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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

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WHAT: Free public briefings (approximately 3 hours) to present:

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3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, September 11, 2012
9 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
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Washington, DC 20002

RESERVATIONS: (202) 741-6008

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To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register

Vol. 77, No. 169

Thursday, August 30, 2012

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

[Docket No. FCIC–11–0011]

RIN 0563–AC34

Common Crop Insurance Regulations; Peach Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes the Common Crop Insurance Regulations, Peach Crop Insurance Provisions. The intended effect of this action is to provide policy changes, to clarify existing policy provisions to better meet the needs of insured producers, and to reduce vulnerability to program fraud, waste, and abuse. The changes will apply for the 2013 and succeeding crop years.

DATES: This rule is effective August 30, 2012.

FOR FURTHER INFORMATION CONTACT: Tim Hoffmann, Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, Room 421, P.O. Box 419205, Kansas City, MO 64141–6205, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be non-significant for the purposes of Executive Order 12866 and, therefore, it has not been reviewed by the Office of Management and Budget (OMB).

Paperwork Reduction Act of 1995

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by OMB under control number 0563–0053.

E-Government Act Compliance

FCIC is committed to complying with the E-Government Act of 2002, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees and compute premium amounts, and all producers are required to submit a notice of loss and production information to determine the amount of an indemnity payment in the event of an insured cause of crop loss. Whether a producer has 10 acres or 1000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure that small entities are given the same opportunities as large entities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and, therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This final rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC or to require the insurance provider to take specific action under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 CFR part 400, subpart J, for the informal administrative review process of good farming practices as applicable, must be exhausted before any action against FCIC for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, or safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

This rule finalizes changes to the Common Crop Insurance Regulations (7 CFR part 457) 457.153 Peach Crop Insurance Provisions that were published by FCIC on January 24, 2012, as a notice of proposed rulemaking in the **Federal Register** at 77 FR 3400–3404. The public was afforded 60 days to submit comments after the regulation was published in the **Federal Register**. A total of 202 comments were received from 17 commenters. The commenters were insurance providers, agents, growers, growers associations, an insurance organization, and other interested parties.

The public comments received regarding the proposed rule and FCIC's responses to the comments are as follows:

General:

Comment: A commenter stated many of the proposed changes in the Peach Crop Provisions Proposed Rule, as explained in the ''Background'' section, appear to be reasonable.

Response: FCIC thanks the commenter for their review of the proposed rule and their support.

Section 1—Definitions:

Comment: A few commenters expressed support for the proposed change to remove the definition of ''actual price per bushel for'' since the Free on Board (FOB) prices are no longer consistently reported by Agricultural Marketing Service (AMS).

Response: FCIC thanks the commenters for their review of the proposed rule and their support. The proposed changes have been retained in this final rule.

Comment: A few commenters do not agree with the proposed addition of definitions of ''fresh and ''processing'' and recommend revising the definition to ''Fresh production'' or ''Fresh peach production'' as in the current Apple Crop Provisions. This would then necessitate revising item (1) to state ''Peaches from insurable acreage that:'' instead of ''Peach production * * *.'' Commenters also recommended revising the definition to ''Processing production'' or ''Processing peach production'' as in the current Apple Crop Provisions.

Response: FCIC agrees and has revised the definition of ''Fresh'' to ''Fresh peach production'' and ''Processing'' to ''Processing peach production'' in these this final rule.

Comment: A few commenters recommended revising the definition of ''fresh'' to read * * * ''its basic form * * *'' to ''* * * the basic form * * *'' as in the Apple Crop Provisions.

Response: FCIC agrees and has deleted the word ''its'' and replaced with ''the'' from the definition of ''fresh'' and ''processing''.

Comment: A few commenters recommended that if the lead-in remains ''Peach production'' instead of ''Peaches'', to match a singular subject, change the word ''Are'' to ''Is'' at the start of section 1(1)(i), (iii) & (iv); and change the first word of section 1(1)(ii) to ''Grades'' and section 1(1)(iv) to ''Follows''.

Response: FCIC agrees with the commenters and has revised the provisions accordingly.

Comment: A few commenters questioned the definition of ''fresh.'' The definition requires fresh peaches to ''Grade at least U.S. Extra No. 1 or better consisting of the minimum diameter as specified in the Special Provisions.'' This requires the peaches actually be produced and graded before the determination is made. The commenters expressed concern because the peach acreage must be reported as fresh or processing on the acreage report. The commenters ask who will be required to grade the peaches because insurance providers have had no training for grading peaches in the past. The commenters ask whether there are USDA peach graders available to assist in the event of any questions or disagreements on the grading of peaches.

Response: FCIC understands and agrees with the commenters that the determination of whether a peach meets the definition of fresh or processing is difficult when it is reported on the acreage report. There is no way to know whether a peach is a fresh peach or processing unless is it graded. The designation of peach acreage as fresh and processing occurs on the acreage report based on the certification provided by the producer that at least 50 percent of the peaches have been sold as fresh and meets the other requirements for fresh. If these requirements are met, the acreage qualifies as fresh even if the peaches subsequently produced do not meet the definition for fresh. If the acreage is subsequently determined not to meet the definition of fresh peach production, the policy provides for remedies. Further, the Peach Loss Adjustment Standards provides instructions to insurance providers to grade peach production or have the samples of the peach production taken to a State/Federal licensed grader to determine the grade of the peach production. No change has been made.

Comment: Numerous commenters stated the phrase ''each unit'' needs to be revised to avoid the problem associated with the Apple Crop Provisions which necessitated issuance of a number of bulletins to clarify, the reference to ''each unit'' in section 1((1)(v) of the definition of ''Fresh''.

Response: A large number of apple producers, who are also peach producers, pointed out that they can and do maintain records of production by unit. However, once apples or peaches are delivered to a warehouse, which is often a third party, for sales and distribution, it is virtually impossible and/or impractical to expect all the apples or peaches to be tracked by unit. FCIC agrees with the commenter and will revise the phrase ''each unit'' to ''total production''.

Comment: Numerous commenters asked how the insured would ''certify,'' as noted in section 1(1)(v) of this definition, that at least 50 percent of the production from acreage reported as fresh peach acreage from each unit was sold as fresh peaches in one or more of the four most recent crop years.'' The commenter asked whether this is accomplished simply by the fact that the insured is reporting the acreage as fresh rather than as processing, or whether some form of additional documentation required (and if so, is it required with the acreage report or at some other time, such as in the event of an Actual Production History (APH) review).

Response: As with all APH programs, certifications include not only the yield but also an attestation to the fact that the producer has the actual records to support the yield. The same concept applies here. The producer is certifying that not only has at least 50 percent of the production from the acreage in the unit been sold as fresh but also that the producer has the records to support those sales. Verification by the insurance provider that records exist would occur the same as any other program where there is a need to verify the production reported for the purpose of establishing the guarantee. No change has been made.

Comment: Numerous commenters stated that based on market demand, large growers must place peaches in cold storage where they lose quality over time. To illustrate, 1000 bushels of peaches that could be sold as fresh peaches today are placed in cold storage. When peaches are removed from cold storage, only 850 bushels can be sold as fresh; thus only 850 bushels can be used to qualify for fresh coverage. In contrast a smaller grower who distributes to local businesses will timely sell all 1000 bushels as fresh and use 1000 bushels towards fresh coverage qualification. In this common situation, the policy does not treat to all growers equally.

Response: It appears that the commenter is suggesting that grading records obtained before the peaches are put in storage be used to determine whether the acreage qualifies for fresh or processing. FCIC cannot simply use grading records because there are instances where peaches that grade as fresh are intended to be and are sold in the processing market. Because fresh peaches gets a higher price election than processing peaches, in order to avoid over-insuring the crop, FCIC must ensure the producer is capable of producing fresh peaches and has a buyer for the fresh peaches. Further, basing insurance on the intent to sell the production as fresh is too subjective a standard. FCIC can only base its insurance offer on verifiable documentation, in this case the sales records of the production. FCIC has taken the concerns expressed by the commenter into consideration when it set the threshold at 50 percent and not some greater percentage to establish that the acreage of peaches was produced for the fresh market. No change has been made.

Comment: A few commenters stated direct marketers sell fresh peaches. Due to diverse methods of record keeping many direct marketers will be unable to produce verifiable sold records to qualify for fresh coverage. Most direct marketers are willing to comply with the requirements for a verifiable record. However, under the proposed policy many will be limited to processing coverage for one or more years until they can convert their record keeping methods and meet the 50 percent sold as fresh peach production. In this common situation, the policy does not treat to all growers equally.

Response: As with all APH programs, there is a requirement to certify yields based on actual records of production or transitional yields. This means producers should already have records of past production. This record keeping requirement applies to all crops insured under the APH program, including those crops that are commonly direct marketed. FCIC understands direct marketing producers may have diverse methods of record keeping so FCIC has made revisions to procedure to allow other acceptable verifiable records to be used for peach direct marketers. In the past, there have been issues with respect to whether producers seeking insurance have the experience to grow and to follow cultural practices appropriate to produce fresh peaches. Fresh peaches receive a higher price than processing peaches. Therefore, to protect program integrity, FCIC must maintain the requirement that producers demonstrate that they can produce fresh peaches to be eligible to insure their peach acreage as fresh. No change has been made.

Comment: A few commenters recommended that due to lack of records in a new orchard (or transferred orchards) and along with the desire of producers to insure fruit for fresh production, a new eligible producer or a new orchard, should be allowed to insure for fresh coverage by declaration.

Response: Declarations of intent without the requirement for maintaining supporting records has proven in the past to lead to instances of abuse of the program when producers declare their intent to produce the crop as fresh when they have not been able to produce a crop meeting the definition of fresh or they have no viable market for their fresh production. FCIC cannot permit insurance based on a higher price election if the producer does not have the ability to ever receive that price. Unfortunately, this issue especially applies to new producers and new orchards where there is no history of ever producing a fresh peach crop. FCIC has taken the commenters concerns into consideration when it set the 50 percent threshold for producing fresh peaches and the one year requirement instead of some other percentage or number of years. In addition, the 50 percent threshold and record keeping requirement may limit insurance but if the new producer legitimately grows the peaches for the fresh market, this limitation should not last more than a year. No change has been made.

Comment: A few commenters stated the apple policy requires apples to be sold at a price commensurate with that of a fresh apple via product management bulletin. If FCIC intends for the peach policy to follow the same rules then the price language needs to be added to the definition of Fresh. In addition, FCIC needs to define ''a price commensurate with that of a fresh peach''. The current definition is ambiguous and does not allow for unilateral application among the insurance providers.

Response: FCIC agrees with the commenters and has clarified in the definition of ''fresh peach production'' to specify that peaches must have been sold or could have been sold for a price not less than Risk Management Agency's (RMA) published fresh peach price election. If fresh peaches were sold or could have been sold at a fresh price that was less than the RMA's published fresh peach price election for the applicable year, then the producer must provide verifiable records to show that the price received was not less than the price for fresh peaches sold in the area the insured normally sells peach her or her production.

Comment: Commenters stated it is critical for FCIC to define ''verifiable records'' in the definition of ''Fresh'' in section 1. Growers need to have a clear and concise explanation of what constitutes ''verifiable records'', especially for ''you- pick operations'' to properly comply with the regulations.

Response: Subsequent to this proposed rule, FCIC published a final rule amending the Common Crop Insurance Regulations. A definition for the term ''verifiable records'' was added to that final rule to refer the reader to the definition contained in 7 CFR part 400, subpart G. Therefore, a definition of ''verifiable records'' is now contained in the policy. No change has been made.

Comment: A few commenters asked if yields for you-pick operations can be verified by an on tree pre-harvest appraisal as opposed to sales receipts.

Response: As in the case of most perennials, the peach policy states before production is sold by direct marketing a pre-harvest appraisal must be completed by the insurance provider to determine the potential production to count. However, a pre-harvest appraisal may determine potential production to count, but it does not determine the quantity of the total production sold as fresh peaches. Therefore, it is incumbent upon the insured to provide verifiable records when requested, that must reflect whether the value received is consistent with the value of fresh peaches verses the value of processing peaches. No change has been made.

Comment: A few commenters stated that it is confusing as to why the phrase in section 1 in the definition of ''fresh peach production'' subsection (2) requires peach acreage with production not meeting all the requirements in subsection (1) of the ''fresh peach production'' definition to be designated on the acreage report as processing peach production. The commenters ask whether this designation of processing acreage on the acreage report considered a forward-looking or an after-the-fact looking statement, or both. The commenters suggested this provision would be better situated in section 6 (Report of Acreage). If all of the requirements in subsection (1) of the ''fresh peach production'' definition must be met, then it would be impossible that any acreage could be designated as fresh peach production, as subsection (1) of the ''fresh peach production'' definition most likely will never be satisfied.

Response: FCIC agrees with the commenter that the designation of acreage not producing production meeting the requirements as fresh peach production as processing acreage on the acreage report is not a definitional requirement and, therefore, FCIC has removed paragraph (2) and redesignated the remaining provisions. FCIC has also revised the provisions in section 6 to clarify that any acreage not qualifying for fresh peach production in accordance with these Crop Provisions must be designated on the acreage report as processing peach production.

Comment: A few commenters recommended changing the term ''Grade'' to ''Grades'' in section 1 of ''fresh peach production'' since the definition refers to U.S. Extra No. 1 or better.

Response: FCIC agrees with the commenters and has revised the definition of ''fresh peach production'' accordingly.

Comment: FCIC received numerous comments in reference to the definition of ''post production cost'' in section 1, asking how ''post production cost'' is determined and stating the definition needs further clarification.

Response: As FCIC stated in the ''Background'' of the proposed rule, the definition of ''post production cost'' is defined as cost associated with activities that occur during harvesting, packing, transportation, and marketing. Insurance coverage is limited to those perils and costs that occur while the crop is in the field. Therefore, for the purposes of determining ''post production costs,'' FCIC will separate those costs as determined by using regional peach price data of peach production budgets from regional respective universities extension, other USDA agencies, and other third party resources. The ''post production cost'' is utilized in order to adjust quality damage by normalizing the actual sale price to the price election amount which is valued ''on tree''. Post production cost amounts will be provided in the Special Provisions. However, FCIC has revised the definition to specify how the post production costs will be determined.

Section 2—Unit Division:

Comment: Numerous commenters expressed support for the proposed change in section 2 which allows optional units by fresh, processing, and non-contiguous land as specified in the Special Provisions. The commenters stated this change will allow producers more flexibility in making management decisions on how to insure their crops.

Response: FCIC thanks the commenters for their review of the proposed rule and their support. The proposed change has been retained in this final rule.

