Conditioning Engineers, Inc., 1791 Tullie Circle, NE., Atlanta, GA 30329, (404) 636–8400, *ashrae@ashrae.org,* or *http://www.ashrae.org.*

(1) American National Standards Institute/American Society of Heating, Refrigeration, and Air-Conditioning Engineers Standard 29–2009, ("ASHRAE Standard 29–2009"), "Method of Testing Automatic Ice Makers," IBR approved for § 431.134.

(2) [Reserved].

4. Section 431.134 is revised to read as follows:

**§ 431.134 Uniform test methods for the measurement of energy and water consumption of automatic commercial ice makers.**

(a) *Scope.* This section provides the test procedures for measuring, pursuant to EPCA, the energy use in kilowatt hours per 100 pounds of ice (kWh/100 lb ice) and the condenser water use in gallons per 100 pounds of ice (gal/100 lb ice) of automatic commercial ice makers with capacities between 50 and 4,000 pounds of ice per 24 hours.

(b) *Testing and Calculations.* Measure the energy use and the condenser water use of each covered product by conducting the test procedures set forth in AHRI Standard 810–2007, section 3, "Definitions," section 4, "Test Requirements," and section 5, "Rating Requirements" (incorporated by reference, see § 431.133). Where AHRI Standard 810–2007 references "ASHRAE Standard 29," ASHRAE Standard 29–2009 shall be used (incorporated by reference, see § 431.133).

(1) For batch type automatic commercial ice-making heads, remote condensing (but not remote compressor) automatic commercial ice makers, and remote condensing and remote compressor automatic commercial ice makers; the energy use and condenser water use will be reported as measured in this paragraph (b), including the energy and water consumption, as applicable, of the ice-making mechanism, the compressor, and the condenser or condensing unit.

(2)(i) For continuous type automatic commercial ice makers, determine the energy use and condenser water use by multiplying the energy consumption or condenser water use as measured in this paragraph (b) by the ice quality adjustment factor, determined using the following equation:

$$\text{Ice Quality Adjustment Factor} = \left[\frac{144\,^{\text{Btu}}/_{\text{lb}} + 38\,^{\text{Btu}}/_{\text{lb}}}{\left(\frac{144\,^{\text{Btu}}/_{\text{lb}}}{\text{calorimeter constant}}\right) + 38\,^{\text{Btu}}/_{\text{lb}}}\right]$$

(ii) Determine the calorimeter constant as specified in the "Procedure for Determining Ice Quality" in section A.3 of normative annex A of ASHRAE Standard 29–2009 (incorporated by reference, see § 431.133).

(3) For batch and continuous type automatic ice makers with multiple capacity settings, determine the energy use and condenser water use by performing the test procedures in this section at the highest capacity setting. The energy consumption and condenser water use may optionally be determined by testing the multiple capacity automatic commercial ice makers at both the highest and the lowest capacity settings and averaging the two results.

[FR Doc. 2011–7728 Filed 4–1–11; 8:45 am]

**BILLING CODE 6450–01–P**

## FEDERAL RESERVE SYSTEM

## 12 CFR Part 234

**[Regulation HH; Docket No. R–1412]**

**RIN 7100–AD71**

## Financial Market Utilities

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** Under section 805(a)(1)(A) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"), the Board of Governors of the Federal Reserve System (the "Board") is required to promulgate risk-management standards governing the operations related to the payment, clearing, and settlement activities of certain financial market utilities ("FMUs") that are designated as systemically important by the Financial Stability Oversight Council (the "Council"). In addition, under section 806(e) of the Dodd-Frank Act, the Board is required to prescribe regulations setting forth the standards for determining when advance notice is required to be provided by a designated FMU for which the Board is the Supervisory Agency when the designated FMU proposes to change its rules, procedures, or operations that could materially affect the nature or level of risks presented by the designated FMU. The Board is proposing new Part 234 to Title 12 of the Code of Federal Regulations to implement these provisions of the Dodd-Frank Act.

**DATES:** Comments on this notice of proposed rulemaking must be received by May 19, 2011.

**ADDRESSES:** You may submit comments, identified by Docket No. R–1412 and RIN No. AD–7100–AD71, by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov.* Include the docket number in the subject line of the message.
- *Facsimile:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

**FOR FURTHER INFORMATION CONTACT:** Jennifer A. Lucier, Manager (202) 872–7581, Division of Reserve Bank Operations and Payment Systems; Christopher W. Clubb, Senior Counsel (202) 452–3904, or Kara L. Handzlik, Senior Attorney (202) 452–3852, Legal Division; for users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

**SUPPLEMENTARY INFORMATION:**

## I. Background

### *A. Financial Market Utilities*

FMUs, such as payment systems, central securities depositories, and central counterparties, are critical components of the nation's financial system. FMUs are multilateral organizations that provide the essential infrastructure to clear and settle payments and other financial transactions, upon which the financial markets and the broader economy rely to function effectively. Financial institutions, such as banks, participate in FMUs pursuant to a common set of rules and procedures, a technical infrastructure, and a risk-management framework. The basic risks that FMUs must manage include credit risk, liquidity risk, settlement risk, operational risk, and legal risk. These risks arise between financial institutions and FMUs as they settle payments and other financial transactions. The FMUs and their participating institutions are responsible for managing these risks on an individual and a collective basis.

Financial stability requires that the financial infrastructure, including FMUs, be robust and well managed. If a systemically important FMU fails to perform as expected or fails to measure, monitor, and manage its risks effectively, it could pose significant risk to its participants and the financial system more broadly. For example, the inability of an FMU to complete settlement on time could create credit or liquidity problems for its participants or other FMUs. An FMU, therefore, should have an appropriate and robust risk-management framework, including sound governance arrangements, and appropriate policies and procedures to measure, monitor, and manage its risks.

### *B. Dodd-Frank Wall Street Reform and Consumer Protection Act*

Title VIII of the Dodd-Frank Act, titled the "Payment, Clearing, and Settlement Supervision Act of 2010," was enacted to mitigate systemic risk in the financial system and to promote financial stability, in part, through enhanced supervision of designated FMUs.[1] Under section 803, an FMU is defined as a person that manages or operates a multilateral system for the purpose of transferring, clearing, or settling payments, securities, or other financial transactions among financial institutions or between financial institutions and the person. Pursuant to section 804 of the Dodd-Frank Act, the Council is required to designate those FMUs that the Council determines are, or are likely to become, systemically important.[2] Designation by the Council makes an FMU subject to the supervisory framework set out in Title VIII.

