 of Section 5h of the Act—Financial Resources

* * * * *

(b) *Acceptable Practices*—(1) *Reasonable calculation of projected operating costs.* In connection with a swap execution facility calculating its projected operating costs, the Commission has determined that a reasonable calculation should include all expenses necessary for the swap execution facility to comply with the core principles set forth in section 5h of the Act and any applicable Commission regulations. This calculation should be based on the swap execution facility's current level of business and business model, and should take into account any projected modification to its business model (*e.g.,* the addition or subtraction of business lines or operations or other changes), and any projected increase or decrease in its level of business over the next 12 months. The Commission believes, however, that it may be reasonable for a swap execution facility to exclude the following expenses (''excludable expenses'') from its projected operating cost calculations:

(i) Costs attributable solely to sales, marketing, business development, product development, or recruitment and any related travel, entertainment, event, or conference costs;

(ii) Compensation and related taxes and benefits for swap execution facility personnel who are not necessary to ensure that the swap execution facility is able to comply with the core principles set forth in section 5h of the Act and any applicable Commission regulations;

(iii) Costs for acquiring and defending patents and trademarks for swap execution facility products and related intellectual property;

(iv) Magazine, newspaper, and online periodical subscription fees;

(v) Tax preparation and audit fees;

(vi) To the extent not covered by paragraphs (b)(1)(ii) or (iii) of this Core Principle 13 of Section 5h of the Act—Financial Resources, the variable commissions that a voice-based swap execution facility may pay to its SEF trading specialists (as defined under § 37.201(c)), calculated as a percentage of transaction revenue generated by the voice-based swap execution facility. Unlike fixed salaries or compensation, such variable commissions are not payable unless and until revenue is collected by the swap execution facility; and

(vii) Any non-cash costs, including depreciation and amortization.

(2) *Prorated expenses.* The Commission recognizes that, in the normal course of a swap execution facility's business, there may be an expense (*e.g.,* typically related to overhead) that is only partially attributable to a swap execution facility's ability to comply with the core principles set forth in section 5h of the Act and any applicable Commission regulations; accordingly, such expense may need to be only partially attributed to the swap execution facility's projected operating costs. For example, if a swap execution facility's office rental space includes marketing personnel and compliance personnel, the swap execution facility may exclude the prorated office rental expense attributable to the marketing personnel. In order to prorate an expense, a swap execution facility should:

(i) Maintain sufficient documentation that reasonably shows the extent to which an expense is partially attributable to an excludable expense;

(ii) Identify any prorated expense in the financial reports that it submits to the Commission pursuant to § 37.1306; and

(iii) Sufficiently explain why it prorated any expense. Common allocation methodologies that can be used include actual use, headcount, or square footage. A swap execution facility may provide documentation, such as copies of service agreements, other legal documents, firm policies, audit statements, or allocation methodologies to support its determination to prorate an expense.

(3) *Expenses allocated among affiliates.* The Commission recognizes that a swap execution facility may share certain expenses with affiliated entities, such as parent entities or other subsidiaries of the parent. For example, a swap execution facility may share employees (including employees on secondment from an affiliate) that perform similar tasks for the affiliated entities or may share office space with its affiliated entities. Accordingly, the Commission believes that it would be reasonable, for purposes of calculating its projected operating costs, for a swap execution facility to prorate any shared expense that the swap execution facility pays for, but only to the extent that such shared expense is actually attributable to the affiliate and for which the swap execution facility is reimbursed. Similarly, a reasonable calculation of a swap execution facility's projected operating costs must include the prorated amount of any expense paid for by an affiliated entity to the extent that the shared expense is attributable to the swap execution facility. In order to prorate a shared expense, the swap execution facility should:

(i) Maintain sufficient documentation that reasonably shows the extent to which the shared expense is attributable to and paid for by the swap execution facility and/or affiliated entity;

(ii) Identify any shared expense in the financial reports that it submits to the Commission; and

(iii) Sufficiently explain why it prorated any shared expense. A swap execution facility may provide documentation, such as copies of service agreements, other legal documents, firm policies, audit statements, or allocation methodologies, that reasonably shows how expenses are attributable to, and paid for by, the swap execution facility and/ or its affiliated entities to support its determination to prorate an expense.