Section 3—Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities:

Comment: A few commenters questioned using the word ''bearing'' in the section 3(c)(2). Producers are required to report their uninsurable acres, and when trees are first planted, they will be non-bearing. The commenters ask whether it is the intent for producers to report zero trees on their uninsurable acres. If the block consists of older trees and younger interplanted trees of the same variety, and only the bearing trees are counted, the commenter states that there will be inconsistencies with the acres, the tree spacing, and the density. If growers remove many older trees and replace them with younger trees, they will need to report them on the producer's Pre-Acceptance Worksheet (PAW) as they have performed cultural practices that will reduce the yield from previous levels. Commenters suggested growers should be required to report all trees and this number should remain constant until they remove trees or plant new trees. Insurance providers should not be required to track only the trees that are bearing and be required to revise this figure each year.

Response: The information that must be submitted in accordance with section 3(c) is required in order to establish the producers' APH, approved yield, and the amount of coverage. Section 3(c)(2) requires the bearing trees on both insurable and uninsurable acreage to be reported. The number of bearing and non-bearing trees on insurable and uninsurable acreage must be reported on the Pre-acceptance Worksheet. Otherwise, there will be inconsistencies with acres, tree spacing, and the density, if only bearing trees are reported. Since non-bearing trees are not eligible for coverage under the policy, the intent is to have the producer report zero if there are no bearing trees in the unit. Since premium and indemnity payments are based on the number of trees that meet eligibility requirements, insurance providers are required to track both bearing and non-bearing trees as outlined in the Crop Provisions and the Crop Insurance Handbook. No change has been made.

Comment: Numerous commenters expressed support for the proposed change in section 3 allowing the insured to select different coverage levels for fresh and processed peaches within the same unit. The commenters stated this change will allow producers more flexibility in making management decisions on how to insure their crops.

Response: FCIC thanks the commenters for their review of the proposed rule and their support. The proposed change has been retained in this final rule.

Comment: A few commenters referenced section 3(d) about the reduction of the yield used to establish the production guarantee for subsequent crop years due to tree damage, removal of trees, change in practices, interplanted of a perennial crop, or any other circumstances that reduce the yield. The commenters state that the eastern peach growing areas have had downward trending component based on the 5 year database for APH calculations. The commenters state that this makes the peach database much more responsive to yield changes than a 10 year database. Commenters stated procedural changes by RMA to the application of ''downward trending'' circumvent actions taken by Congress to minimize flaws in the Federal crop insurance program through the Agricultural Risk Protection Act of 2000 (ARPA).

ARPA created a yield adjustment option and mandated that in the event of a significant crop loss or zero production on a given insurance unit, the producer would be able to replace the low yield with 60 percent of the transitional yield. Recent procedural changes regarding downward trending as applied to the peach crop insurance program prohibits producers from selecting the yield adjustment option when there are two consecutive years of crop losses recorded on a particular insurance unit regardless of the reason for the loss. This change negatively affects APH and is in direct contradiction of the ARPA. Additionally downward trending allows RMA to reduce the APH to 75 percent of its value. Currently, by definition and application, a 6 year old block entering its prime production years could be subject to downward trending if it has losses in 2 of the last 3 years due to climatic weather events. In such a case losing the yield adjustment option directly refutes the ARPA intention of Congress in 2000 and dramatically lowers the producer's APH. Therefore this rule should be removed or, at the very minimum, be applied to orchards that are 10 years of age.

Response: Since the recommended changes were not proposed, and the public was not provided an opportunity to comment, the recommendation cannot be incorporated in the final rule. However, in 2009 FCIC released the ''Perennial Crop and Declining Yield Report to Congress'' *http://www.rma.usda.gov/pubs/2009/perennialcrops.pdf.* In this publication FCIC addressed the issues of utilizing the insured's APH in place of T-yields for yield adjustments, as well as high variability testing for crops with a shorter base period. As noted in the report, FCIC has requested legislative authority for these changes. Until legislative authority is granted, FCIC procedures allow RMA Regional Offices to modify or waive a high variability adjustment, which includes downward trend adjustments, and to authorize yield adjustment for APH, when appropriate. No change has been made.

Comment: FCIC received numerous comments in reference to the last sentence of section 3(d), ''* * * We will reduce the yield used to establish your production guarantee for the subsequent crop year''. Commenters questioned what happens if the event that occurred was something that only impacts the crop for the year in question and has no carryover effect on the yield into the next year. Commenters suggested the language needs to be revised to provide the insurance provider some latitude as to whether the subsequent years yield should be reduced and to what extent it should be reduced. There could also be certain events that occur that have some effect on the next year but the impact is less than the production that was assessed for the year in which the event occurred. Therefore, this sentence needs to be modified to allow the approved insurance provider to have some flexibility to be able to determine how much, if any, that the yield should be reduced for the subsequent crop year.

Response: Section 3(d) states that a reduction in the yield will be done, as necessary. This gives the insurance provider the discretion to determine the event will cause a reduction in yield on the subsequent crop year. In addition, section 3(d) allows the insurance provider to estimate the effect of any reduction in future years. Therefore, the provision already contains the flexibility requested. No change has been made.

Section 6—Report of Acreage:

Comment: FCIC received numerous comments regarding the provision to report and designate all acreage of peaches as fresh or processing peaches by the acreage reporting date. However, fresh and processing are identified as types in the Special Provisions of the Actuarial Information Browser. FCIC stated in the ''Background'' of the Peach Crop Provision proposed rule, it removed the word ''type'' because it is no longer applicable. The commenters stated, since the proposal is to remove the word ''type'', it will be necessary to change the Special Provisions. Due to the importance of the Special Provisions, the commenter recommended FCIC provide insurance providers with a preview of the Special Provisions, so they can see the changes.

Response: FCIC understands the commenter's concern and agrees the types as well as the numerical type codes may change for the 2013 crop year. As stated in the proposed rule, the word ''type'' will not be applicable in the future, which is why the definitions of ''fresh'' and ''processing'' were added. The Actuarial Information Browser will provide a generic definition of ''type'', which allows for changes or additional types in the future. This is consistent with other Crop Provisions and allows FCIC to make changes in the Special Provisions, if applicable, without having to promulgate regulations to revise, add, or change types of peaches, which allows FCIC to be more responsive to the risk management needs of producers. Since these changes are similar to other crops, it is not necessary to provide a preview of the changes since implementation of the Special Provisions are time sensitive and FCIC is concerned that sending the Special Provisions out for preview will delay implementation. The change also aids in sharing information with other United States Department of Agriculture (USDA). Adding the definition of ''fresh peach production'' and ''processing peach production'' clearly defines the intended use of peach production. No change has been made.

Section 7—Insured Crop:

Comment: FCIC received comments stating that the introductory paragraph in section 7 seems to be redundant. The opening paragraph states ''* * * the crop insured will be all the peaches in the county for which a premium rate is provided by the actuarial documents''. Section 7(c) repeats the same opening paragraph by stating ''* * * any varieties of peaches that are grown for the production of fresh or processing peaches on insured acreage for which a guarantee and premium rate are provided by the actuarial documents.''

Response: FCIC agrees with the commenters stating the opening paragraph in section 7 is redundant with section 7(c) and the provision has been revised accordingly.

Section 9—Insurance Period:

Comment: A few commenters stated subsections in section 9(a)(1) and (c) seem somewhat contradictory and confusing. According to (a)(1): ''Coverage begins on November 21 of each crop year, except that for the year of application* * *'' if the application is received in the last 10 days before sales closing date, coverage attaches on the 10th day. But according to (c): ''* * * for each subsequent crop year that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period * * *'' The calendar date for the end of the insurance period is September 30 in accordance with section 9(a)(2), so this indicates coverage would begin October 1 (unless some other event ended coverage earlier) rather than November 21. It appears that the November 21 date applies only the year of application (with the 10-day exception for applications during that 10-day period) rather than for ''each'' crop year since all subsequent crop years are addressed in (c).

Response: Since the recommended changes were not proposed, and the public was not provided an opportunity to comment, the recommendation cannot be incorporated in the final rule. However, FCIC believes there is no conflict. Insurance coverage begins on November 21 of each crop year, except for the year of application. Insurance coverage ends on September 30. However, in accordance with these Crop Provisions, for each subsequent crop year that the policy is remains continuously in force, coverage begins on the day immediately following the end of insurance period for the prior crop year. The insurance period is set to provide insurance during the same time when the crop is at risk from normal causes of loss. This is period is not the same for all crops. There needs to be variance in the beginning and ending of insurance periods to reflect differences in the crops being insured and the areas where they are grown. The calendar date for the end of insurance period must reflect the normal harvest date for each crop. No change has been made.

Comment: A commenter recommended the words ''* * * after an inspection * * *'' should be removed in section 9(b)(1). If damage has not generally occurred in the area where such acreage is located, it should be up to the insurance providers' discretion to decide whether the acreage needs an inspection to be considered acceptable. The language in this section already refers to the insurance provider having the ability to consider the acreage acceptable. Since the acreage and production reporting dates are after insurance attaches, the insurance provider may not know if the acreage was acquired after coverage began, but before the acreage reporting date. The insurance provider reserves the right to perform an inspection if they deem necessary, but this should NOT be a requirement.

Response: Since the recommended changes were not proposed, and the public was not provided an opportunity to comment, the recommendation cannot be incorporated in the final rule. No change has been made.

Comment: A commenter recommended adding language to this section to allow the insurance provider the opportunity to inspect and insure any additional acreage that is acquired after the acreage reporting date if they wish to do so. The insurance provider should have the opportunity to accept or deny coverage in these types of situations. This would be similar to what is currently allowed for acreage that is not reported in accordance with section 6(f) of the Basic Provisions.

Response: Since the recommended changes were not proposed, and the public was not provided an opportunity to comment, the recommendation cannot be incorporated in the final rule. No change has been made.

Section 11—Duties in the Even of Damage:

Comment: FCIC received comments that the provision in section 11 requiring the insured to leave representative samples in units should be removed. Peaches are extremely perishable, with a ripening period of only 10–14 days. Beyond that, the fruit will begin to break down and decay. Fruit left on trees provides an ideal environment for insect and disease infestation. Many units contain multiple varieties, ripening on different timelines. This practice of leaving samples would increase the likelihood of infection for neighboring varieties''.

Response: FCIC realizes that there is a narrow window of time to harvest the peaches and has tried to achieve a balance with will the need to provide meaningful coverage, such as direct harvest which requires an appraisal because of the difficulty with verifiable records, and protect program integrity. Insurance providers know of the expediency needed to appraise peaches and the goal is to conduct such appraisals in a timely manner to avoid any adverse consequences to the peaches or trees. No change has been made.

Section 12—Settlement of Claim:

Comment: A few commenters suggested adding a second example in section 12(b) depicting two optional units, one for fresh peaches and a second for processing peaches and to demonstrate within the fresh peach unit a portion of the total production that does not meet the requirements for fresh production and is sold as processing peach production.

Response: FCIC understands the commenters suggestion, but due to the numerous situations regarding optional units, it is not possible to list them all in an example. The example in section 12(b) is only intended to provide only a general explanation of how the indemnity payment would be calculated in accordance with these Crop Provisions. To the extent that other examples may be necessary, they will be provided in the applicable procedures. No change has been made.

Comment: A few commenters recommended adding hyphens in the phrase ''3,000-bushel production guarantee'' and ''1,500-bushel production guarantee'' in steps (A) (B).

Response: FCIC has revised the provision accordingly.

Comments: Commenter asks why the steps are designated (A)–(G) rather than (1)–(7) to match (b) (1)–(7) and to be consistent with other crop policies.

Response: FCIC understands the commenters questioning why the steps in the example designated as (A)–(G) rather that (1)–(7) to match (b) (1)–(7). However, the example follows paragraph (7) and is, in effect, a descriptor for paragraphs (1) through (7). Therefore, it did not make sense to designate these provisions again as paragraphs (1) through (7). Further, descriptive headings and formatting of various policy provisions are formulated for convenience only and are not intended to affect the construction or meaning of any of the policy provisions. No change has been made.

Comment: A few commenters recommended the subsection designation of ''(2.)'' should read ''(2)''.

Response: FCIC has revised the provision accordingly.

Comment: A commenter asked whether the reference to the fresh peach price election and processing peach price election in section 12(c)(3)(i) and (ii)(A) is the same as RMA's price election in the Special Provisions or the addendum to the Special Provisions and not the insured's price election.

Response: The ''fresh peach and processing price election'' referenced in section 12(c)(3)(i) and (ii)(A) are RMA's price elections as published in the Special Provisions. No change has been made.

In addition to the changes described above, FCIC has made minor typographical and punctuation changes.

Good cause is shown to make this rule effective less than 30 days after publication in the **Federal Register**. Good cause to make a rule effective less than 30 days after publication in the **Federal Register** exists when the 30-day delay in the effective date is impracticable, unnecessary, or contrary to the public interest.

With respect to the provision for this rule, it would be contrary to public interest to delay implementation because public interest is served by improving the insurance product as follows: (1) Increasing insurance flexibility by providing for separate optional units by fresh and processing; (2) allowing different coverage levels for all fresh peach acreage in the county and for all processing peach acreage in the count; and (3) providing simplification and clarity to the peach crop insurance program.

If FCIC is required to delay the implementation of this rule 30 days after the date it is published, the provisions of this rule could not be implemented unit the 2014 crop year. This would mean the affected producers would be without the benefits described above for an additional year.

For the reasons stated above, good cause exists to make these policy changes effective less than 30 days after publication in the **Federal Register**.

List of Subjects in 7 CFR Part 457

Crop insurance, Peach, Reporting and recordkeeping requirements.

Final Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 457 effective for the 2013 and succeeding crop years as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

■ 1. The authority citation for 7 CFR Part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(o).

■ 2. Amend § 457.153 as follows:

■ a. Amend the introductory text by removing the ''2001'' and adding ''2013'' in its place;

■ b. Remove the undesignated paragraph immediately preceding section 1.