Section 805(a)(1)(A) of the Dodd-Frank Act requires the Board to prescribe, by rule or order, risk-management standards governing the operations related to the payment, clearing, and settlement activities of certain designated FMUs. With respect to a designated FMU that is a derivatives clearing organization registered under section 5b of the Commodity Exchange Act or a clearing agency registered under section 17A of the Securities Exchange Act of 1934 (collectively, "designated clearing entities"), the Commodity Futures Trading Commission ("CFTC") or the Securities and Exchange Commission ("SEC"), respectively, may each prescribe regulations, in consultation with the Council and the Board, containing applicable risk-management standards.[3]

In prescribing the standards, section 805(a)(1) requires the Board to take into consideration relevant international standards and existing prudential requirements.[4] In addition, as set out in section 805(b) of the Dodd-Frank Act, the objectives and principles for the risk-management standards are to (1) promote robust risk management, (2) promote safety and soundness, (3) reduce systemic risks, and (4) support the stability of the broader financial system. Section 805(c) of the Dodd-Frank Act also states that risk-management standards may address areas such as (1) risk-management policies and procedures, (2) margin and collateral requirements, (3) participant or counterparty default policies and procedures, (4) the ability to complete timely clearing and settlement of financial transactions, (5) capital and financial resource requirements for designated FMUs, and (6) other areas that are necessary to achieve the objectives and principles for risk-management standards in section 805(b). Designated FMUs are required to conduct their operations in compliance with the applicable risk-management standards.

In addition to compliance with the applicable risk-management standards, section 806(e)(1)(B) of the Dodd-Frank Act requires a designated FMU to provide at least 60 days' advance notice to its Supervisory Agency (as defined below) of any proposed change to its rules, procedures, or operations that could, as defined in rules of each Supervisory Agency, materially affect the nature or level of risks presented by the designated FMU. Each Supervisory Agency must prescribe regulations that define and describe the standards for determining when such advance notice is required. Under section 803(8) of the Dodd-Frank Act, a "Supervisory Agency" means the federal agency that has primary jurisdiction over a designated FMU under federal banking, securities, or commodity futures laws.[5]

## II. Explanation of Proposed Rules

### *A. Authority, Purpose, and Scope*

Proposed § 234.1(a) clarifies that sections 805, 806, and 810 of the Dodd-Frank Act provide the statutory authority for the Board to promulgate the proposed part. Proposed § 234.1(b) explains that the proposed rules include risk-management standards for designated FMUs and that this part does not apply to designated clearing entities governed by the risk-management standards promulgated by the CFTC or the SEC, as appropriate. Proposed § 234.1(b) also clarifies that the requirements and procedures in this part for a designated FMU that proposes to make a change to its rules, procedures, or operations that could materially affect the nature or level of risks presented by the designated FMU apply only to designated FMUs for which the Board is the Supervisory Agency.

### *B. Definitions*

The proposed rule includes definitions that are necessary to implement the rules. Several definitions (including "designated financial market

[1] The Dodd-Frank Act, Public Law 111–203, 124 Stat. 1376, was signed into law on July 21, 2010.

[2] For these purposes, section 803(9) of the Dodd-Frank Act defines "systemically important" as a situation in which the failure of or a disruption to the functioning of an FMU could create, or increase, the risk of significant liquidity or credit problems spreading among financial institutions or markets and thereby threaten the stability of the financial system of the United States. 12 U.S.C. 5462(9). The Council issued an advance notice of proposed rulemaking on the criteria for FMU designations on November 23, 2010 (*see* 75 FR 79982 (Dec. 21, 2010)).

[3] Dodd-Frank Act section 805(a)(2) 12 U.S.C. 5464(a)(2).

[4] Section 805(a)(2) similarly requires the CFTC and SEC to take into consideration relevant international standards and existing prudential requirements when prescribing regulations containing risk-management standards for designated clearing entities.

[5] A Supervisory Agency includes the SEC and CFTC with respect to their respective designated clearing entities (as defined above), the appropriate federal banking agencies with respect to FMUs that are institutions described in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), and the Board with respect to a designated FMU this is otherwise not subject to the jurisdiction of any of the agencies listed above.

utility," "financial market utility," and "Supervisory Agency") reference the statutory language in section 803 of the Dodd-Frank Act. Other proposed definitions (including "central counterparty," "central securities depository," and "payment system") are based on similar terms used in the risk-management standards issued by the Committee on Payment and Settlement Systems (the "CPSS") and the Technical Committee of the International Organization of Securities Commissions ("IOSCO"), which are discussed in detail below. The Board is requesting comment on all aspects of the proposed definitions except those defined in the Dodd-Frank Act. In particular, the Board requests comment on whether the definitions are clear and sufficiently detailed and whether additional definitions are needed to implement the proposed rules.

*C. Risk-Management Standards for Designated FMUs*

As noted above, in prescribing risk-management standards for designated FMUs, section 805(a) of the Dodd-Frank Act directs the Board to take into consideration relevant international standards and existing prudential requirements. The current international standards most relevant to risk management of FMUs are the standards developed by the CPSS and IOSCO.[6] In 2001, the CPSS published a set of principles for the design and operation of systemically important payment systems (the "Core Principles"). That same year the CPSS and IOSCO jointly issued a set of minimum standards for securities settlement systems (the "Recommendations for Securities Settlement Systems"). In 2004, the CPSS and IOSCO jointly published recommendations for the risk management of central counterparties (the "Recommendations for Central Counterparties," and collectively with the Recommendations for Securities Settlement Systems, the "CPSS–IOSCO Recommendations"). The Board has adopted the three sets of standards in its Policy on Payment System Risk ("PSR policy"). Furthermore, the Board has been guided by this policy, in conjunction with relevant laws and other Federal Reserve policies, when exercising its authority in (1) supervising state member banks, Edge and agreement corporations, bank holding companies, and clearinghouse arrangements, including the exercise of authority under the Bank Service Company Act, where applicable; (2) setting or reviewing the terms and conditions for use of Federal Reserve payment and settlement services by system operators and participants; (3) developing and applying policies for the provision of intraday credit to Reserve Bank account holders; and (4) interacting with other domestic and foreign financial system authorities on payments and settlement risk issues.[7] Thus, the Board has had several years experience with interpreting and applying the three sets of standards to payment, clearing, and settlement systems.