* * * * *

Core Principle 15 of Section 5h of the Act—Designation of Chief Compliance Officer

* * * * *

(b) *Acceptable Practices*—(1) *Qualifications of chief compliance officer.* In determining whether the background and skills of a potential chief compliance officer are appropriate for fulfilling the responsibilities of the role of the chief compliance officer, the swap execution facility has the discretion to base its determination on the totality of the qualifications of the potential chief compliance officer, including, but not limited to, compliance experience, related career experience, training, and any other relevant factors to the position. A swap execution facility should be especially vigilant regarding potential conflicts of interest when appointing a chief compliance officer.

(2) [Reserved]

Issued in Washington, DC, on December 23, 2020, by the Commission.

Christopher Kirkpatrick,

Secretary of the Commission.

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

Appendices To Swap Execution Facilities—Commission Voting Summary and Commissioners' Statements

Appendix 1—Commission Voting Summary

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

Appendix 2—Statement of Concurrence of Commissioner Rostin Behnam

More than two years ago, in November 2018, the Commission voted to propose a comprehensive overhaul of the existing framework for swap execution facilities (SEFs).[1] Today, the Commission issues two rules finalizing aspects of the SEF Proposal and a withdrawal of the SEF Proposal's unadopted provisions. This is the final step in a long road. Last month, the Commission finalized rules emanating from the SEF Proposal regarding codification of existing no-action letters regarding, among other things, package transactions.[2] Today's final rules and withdrawal complete the Commission's consideration of the SEF Proposal.

Back in November 2018, I expressed concern that finalization of the SEF Proposal would reduce transparency, increase limitations on access to SEFs, and add significant costs for market participants.[3] I also noted that, while the existing SEF framework could benefit from targeted changes, particularly the codification of existing no-action relief, the SEF framework has in many ways been a success. I pointed out that the Commission's work to promote swaps trading on SEFs has resulted in increased liquidity, while adding pre-trade price transparency and competition. Nonetheless, I voted to put the SEF Proposal out for public comment, anticipating that the notice and comment process would guide the Commission in identifying a narrower set of changes that would improve the current SEF framework and better align it with the statutory mandate and the underling policy objectives shaped after the 2008 financial crisis.[4] More than two years and many comment letters later, that is exactly what has happened. The Commission has been precise and targeted in its finalization of specific provisions from the SEF Proposal that provide needed clarity to market participants and promote consistency, competitiveness, and appropriate operational flexibility consistent with the core principles.

In addition to expressing substantive concerns about the overbreadth of the SEF Proposal, I also voiced concerns that we were rushing by having a comparatively short 75-day comment period.[5] In the end, the comment period was rightly extended, and the Commission has taken the time necessary to carefully evaluate the appropriateness of the SEF Proposal in consideration of its regulatory and oversight responsibilities and the comments received. I think that the consideration of the SEF Proposal is an example of how the process is supposed to work. When we move too quickly toward the finish line and without due consideration of the surrounding environment, we risk making a mistake that will impact our markets and market participants.

Finally, I would like to address the Commission's separate vote to withdraw the unadopted provisions of the SEF Proposal. In the past, I have expressed concern with such withdrawals by an agency that has historically prided itself on collegiality and

[1] Swap Execution Facilities and Trade Execution Requirement, 83 FR 61946 (Nov. 30, 2018) (the ''SEF Proposal'').