■ c. Amend section 1 as follows:

■ 1. Add definitions of ''fresh peach production'', ''post production cost'', and ''processing peach production'' in alphabetical order; and

■ 2. Remove the definition of ''actual price per bushel for''.
■ d. Redesignate sections 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11 as 3, 4, 5, 7, 8, 9, 10, 11, 12, and 13, respectively.
■ e. Add a new section 2.
■ f. Amend redesignated section 3 as follows:
■ i. Remove the phrase ''(Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities)'' in the introductory text;
■ ii. Redesignate paragraphs (a), (b), and (c) as (b), (c), and (e), respectively, and adding a new paragraph (a);
■ iii. Revise redesignated paragraphs (b), (c) introductory text, (c)(1), (c)(3), and (c)(4)(ii);
■ iv. Designate the undesignated paragraph following redesignated paragraph (c) as paragraph (d); and
■ v. Revise redesignated paragraph (d).
■ g. Amend redesignated section 4 by removing the phrase ''(Contract Changes)''.
■ h. Amend redesignated section 5 by removing the phrase ''(Life of Policy, Cancellation and Termination)''.
■ i. Add a new section 6.
■ j. Amend redesignated section 7 as follows:
■ i. Remove the phrase ''(Insured Crop)'';
■ ii. Amend paragraph (c) by removing phrases ''of the types or'' and ''(except Processing Peaches excluded in California) on insured acreage and for which guarantee and premium rate are provided by the Actuarial Table'';
■ iii. Amend paragraph (d) by removing the word ''and'' at the end;
■ iv. Amend paragraph (e) by removing the period at the end and adding the phrase ''; and'' in its place; and
■ v. Add a new paragraph (f).
■ k. Amend redesignated section 8 by removing the phrase ''(Insurable Acreage)''.
■ l. Amend redesignated section 9 as follows:
■ i. Remove the phrase ''(Insurance Period)''in paragraphs (a) and (b); and
■ ii. Amend paragraph (c) by removing the phrase ''paragraph (a)(1)'' and adding the phrase ''section 9(a)(1)'' in its place.
■ iii. Amend paragraph (d) to add a comma after the phrase, ''termination dates.''
■ m. Amend redesignated section 10 by removing the phrase ''(Causes of Loss)'' in paragraphs (a) and (b).
■ n. Amend redesignated section 11 as follows:
■ i. Redesignate the introductory text as paragraph (b);
■ ii. Redesignate paragraphs (a), (b), (c), and (d) as (1), (2), (3), and (4), respectively;
■ iiii. Add a new paragraph (a); and
■ iv. Remove the phrase ''(Duties in the Event of Damage or Loss)'' in redesignated paragraph (b).
■ o. Amend redesignated section 12 as follows:
■ i. Revise paragraphs (b)(1) through (b)(7);
■ ii. Add a loss example after paragraph (b)(7);
■ iii. Revise paragraph (c)(1) introductory text:
■ iv. Revise paragraph (c)(1)(i)(B);
■ v. Revise paragraph (c)(1)(iii);
■ vi. Revise paragraph (c)(2); and
■ vii. Revise paragraphs (c)(3)(i) and (c)(3)(ii).

The revised and added text reads as follows:

§ 457.153 Peach crop insurance provisions.

* * * * *

1. Definitions.

* * * * *

Fresh peach production. Peach production from insurable acreage that:

(1) Is sold, or could be sold, for human consumption without undergoing any change in the basic form, such as peeling, juicing, crushing, etc.

(2) Grades at least U.S. Extra No. 1 or better, and consisting of a 2¼ inch minimum diameter, unless otherwise specified in the Special Provisions.

(3) Is from acreage that is designated as fresh peaches on the acreage report;

(4) Follows the recommended cultural practices generally in use for fresh peach acreage in the area in a manner generally recognized by agricultural experts;

(5) Is from acreage that you certify, and if requested by us, provide verifiable records to support, that at least 50 percent of the total production from acreage reported as fresh peach acreage was sold as fresh peaches in one or more of the four most recent crop years; and

(6) Is sold or could have been sold for a price that is not less than the applicable fresh peach price election for the applicable crop year in the actuarial documents. If the fresh peach production is sold or could have been sold for a price less than the applicable fresh peach price election for the applicable crop year in the actuarial documents, you must provide verifiable records to show that the price received was at least the amount paid by buyers for fresh peaches in the area in which you sell your peaches.

* * * * *

Post production cost. The costs, as specified in the Special Provisions, associated with activities that occur during harvesting, packing, transportation, and marketing, as determined by FCIC using regional peach price data of peach production budgets from regional respective universities extension, other USDA agencies, and other third party resources.

Processing peach production. Peach production from insurable acreage that is:

(i) Sold, or could be sold, for the purpose of undergoing a change to its basic structure such as peeling, juicing, crushing, etc.; or

(ii) From acreage designated as processing peaches on the acreage report.

* * * * *

2. Unit Division.

In addition to the requirements contained in section 34 of the Basic Provisions, optional units may be established if each optional unit is:

(a) Located on non-contiguous land; or

(b) By fresh and processing as specified in the Special Provisions.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

* * * * *

(a) You may select a separate coverage level for all fresh peach acreage and for all processing peach acreage. For example, if you choose the 55 percent coverage level for all fresh peach acreage, you may choose the 75 percent coverage level for all processing peach acreage.

(1) Notwithstanding paragraph (a) of this section, if you elect the Catastrophic Risk Protection (CAT) level of coverage for fresh peach acreage or processing peach acreage, the CAT level of coverage will be applicable to all insured peach acreage in the county of both fresh and processing peaches.

(2) If you only have fresh peach acreage designated on your acreage report and processing peach acreage is added after the sales closing date, we will assign a coverage level equal to the coverage level you selected for your fresh peach acreage.

(3) If you only have processing peach acreage designated on your acreage report and fresh peach acreage is added after the sales closing date, we will assign a coverage level equal to the coverage level you selected for your processing peach acreage.

(b) You may select only one price election for all the peaches in the county insured under this policy unless the Special Provisions provide different price elections by fresh and processing peaches. If the Special Provisions allow different price elections, you may select a separate price election for all your fresh peaches and for all your processing peaches. If the Special Provisions do not allow for different price elections, the price elections you choose for fresh peaches and processing peaches must have the same percentage relationship to the maximum price offered by us for fresh and processing peaches. For example, if you choose 100 percent of the maximum price election for fresh peaches, you must choose 100 percent of the maximum price election for processing peaches.

(c) You must report, not later than the production reporting date designated in section 3 of the Basic Provisions, separately by fresh and processing peach acreage, as applicable:

(1) Any event or action that could impact the yield potential of the insured crop including, interplanting of a perennial crop, removal of trees, any tree damage, change in practices, or any other circumstance that may reduce the expected yield upon which the insurance guarantee is based, and the number of affected acres;

(2) * * *

(3) The age of trees, variety, and the planting pattern; and

(4) * * *

(ii) The variety;

* * * * *

(d) We will reduce the yield used to establish your production guarantee, as necessary, based on our estimate of the effect of any situation listed in sections 3(c)(1) through (4). If the situation occurred:

(1) Before the beginning of the insurance period, we will reduce the yield used to establish your production guarantee for the current crop year as necessary. If you fail to notify us of any circumstance that may reduce your yields from previous levels, we will reduce your production guarantee at any time we become aware of the circumstance;

(2) Or may occur after the beginning of the insurance period and you notify us by the production reporting date, the yield used to establish your production guarantee is due to an uninsured cause of loss;

(3) Or may occur after the beginning of the insurance period and you fail to notify us by the production reporting date, production lost due to uninsured causes equal to the amount of the reduction in yield used to establish your production guarantee will be applied in determining any indemnity (see section 12(c)(1)(ii). We will reduce the yield used to establish your production guarantee for the subsequent crop year.

* * * * *

6. Report of Acreage.

In addition to the requirements contained in section 6 of the Basic Provisions, you must report and designate all acreage of peaches as fresh or processing peaches by the acreage reporting date. Any acreage not meeting all the requirements to qualify for fresh peach production must be designated on the acreage report as processing peach production.

7. Insured Crop.

* * *

(f) That are grown for:

(1) Fresh peach production; or

(2) Processing peach production.

* * * * *

11. Duties In the Event of Damage or Loss.

(a) In accordance with the requirements of section 14 of the Basic Provisions, you must leave representative samples in accordance with our procedures.

* * * * *

12. Settlement of Claim.

* * * * *

(b) * * *

(1) Multiplying the insured acreage for fresh and processing peaches, as applicable, by the respective production guarantee;

(2) Multiplying each result in section 12(b)(1) by the respective price election;

(3) Totaling the results in section 12(b)(2);

(4) Multiplying the total production of fresh and processing peaches to be counted, as applicable (see subsection 12(c)) by the respective price election;

(5) Totaling the results in section 12(b)(4);

(6) Subtracting the total in section 12(b)(5) from the total in section 12(b)(3); and

(7) Multiplying the result in section 12(b)(6) by your share.

Example:

You have a 100 percent share in one basic unit with 10 acres of fresh peaches and 5 acres of processing peaches designated on your acreage report, with a 300 bushel per acre production guarantee for both fresh and processing peaches, and you select 100 percent of the price election of $15.50 per bushel for fresh peaches and $6.50 per bushel for processing peaches. You harvest 2,500 bushels of fresh peaches and 500 bushels of processing peaches. Your indemnity will be calculated as follows:

(A) 10 acres × 300 bushels = 3,000-bushel production guarantee of fresh peaches;

5 acres × 300 bushels = 1,500-bushel production guarantee of processing peaches;

(B) 3,000-bushel production guarantee × $15.50 price election = $46,500 value of the production guarantee for fresh peaches; 1,500-bushel production guarantee × $6.50 price election = $9,750 value of the production guarantee for processing peaches;

(C) $46,500 value of the production guarantee for fresh peaches + $9,750 value of the production guarantee for processing peaches = $56,250 total value of the production guarantee;

(D) 2,500 bushels of fresh peach production to count × $15.50 price election = $38,750 value of the fresh peach production to count; 500 bushels of processing peach production to count × $6.50 price election = $3,250 value of the processing peach production to count;

(E) $38,750 value of the fresh peach production to count + $3,250 value of the processing peach production to count = $42,000 total value of the production to count;

(F) $56,250 total value of the production guarantee—$42,000 total value of the production to count = $14,250 value of loss; and

(G) $14,250 value of loss × 100 percent share = $14,250 indemnity payment.

[End of Example]

(c) * * *

(1) All appraised production as follows:

(i) * * *

(B) From which production is sold by direct marketing if you fail to meet the requirements contained in section 11.

* * *

(iii) Unharvested peach production that would be marketable if harvested;

* * *

(2) All harvested marketable peach production from the insurable acreage.

(3) * * *

(i) For fresh peaches by:

(A) Dividing the value of the damaged peaches minus the post production cost specified in the Special Provisions, by the fresh peach price election; and

(B) Multiplying the result of section 12(c)(3)(i)(A) (not to exceed 1.00) by the number of bushels of the damaged fresh peaches.

(ii) For processing peaches by:

(A) Dividing the value of the damaged peaches minus the post production cost specified in the Special Provisions, by the processing peach price election; and

(B) Multiplying the result of section 12(c)(3)(ii)(A) (not to exceed 1.00) by the number of bushels of the damaged processing peaches.

* * * * *

Signed in Washington, DC, on August 24, 2012.

William J. Murphy,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 2012–21350 Filed 8–29–12; 8:45 am]

BILLING CODE 3410–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 929

[Doc. No. AMS–FV–12–0002; FV12–929–1 IR]

Cranberries Grown in States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York; Changing Reporting Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This rule revises the reporting requirements currently prescribed under the marketing order that regulates the handling of cranberries grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York (order). The order is administered locally by the Cranberry Marketing Committee (Committee). This rule changes the dates covered by the third reporting period and the date by which the Handler Inventory Report (Form HIR) is due to the Committee. These changes will help ensure the Committee has current and complete information available for its discussions during its annual August meeting, while providing handlers sufficient time to submit their reports.

DATES: Effective August 31, 2012; comments received by October 29, 2012 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: *http://www.regulations.gov.* All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov.* All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Marketing Specialist, or Christian D. Nissen, Regional Manager, Southeast Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (863) 324–3375, Fax: (863) 325–8793, or Email: *Doris.Jamieson@ams.usda.gov* or *Christian.Nissen@ams.usda.gov.*

Small businesses may request information on complying with this regulation by contacting Laurel May, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Laurel.May@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 929, both as amended (7 CFR part 929), regulating the handling of cranberries produced in States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule revises the reporting requirements currently prescribed under the order. This rule changes the dates covered by the third reporting period and the date by which the Handler Inventory Report (Form HIR) is due to the Committee. These changes will help ensure the Committee has current and complete information available for its discussions during its annual August meeting, while providing handlers sufficient time to submit their report. These changes were unanimously recommended by the Committee at a meeting on August 31, 2011.

Section 929.62 of the cranberry marketing order provides, in part, that each handler engaged in the handling of cranberries or cranberry products shall, upon request of the Committee, report as to the quantity of cranberries acquired and handled during any designated period or periods. This section also provides that handlers report cranberries or cranberry products held in inventory on such date as the Committee may designate.

Currently, § 929.105 provides that certified reports shall be filed with the Committee, on a form provided by the Committee, by each handler not later than January 20, May 20, and August 20 of each fiscal period and by September 20 of the succeeding fiscal period. This Handler Inventory Report (Form HIR) must show the total quantity of cranberries acquired and the total quantity of cranberries and *Vaccinium oxycoccus* cranberries handled from the beginning of the reporting period indicated through December 31, April 30, July 31, and August 31, respectively. The report must also show the total quantity of cranberries and *Vaccinium oxycoccus* cranberries as well as cranberry products and *Vaccinium oxycoccus* cranberry products held by the handler on January 1, May 1, August 1, and August 31 of each fiscal period. The information obtained from handlers is compiled into reports which are reviewed by the Committee and used to make informed decisions regarding the activities under the order.

In 2010, the Committee recommended changing the dates when handler reports were due in order to provide handlers with additional time to submit their report (75 FR 5898). Under that action, the due dates were changed from January 5, May 5, and August 5 of each fiscal period and by September 5 of the succeeding fiscal period to January 20, May 20, and August 20 of each fiscal period and by September 20 of the succeeding fiscal period, respectively. This change was made to allow handlers more time to file their report.

After changing the due dates of the report, the Committee realized that given the new due dates, the handler report due by August 20 may not be received prior to the Committee's annual August meeting. In discussing this issue, the Committee recognized that having as current industry information as possible available for the August meeting is important for administering the order. Further, it is particularly significant as the Committee is required to make decisions regarding the need to establish a volume regulation using a handler withholding not later than August 31 each year.

Consequently, the Committee unanimously voted to change the due date for the third reporting period from August 20 to July 20. To accommodate the new due date, this rule also adjusts the timeframes covered under third period reporting by adjusting the end date from July 31 to June 30 for cranberries acquired and handled and for reporting inventory held changes August 1 to June 30. With these changes, handler information from the third reporting period will be received and compiled into reports prior to the Committee's meeting in August. These changes will help ensure that the Committee has current and complete information available for its discussions, while providing handlers sufficient time to submit their reports.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 55 handlers of cranberries who are subject to regulation under the marketing order and approximately 1,200 cranberry producers in the regulated area. Small agricultural service firms are defined by the Small Business Administration (SBA) as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000 (13 CFR 121.201).