The Board believes that the Core Principles and the CPSS–IOSCO Recommendations further the objectives and principles for designated FMU standards set out in section 805(b) of the Dodd-Frank Act. These international standards were formulated by central banks and securities regulators to promote sound risk-management practices, encourage the safe design and operation of relevant FMUs, reduce systemic risk, and, in certain instances, improve selected market practices or actions by regulators. The Federal Reserve collaborated with participating financial system authorities in developing the three sets of standards. In addition, the SEC and CFTC participated in the development of the CPSS–IOSCO Recommendations. The Core Principles and Recommendations for Securities Settlement Systems are also part of the Financial Stability Board's Compendium of Standards, which has been widely recognized, supported, and endorsed by U.S. authorities as integral to strengthening the stability of the financial system. Furthermore, while the Recommendations for Central Counterparties have not been recognized formally by the Financial Stability Board, they are widely accepted and applied by central banks and market regulators around the world. The Board, therefore, believes that the Core Principles and CPSS–IOSCO Recommendations are an appropriate basis for risk-management standards for designated FMUs, and the Board is proposing to adopt by regulation a set of standards based on the Core Principles and CPSS–IOSCO Recommendations to implement section 805(a) of the Dodd-Frank Act.

The Board believes, however, that it should adopt a modified version of the standards for the purpose of section 805(a). In particular, the Board is proposing to adopt by regulation only those Core Principles and CPSS–IOSCO Recommendations, or portions thereof, that directly apply to an FMU's risk-management or operational framework, rather than those standards that apply more generally to financial markets (for example, market convention, pre-settlement activities) or regulators (for example, regulation and oversight). The Board acknowledges that the scope of the standards is broad. For example, the Core Principles and the CPSS–IOSCO Recommendations contain a standard requiring a clear and well founded legal framework, which includes legislation and administrative rulemaking. While the Board acknowledges that an FMU cannot control or dictate legislation or regulatory rulemaking, it expects that a designated FMU will manage its legal risk within the context of current applicable statutes and regulations, in ways such as ensuring that its rules, procedures, and contractual provisions are clear and accessible to participants and such rules, procedures, and contractual provisions will be enforceable with a high degree of certainty. In order to facilitate compliance, designated FMUs may refer to the CPSS and CPSS–IOSCO documents for background.

The Board expects to interpret and apply the proposed standards consistent with its interpretation and application of those standards under its existing PSR policy. For instance, when considering the adequacy of risk controls or the sufficiency of financial resources that a payment system, central securities depository, or central counterparty would require to complete timely settlement in the event the participant with the largest settlement obligation is unable to complete settlement, the Board usually has interpreted the term "participant" to mean the largest family of affiliated participants where there is more than one affiliated participant.[8] Furthermore, the Board would continue to expect a central securities depository that extends intraday credit to its participants to institute risk controls that cover fully its credit risk exposure to all participants, not only the participant with the largest payment

[6] *See* full reports for the Core Principles for Systemically Important Payment Systems (Core Principles) (*http://www.bis.org/publ/cpss43.htm*) and the CPSS–IOSCO Recommendations for Securities Settlement Systems (Recommendations for Securities Settlement Systems) (*http://www.bis.org/publ/cpss46.htm*) and Central Counterparties (*http://www.bis.org/publ/cpss64.htm*) (Recommendations for Central Counterparties).

[7] *See* the full PSR policy at *http://www.federalreserve.gov/paymentsystems/psr_policy.htm*. The Board requested comment on these standards prior to adopting them as part of its PSR policy. *See* 71 FR 36800 (June 28, 2006) and 72 FR 2518 (Jan. 19, 2007).

[8] See, for example, proposed standards in §§ 234.3(a)(5) and 234.4(a)(18).

obligation.[9] In addition, the Board would expect a designated FMU to meet the sound practices set forth in the "Interagency Paper on Sound Practices to Strengthen the Resilience of the U.S. Financial System" as one element of complying with the risk-management standards in proposed §§ 234.3(a)(7) and 234.4(a)(4).[10] Specifically, a designated FMU should develop the capacity to recover and resume its payment, clearing, and settlement activities within the business day on which the disruption occurs with the overall goal of achieving recovery and resumption within two hours after an event.[11] The Board requests comment on whether these provisions need further definition in the text of the proposed standards.

The Board believes that the adoption of risk-management standards under Title VIII that are based on the current international standards will have several important benefits, including easing the potential burden for designated FMUs to comply with the standards; reducing potential conflicts among regulators regarding prudential requirements; providing a common framework among relevant regulators for overseeing and assessing the risks and risk management of FMUs with cross-market, cross-border, or cross-currency operations; aiding international efforts to strengthen the risk management of critical FMUs; and reducing systemic risk.

The Board requests comment on the set of standards set out in the proposed rule and the use of CPSS and CPSS–IOSCO documents as further information. In particular, given the familiarity of most FMUs with the existing relevant international standards, the Board requests comment on whether the proposed standards provide sufficient guidance for designated FMUs to comply with the standards pursuant to Title VIII of the Dodd-Frank Act.

The CPSS and IOSCO are currently reviewing the three sets of international standards. This review is intended to strengthen and clarify the standards based on experience with the Core Principles and CPSS–IOSCO Recommendations since their publication and to incorporate lessons learned during the recent financial crisis. The CPSS and IOSCO published a consultative report on March 10, 2011; final international standards are expected in early 2012.[12] At that time, the Board anticipates that it will review the new standards, consult with other appropriate agencies and the Council, and likely seek public comment on the adoption of revised standards for designated FMUs under section 805(a) of the Dodd-Frank Act based on the new international standards.

*Payment systems.* Proposed § 234.3(a) sets out risk-management standards for designated FMUs that operate as payment systems, in accordance with section 805(a) of the Dodd-Frank Act. The Board is proposing a set of standards based on the Core Principles for such designated FMUs. The Core Principles are widely accepted by the international regulatory community, and numerous payment systems around the world already follow them. These standards address the types of areas of supervisory concern for designated FMUs set out in section 805(c) of the Dodd-Frank Act. For example, the standards address risk-management policies and procedures, participant default policies and procedures, and the ability to complete timely settlement of payments.

Proposed § 234.3(b) clarifies that the Board will apply the standards set out in proposed § 234.3(a) in its supervision of designated FMUs that operate as payment systems and for which the Board is the Supervisory Agency. All designated FMUs are expected to employ a risk-management framework that is appropriate for their risks, so the Board may require a particular designated FMU to exceed the standards set out in the proposed rules in this notice. To that end, § 234.3(b) states that the Board may, by order, apply heightened risk-management standards to a particular FMU in response to the risks presented by that FMU.

The Board requests comment on all aspects of the appropriateness of the proposed standards for designated FMUs that are payment systems, including whether there are any areas of supervisory concern regarding a payment system's operations that are not sufficiently addressed by the proposed rules. The Board also requests comment on whether the proposed standards achieve the statutory objectives outlined above to (1) promote robust risk management, (2) promote safety and soundness, (3) reduce systemic risks, and (4) support the stability of the broader financial system.