[2] Swap Execution Facility Requirements (Nov. 18, 2020), *https://www.cftc.gov/PressRoom/PressReleases/8313-20.*

[3] Statement of Concurrence of Commissioner Rostin Behnam Regarding Swap Execution Facilities and Trade Execution Requirement, *https://www.cftc.gov/PressRoom/SpeechesTestimony/behnamstatement110518a.*

[4] *Id.*

[5] *Id.*

working in a bipartisan fashion.[6] In the case of today's withdrawal, the Commission has voted on all appropriate aspects of the SEF Proposal through three rules finalized during the past month. The Commission has voted unanimously on all of these rules, including today's decision to withdraw the remainder from further consideration. While normally a single proposal results in a single final rule, in this instance, multiple final rules have been finalized emanating from the SEF Proposal. This could lead to confusion regarding the Commission's intentions regarding the many unadopted provisions of the SEF Proposal. Under such circumstances, I think it is appropriate to provide market participants with clarity regarding the SEF Proposal. Accordingly, I will support today's withdrawal of the SEF Proposal. But rather than viewing it as a withdrawal of the SEF Proposal, I see it as an affirmation of the success of the existing SEF framework and the careful process to markedly improve the SEF framework in a measured and thoughtful way.

Appendix 3—Statement of Commissioner Dan M. Berkovitz

I support the Commission's decision to withdraw its 2018 proposal to overhaul the regulation of swap execution facilities (''SEFs'') [1] (''2018 SEF NPRM'') and proceed instead with targeted adjustments to our SEF rules (''Final Rules''). The two Final Rules approved today will make minor changes to SEF requirements while retaining the progress we have made in moving standardized swaps onto electronic trading platforms, which has enhanced the stability, transparency, and competitiveness of our swaps markets.[2]

When the Commission issued the 2018 SEF NPRM, I proposed that we enhance the existing swaps trading system instead of dismantling it. For example, I urged the Commission to clarify the floor trader exception to the swap dealer registration requirement and abolish the practice of post-trade name give-up for cleared swaps. I am pleased that the Commission already has acted favorably on both of those matters. Today's rulemaking represents a further positive step in this targeted approach.

Many commenters to the 2018 SEF NPRM supported this incremental approach, advocating discrete amendments rather than wholesale changes. Today, the Commission is adopting two Final Rules that codify tailored amendments that received general support from commenters. The first rule—Swap Execution Facilities—amends part 37 to address certain operational challenges that SEFs face in complying with current requirements, some of which are currently the subject of no-action relief or other Commission guidance. The second rule—Exemptions from Swap Trade Execution Requirement—exempts two categories of swaps from the trade execution requirement, both of which are linked to exceptions to or exemptions from the swap clearing requirement.

Swap Execution Facilities: Audit Trail Data, Financial Resources and Reporting, and Requirements for Chief Compliance Officers

Commission regulations require a SEF to capture and retain all audit trail data necessary to detect, investigate, and prevent customer and market abuses, which currently includes identification of each account to which fills are ultimately allocated.[3] Following the adoption of these regulations, SEFs represented that they are unable to capture post-execution allocation data because the allocations occur away from the SEF, prompting CFTC staff to issue no-action relief. Other parties, including DCOs and account managers, must capture and retain post-execution allocation information and produce it to the CFTC upon request, and SEFs are required to establish rules that allow them obtain this allocation information from market participants as necessary to fulfill their self-regulatory responsibilities. Given that staff is not aware of any regulatory gaps that have resulted from SEFs' reliance on the no-action letter, codifying this alternative compliance framework is appropriate.

This Swap Execution Facility final rule also will amend part 37 to tie a SEF's financial resource requirements more closely to the cost of its operations, whether in complying with core principles and Commission regulations or winding down its operations. Based on its experience implementing the SEF regulatory regime, the Commission believes that these amended resource requirements—some of which simply reflect current practice—will be sufficient to ensure that a SEF is financially stable while avoiding the imposition of unnecessary costs. Additional amendments to part 37, including requirements that a SEF must prepare its financial statements in accordance with U.S. GAAP standards, identify costs that it has excluded in determining its projected operated costs, and notify the Commission within 48 hours if it is unable to comply with its financial resource requirements, will further enhance the Commission's ability to exercise it oversight responsibilities.