Based on Committee data and information from the National Agricultural Statistics Service, the average annual f.o.b. price of cranberries during the 2010 season was approximately $46.50 per barrel and total shipments were approximately 6.8 million barrels. As a percentage, about 18 percent of the handlers shipped approximately 6.5 million barrels of cranberries. Using the average f.o.b. price and shipment data, about 82 percent of cranberry handlers could be considered small businesses under SBA's definition. In addition, based on production and producer prices, and the total number of cranberry growers, the average grower revenue is less than $750,000. Therefore, the majority of growers and handlers of cranberries may be considered small entities.

This rule revises the reporting requirements currently prescribed under the cranberry marketing order. This rule revises § 929.105 by changing the due date for the third reporting period from August 20 to July 20. To accommodate the new due date, this rule also adjusts the end date for the timeframe covered under the third period reporting from July 31 to June 30 for cranberries acquired and handled, and changes August 1 to June 30 for reporting inventory held. These changes will help ensure the Committee has current and complete information available for discussion during its annual August meeting, while providing handlers sufficient time to submit their Handler Inventory Report (Form HIR). The authority for these actions is provided in § 929.62. These changes were unanimously recommended by the Committee at a meeting on August 31, 2011.

It is not anticipated that this action will impose any additional costs on the industry nor will it change the reporting and recordkeeping burden on handlers. Having current and complete information available during the Committee's August meeting will assist the Committee when making decisions regarding the administration of the order. The benefits of this rule are not expected to be disproportionately greater or less for small handlers or growers than for large entities.

The Committee considered one alternative to these changes, making no changes to the reporting requirements. The Committee recognized making no changes to the reporting requirements could mean that current and complete information for the third reporting period may not be available for discussion during the August meeting. Therefore, this alternative was rejected.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. chapter 35), the order's information collection requirements have been approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0189, Generic Fruit Crops. Because this revision changes neither the content of the Handler Inventory Report (Form HIR) nor its calculated burden, no changes in OMB requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large cranberry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the cranberry industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the August 31, 2011, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit comments on this interim rule, including the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *www.ams.usda.gov/MarketingOrdersSmallBusinessGuide.* Any questions about the compliance guide should be sent to Laurel May at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on changes to the reporting requirements currently prescribed under the cranberry marketing order. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The handler reporting cycle for the current fiscal period has already begun; (2) the Committee would like this action in place prior to the start of the third reporting period which begins May 1; (3) the Committee unanimously recommended these changes at a public meeting and interested parties had an opportunity to provide input; and (4) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 929

Cranberries, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 929 is amended as follows:

PART 929—CRANBERRIES GROWN IN THE STATES OF MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

■ 1. The authority citation for 7 CFR part 929 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Amend § 929.105 by revising paragraph (b) to read as follows:

§ 929.105 Reporting.

* * * * *

(b) Certified reports shall be filed with the committee, on a form provided by the committee, by each handler not later than January 20, May 20, and July 20 of each fiscal period and by September 20 of the succeeding fiscal period showing:

(1) The total quantity of cranberries the handler acquired and the total quantity of cranberries and *Vaccinium oxycoccus* cranberries the handler handled from the beginning of the reporting period indicated through December 31, April 30, June 30, and August 31, respectively, and

(2) The respective quantities of cranberries and *Vaccinium oxycoccus* cranberries and cranberry products and *Vaccinium oxycoccus* cranberry products held by the handler on January 1, May 1, June 30, and August 31 of each fiscal period.

Dated: August 22, 2012.

David R. Shipman,

Administrator, Agricultural Marketing Service.

[FR Doc. 2012–21372 Filed 8–29–12; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1260

[Doc. No. AMS–LS–11–0086]

Beef Promotion and Research; Amendment to the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule expands the contracting authority of the Beef Promotion and Research Order (Order). The Beef Research and Information Act (Act) requires that the Beef Promotion Operating Committee (BPOC) enter into contracts with established national non-profit industry-governed organizations including the Federation of State Beef Councils to implement programs of promotion, research, consumer information, and industry information. The Act does not define ''national non-profit industry governed organization,'' however, the Order states that these organizations must be governed by a board of directors representing the cattle or beef industry on a national basis and that they were active and ongoing prior to enactment of the Act. This final rule changes the date requirement in the Order so that organizations otherwise qualified could be eligible to contract with the BPOC for the implementation and conduct of Beef Checkoff programs if they have been active and ongoing for at least two years.

DATES: Effective August 31, 2012.

FOR FURTHER INFORMATION CONTACT: Craig Shackelford, Agricultural Marketing Specialist, Marketing Programs Division, on 202/720–1115, fax 202/720–1125, or by email at *craig.shackelford@ams.usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget has waived the review process required by Executive Order 12866 for this action.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have a retroactive effect.

Section 11 of the Act provides that nothing in the Act may be construed to preempt or supersede any other program relating to beef promotion organized and operated under the laws of the United States or any State. There are no administrative proceedings that must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act and Paperwork Reduction Act

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic effect of this action on small entities and has determined that this final rule will not have a significant economic impact on a substantial number of small entities. The purpose of RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly burdened.

In the February 2011 publication of ''Farms, Land in Farms, and Livestock Operations,'' the U.S. Department of Agriculture's (USDA) National Agricultural Statistics Service (NASS) estimates that in 2010 the number of operations in the United States with cattle totaled approximately 935,000. The majority of these operations that are subject to the Order may be classified as small entities.

The final rule imposes no new burden on the industry. It merely expands the contracting authority as established under section 1260.168(b) within the Order to permit a greater number of organizations to perform work on behalf of the BPOC.

Background and Final Action

The Order is authorized by the Act of 1985 [7 U.S.C. 2901–2918]. The Act was passed as part of the 1985 Farm Bill [Pub. L. 99–198]. The program became effective on July 18, 1986, when the Order was issued [51 FR 26132]. Assessments began on October 1, 1986.

Section 5(6) of the Act provides that the BPOC, to insure coordination and efficient use of funds, shall enter into contracts or agreements for implementing any activities, which it has approved to be carried out, with established national nonprofit industry-governed organizations including the Federation of State Beef Councils. This language has the effect of requiring the BPOC to contract with organizations, which qualify as established national non-profit industry-governed organizations. The Act does not define ''national non-profit industry governed organization.''

Previously, section 1260.113 of the Order defined ''established national non-profit industry-governed organizations'' as organizations which: (a) Are non-profit organizations pursuant to sections 501(c)(3), (5) or (6) of the Internal Revenue Code (26 U.S.C. 501(c)(3), (5), and (6)); (b) are governed by a board of directors representing the cattle or beef industry on a national basis; and (c) were active and ongoing before enactment of the Act. This final rule amends section 1260.113 of the Order by replacing the existing language under paragraph (c), ''were active and ongoing before the enactment of the Act'' with ''have been active and ongoing for at least two years.''

In 2006, the National Cattlemen's Beef Association (NCBA) and the American Farm Bureau Federation (AFBF) initiated the Industry-Wide Beef Checkoff Taskforce (Taskforce) to review, study, and recommend enhancements to the Beef Checkoff program for the purpose of strengthening the Beef Checkoff Program for the common good of the beef industry. The Taskforce included producer and industry representatives and representatives from national organizations, while USDA took on an advisory role during meetings. The Taskforce issued a report in September 2006, which included a recommendation to eliminate section 1260.113(c) in order to make the Beef Checkoff more inclusive. USDA believes that permitting a greater number of organizations to contract with the BPOC could bring new perspectives to the contracting process.

In February 2008 at the Cattle Industry Annual Convention, leaders of the Cattlemen's Beef Board (Board) asked AMS officials if the Board could conduct a program review. The industry officials believed that it would be in the best interest of the Beef Checkoff Program to conduct a review of the operations to determine if there are any changes that need to or could be made in program operations, the Act, or Order that would facilitate a more effective Beef Checkoff Program. Included in the Board's subsequent January 2009 recommendations to AMS was a recommendation for a statutory amendment intended to result in an expansion of the contracting authority to organizations created after the 1986 enactment of the Act.

Finally, a meeting was held in Minneapolis, Minnesota on September 27, 2011, attended by many industry stakeholders and co-hosted by the U.S. Cattlemen's Association and the National Farmers Union as requested by the Secretary. The goal of the meeting was to bring more broad-based producer support to the Beef Checkoff program through a discussion of issues regarding Beef Checkoff administration and to provide the Secretary with recommendations that would enhance support for the Beef Checkoff. Many major Beef Checkoff industry stakeholders attended, including the American National Cattlewomen, American Veal Association, Livestock Marketing Association, NCBA, National Livestock Producers Association, and Ranchers-Cattlemen Action Legal Fund, United Stockgrowers of America (R–CALF). Representatives from the AMS also attended the meeting, as did the Chief Executive Officer and Producer Chairman of the Board.

As a result of that meeting, the Secretary received a joint letter signed by most of the organizations in attendance. The letter requested that USDA amend Beef Checkoff regulations to expand the contracting authority as authorized under the Act and Order by permitting organizations that are active and ongoing for at least two years to contract with the BPOC.

Conclusion

A greater number of beef industry organizations exist now than did at the time the Order was issued. The Beef Checkoff Program could benefit from the perspectives and skills of some of these organizations that are ineligible solely because they were formed after the enactment of the Act. For several years, the beef industry has been recommending expanding the eligibility of organizations to contract with the BPOC in order to enhance the Beef Checkoff Program. Amending the Order will allow the BPOC to contract with organizations possessing the requisite experience, skills and information related to the marketing of beef and beef products, as is intended under the Act.

Comments

On March 2, 2012, USDA published in the **Federal Register** (77 FR 12752) for public comment a proposed rule providing for the expansion of the contracting authority as authorized under the Order by permitting organizations that are active and ongoing for at least two years to contract with the BPOC. Comments were due to USDA by May 1, 2012.

USDA received 20 timely comments associated with the proposed rule for expansion of the contracting authority. Ten comments were submitted by individual cattle ranchers or members of the general public. Ten comments were received from cattle industry organizations. No untimely comments were received and no new information was obtained that was not already provided in the timely comments that are considered below.

Twelve commenters directly expressed support of the expansion of the contracting authority and for the provision requiring that otherwise qualified organizations must have been active and ongoing for at least 2 years.

One commenter provided background information on how the Order came to have its current contracting provisions and compared this to the current proposal. This commenter fully supported the expansion of the contracting authority and the requirement that qualifying contracting organizations be active and ongoing for at least 2 years.

Several commenters offered ideas and suggestions that were pertinent to the Program but were outside the scope of this final rule. One commenter suggested that farmers and ranchers who pay into the Beef Checkoff should be given the opportunity to vote on Beef Checkoff promotion programs every five years. Six commenters suggested that AMS should reinstate the eligibility requirement contained in its proposed rule dated March 14, 1986 (51 FR 8984) that such organizations must be governed by a board of directors composed of a majority of producers. Eight commenters suggested that AMS should add a new provision to the Order that would restrict any contracting organization from receiving more than a specified percentage of the Beef Checkoff annual program funding. Five commenters suggested that the Beef Checkoff should promote U.S. produced beef. One commenter suggested that AMS should reopen the comment period and propose a plan to make improvements to the administration and operation of the Program. These comments were all beyond the scope of this rulemaking and therefore no changes were incorporated into this final rule based on these comments.

One commenter raised a number of points regarding AMS and the beef industry as a whole that are not pertinent to the proposal and therefore are not addressed.

List of Subjects in 7 CFR Part 1260

Administrative practice and procedure, Advertising, Agricultural research, Imports, Marketing agreement, Meat and meat products, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, 7 CFR part 1260 is amended as follows:

PART 1260—BEEF PROMOTION AND RESEARCH

■ 1. The authority citation for 7 CFR part 1260 continues to read as follows:

Authority: 7 U.S.C. 2901–2911 and 7 U.S.C. 7401.

■ 2. In § 1260.113, paragraph (c) is revised to read as follows:

§ 1260.113 Established national non-profit industry-governed organizations.

* * * * *

(c) Have been active and ongoing for at least two years.

Dated: August 22, 2012.

David R. Shipman,

Administrator, Agricultural Marketing Service.

[FR Doc. 2012–21374 Filed 8–29–12; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2012–0679]

Drawbridge Operation Regulation; Sacramento River, Sacramento, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating regulation that governs the Tower Drawbridge across Sacramento River, mile 59.0, at Sacramento, CA. The deviation is necessary to allow the community to participate in the A.L.S. 5K walk and run event. This deviation allows the bridge to remain in the closed-to-navigation position during the event.

DATES: This deviation is effective from 11 a.m. to 2 p.m., on October 6, 2012.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of the docket USCG–2012–0679 and are available online by going to *http://www.regulations.gov,* inserting USCG–2012–0679 in the ''Keyword'' box and then clicking ''Search''. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email David H. Sulouff, Chief, Bridge Section, Eleventh Coast Guard District; telephone 510–437–3516, email *David.H.Sulouff@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The California Department of Transportation has requested a temporary change to the operation of the Tower Drawbridge, mile 59.0, over Sacramento River, at Sacramento, CA. The drawbridge navigation span provides a vertical clearance of 30 feet above Mean High Water in the closed-to-navigation position. The draw opens on signal from May 1 through October 31 from 6 a.m. to 10 p.m. and from November 1 through April 30 from 9 a.m. to 5 p.m. At all other times the draw shall open on signal if at least four hours notice is given, as required by 33 CFR 117.189(a). Navigation on the waterway is commercial and recreational.

The drawspan will be secured in the closed-to-navigation position from 11 a.m. to 2 p.m. on October 6, 2012 to allow the community to participate in the A.L.S. 5K walk and run event. This temporary deviation has been coordinated with waterway users. There are no scheduled river boat cruises or anticipated levee maintenance during this deviation period. No objections to the proposed temporary deviation were raised. Vessels that can transit the bridge, while in the closed-to-navigation position, may continue to do so at any time. In the event of an emergency the drawspan can be opened without delay.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: August 21, 2012.

D.H. Sulouff,

District Bridge Chief, Eleventh Coast Guard District.

[FR Doc. 2012–21383 Filed 8–29–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[USCG–2012–0357]

RIN 1625–AA09

Drawbridge Operation Regulation; Elizabeth River, Eastern Branch, Norfolk, VA

AGENCY: Coast Guard, DHS.

ACTION: Interim rule with request for comments.