*Central securities depositories and central counterparties.* Proposed § 234.4(a) of the proposed rule sets out risk-management standards for designated FMUs that operate as central securities depositories or central counterparties, in accordance with section 805(a) of the Dodd-Frank Act. Each proposed standard states whether it is applicable to a central securities depository, a central counterparty, or both.

Most designated FMUs that operate as central securities depositories or central counterparties will be designated clearing entities subject to the risk-management standards promulgated by the CFTC or SEC. The Board is proposing standards for designated FMUs that operate as central securities depositories, central counterparties, or both, to address the unlikely event that a designated FMU operates as a central securities depository or central counterparty and is not required to be registered as a clearing agency or derivatives clearing organization with the SEC or CFTC, respectively. Pursuant to section 805(a)(1) of the Dodd-Frank Act, the Board's risk-management standards apply to any designated FMU that is otherwise not subject to the jurisdiction of the SEC or the CFTC.[13]

The Board is proposing a set of standards for such designated FMUs that is based on the majority of the CPSS–IOSCO Recommendations presented in a modified format. Specifically, the Board is proposing to prescribe only those portions of the CPSS–IOSCO Recommendations that apply directly to FMUs, rather than those portions that apply to market convention, pre-settlement activities, and regulation and oversight, which are outside the control of the individual FMUs and are more appropriately addressed by other entities.[14] While the Board endorses the CPSS–IOSCO

[9] *See* proposed standard in § 234.4(a)(15).

[10] The interagency paper is available at *http://www.federalreserve.gov/boarddocs/SRLETTERS/2003/SR0309a1.pdf.*

[11] This interpretation is consistent with the Board's supervision of banking organizations that are core clearing and settlement organizations or act as large-value payment system operators. *See* Supervision and Regulation letter 03–9 (May 28, 2003) at *http://www.federalreserve.gov/boarddocs/srletters/2003/sr0309.htm.*

[12] *See* consultative report for Principles for Financial Market Infrastructures at *http://www.bis.org/publ/cpss94.htm.*

[13] 12 U.S.C. 5464(a)(1).

[14] The Board is not proposing to include the following CPSS–IOSCO Recommendations as risk-management standards for designated FMUs: Recommendations 2 (trade confirmation), 3 (settlement cycles), 4 (central counterparties), 5 (securities lending), 12 (protection of customers' securities), and 18 (regulation and oversight) of the Recommendations for Securities Settlement Systems and recommendation 15 (regulation and oversight) in the Recommendations for Central Counterparties. In addition, the Board is not proposing to prescribe a rule to adopt Recommendation 16 in the Recommendations for Securities Settlement Systems (communication procedures and standards) because the Board believes that at this time the purpose of this recommendation is sufficiently captured in the proposed risk-management standard regarding the efficient operation of a central securities depository.

Recommendations in their entirety as a policy matter, its primary interest for purposes of this rulemaking is in those recommendations related to the clearing and settlement aspects of financial transactions, including the delivery of securities or other financial instruments against payment, and related risks. In addition, the standards in the Recommendations for Securities Settlement Systems and the Recommendations for Central Counterparties that overlap significantly have been consolidated to avoid repetition.

Finally, the Board has modified the margin-related standards set forth in the Recommendations for Central Counterparties by adding two components on testing set forth in proposed § 234.4(a)(17). The components added by the Board are consistent with the frequencies recommended in the explanatory text of the Recommendations for Central Counterparties; however, proposed § 234.4(a)(17)(i) would introduce more specific parameters on who may conduct model validations for central counterparties.[15] In conducting supervision of central counterparties, the Board typically has required systems to employ a qualified, independent party to conduct validations of proposed and existing models to evaluate the performance of the model, along with parameters and assumptions, in a range of scenarios. The Board believes that in order for the validator to offer independent, unbiased conclusions and recommendations, the model validation should be performed by a person who is not responsible for developing the margin model and does not report to a person who performs these functions. A central counterparty's margin model is a critical component in its risk-management framework and should be tested rigorously and validated at least annually to ensure it is performing reliably and achieving the desired coverage. The Board requests comment on whether the proposed rule for model validation is sufficiently clear. The Board also requests comment on all aspects of the proposed rule, including the proposed frequency and whether a model validation should be triggered as a result of any material change to a central counterparty, such as revisions to the margin model, introduction of new products, or formation of new margining arrangements (for example, portfolio or cross-margining).

The Board believes that the standards in proposed § 234.4(a) appropriately address the types of areas of supervisory concern set out in section 805(c) of the Dodd-Frank Act. For example, the standards address collateral requirements and the ability to complete timely clearing and settlement of financial transactions for central securities depositories, and margin requirements and counterparty default policies and procedures for central counterparties.

Proposed § 234.4(b) clarifies that the Board will apply the standards in proposed § 234.4(a) in its supervision of designated FMUs that operate as a central securities depository or a central counterparty and for which the Board is the Supervisory Agency. A designated FMU should comply with the standards that are applicable to it as determined by its function as a central securities depository, a central counterparty, or both. In addition, proposed § 234.4(b) states that the Board may, by order, apply heightened risk-management standards to a particular FMU in response to the risks presented by that FMU, for the same reasons as discussed above regarding heightened standards for designated FMUs operating as payment systems.

The Board requests comment on all aspects of the proposed standards for designated FMUs that act as central securities depositories or central counterparties, including whether there are any areas of supervisory concern regarding the operations of a central securities depository or a central counterparty that are not sufficiently addressed by the proposed rules. The Board also requests comment on whether these standards achieve the statutory objectives outlined above to (1) promote robust risk management, (2) promote safety and soundness, (3) reduce systemic risks, and (4) support the stability of the broader financial system.

The Board also requests comment on all aspects of proposed rules in §§ 234.3 and 234.4, but, in particular, the Board requests comment on the following specific issues:

- Under §§ 234.3(a)(5), 234.4(a)(2), 234.4(a)(15), and 234.4(a)(18), should the Board require designated FMUs to maintain sufficient financial resources to withstand the default by the participant with the largest exposure or obligation in extreme but plausible market conditions, where participant means the family of affiliated participants where there is more than one affiliated participant ("cover one"); or should the Board require sufficient financial resources to withstand defaults by the two participants, plus any affiliated participants, with the largest exposures or obligations in extreme but plausible market conditions ("cover two")? Should the Board require that financial resource requirements be different for certain types of designated FMUs in the same category, such as central counterparties, depending on the risk and other characteristics of the particular products that it clears or settles? What competitive impacts, if any, should the Board consider?
- How would a cover two requirement compare with the current practices of payment, clearing, and settlement systems? What would be the expected incremental financial resource costs, separately including incremental liquidity costs on the system, and its participants, in connection with potentially increasing the current cover one requirement to a cover two requirement?