Finally, this rule makes limited changes to the Chief Compliance Officer (''CCO'') requirements. As a general matter, I agree that the Commission should clarify certain CCO duties and streamline CCO reporting requirements where information is duplicative or not useful to the Commission. Although the CCO requirements diverge somewhat from those for futures commission merchants and swap dealers, the role of SEFs is different and therefore, standardization is not always necessary or appropriate. I expect that the staff will continue to monitor the effects of all of the changes adopted today and inform the Commission if it believes further changes to our rules are needed.

Exemptions From Swap Trade Execution Requirement

Commodity Exchange Act (''CEA'') section 2(h)(8) specifies that a swap that is excepted from the clearing requirement pursuant to CEA section 2(h)(7) is not subject to the requirement to trade the swap on a SEF. Accordingly, swaps that fall into the statutory swap clearing exceptions (*e.g.,* commercial end-users and small banks) are also excepted from the trading mandate. However, the Commission has also exempted from mandatory clearing swaps entered into by certain entities (*e.g.,* cooperatives, central banks, and swaps between affiliates) using different exemptive authorities from section 2(h)(7).

The Exemptions from Swap Trade Execution Requirement final rule affirms the link between the clearing mandate and the trading mandate for swaps that are exempted from the clearing mandate under authorities other than CEA section 2(h)(7). The additional clearing exemptions are typically provided by the Commission to limited types of market participants, such as cooperatives or central banks that use swaps for commercial hedging or have financial structures or purposes that greatly reduce the need for mandatory clearing and SEF trading. In addition, limited data provided in the release indicates that, at least up to this point in time, these exempted swaps represent a small percentage of the notional amount of swaps traded.

This final rule also exempts inter-affiliate swaps from the trade execution requirement. These swaps are exempted from the clearing requirement primarily because the risks on both sides of the swap are, at least in some respects, held within the same corporate enterprise. As described in the final rule release, these swaps may not be traded at arms-length and serve primarily to move risk from one affiliate to another within the same enterprise. Neither market transparency nor price discovery would be enhanced by including these transactions within the trade execution mandate. For these reasons, I am approving the Exemptions from Swap Trade Execution Requirement final rule as a sensible exemption consistent with the relevant sections of the CEA.

Conclusion

These two Final Rules provide targeted changes to the SEF regulations based on experience from several years of implementing them. These limited changes, together with the withdrawal of the remainder of the 2018 SEF NPRM, effectively leave in place the basic framework of the SEF rules as originally adopted by the Commission. This framework has enhanced market transparency, improved competition, lowered transaction costs, and resulted in better swap prices for end users. While it may be appropriate to make other incremental changes going forward, it is important that we affirm the established regulatory program for SEFs to maintain

[6] Rostin Behnam, Commissioner, CFTC, Dissenting Statement of Commissioner Rostin Behnam Regarding Electronic Trading Risk Principles (June 25, 2020), *https://www.cftc.gov/PressRoom/SpeechesTestimony/behnamstatement062520b.*

[1] Swap Execution Facilities and Trade Execution Requirement, 83 FR 61946 (Nov. 30, 2018).

[2] Dissenting Statement of Commissioner Dan M. Berkovitz Regarding Proposed Rulemaking on Swap Execution Facilities and Trade Execution Requirement (Nov, 5, 2018), available at *https://www.cftc.gov/PressRoom/SpeechesTestimony/berkovitzstatement110518a.*

[3] 17 CFR 37.205(a), b(2)(iv).

these benefits and facilitate further expansion of this framework.

I thank the staff of the Division of Market Oversight for their work on these two rules and their helpful engagement with my office.

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