SUMMARY: The Coast Guard is modifying the operating schedule that governs the Berkley (I–264) Bridge, at mile 0.4, across the Eastern Branch of the Elizabeth River, Norfolk, VA. The current temporary regulation for the Berkley Bridge is scheduled to end on October 5, 2012. This regulation will make the provisions of the temporary regulation permanent. This change to the regulation is necessary to alleviate heavy vehicular traffic delays throughout the day and secondary congestion during the afternoon rush hour, while still providing for the reasonable needs of navigation.

DATES: This interim rule is effective at 5 a.m. on October 6, 2012. Comments and related material must reach the Coast Guard on or before October 1, 2012.

ADDRESSES: You may submit comments identified by docket number USCG–2012–0357 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S.

Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments. To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Terrance A. Knowles, Environmental Protection Specialist, Fifth Coast Guard District, at (757) 398–6587, *terrance.a.knowles@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. All comments received will be posted, without change to *http://www.regulations.gov* and will include any personal information you have provided.

1. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2012–0357), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (*http://www.regulations.gov*), or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via *www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand delivery, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu select ''Proposed Rules'' and insert ''USCG–2012–0357'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2012–0357'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit either the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC, 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

4. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**. For information on facilities or services for individuals with disabilities or to request special assistance at the public meeting, contact Terrance Knowles at the telephone number or email address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

B. Regulatory History and Information

The Coast Guard is issuing this interim final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA)(5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule for the following reasons:

On October 9, 2009, we published a notice of temporary deviation request for comments entitled; ''Drawbridge Operation Regulations; Elizabeth River, Eastern Branch, Norfolk, VA'' in the **Federal Register** (74 FR 52143) and a notice of proposed rulemaking (NPRM) entitled ''Drawbridge Operation Regulations; Elizabeth River, Eastern Branch, Norfolk, VA'' in the **Federal Register** (74 FR 52158). We received 861 comments for both the temporary deviation and NPRM. No public meeting was requested, and none was held.

On March 3, 2010, we published a notice of temporary deviation request for comments entitled; ''Drawbridge Operation Regulations; Elizabeth River, Eastern Branch, Norfolk, VA'' in the **Federal Register** (75 FR 9521) and a supplemental notice of proposed rulemaking (SNPRM) entitled ''Drawbridge Operation Regulations; Elizabeth River, Eastern Branch, Norfolk, VA'' in the **Federal Register** (75 FR 9557). We received four comments on the published deviation and SNPRM. No public meeting was requested, and none was held.

On August 6, 2010, we published a final rule entitled ''Drawbridge Operation Regulations; Elizabeth River, Eastern Branch, Norfolk, VA'' in the **Federal Register** (75 FR 47461) that temporarily changed the drawbridge operation regulations effective from 9 a.m. on September 4, 2010 until 2:30 p.m. on October 5, 2012.

The establishment of this regulation, effective since September 4, 2010, does not place any additional constraints on the waterway users because mariners have been using the temporary schedule for almost two years and can still plan their trips in accordance with the scheduled bridge openings. Any delay in the issuance of this rule after October 5, 2012 will result in the bridge operating schedule reverting back to the previous on-demand operation of the bridge that produced a tremendous amount of delay. These delays were unpredictable for motorists, and will continue to increase with population growth and any increase in associated traffic. We, therefore, believe to avoid any increased traffic delays and since this rule makes permanent an already existing bridge schedule, it is unnecessary and contrary to the public interest to publish an NPRM.

C. Basis and Purpose

On behalf of the Cities of Chesapeake and Norfolk Virginia, the Virginia Department of Transportation (VDOT), which owns and operates the bascule-type Berkley Bridge, has requested a permanent change to the bridge regulations. The proposed regulation would implement and make permanent those temporary regulations currently in effect.

The Berkley Bridge is the principle arterial route in and out of the City of Norfolk and serves as the major evacuation highway in the event of emergencies. In the closed to navigation position, the Berkley Bridge has a vertical clearance of 48 feet above mean high water. Vessel traffic on this portion of the Elizabeth River waterway consists of pleasure craft, tug and barge traffic, and ships with assist tugs seeking repairs. There is no alternate waterway route.

The regulation set out in Title 33 CFR 117.1007 (b) and (c) allows the Berkley Bridge, mile 0.4, in Norfolk, Virginia to remain closed one hour prior to the published start of a scheduled marine event regulated under § 100.501, and remain closed until one hour following the completion of the event unless the Patrol Commander designated under § 100.501 allows the bridge to open for commercial vessel traffic. In addition, the bridge shall open on signal any time, except from 5 a.m. to 9 a.m. and from 3 p.m. to 7 p.m., Monday through Friday, except Federal holidays, and shall open at any time for vessels with a draft of 18 feet or more, provided that at least 6 hours advance notice has been given to the Berkley Bridge Traffic Control Room at (757) 494–2490 as required by 33 CFR 117.1007(b) and (c).

The temporary regulation, which modified the above schedule, is effective from 9 a.m. on September 4, 2010 until 2:30 p.m. on October 5, 2012. During the temporary regulation, the draw shall remain closed one hour prior to the published start of a scheduled marine event regulated under § 100.501, and remain closed until one hour following the completion of the event unless the Patrol Commander designated under § 100.501 allows the bridge to open for commercial vessel traffic. The draw shall open on signal at any time for vessels carrying, in bulk, cargoes regulated by 46 CFR subchapters D or O, or Certain Dangerous Cargoes as defined in 33 CFR 160.204. For all other vessels, the draw shall open on signal at any time, except from 5 a.m. to 7 p.m., Monday through Friday, except Federal holidays. During these times, the draw shall open for commercial vessels with a draft of 18 feet or more, provided at least 6 hours notice was given to the Berkley Bridge Traffic Control room at (757) 494–2490; open on signal at 9 a.m., 11 a.m., 1 p.m. and 2:30 p.m.; and if the bridge is not opened during a particular scheduled opening and a vessel has made prior arrangements for a delayed opening, the draw tender may provide a single opening up to 30 minutes past that scheduled opening time for that signaling vessel, except at 2:30 p.m. The draw tender may provide a single opening up to 20 minutes past the 2:30 p.m. scheduled opening time for a signaling vessel that made prior arrangements for a delayed opening. A vessel may make prior arrangements for a delayed opening by contacting the Berkley Bridge Traffic Control room at (757) 494–2490.

The temporary regulation, detailed in the immediately preceding paragraph, is scheduled to expire on October 5, 2012. This new Interim Final Rule would make those temporary opening procedures permanent. By imposing the temporary regulation as permanent; we anticipate less vehicular traffic congestion between 9 a.m. and 3 p.m., while causing fewer secondary back-ups during rush hours, as compared to increased traffic when the bridge opens on signal.

In 2008, prior to implementing the temporary regulation, a Test Deviation published in the **Federal Register** (75 FR 52143) was issued to allow VDOT to test the proposed schedule and to obtain data and public comments. During that Test Deviation period, a count of the delayed vessels during the closure periods was taken to ensure the regulation would not have a significant impact on navigation. The monthly vehicular traffic counts submitted by VDOT for the last quarter of calendar year 2008 showed the average daily traffic volumes at the Berkley Bridge (See Table A):

TABLE A

OCT 2008	83,296 vehicles.
NOV 2008	99,643 vehicles.
DEC 2008	106,856 vehicles.

The traffic counts revealed that from October 2008 to December 2008, the Berkley Bridge experienced a seven percent (or 23,560-car) increase in vehicular traffic flow. The Coast Guard believes that the increase was due to the previously referenced temporary closure of two Norfolk-area bridges and that vehicular traffic will subside when those bridges return to service.

The Coast Guard received 861 comments on both the temporary deviation and NPRM originally proposed in 2009. A large majority of the responses from commuters were in support of the scheduled opening set-up. However, the local maritime community expressed some objections to the schedule change to vessels.

After review of all of the comments and bridge-related data received, the Coast Guard had determined that an alternative proposal should be considered.

From September 3, 2010 to October 5, 2012, an alternative proposal was offered with changes made that allowed for the draw of the Berkley Bridge to open on signal for the proposed drawbridge openings (scheduled during the daytime) which expected to similarly cause a decrease in traffic congestion. Concurrent with the publication of the Supplemental Notice of Proposed Rulemaking (SNPRM), another Test Deviation was issued to allow VDOT to test another proposed schedule and to acquire additional data and public comments.

The Coast Guard received four responses to the SNPRM and the second temporary deviation, one each by letter and to the Web site at *www.regulations.gov* along with two emails.

The Virginia Maritime Association (VMA), which represents waterborne commerce in the Port of Hampton Roads, responded in writing with its support of the revised regulation and its statement that the current operating regulation incorporates the minimum degree of flexibility that the maritime industry can accept. VDOT also indicated that the new Berkley Bridge operating regulation had improved the flow of vehicular traffic while still meeting the minimum needs of navigation.

VMA, VDOT and two private citizens expressed concerns about unscheduled openings that caused vehicular traffic congestion. The unscheduled openings were provided for Government vessels, vessels with a draft of 18 feet or more that provided at least 6 hours advance notice and for vessels hauling dangerous cargo.

The Coast Guard reviewed the bridge data supplied by VDOT. The information indicated that during the deviation test period (from March 3, 2010 to July 1, 2010), that a total of 260 potential bridge openings for vessels could have been provided Monday through Friday, except Federal holidays, at 9 a.m., 11 a.m., 1 p.m. and 2:30 p.m. The data showed the bridge only opened 88 times of the 260 potential openings. The data also revealed that seven bridge openings were provided just about 15 minutes past the scheduled opening time at 9 a.m., 11 a.m. and 1 p.m. and that the average opening usually lasted 12 minutes; a later opening at 2:30 p.m. would add to the traffic congestion during the rush hour. However, due to good communication with the general public by using road signs and broadcasts, there was only one opening that occurred after 2:45 p.m. A majority of those openings were provided primarily for commercial vessels, with a maximum of four vessels transiting through a single bridge opening. The subsequent changes to the operating procedures appear to have reduced vehicular traffic congestion while still providing for the reasonable needs of navigation. Based on the information provided, the revised temporary rule was implemented with no changes to the SNPRM.

Since October 2010, according to recent data provided by VDOT, the Berkley Bridge average daily traffic volume is approximately 106,000 vehicles per day which ranks it among the most heavily traveled routes in the region (See Table B).

TABLE B—AVERAGE DAILY VEHICULAR TRAFFIC COUNT

Hourly total	OCT 2010	JAN 2011	MAY 2011	AUG 2011	JAN 2012	Average
9AM–10AM	6,509	6,230	6,545	6,335	5,956	6,315
10AM–11AM	6,248	6,074	6,362	6,383	5,898	6,193
11AM–12PM	6,443	6,008	6,457	6,439	5,927	6,255
12PM–1PM	6,714	6,583	6,781	6,780	6,283	6,628
1PM–2PM	6,860	6,345	6,766	6,760	6,249	6,596
2PM–3PM	7,330	7,133	7,361	7,210	7,032	7,213
Total	40,103	38,373	40,270	39,906	37,345	39,199

Overall hourly average—6,533

The temporary regulation schedule provides four bridge lift opportunities each weekday between 9 a.m. and 3 p.m. This equates to a maximum of 88 lifts per month (assuming 22 workdays per month). Since October 2010, there has been an average of only 24 requested lifts per month—a usage rate of only 27% of capacity (See Table C).

TABLE C—BRIDGE OPENING COUNTS

2010 OCT	2010 NOV	2010 DEC	2011 JAN	2011 FEB	2011 MAR	2011 APR	2011 MAY	2011 JUN	2011 JUL	2011 AUG	2011 SEP	2011 OCT	2011 NOV	2011 DEC	2012 JAN	2012 FEB	MONTHLY AVERAGE	TOTAL
30	15	23	28	27	29	23	22	28	20	9	21	19	34	15	23	35	23.6	401

BRIDGE OPENING AVERAGE DURATION (IN MINUTES)

2010 OCT	2010 NOV	2010 DEC	2011 JAN	2011 FEB	2011 MAR	2011 APR	2011 MAY	2011 JUN	2011 JUL	2011 AUG	2011 SEP	2011 OCT	2011 NOV	2011 DEC	2012 JAN	2012 FEB	MONTHLY AVERAGE
10.0	9.9	9.7	8.9	9.4	9.1	9.0	8.9	10.2	10.1	9.3	10.0	9.1	9.1	8.7	10.1	12.3	9.6

Prior to execution of the temporary deviation and temporary regulation periods, the average duration of a bridge lift was approximately 15 minutes. Throughout the same periods, the average duration of bridge lifts has been 9.6 minutes—a reduction of 5.4 minutes per lift.

The temporary closures of two Norfolk-area bridges, forced increased use of the Berkley Bridge by vehicular traffic. Now with those bridges near completion, the Berkley Bridge and its approaches still experience back-ups, delays, and congestion, due to increased traffic and population. The Hampton Roads Planning District Commission projected a population growth of 31% by 2034. This continued increase in traffic volume in Norfolk and at the Berkley Bridge is not expected to decrease in the future. The temporary rule draw opening schedule has helped to decrease the average bridge opening times, and the rule has led to only 27% of the available opening time being utilized by mariners. Continuing this schedule as proposed in the Interim Final Rule will help to mitigate future adverse impacts caused by the increased traffic congestion.

Assuming no reduction in maritime traffic volume, this reduction in lift duration has resulted in a significant efficiency increase in the use of time the bridge is actually opened for vessels and a significant reduction in delays to vehicular traffic during vessel openings. The reduction in lift duration combined with the predictability of scheduled lifts optimally balances the competing demands of both road and waterway users.

D. Discussion of Interim Rule

The Coast Guard is amending the regulations governing the Berkley Bridge, mile 0.4, at Norfolk, Virginia, at 33 CFR § 117.1007, by revising paragraph (b)(2) to read as follows: The draw shall open on signal at any time for vessels carrying, in bulk, cargoes regulated by 46 CFR subchapters D or O, or Certain Dangerous Cargoes as defined in 33 CFR 160.204; For all other vessels, the draw shall open on signal at any time, except from 5 a.m. to 7 p.m., Monday through Friday, except Federal holidays. During these times, the draw shall open for commercial vessels with a draft of 18 feet or more, provided at least 6 hours notice was given to the Berkley Bridge Traffic Control room at (757) 494–2490; open on signal at 9 a.m., 11 a.m., 1 p.m. and 2:30 p.m.; and if the bridge is not opened during a particular scheduled opening and a vessel has made prior arrangements for a delayed opening, the draw tender may provide a single opening up to 30 minutes past that scheduled opening time for that signaling vessel, except at 2:30 p.m. The draw tender may provide a single opening up to 20 minutes past the 2:30 p.m. scheduled opening time for a signaling vessel that made prior arrangements for a delayed opening. A vessel may make prior arrangements for a delayed opening by contacting the Berkley Bridge Traffic Control room at (757) 494–2490.