*D. Material Changes to Rules, Procedures, or Operations Requiring Advanced Notice*

As noted above, section 806(e)(1) of the Dodd-Frank Act requires a designated FMU to provide 60 days' advance notice to its Supervisory Agency of any changes to its rules, procedures, or operations that "materially affect the nature or level of risks presented." Section 806(e) further requires each Supervisory Agency to describe in a rule what changes are considered material and thus would require advance notice by the designated FMU. The Board is currently evaluating the manner in which these types of advance notice should be submitted. The Board will provide guidance at a future date regarding the advance notice submission procedures.

Proposed § 234.5(a) requires designated FMUs for which the Board is the Supervisory Agency to provide the Board with 60 days' advance notice of any proposed change to its rules, procedures, or operations that could materially affect the nature or level of risks presented by the designated FMU. The proposed rule includes procedural requirements regarding such notices, such as the required contents of the notices and the procedures and timing for the methods for approving such changes. These provisions of the proposed rules essentially reiterate

[15] Proposed § 234.4(a)(17)(i)—(ii) are generally consistent with Recommendations 4 and 5 in the Recommendations for Central Counterparties. Proposed rule 234.4.(17)(i) is based on Recommendation 5 (financial resources), paragraph 4.5.4, that recommends that a central counterparty conduct comprehensive stress tests involving a full validation of model parameters and assumptions at least annually. Proposed § 234.4(17)(ii) is based on Recommendation 4 (margin requirements), paragraph 4.4.2, that states that margin models and parameters should be reviewed and backtested regularly (at least quarterly) to assess the reliability of the methodology in achieving the desired coverage.

similar provisions in section 806(e) of the Dodd-Frank Act.

As required by section 806(e), the Board is proposing to define under § 234.5(c) changes that "materially affect the nature or level of risks presented" as those that could be reasonably expected to affect the performance of payment, clearing, or settlement functions or the overall nature or level of risk (including credit, liquidity, settlement, legal, or operational risks) presented by the designated FMU. Under this proposed definition, material changes would generally include changes that may affect the designated FMU's ability or approach to measure or manage the risks posed by or to itself. Material changes also include changes to the designated FMU's design that not only affect the FMU and its direct participants, but, even when properly implemented, could also affect the financial system more broadly. For example, given the operational and risk interdependencies of a designated FMU, it is possible that attempts to reduce or limit one type of risk could lead to the concentration or creation of different risks. Material changes, therefore, are not limited to those changes that would adversely affect or increase the risks of the FMU, and include those that may transfer or transform risks.

To assist designated FMUs in determining whether a proposed change is material, the Board's proposed rule sets out a non-exclusive list of changes that would be considered material and require advance notice to the Board. Under the proposed rule, material changes would include, but not be limited to, changes that affect participant eligibility or access criteria; product eligibility; risk management; settlement failure or default procedures; financial resources; business continuity and disaster recovery plans; daily or intraday settlement procedures; the scope of services, including the addition of a new service or discontinuation of an existing service; technical design or operating platform, which result in nonroutine changes to the underlying technological framework for payment, clearing, or settlement functions; or governance.

The proposed rule also includes a non-exclusive list of routine changes to a designated FMU's rules, procedures, or operations that will not be deemed to materially affect an FMU's nature or level of risks or impact or cause disruption to the financial system more broadly. The Board believes the relevant safety and soundness issues associated with these routine changes are more appropriately addressed through ongoing communications with the designated FMU rather than through the formal advance notice process under section 806(e) of the Dodd-Frank Act. For the purposes of the advance notice provision, changes that would not be deemed to materially affect the FMU's risks include, but are not limited to, changes to an existing rule, procedure, or operation that do not modify the contractual rights or obligations of the designated FMU or persons using its payment, clearing, or settlement services; changes to an existing procedure, control, or service that do not adversely affect the safeguarding of securities, collateral, or funds in the custody or control of the designated FMU or for which it is responsible; routine technology systems upgrades; changes related solely to the administration of the designated FMU or related to the routine, daily administration, direction, and control of employees; or clerical changes and other nonsubstantive revisions to rules, procedures, or other documentation.

The material and nonmaterial lists are not exhaustive regarding the types of changes that the Board may deem material under section 806(e). There would be many proposed changes to a designated FMU's rules, procedures, or operations that are not included in either list. If a designated FMU had any question regarding whether a particular change to a rule, procedure, or operation, which was not covered by either list, met the general materiality standard, the Board anticipates that the FMU would contact Board staff.

The Board requests comment on all aspects of the proposed rule regarding changes to rule, procedures, or operations of a designated FMU. The Board requests comment on whether the proposed rule's provisions regarding the requirements, content, and timing of advance notices of proposed changes are clear. In addition, the Board requests comment on whether the proposed non-exclusive illustrative lists for material and nonmaterial changes to an FMU's rules, procedures, or operations would be helpful to designated FMUs in determining whether advance notice of such changes is required. The Board also requests comment on whether there are any areas or items on either list that should be deleted as inappropriate. Finally, the Board requests comment on whether there are other areas or items that appropriately should be added to either list as material or not material to an FMU's risks. In responding to these questions, commenters are requested to explain why they believe an item or area on either list should be deleted or added.

## III. Administrative Law Matters

### *A. Regulatory Flexibility Act Analysis*

Congress enacted the Regulatory Flexibility Act (the "RFA") (5 U.S.C. 601 *et seq.*) to address concerns related to the effects of agency rules on small entities, and the Board is sensitive to the impact its rules may impose on small entities. The RFA requires agencies either to provide an initial regulatory flexibility analysis with a proposed rule or to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. In accordance with section 3(a) of the RFA, the Board has reviewed the proposed regulation. In this case, the proposed rule would apply to FMUs that are identified and designated by the Council as systemically important to the U.S. financial system. Based on current information, the Board believes that the payment system FMUs that would likely be designated by the Council would not be "small entities" for purposes of the RFA, and so, the proposed rule likely would not have a significant economic impact on a substantial number of small entities (5 U.S.C. 605(b)). The authority to designate systemically important FMUs, however, resides with the Council, rather than the Board, and the Board cannot therefore be assured of the identity of the FMUs that the Council may designate in the future. Accordingly, an Initial Regulatory Flexibility Analysis has been prepared in accordance with 5 U.S.C. 603, based on current information. The Board will, if necessary, conduct a final regulatory flexibility analysis after consideration of comments received during the public comment period.