The Coast Guard believes that this permanent change is necessary to reduce vehicular traffic congestion throughout the day and during rush hour time periods. Results of studies conducted since the temporary regulation went into effect in September 2010 confirm that scheduled lifts have decreased congestion without negatively impacting waterway users. Scheduled lifts, according to the statistics, are currently being utilized well under capacity by the maritime public. Furthermore, waterway users are accustomed to this schedule, as it has been in effect since September 2010.

E. Regulatory Analyses

We developed this interim rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

We reached this conclusion based on the fact that the changes have only a minimal impact on maritime traffic transiting the bridge. Mariners can plan their trips in accordance with the scheduled bridge openings, to minimize delays.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), (5 U.S.C. 601–612), as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this interim rule will not have a significant economic impact on a substantial number of small entities.

This action will not have a significant economic impact on a substantial number of small entities because the rule only adds minimal restrictions to the movement of navigation, in allowing four scheduled openings during the day, outside of the advance notice request opening. Mariners who plan their transits in accordance with the scheduled bridge openings can minimize delay. And, vessels that can pass under the bridge without a bridge opening may do so at all times. Before the effective period, we will issue maritime advisories widely available to users of the river.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This proposed rule is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01, and Commandant Instruction M16475.lD which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule simply promulgates the operating regulations or procedures for drawbridges. This rule is categorically excluded under figure 2–1, paragraph (32)(e), of the Instruction.

Under figure 2–1 paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; and Department of Homeland Security Delegation No. 0170.1.

■ 2. In § 117.1007, revise paragraph (b) and remove paragraph (c) to read as follows:

§ 117.1007 Elizabeth River—Eastern Branch.

* * * * *

(b) The draw of the Berkley Bridge, mile 0.4 in Norfolk:

(1) Shall remain closed one hour prior to the published start of a scheduled marine event regulated under § 100.501 of this chapter, and shall remain closed until one hour following the completion of the event unless the Patrol Commander designated under § 100.501 of this chapter allows the bridge to open for commercial vessel traffic.

(2) Shall open on signal at any time for vessels carrying, in bulk, cargoes regulated by 46 CFR subchapters D or O, or Certain Dangerous Cargoes as defined in 33 CFR 160.204.

(3) For all other vessels, the draw shall open on signal at any time, except from 5 a.m. to 7 p.m., Monday through Friday, except Federal holidays. During these times, the draw shall:

(i) Open for commercial vessels with a draft of 18 feet or more, provided at least 6 hours notice was given to the Berkley Bridge Traffic Control room at (757) 494–2490.

(ii) Open on signal at 9 a.m., 11 a.m., 1 p.m. and 2:30 p.m.

(4) If the bridge is not opened during a particular scheduled opening per paragraph (b)(3)(ii) of this section and a vessel has made prior arrangements for a delayed opening, the draw tender may provide a single opening up to 30 minutes past that scheduled opening time for that signaling vessel, except at 2:30 p.m. The draw tender may provide a single opening up to 20 minutes past the 2:30 p.m. scheduled opening time for a signaling vessel that made prior arrangements for a delayed opening. A vessel may make prior arrangements for a delayed opening by contacting the Berkley Bridge Traffic Control room at (757) 494–2490.

* * * * *

Dated: August 16, 2012.

Steven H. Ratti,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 2012–21384 Filed 8–29–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–0384]

Special Local Regulations; Safety Zones; Recurring Events in Captain of the Port Long Island Sound

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce two fireworks display safety zones in the Sector Long Island Sound area of responsibility on various dates and times listed in the table below. This action is necessary to provide for the safety of life on navigable waterways during these fireworks displays. During the enforcement period, no person or vessel may enter the safety zones without permission of the Captain of the Port (COTP) Sector Long Island Sound or designated representative.

DATES: The regulations in 33 CFR 165.151 will be enforced during the dates and time shown in Table 1 in the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email Petty Officer Joseph Graun Prevention Department U.S. Coast Guard Sector Long Island Sound (203) 468–4544, *joseph.L.Graun@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zones listed in 33 CFR 165.151 on the specified dates and times as indicated in tables above. If the event is delayed by inclement weather, the regulation will be enforced on the rain date indicated in tables below. These regulations were published in the **Federal Register** on February 10, 2012 (77 FR 6954).

TABLE 1 TO § 165.151

	August
8.5 Old Black Point Beach Association Fireworks	• Date: August 18, 2012. • Rain Date: August 19, 2012. • Location: Waters off Old Black Point Beach East Lyme, CT in approximate position, 41°17′34.9″ N, 072°12′55″ W (NAD 83).
	September

TABLE 1 TO § 165.151—Continued

9.3 Village of Island Park Labor Day Celebration Fireworks	• Date: September 1, 2012. • Rain Date: September 2, 2012. • Location: Waters off Village of Island Park Fishing Pier, Village Beach, NY in approximate position 40°36′30.95″ N, 073°39′22.23″ W (NAD 83).

Under the provisions of 33 CFR 165.151, the fireworks displays listed above are established as safety zones. During these enforcement periods, persons and vessels are prohibited from entering into, transiting through, mooring, or anchoring within the safety zones unless they receive permission from the COTP or designated representative.

This notice is issued under authority of 33 CFR part 165 and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via the Local Notice to Mariners or marine information broadcasts. If the COTP determines that a regulated area need not be enforced for the full duration stated in this notice, a Broadcast Notice to Mariners may be used to grant general permission to enter the regulated area.

Dated: July 31, 2012.

J.M. Vojvodich,

Captain, U.S. Coast Guard, Captain of the Port Sector Long Island Sound.

[FR Doc. 2012–21382 Filed 8–29–12; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2011–0866; FRL–9723–3]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Preconstruction Requirements—Prevention of Significant Deterioration and Nonattainment New Source Review; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: This document corrects errors in the final rule document published on August 2, 2012 announcing EPA's final approval of several revisions to the Maryland State Implementation Plan (SIP) pertaining to preconstruction requirements under the Prevention of Significant Deterioration (PSD) and nonattainment New Source Review (NSR) programs. The correction of these errors neither changes EPA's final action to approve these regulations nor the September 4, 2012 effective date of that final approval.

DATES: *Effective Date:* September 4, 2012.

FOR FURTHER INFORMATION CONTACT: David Talley, (215) 814–2117 or by email at *talley.david@epa.gov.*

SUPPLEMENTARY INFORMATION: On August 2, 2012 (77 FR 45949), EPA published a final rulemaking action announcing its approval of revisions to the Maryland SIP pertaining to preconstruction requirements under the PSD and nonattainment NSR programs. In this document, a reference on page 45953 to the approval of Maryland's October 24, 2007 SIP revision submittal was inadvertently omitted. The document also inadvertently provided an incorrect state effective date on page 45954 regarding the addition of an entry to paragraph 52.1070(c) for COMAR 26.11.01.01. Finally, the document inadvertently neglected to remove 40 CFR 52.1073(h) containing the Federally-promulgated ''Narrowing Rule'' for greenhouse gas (GHG) emissions. In its March 19, 2012 notice of proposed rulemaking (77 FR 15985, 15989), EPA stated, ''With the regulations submitted in the proposed SIP revision, Maryland has adopted EPA's tailoring approach.'' In view of its August 2, 2012 final approval of Maryland's SIP revision, EPA has determined that section 52.1073(h) is redundant and should have been removed from the CFR. EPA is correcting that oversight with this corrective action.

In rule document 2012–18656, published in the **Federal Register** on August 2, 2012 (77 FR 45949):

1. On page 45952, in the first column, the first sentence under ''IV. Final Action'' is revised to read, ''EPA is approving MDE's October 24, 2007, July 31, 2009 and June 23, 2011 SIP submittals as a revision to the Maryland SIP.''

§ 52.1070 [Corrected]

■ 2. On page 45953, the State effective date in the third column of the table in § 52.1070(c) for the entry ''26.11.01.01'' (Definitions) is revised to read ''5/16/11.'' All other amendments to this paragraph remain unchanged.

§ 52.1073 [Corrected]

■ 3. On page 45954, an amendatory instruction is added to the end of the document to read, ''3. In § 52.1073, paragraph (h) is removed.''

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because it merely corrects an incorrect citation in a previous action. Thus, notice and public procedure are unnecessary. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(3)(B).

Statutory and Executive Order Reviews

Under Executive Order (E.O.) 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)). Because the agency has made a ''good cause'' finding that this action is not subject to notice-and-comment requirements under the Administrative Procedures Act or any other statute as indicated in the Supplementary Information section above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of governments, as specified by Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant. This technical correction action does not involve technical standards; thus the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1998) by examining the takings implications of the rule in accordance with the Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings issued under the executive order. This rule does not impose an information collection burden under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*). 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. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA had made such a good cause finding, including the reasons therefore, and established an effective date of August 13, 2012. EPA will submit a report containing this rule 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**. This action to correct the document preamble, to correct the revision to § 52.1070(c), and to remove § 52.1073(h) is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Dated: August 17, 2012.

W.C. Early,

Acting Regional Administrator, EPA Region III.

[FR Doc. 2012–21345 Filed 8–29–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2010–1047; FRL–9720–2]

Approval and Promulgation of Air Quality Implementation Plans; Indiana; Volatile Organic Compounds; Architectural and Industrial Maintenance Coatings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving into the Indiana State Implementation Plan (SIP) the addition of a new rule that sets limits on the amount of volatile organic compounds (VOC) in architectural and industrial maintenance (AIM) coatings that are sold, supplied, manufactured, or offered for sale in the State.

DATES: This direct final rule will be effective October 29, 2012, unless EPA receives adverse comments by October 1, 2012. If adverse comments are received, EPA 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–R05–OAR–2010–1047, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: blakley.pamela@epa.gov.*
3. *Fax:* (312) 692–2450.
4. *Mail:* Pamela Blakley, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Pamela Blakley, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2010–1047. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Anthony Maietta, Environmental Protection

Specialist, at (312) 353–8777 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Anthony Maietta, Environmental Protection Specialist, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8777, *maietta.anthony@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. Background

AIM coatings are generally paints, varnishes, and other similar materials that are meant for use on external surfaces of buildings, pavements and other outside structures. On December 7, 2010, the Indiana Department of Environmental Management submitted to EPA a request to approve into the Indiana SIP a new rule within Title 326, Article 8 ''Volatile Organic Compound Rules'' that limits the VOC content in AIM coatings. The rule is located within the Indiana Administrative Code (IAC) at Title 326 IAC 8–14. Titled ''Architectural and Industrial Maintenance (AIM) Coatings,'' it consists of seven sections that include the following components:

(1) 326 IAC Article 8, Rule 14, Section 1 ''Applicability''
(2) 326 IAC Article 8, Rule 14, Section 2 ''Definitions''
(3) 326 IAC Article 8, Rule 14, Section 3 ''Standards for AIM coatings''
(4) 326 IAC Article 8, Rule 14, Section 4 ''Container labeling''
(5) 326 IAC Article 8, Rule 14, Section 5 ''Recordkeeping and reporting requirements''
(6) 326 IAC Article 8, Rule 14, Section 6 ''Compliance provisions and test methods''
(7) 326 IAC Article 8, Rule 14, Section 7 ''Application of traffic marking materials''

A discussion of each section and its approvability is included in Section III of this action.

The VOC limits for consumer products and AIM coatings in 326 IAC 8–14 are based on a model rule developed by the Ozone Transport Commission (OTC) establishing VOC limits for adhesives, sealants and primers. In addition, the limits are at least as stringent as, and in some cases are more stringent than, EPA's national AIM rule, ''National Volatile Organic Compound Emission Standards for Architectural Coatings,'' 40 CFR part 59, subpart D. As a result, the new rule at 326 IAC 8–14 is approvable into the Indiana SIP. It should be noted that Indiana is not an OTC member state. By adopting a rule that mirrors the OTC model rule, however, Indiana is strengthening its SIP through enforceable VOC limits for AIM coatings with corresponding recordkeeping and reporting requirements.

II. Contents of Indiana's Rule

The following is a summary of each section of 326 IAC–8–14 ''Architectural and Industrial Maintenance (AIM) Coatings,'' as submitted on December 7, 2010, and a discussion of why each section is approvable into the State's SIP.

326 IAC 8–14–1 ''Applicability''

This section makes 326 IAC 8–14 applicable to any person who sells, supplies, offers for sale, or manufactures AIM coatings within the State of Indiana. This section makes clear that AIM coatings that are sold or manufactured for use outside the State, shipped to other manufacturers for reformulation or repackaging, or sold in a container with a volume of one liter or less are exempt. Further, any aerosol coating product is exempt from this rule. The applicability for the rule as outlined in this section is consistent with model OTC language, and therefore is approvable for inclusion in Indiana's SIP.

326 IAC 8–14–2 ''Definitions''

This section provides definitions of products, terms, acronyms, and other language that is unique and/or specific to this rule. This section is consistent with the OTC model rule, and therefore is approvable for inclusion in Indiana's SIP.

326 IAC 8–14–3 ''Standards for AIM Coatings''

This section codifies VOC limits for each category of AIM coatings affected by 326 IAC 8–14. This section also includes additional requirements for certain product categories, including:

—A requirement that containers used to apply or thin AIM coatings subject to the limits of 326 IAC 8–14 must be closed when not in use.
—Sell-through provisions for affected products that were already manufactured by October 1, 2011.
—A provision stating that if an AIM coating is subject to two or more limits in this section, the most restrictive limit applies to the coating. Certain product categories are exempted, consistent with OTC and EPA rules for AIM coatings.
—A provision that restricts thinning of AIM coatings that exceeds the VOC limits set forth in this section.
—A provision that prohibits the application on or solicitation of any rust preventative coatings for industrial use unless the coating complies with the industrial maintenance coating VOC limit specified in this subsection.
—A provision for determining the VOC content limit of an AIM coating that does not meet any of the definitions for specialty coatings as specified in this section.

This section is consistent with the OTC model rule, and therefore is approvable for inclusion in Indiana's SIP.

326 IAC 8–14–4 ''Container Labeling''

This section sets standards for product labeling for AIM coatings subject to 326 IAC 8–14. Under this section, container labels must prominently display, among other things:

—The date of manufacture of the AIM coating subject to this rule.
—Clear recommendations for thinning the AIM coating, if necessary, to meet the VOC limits set forth in this rule.
—A display of the VOC content of the AIM coating.