1. *Statement of the need for, objectives of, and legal basis for, the proposed rule.* The Board is proposing a regulation to implement certain provisions of Title VIII of the Dodd-Frank Act. Section 805(a)(1)(A) of the Dodd-Frank Act requires the Board to promulgate risk-management standards governing the operations related to the payment, clearing, and settlement activities of designated FMUs. The proposed rule clarifies that the Board would apply the standards set out in the proposed rule to designated FMUs for which the Board is the Supervisory Agency. In addition, under section 806(e) of the Dodd-Frank Act, the Board is required to prescribe regulations setting forth the standards for determining when advance notice is required to be provided by a designated FMU for which the Board is the Supervisory Agency that proposes to change its rules, procedures, or operations that could materially affect

the nature or level of risks presented by the designated FMU. The Board believes that the proposed regulation implements Congress's requirement that the Board prescribe regulations that carry out the purposes of Title VIII of the Dodd-Frank Act.

2. *Small entities affected by the proposed rule.* The proposed rule would affect FMUs that the Council designates as systemically important to the U.S. financial system. The Board estimates that fewer than five large-value payment systems would meet these conditions and be affected by this proposed rule. Pursuant to regulations issued by the Small Business Administration (the "SBA") (13 CFR 121.201), a "small entity" includes an establishment engaged in providing financial transaction processing, reserve and liquidity services, or clearinghouse services with an average revenue of $7 million or less (NAICS code 522320). Based on current information, the Board does not believe that any of the payment systems that would likely be designated by the Council would be "small entities" pursuant to the SBA regulation. The Board does not at this time believe that, pursuant to section 803(8) of the Dodd-Frank Act, it would be the Supervisory Agency for any FMU that operates as a central securities depository or a central counterparty and that would likely be designated by the Council. The Board seeks information and comment on the number of small entities to which the proposed rule would apply.

3. *Projected reporting, recordkeeping, and other compliance requirements.* The proposed rule imposes certain reporting and recordkeeping requirements for a designated FMU. (See, for example, § 234.3(a)(3) of the proposed rule (requiring clearly defined procedures for the management of credit risks and liquidity risks), §§ 234.5(a)(1) and (2) of the proposed rule (requiring advance notice of changes that could materially affect the nature or level of risks presented by the designated FMU), and §§ 234.5(a)(2) and (3) of the proposed rule (requiring notice of an emergency change implemented by a designated FMU).) The proposed rule also contains a number of compliance requirements, including the standards that the designated FMU must meet, such as having a well-founded legal basis under all relevant jurisdictions and having rules and procedures that enable participants to understand clearly the FMU's impact on each of the financial risks they incur by participation in it. Payment systems under the Board's jurisdiction (including certain payment systems the Board believes could be designated as systemically important) generally already have implemented these standards, so the proposed rule would not likely impose additional costs on those payment systems. The Board seeks information and comment on any costs, compliance requirements, or changes in operating procedures that would arise from the application of the proposed rule.

4. *Identification of duplicative, overlapping, or conflicting Federal rules.* The Board does not believe that any Federal rules conflict with the proposed rule. There is an overlap between the risk-management standards for FMUs in the proposed rule and the Board's PSR policy; however, the proposed standards are consistent with the PSR policy. The Board seeks comment regarding any statutes or regulations that would duplicate, overlap, or conflict with the proposed rule.

5. *Significant alternatives to the proposed rule.* The Board is unaware of any significant alternatives to the proposed rule that accomplish the stated objectives of the Dodd-Frank Act and that minimize any significant economic impact of the proposed rule on small entities. FMUs that are designated as systemically important by the Council and present similar risk profiles should be held to consistent standards. Promoting uniform standards for designated FMUs is one of the stated purposes of Title VIII of the Dodd-Frank Act.[16] The standards in the proposed rule are being proposed for adoption in part because the payment systems that would likely be designated by the Council are already familiar with the international standards and could implement them with relatively less burden than if the Board adopted a wholly new and unfamiliar set of standards at this time. Similarly, the standards in the proposed rule for central securities depositories and central counterparties are a consolidated and streamlined compilation. They are based on the CPSS–IOSCO Recommendations, and most central securities depositories and central counterparties are already familiar with them. The Board requests comment on whether there are additional ways to reduce regulatory burden on small entities associated with this proposed rule.

*B. Paperwork Reduction Act Analysis*

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320, Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget. For purposes of calculating burden under the Paperwork Reduction Act, a "collection of information" involves 10 or more respondents. Any collection of information addressed to all or a substantial majority of an industry is presumed to involve 10 or more respondents (5 CFR 1320.3(c), 1320.3(c)(4)(ii)). The Board estimates there are fewer than 10 respondents, and these respondents do not represent all or a substantial majority of the participants in payment, clearing, and settlement systems. Therefore, no collections of information pursuant to the Paperwork Reduction Act are contained in the proposed rule.

**IV. Statutory Authority**

Pursuant to the authority in Title VIII of the Dodd-Frank Act, particularly sections 805(a) and 806(e) (12 U.S.C. 5464(a) and 5465(e)), the Board proposes to adopt part 234 to govern designated financial market utilities (Regulation HH).

**V. Text of Proposed Rules**

**List of Subjects in 12 CFR Part 234**

Banks, Banking, Credit, Electronic funds transfers, Financial market utilities, Securities.

**Authority and Issuance**

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR, Chapter II by adding part 234 as set forth below.

## PART 234—DESIGNATED FINANCIAL MARKET UTILITIES (REGULATION HH)

Sec.



**Authority:** 12 U.S.C. 5461 *et seq.*

**§ 234.1 Authority, purpose, and scope.**

(a) *Authority.* This part is issued under the authority of sections 805, 806, and 810 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) (Pub. L. 111–203, 124 Stat. 1376; 12 U.S.C. 5464, 5465, and 5469).

(b) *Purpose and scope.* This part establishes risk-management standards governing the operations related to the payment, clearing, and settlement activities of designated financial market utilities. The risk-management standards do not apply, however, to a designated financial market utility that

[16] *See* 12 U.S.C. 5461(b)(1)(A).

is a derivatives clearing organization registered under section 5b of the Commodity Exchange Act (7 U.S.C. 7a–1) or a clearing agency registered with the Securities and Exchange Commission under section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q–1), which are governed by the risk-management standards promulgated by the Commodity Futures Trading Commission or the Securities and Exchange Commission, respectively, for which each is the Supervisory Agency (as defined in § 234.2). In addition, this part sets out requirements and procedures for a designated financial market utility that proposes to make a change to its rules, procedures, or operations that could materially affect the nature or level of risks presented by the designated financial market utility and for which the Board is the Supervisory Agency.