This section is consistent with the OTC model rule, and is approvable for inclusion in Indiana's SIP.

326 IAC 8–14–5 ''Recordkeeping and Reporting Requirements''

This section outlines the recordkeeping and reporting requirements that manufacturers of products regulated under this rule must meet. Manufacturers of products subject to a VOC content limit within 326 IAC 8–14–3 must keep and make available to Indiana or EPA information about their product, including:

—The name of the product.
—An identifying number for the product, if applicable.
—VOC content of the product as determined by 326 IAC 8–14–6.
—The name or names and chemical abstract service (CAS) number of the VOC constituents in the product.
—Dates of the VOC content determinations for the product.
—The coating category and applicable VOC content limit of the product.

These records shall be kept by the manufacturer for no less than five years and be made available to Indiana for inspection within 90 days of request.

Manufacturers of products subject to VOC content limits within 326 IAC 8–14–3 must also make available to the State within 90 days of a request the following distribution and sales information:

—The manufacturer name and mailing address.
—The name, address, and telephone number of a contact person for the manufacturer.
—The name of the product as it appears on the label and the coating category under which it is regulated.
—Whether the coating is marketed for interior or exterior use, or both.
—The number of gallons of product sold in Indiana in containers greater than one liter.
—The actual VOC content and VOC content in grams per liter. If thinning is recommended, manufacturers must list the actual VOC content and the VOC content limit after recommended thinning.
—The names and CAS number of the VOC constituents in the product.

This section also lays out recordkeeping and reporting requirements for AIM coatings that contain perchloroethylene or methylene chloride. These requirements state that a manufacturer must provide to the State certain information about the product sold in Indiana, but within a shorter response time frame (30 days) than other paragraphs in this section.

Manufacturers of recycled coatings must provide the State with certification of their status as a recycled paint manufacturer, as well as total sales during the past year to the nearest gallon and the method used for determining those sales.

Finally, this section lays out recordkeeping and reporting requirements for manufacturers of bituminous roof coatings or bituminous roof primers. Manufacturers of these coatings must, within 30 days of a State request, provide the past year's sales in gallons, as well as the method used to determine those sales.

The recordkeeping and reporting requirements in this section are consistent with the OTC model rule for these coatings. Therefore this section is approvable into Indiana's SIP.

326 IAC 8–14–6 ''Compliance Provisions and Test Methods''

This section outlines methods that must be used to determine compliance with the VOC content limits within 326 IAC 8–14–3. Two formulas for determining VOC content of an AIM coating are listed: one of these formulas for most coatings, and a second formula for low-solids coatings.

In addition to these formulas, this section codifies EPA and other acceptable methods available to determine the physical properties of a coating in order to perform the VOC content limit calculation discussed above.

This section also allows the use of alternative compliance calculations, so long as those calculations are reviewed and approved in writing by the State and EPA. Finally, this section makes clear that manufacturers of methacrylate multicomponent coatings used for traffic markings must use a modification of EPA Reference Method 24 at 40 CFR part 60, appendix A. This section is consistent with the OTC model rule for AIM coatings and is therefore approvable into Indiana's SIP.

326 IAC 8–14–7 ''Application of Traffic Marking Materials''

This section limits the application of traffic marking materials during Indiana's ozone season (defined in the rule as May 1 through September 30) to only coatings that meet the VOC limits set forth in 326 IAC 8–14–3. Further, this section limits field-reacted (non-liquid) traffic marking materials, or traffic marking materials that cannot be measured as a liquid at the time of application to 3.6 kilograms per stripe-kilometer, or 12.2 pounds per stripe-mile. This section is consistent with the OTC model rule for these coatings and therefore is approvable into Indiana's SIP.

III. What action is EPA taking?

EPA is approving into the Indiana SIP Title 326 IAC 8–14 as adopted by the State of Indiana and as submitted to EPA on December 7, 2010. We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective October 29, 2012 without further notice unless we receive relevant adverse written comments by October 1, 2012. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. 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 EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. If we do not receive any comments, this action will be effective October 29, 2012.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act 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 Clean Air Act. 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 Order 12866 (58 FR 51735, October 4, 1993);

• 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 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 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.

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. 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 October 29, 2012. 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. 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 today's **Federal Register,** rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 14, 2012.

Susan Hedman,

Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

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

■ 2. In § 52.770 the table in paragraph (c) is amended by adding a new entry in ''Article 8. Volatile Organic Compound Rules'' for ''Rule 14. Architectural and Industrial Maintenance (AIM) Coatings'' in numerical order to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED INDIANA REGULATIONS

Indiana citation	Subject	Indiana effective date	EPA approval date	Notes
*	*	*	*	*
Article 8. Volatile Organic Compound Rules				
*	*	*	*	*
Rule 14. Architectural and Industrial Maintenance (AIM) Coatings				
8–14–1	Applicability	12/1/2010	8/30/2012, [Insert page number where the document begins].	
8–14–2	Definitions	12/1/2010	8/30/2012, [Insert page number where the document begins].	
8–14–3	Standards for AIM coatings	12/1/2010	8/30/2012, [Insert page number where the document begins].	
8–14–4	Container labeling	12/1/2010	8/30/2012, [Insert page number where the document begins].	
8–14–5	Recordkeeping and reporting requirements.	12/1/2010	8/30/2012, [Insert page number where the document begins].	
8–14–6	Compliance provisions and test methods	12/1/2010	8/30/2012, [Insert page number where the document begins].	
8–14–7	Application of traffic marking materials	12/1/2010	8/30/2012, [Insert page number where the document begins].	
*	*	*	*	*

* * * * *

[FR Doc. 2012–21235 Filed 8–29–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 158

[EPA–HQ–OPP–2010–0670; FRL–9338–9]

RIN 2070–AJ80

Pesticides; Microbial Pesticide Definitions and Applicability; Clarification and Availability of Test Guideline

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule clarifies the distinction between ''isolates'' and ''strains,'' and clarifies the requirements applicable to new isolates, which are considered to be new active ingredients under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Additional revisions to regulatory text include several minor corrections to words and references. Finally, EPA is announcing the availability of a final microbial pesticide test guideline that further explains the existing data requirement to deposit a sample in a nationally recognized culture collection. Collectively, the final rule clarifications and revisions, as well as the final microbial pesticide test guideline, are expected to enhance the ability of industry to efficiently manage its microbial pesticide registration submissions.

DATES: This final rule is effective October 29, 2012.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2010–0670, is available either electronically through *http://www.regulations.gov* or in hard copy at the OPP Docket in the Environmental Protection Agency Docket Center (EPA/DC), located in EPA West, Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets*.

FOR FURTHER INFORMATION CONTACT: Rose Kyprianou, Field and External Affairs Division (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–5354; fax number: (703) 305–5884; email address: *kyprianou.rose@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Does this action apply to me?

You may be potentially affected by this action if you are a producer or registrant of a microbial pesticide product. This action also may affect any person or company who might petition EPA for a tolerance or an exemption from the requirement of a tolerance for residues of a microbial pesticide, holds a pesticide registration with an existing tolerance or tolerance exemption for a microbial pesticide, or is interested in obtaining or retaining a tolerance or tolerance exemption in the absence of a registration (i.e., a tolerance or tolerance exemption for an imported microbial pesticide). The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. Potentially affected entities may include, but are not limited to:

- Pesticide and Other Agricultural Chemical Manufacturing (NAICS code 325320), e.g., pesticide manufacturers or formulators of pesticide products, importers, or any person or company who seeks to register a pesticide or to obtain a tolerance or tolerance exemption for a pesticide.
- Crop Production (NAICS code 111).
- Animal Production (NAICS code 112).
- Food Manufacturing and Processing (NAICS code 311).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

II. Background

In the **Federal Register** of October 26, 2007 (72 FR 60988) (FRL–8109–8), a final rule, entitled ''Pesticides; Data Requirements for Biochemical and Microbial Pesticides,'' revised the data requirements for biochemical and microbial pesticides—regulations that had originally been promulgated in and had remained largely unchanged since 1984. In doing so, EPA established a distinct subpart for microbial pesticides (i.e., 40 CFR part 158, subpart V) that provided a definition for these particular pesticides and clearly identified the data required to support their registration. Since 2007, however, EPA has consistently encountered questions from industry stakeholders on certain portions of 40 CFR part 158, subpart V, particularly with regard to the language set forth in 40 CFR 158.2100(c)(2).

To address these questions, in the **Federal Register** of April 15, 2011 (76 FR 21294) (FRL–8857–7), EPA proposed specific revisions to the regulatory text in 40 CFR 158.2100(c)(2) for purposes of enhanced clarity. In addition, EPA also recognized that an existing data requirement under 40 CFR 158.2120(c) and 40 CFR 158.2171(c), deposition of a sample in a nationally recognized culture collection, did not have an accompanying test guideline and that there were several minor errors in the regulatory text of 40 CFR part 158, subpart V. Therefore, with the proposed rule, EPA also made available for public comment a draft test guideline, entitled ''Deposition of a Sample in a Nationally Recognized Culture Collection'' and identified as OCSPP Test Guideline 885.1250, addressing the deposition of a sample in a nationally recognized culture collection data requirement, and proposed to make other minor corrections to the regulations. The public comment period for the proposed rule closed on July 14, 2011, and EPA received no comments on the proposed rule or the draft test guideline.

III. Final Changes

A. What action is EPA taking?

EPA is finalizing most of the changes and corrections proposed. Although no comments were received, EPA has revised a few of the originally proposed changes and corrections to further clarify the regulatory text being modified. These changes are not substantive in nature. The specific changes being promulgated with this action and the anticipated benefits of such changes are described in this final rule and the rationale supporting the revisions can be found in the proposed rule (see Unit IV. of the April 15, 2011 proposed rule).

Specifically, EPA is making several changes and corrections to the Microbial Pesticides data requirements (40 CFR part 158, subpart V). First, EPA is revising 40 CFR 158.2100(c)(2) to reduce confusion over the distinction between ''isolates'' and ''strains'' and exactly how EPA views both of these terms. To this end, EPA substitutes ''active ingredient'' for ''strain.'' The clarification to 40 CFR 158.2100(c)(2) also includes a requirement for the use of a unique identifier, as part of the microbial pesticide active ingredient taxonomic name, to allow for improved identification of company-specific registered isolates. The clarification also mentions the possibility for data citation, in lieu of data generation, should sufficient similarity be established between isolates. Moreover, after further consideration, EPA has decided against including the proposed explanatory text (i.e., ''Because of the potential for variation in microorganisms'') at the beginning of the first sentence in 40 CFR 158.2100(c)(2). This phrase is not necessary or appropriate as regulatory text because it does not add anything to the regulatory provision.

Second, in conjunction with the changes detailed for 40 CFR 158.2100(c)(2), EPA is announcing the availability of a final microbial pesticide test guideline under Series 885, entitled ''Deposition of a Sample in a Nationally Recognized Culture Collection'' and identified as OCSPP Test Guideline 885.1250. This OCSPP test guideline is intended to explain the existing data requirement to deposit a sample in a nationally recognized culture collection found in the tables in 40 CFR 158.2120(c) and 40 CFR 158.2171(c). Additionally, to clarify this microbial deposition data requirement, EPA is adding a test note to 40 CFR 158.2120(d) and 40 CFR 158.2171(d), emphasizing the need for the continuing maintenance of a culture deposit to ensure that it remains available for the duration of an associated registration or experimental use permit in case EPA requests a sample. This requirement already applies to all isolates; thus, the reference to ''new isolates'' in the proposed rulemaking was an oversight and is just ''isolates'' in this final rule.

Finally, to correct several minor errors, EPA is replacing ''part'' with ''subpart'' in 40 CFR 158.2100(c)(1) and removing references to a non-existing paragraph (e) that appears in 40 CFR 158.2120 and 40 CFR 158.2171.

The improved clarity and transparency resulting from the insertion of this information in 40 CFR part 158, subpart V, are expected to enhance the ability of industry to efficiently manage its microbial pesticide registration submissions. Applicants may save time and money from an improved understanding of the standards and interpretations of the definitions for the data that are needed. Having all required studies and information available to EPA at the time of application may also reduce potential delays in the registration process, thereby enabling registration of microbial pesticides sooner and allowing microbial pesticide products to enter the market sooner.

B. What is EPA's authority for taking this action?

This final rule is issued under the authority of FIFRA sections 3, 5, 10, 12, and 25 (7 U.S.C. 136 *et seq.*), and section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 346a).

C. Electronic Access to the OCSPP Test Guidelines

To access the OSCPP test guidelines referenced in this final rule electronically, please go to *http://www.epa.gov/ocspp* and select ''Test Methods and Guidelines.'' You may also access the test guidelines in *http://www.regulations.gov* grouped by Series under Docket ID numbers: EPA–HQ–OPPT–2009–0150 through EPA–HQ–OPPT–2009–0159 and EPA–HQ–OPPT–2009–0576.

IV. FIFRA Review Requirements

Pursuant to FIFRA sections 25(a) and (d), EPA has submitted a draft of this final rule to the Committee on Agriculture in the House of Representatives; the Committee on Agriculture, Nutrition, and Forestry in the United States Senate; the United States Department of Agriculture (USDA); and the FIFRA Scientific Advisory Panel (SAP). FIFRA SAP and USDA waived review of this final rule.

V. Statutory and Executive Order Reviews

This action only clarifies existing regulatory text to allow EPA and stakeholders a clearer understanding of 40 CFR part 158, subpart V. It does not otherwise impose any other requirements, involve any significant policy or legal issues, or increase existing costs. As such, EPA is not required to make special considerations or evaluations under the following statutory and Executive Order review requirements.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This is not a ''significant regulatory action'' under Executive Order 12866 (58 FR 51735, October 4, 1993) and was therefore not reviewed by the Office of Management and Budget (OMB) under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act (PRA)

This action does not impose or change any information collection burden that requires additional review by OMB under the provisions of PRA (44 U.S.C. 3501 *et seq.*). *Burden* is defined at 5 CFR 1320.3(b). An agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register,** are listed in 40 CFR part 9, and included on the related collection instrument, or form, if applicable.

The revisions in this final rule involve existing information collection activities that are already approved by OMB under PRA. Specifically, the submission of data to EPA in order to establish a tolerance or an exemption from the requirement of a tolerance are currently approved under OMB Control No. 2070–0024 (EPA ICR No. 0597); the activities associated with the application for a new or amended registration of a pesticide are currently approved under OMB Control No. 2070–0060 (EPA ICR No. 0277); the activities associated with the application for an experimental use permit are currently approved under OMB Control No. 2070–0040 (EPA ICR No. 0276); and the activities associated with the generation of data for regulatory review programs are currently approved under OMB Control No. 2070–0174 (EPA ICR No. 2288).