**§ 234.2 Definitions.**

(a) *Central counterparty* means a designated financial market utility that interposes itself between the counterparties to trades, acting as the buyer to every seller and the seller to every buyer.

(b) *Central securities depository* means a designated financial market utility that holds securities in custody to enable securities transactions to be processed by means of book entries or a designated financial market utility that enables securities to be transferred and settled by book entry either free of or against payment.

(c) *Designated financial market utility* means a financial market utility (as defined in paragraph (d) of this section) that the Financial Stability Oversight Council has designated as systemically important under section 804 of the Dodd-Frank Act (12 U.S.C. 5463).

(d) *Financial market utility* has the same meaning as the term is defined in section 803(6) of the Dodd-Frank Act (12 U.S.C. 5462(6)).

(e) *Payment system* means a designated financial market utility that consists of a set of payment instructions, procedures, and rules for the transfer of funds among system participants.

(f) *Supervisory Agency* has the same meaning as the term is defined in section 803(8) of the Dodd-Frank Act (12 U.S.C. 5462(8)).

**§ 234.3 Standards for payment systems.**

(a) A designated financial market utility that operates as a payment system should meet or exceed the following risk-management standards with respect to its payment, clearing, and settlement activities:

(1) The payment system should have a well-founded legal basis under all relevant jurisdictions.

(2) The payment system's rules and procedures should enable participants to have a clear understanding of the payment system's impact on each of the financial risks they incur through participation in it.

(3) The payment system should have clearly defined procedures for the management of credit risks and liquidity risks, which specify the respective responsibilities of the payment system operator and the participants and which provide appropriate incentives to manage and contain those risks.

(4) The payment system should provide prompt final settlement on the day of value, preferably during the day and at a minimum at the end of the day.

(5) A payment system in which multilateral netting takes place should, at a minimum, be capable of ensuring the timely completion of daily settlements in the event of an inability to settle by the participant with the largest single settlement obligation.

(6) Assets used for settlement should preferably be a claim on the central bank; where other assets are used, they should carry little or no credit risk and little or no liquidity risk.

(7) The payment system should ensure a high degree of security and operational reliability and should have contingency arrangements for timely completion of daily processing.

(8) The payment system should provide a means of making payments that is practical for its users and efficient for the economy.

(9) The payment system should have objective and publicly disclosed criteria for participation, which permit fair and open access.

(10) The payment system's governance arrangements should be effective, accountable, and transparent.

(b) Designated financial market utilities that operate as payment systems and for which the Board is the Supervisory Agency must meet or exceed the risk-management standards in § 234.3(a). The Board, by order, may apply heightened risk-management standards to an individual designated financial market utility in accordance with the risks presented by the designated financial market utility.

**§ 234.4 Standards for central securities depositories and central counterparties.**

(a) A designated financial market utility that operates as a central securities depository or a central counterparty should meet or exceed the following risk-management standards with respect to its payment, clearing, and settlement activities:

(1) The central securities depository or central counterparty should have a well-founded, transparent, and enforceable legal framework for each aspect of its activities in all relevant jurisdictions.

(2) The central securities depository or central counterparty should require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the central securities depository or central counterparty. The central securities depository or central counterparty should have procedures in place to monitor that participation requirements are met on an ongoing basis. The central securities depository's or central counterparty's participation requirements should be objective and publicly disclosed, and permit fair and open access.

(3) The central securities depository or central counterparty should hold assets in a manner whereby risk of loss or of delay in its access to them is minimized. Assets invested by a central securities depository or central counterparty should be held in instruments with minimal credit, market, and liquidity risks.

(4) The central securities depository or central counterparty should identify sources of operational risk and minimize them through the development of appropriate systems, controls, and procedures; have systems that are reliable and secure, and have adequate, scalable capacity; and have business continuity plans that allow for timely recovery of operations and fulfillment of the central securities depository's or central counterparty's obligations.

(5) The central securities depository or central counterparty should employ money settlement arrangements that eliminate or strictly limit its settlement bank risks, that is, its credit and liquidity risks from the use of banks to effect money settlements with its participants and should require funds transfers to the central securities depository or central counterparty be final when effected.

(6) The central securities depository or central counterparty should be cost-effective in meeting the requirements of participants while maintaining safe and secure operations.

(7) The central securities depository or central counterparty should evaluate the potential sources of risks that can arise when the central securities depository or central counterparty establishes links either cross-border or domestically to settle transactions or

clear trades, and ensure that the risks are managed prudently on an ongoing basis.

(8) The central securities depository or central counterparty should have governance arrangements that are clear and transparent to fulfill public interest requirements and to support the objectives of owners and participants and should promote the effectiveness of a central securities depository's or central counterparty's risk-management procedures.

(9) The central securities depository or central counterparty should provide market participants with sufficient information for them to identify and evaluate accurately the risks and costs associated with using its services.

(10) The central securities depository or central counterparty should establish default procedures that ensure that the central securities depository or central counterparty can take timely action to contain losses and liquidity pressures and to continue meeting its obligations and should provide for key aspects of the default procedures to be publicly available.

(11) The central securities depository or central counterparty should ensure that final settlement occurs no later than the end of the settlement day and should require that intraday or real-time finality be provided where necessary to reduce risks.

(12) The central securities depository or central counterparty should eliminate principal risk by linking securities transfers to funds transfers in a way that achieves delivery versus payment.

(13) The central securities depository or central counterparty should state its obligations with respect to physical deliveries, and the risks from these obligations should be identified and managed.

(14) The central securities depository should immobilize or dematerialize securities certificates and transfer them by book entry to the greatest extent possible.

(15) The central securities depository should institute risk controls that include collateral requirements and limits, and ensure timely settlement in the event that the participant with the largest payment obligation is unable to settle when the central securities depository extends intraday credit.

(16) The central counterparty should measure its credit exposures to its participants at least once a day and limit its exposures to potential losses from defaults by its participants in normal market conditions so that the operations of the central counterparty would not be disrupted and non-defaulting participants would not be exposed to losses that they cannot anticipate or control.

(17) The central counterparty should use margin requirements to limit its credit exposures to participants in normal market conditions and use risk-based models and parameters to set margin requirements and review them regularly. Specifically, the central counterparty should—

(i) Provide for annual model validation consisting of evaluating the performance of the clearing agency's margin models and the related parameters and assumptions associated with such models by a qualified person who does not perform functions associated with the clearing agency's margin models (except as part of the annual model validation) and does not report to such a person.

(ii) Review and backtest margin models and parameters at least quarterly.

(18) The central counterparty should maintain sufficient financial resources to withstand, at a minimum, a default by the participant to which it has the largest exposure in extreme but plausible market conditions.

(b) Designated financial market utilities that operate as central securities depositories or central counterparties and for which the Board is the Supervisory Agency must meet or exceed the risk-management standards in § 234.4(a). The Board, by order, may apply heightened risk-management standards to individual designated financial market utilities in accordance with the risks presented by the designated financial market utility.

**§ 234.5 Changes to rules, procedures, or operations.**

(a) *Advance notice.*

(1) A designated financial market utility shall provide at least 60-days advance notice to the Board of any proposed change to its rules, procedures, or operations that could materially affect the nature or level of risks presented by the designated financial market utility.

(2) The notice of the proposed change shall describe—

(i) The nature of the change and expected effects on risks to the designated financial market utility, its participants, or the market; and

(ii) How the designated financial market utility plans to manage any identified risks.

(3) The Board may require the designated financial market utility to provide additional information necessary to assess the effect the proposed change would have on the nature or level of risks associated with the utility's payment, clearing, or settlement activities and the sufficiency of any proposed risk-management techniques.

(4) A designated financial market utility shall not implement a change to which the Board has an objection.

(5) The Board will notify the designated financial market utility of any objection within 60 days from the later of—

(i) The date the Board receives the notice of proposed change; or

(ii) The date the Board receives any further information it requests for consideration of the notice.

(6) A designated financial market utility may implement a change if it has not received an objection to the proposed change within 60 days of the later of—

(i) The date the Board receives the notice of proposed change; or

(ii) The date the Board receives any further information it requests for consideration of the notice.

(7) With respect to proposed changes that raise novel or complex issues, the Board may, by written notice during the 60-day review period, extend the review period for an additional 60 days. Any extension under this paragraph will extend the time periods under paragraphs (a)(5) and (a)(6) to 120 days.

(8) A designated financial market utility may implement a proposed change before the expiration of the applicable review period if the Board notifies the designated financial market utility in writing that the Board does not object to the proposed change and authorizes the designated financial market utility to implement the change on an earlier date, subject to any conditions imposed by the Board.

(b) *Emergency changes.*

(1) A designated financial market utility may implement a change that would otherwise require advance notice under this section if it determines that—

(i) An emergency exists; and

(ii) Immediate implementation of the change is necessary for the designated financial market utility to continue to provide its services in a safe and sound manner.

(2) The designated financial market utility shall provide notice of any such emergency change to the Board as soon as practicable and no later than 24 hours after implementation of the change.

(3) In addition to the information required for changes requiring advance notice in paragraph (a)(2) of this section, the notice of an emergency change shall describe:

(i) The nature of the emergency; and

(ii) The reason the change was necessary for the designated financial

market utility to continue to provide its services in a safe and sound manner.

(4) The Board may require modification or rescission of the change if it finds that the change is not consistent with the purposes of the Dodd-Frank Act or any applicable rules, order or standards prescribed under section 805(a) of the Dodd-Frank Act.

(c) *Materiality.*

(1) The term "materially affect the nature or level of risks presented" in paragraph (a)(1) of this section means matters as to which there is a reasonable possibility that the change could materially affect the performance of clearing, settlement, or payment functions or the overall nature or level of risk presented by the designated financial market utility.

(2) A change to rules, procedures, or operations that would materially affect the nature or level of risks presented includes, but is not limited to, changes that affect the following:

(i) Participant eligibility or access criteria;

(ii) Product eligibility;

(iii) Risk management;

(iv) Settlement failure or default procedures;

(v) Financial resources;

(vi) Business continuity and disaster recovery plans;

(vii) Daily or intraday settlement procedures;

(viii) The scope of services, including the addition of a new service or discontinuation of an existing service;

(ix) Technical design or operating platform, which results in non-routine changes to the underlying technological framework for payment, clearing, or settlement functions; or

(x) Governance.

(3) A change to rules, procedures, or operations that does not meet the conditions of paragraph (c)(2) of this section and would not materially affect the nature or level of risks presented includes, but is not limited to the following:

(i) A change that does not modify the contractual rights or obligations of the designated financial market utility or persons using its payment, clearing, or settlement services;

(ii) A change to an existing procedure, control, or service that does not adversely affect the safeguarding of securities, collateral, or funds in the custody or control of the designated financial market utility or for which it is responsible;

(iii) A routine technology systems upgrade;

(iv) A change related solely to the administration of the designated financial market utility or related to the routine, daily administration, direction, and control of employees; or

(v) A clerical change and other non-substantive revisions to rules, procedures, or other documentation.

By order of the Board of Governors of the Federal Reserve System, March 29, 2011.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. 2011–7812 Filed 4–1–11; 8:45 am]

**BILLING CODE 6210–01–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2011–0318; Directorate Identifier 2010–CE–033–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Burl A. Rogers (Type Certificate Previously Held by William Brad Mitchell and Aeronca, Inc.) Models 15AC and S15AC Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD would require repetitive inspections of the upper and lower main wing spar cap angles for cracks and/or corrosion and installing inspection access panels. This AD would also require replacing the wing spar cap angles if moderate or severe corrosion is found and applying corrosion inhibitor. This proposed AD was prompted by reports of intergranular exfoliation and corrosion of the upper and/or lower wing main spar cap angles found on the affected airplanes. We are proposing this AD to detect and correct cracks, intergranular exfoliation and corrosion in the wing main spar cap angles, which could result in reduced strength of the wing spar and the load carrying capacity of the wing. This could lead to wing failure and consequent loss of control.

**DATES:** We must receive comments on this proposed AD by May 19, 2011.

**ADDRESSES:** You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Burl's Aircraft, LLC, P.O. Box 671487, Chugiak, Alaska 99567–1487; phone: (907) 688–3715; fax (907) 688–5031; e-mail *burl@biginalaska.com;* Internet: *http://www.burlac.com.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

### Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Eric Wright, Aerospace Engineer, FAA, Anchorage Aircraft Certification Office, 222 W. 7th Ave., #14, Anchorage, Alaska 99513; telephone: (907) 271–2648; fax: (907) 271–6365; e-mail: *eric.wright@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section.

Include "Docket No. FAA–2011–0318; Directorate Identifier 2010–CE–033–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.