C. Regulatory Flexibility Act (RFA)

Pursuant to RFA section 605(b) (5 U.S.C. 601 *et seq.*), EPA hereby certifies that this final rule does not have a significant adverse economic impact on a substantial number of small entities. Under RFA, small entities include small businesses, small organizations, and small governmental jurisdictions. In making this determination, the impact of concern is any significant adverse economic impact on small entities because the primary purpose of regulatory flexibility analysis is to identify and address regulatory alternatives ''which minimize any significant economic impact of the rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify under RFA when the rule relieves regulatory burden, or otherwise has no expected economic impact on small entities subject to the rule.

This action only clarifies existing regulatory text to allow EPA and stakeholders a clearer understanding of

40 CFR part 158, subpart V. It does not otherwise amend or impose any other requirements. As such, this final rule will not have any adverse economic impact on any entities, large or small.

D. Unfunded Mandates Reform Act (UMRA)

State, local, and Tribal governments are rarely pesticide applicants or registrants, so this final rule is not expected to affect these governments and is not expected to adversely affect the private sector. Accordingly, pursuant to Title II of UMRA (2 U.S.C. 1531–1538), EPA has determined that this action is not subject to the requirements in UMRA sections 202 and 205 because it does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or for the private sector in any 1 year. In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in UMRA sections 203 and 204.

E. Executive Order 13132: Federalism

This action will not have federalism implications because it is not expected to have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

EPA is not aware of any Tribal governments that are pesticide registrants. This action will not, therefore, have Tribal implications because it is not expected to have substantial direct effects on Indian Tribes, will not significantly or uniquely affect the communities of Indian Tribal governments, and does not involve or impose any requirements that affect Indian Tribes, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). Accordingly, the requirements of Executive Order 13175 do not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks, nor is it an ''economically significant regulatory action'' as defined by Executive Order 12866.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866, nor will it affect energy supply, distribution, or use.

I. National Technology Transfer and Advancement Act (NTTAA)

This action does not involve technical standards that would require the consideration of voluntary consensus standards pursuant to NTTAA section 12(d) (15 U.S.C. 272 note).

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

This action does not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. Therefore, this action does not involve special consideration of environmental justice-related issues as specified in Executive Order 12898 (59 FR 7629, February 16, 1994).

VI. Congressional Review Act (CRA)

Pursuant to CRA (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule 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**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 158

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 24, 2012.

James Jones,

Acting Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

Therefore, 40 CFR chapter I is amended as follows:

PART 158—[AMENDED]

■ 1. The authority citation for part 158 continues to read as follows:

Authority: 7 U.S.C. 136–136y; 21 U.S.C. 346a.

■ 2. In § 158.2100, revise paragraphs (c)(1) and (2) to read as follows:

§ 158.2100 Microbial pesticides definition and applicability.

* * * * *

(c) * * *

(1) This subpart applies to microbial pesticides as specified in paragraphs (c)(2), (c)(3), and (c)(4) of this section.

(2) Each new isolate of a microbial pesticide is a new active ingredient and must be registered independently of any similarly designated and already registered microbial pesticide active ingredient. Each new isolate for which registration is sought must have a unique identifier following the taxonomic name of the microorganism, and the registration application must be supported by data required in this subpart. This does not preclude the possibility of using data from another isolate, provided sufficient similarity is established, to support registration.

* * * * *

■ 3. In § 158.2120:

■ a. Revise paragraphs (a), (b), and (c).

■ b. Redesignate in paragraph (d), test notes 1 through 4 as test notes 2 through 5 and add new test note 1.

The amendments read as follows:

§ 158.2120 Microbial pesticides product analysis data requirements table.

(a) *General.* Sections 158.100 through 158.130 describe how to use this table to determine the product analysis data requirements and the substance to be tested for a particular microbial pesticide. Notes that apply to an individual test and include specific conditions, qualifications, or exceptions to the designated test are identified in paragraph (d) of this section.

(b) *Key.* R = Required; CR = Conditionally required; NR = Not required; MP = Manufacturing-use product; EP = End-use product; TEP = Typical end-use product; TGAI = Technical grade of the active ingredient; All = All of the above.

(c) *Table.* The table in this paragraph shows the data requirements for microbial pesticides product analysis.

The test notes are shown in paragraph (d) of this section.

TABLE—MICROBIAL PESTICIDES PRODUCT ANALYSIS DATA REQUIREMENTS

Test guideline No.	Data requirement	All use patterns	Test substance		Test notes
			MP	EP	
Product Chemistry and Composition					
885.1100	Product identity	R	MP	EP	
885.1200	Manufacturing process	R	TGAI and MP	TGAI and EP	
885.1250	Deposition of a sample in a nationally recognized culture collection.	R	TGAI	TGAI	1
885.1300	Discussion of formation of unintentional ingredients.	R	TGAI and MP	TGAI and EP	
Analysis and Certified Limits					
885.1400	Analysis of samples	R	TGAI and MP	TGAI and EP	2
885.1500	Certification of limits	R	MP	EP	
Physical and Chemical Characteristics					
830.6302	Color	R	TGAI	TGAI	
830.6303	Physical state	R	TGAI	TGAI	
830.6304	Odor	R	TGAI	TGAI	
830.6313	Stability to normal and elevated temperatures, metals, and metal ions.	R	TGAI	TGAI	
830.6317	Storage stability	R	TGAI and MP	TGAI and EP	
830.6319	Miscibility	R	MP	EP	3
830.6320	Corrosion characteristics	R	MP	EP	4
830.7000	pH	R	TGAI	TGAI	
830.7100	Viscosity	R	MP	EP	5
830.7300	Density/relative density/bulk density (specific gravity).	R	TGAI	TGAI	

(d) * * *

1. Required for each isolate of a microbial pesticide. Isolates must be deposited with an agreement to ensure that the sample will be maintained and will not be discarded for the duration of the associated registration(s).

* * * * *

■ 4. In § 158.2171:

■ a. Revise paragraphs (a), (b), and (c).

■ b. Redesignate in paragraph (d), test notes 3 through 6 as test notes 4 through 7 and add new test note 3.

The amendments read as follows:

§ 158.2171 Experimental use permit microbial pesticides product analysis data requirements table.

(a) *General.* Sections 158.100 through 158.130 describe how to use this table to determine the product analysis data requirements and the substance to be tested for a particular microbial pesticide. Notes that apply to an individual test and include specific conditions, qualifications, or exceptions to the designated test are identified in paragraph (d) of this section.

(b) *Key.* R = Required; CR = Conditionally required; NR = Not required; MP = Manufacturing-use product; EP = End-use product; TEP = Typical end-use product; TGAI = Technical grade of the active ingredient; All = All of the above.

(c) *Table.* The table in this paragraph shows the data requirements for experimental use permit microbial pesticides product analysis. The test notes are shown in paragraph (d) of this section.

TABLE—EUP MICROBIAL PESTICIDES PRODUCT ANALYSIS DATA REQUIREMENTS

Test guideline No.	Data requirement	All use patterns	Test substance		Test notes
			MP	EP	
Product Chemistry and Composition					
885.1100	Product identity	R	MP	EP	
885.1200	Manufacturing process	R	TGAI and MP	TGAI and EP	1, 2
885.1250	Deposition of a sample in a nationally recognized culture collection.	R	TGAI	TGAI	3
885.1300	Discussion of formation of unintentional ingredients.	R	TGAI and MP	TGAI and EP	2
Analysis and Certified Limits					
885.1400	Analysis of samples	R	TGAI and MP	TGAI and EP	2, 4
885.1500	Certification of limits	R	MP	EP	

TABLE—EUP MICROBIAL PESTICIDES PRODUCT ANALYSIS DATA REQUIREMENTS—Continued

Test guideline No.	Data requirement	All use patterns	Test substance		Test notes
			MP	EP	
Physical and Chemical Characteristics					
830.6302	Color	R	TGAI	TGAI	
830.6303	Physical state	R	TGAI	TGAI	
830.6304	Odor	R	TGAI	TGAI	
830.6313	Stability to normal and elevated temperatures, metals, and metal ions.	R	TGAI	TGAI	
830.6317	Storage stability	R	TGAI and MP	TGAI and EP	
830.6319	Miscibility	R	MP	EP	5
830.6320	Corrosion characteristics	R	MP	EP	6
830.7000	pH	R	TGAI	TGAI	
830.7100	Viscosity	R	MP	EP	7
830.7300	Density/relative density/bulk density (specific gravity).	R	TGAI	TGAI	

(d) * * *

3. Required for each isolate of a microbial pesticide. Isolates must be deposited with an agreement to ensure that the sample will be maintained and will not be discarded for the duration of the associated experimental use permit(s).

* * * * *

[FR Doc. 2012–21430 Filed 8–29–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 152

[CMS–9995–IFC2]

RIN 0938–AQ70

Pre-Existing Condition Insurance Plan Program

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Amendment to interim final rule with request for comments.

SUMMARY: This document contains an amendment regarding program eligibility to the interim final regulation implementing the Pre-Existing Condition Plan program under provisions of the Patient Protection and Affordable Care Act. In light of a new process recently announced by the Department of Homeland Security, eligibility for the program is being amended so that the program does not inadvertently expand the scope of that process.

DATES: *Effective date.* These interim final regulations are effective on August 30, 2012.

Comment date. Comments are due on or before October 29, 2012.

Applicability date. This amendment to the interim final regulation generally applies to individuals on August 30, 2012.

ADDRESSES: Written comments may be submitted to any of the addresses specified below. Please do not submit duplicates.

All comments will be made available to the public. *Warning:* Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments are posted on the Internet exactly as received, and can be retrieved by most Internet search engines. No deletions, modifications, or redactions will be made to the comments received, as they are public records. Comments may be submitted anonymously.

In commenting, please refer to file code CMS–9995–IFC2. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–9995–IFC2, P.O. Box 8016, Baltimore, MD 21244–8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–9995–IFC2, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

4. *By hand or courier.* Alternatively, you may deliver (by hand or courier) your written comments only to the following addresses prior to the close of the comment period:

a. For delivery in Washington, DC— Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD— Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, call telephone number (410) 786–4492 in advance to schedule your arrival with one of our staff members.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov*. Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. EST. To schedule an appointment to view public comments, phone 1–800–743–3951.

FOR FURTHER INFORMATION CONTACT: Alexis Ahlstrom, Centers for Medicare & Medicaid Services, Department of Health and Human Services, at (202) 690–7506.

SUPPLEMENTARY INFORMATION:

I. Background

The Patient Protection and Affordable Care Act, Public Law 111–148, was enacted on March 23, 2010; the Health Care and Education Reconciliation Act of 2010 (Reconciliation Act), Public Law 111–152, was enacted on March 30, 2010 (collectively, ''Affordable Care Act''). Section 1201 of the Affordable Care Act prohibits issuers of non-grandfathered health insurance coverage from denying coverage or inflating rates based on health status or medical history in policy years beginning on or after January 1, 2014. In light of the fact that these protections will not take effect until 2014, section 1101 of the Affordable Care Act directs the Secretary of Health and Human Services to establish, either directly or through contracts with states or nonprofit private entities, a temporary high risk health insurance pool program to provide immediate access to coverage for eligible uninsured Americans with pre-existing conditions. (Hereafter, we generally refer to this program as the Pre-Existing Condition Insurance Plan program, or the PCIP program.) The PCIP program provides coverage to eligible uninsured Americans with pre-existing conditions until 2014, when the protections under section 1201 of the Affordable Care Act referenced above take effect and coverage is available through the Affordable Insurance Exchanges established under section 1311 or 1321 of the Act.

HHS previously issued an interim final regulation implementing section 1101 of the Affordable Care Act. This interim final rule was published in the **Federal Register** on July 30, 2010 (75 FR 45014). For the reasons explained below, HHS is now issuing an amendment to this interim final rule.

II. Overview of the Amendment to the Interim Final Rule

The interim final rule issued on July 30, 2010, provided information on the administration of the PCIP program, eligibility for and enrollment in the program, program benefits, program oversight, program funding, coordination with state laws and programs, and the transition to coverage through the Affordable Insurance Exchanges. Under section 1101(d) of the Affordable Care Act and codified by the July 30, 2010 interim final rule at 45 CFR 152.14(a)(1) through (3), an individual is eligible to enroll in a PCIP if he or she: (1) Is a citizen or national of the United States or is lawfully present in the United States (as determined in accordance with section 1411 of the Affordable Care Act [1]); (2) has not been covered under creditable coverage (as defined in section 2701(c)(1) of the Public Health Service Act as of the date of enactment of the Affordable Care Act—that is, March 23, 2010) during the 6-month period prior to the date on which he or she is applying for coverage through the PCIP; and (3) has a pre-existing condition, as determined in a manner consistent with guidance issued by the Secretary of HHS. We further provided in § 152.14(a)(4) of the interim final rule that an individual must be a resident of a state that falls within the service area of the PCIP.

In the interim final rule, HHS defined ''lawfully present'' as having a similar meaning as that given to ''lawfully residing'' in Medicaid and the Children's Health Insurance Program (CHIP), as set forth in a State Health Official letter issued by the Centers for Medicare & Medicaid Services (CMS) on July 1, 2010.[2] The July 30, 2010 interim final rule codified that definition of ''lawfully present'' at § 152.2.

Subsequent regulations implementing the Affordable Insurance Exchanges, 45 CFR 155.20 (77 FR 18310, March 27, 2012), and the premium tax credits, 26 CFR 1.36B–1(g) (77 FR 30377, May 23, 2012), issued by HHS and the Department of the Treasury respectively, define ''lawfully present'' by a cross-reference to the definition in § 152.2.

On June 15, 2012, the Department of Homeland Security (DHS) announced that it will consider providing temporary relief from removal by exercising deferred action on a case-by-case basis with respect to certain individuals under age 31 who meet DHS's guidelines, including that he or she came to the United States as children and does not present a risk to national security or public safety.[3] This process is referred to by DHS as Deferred Action for Childhood Arrivals (DACA).[4]

As DHS has explained, the DACA process is designed to ensure that governmental resources for the removal of individuals are focused on high priority cases, including those involving a danger to national security or a risk to public safety, and not on low priority cases.[5] Because the reasons that DHS offered for adopting the DACA process do not pertain to eligibility for Medicaid or CHIP, HHS has determined that these benefits should not be extended as a result of DHS deferring action under DACA. Concurrent with this amendment, CMS is issuing a State Health Official letter providing that individuals whose cases are deferred under DHS's DACA process will not be eligible under the state option.[6] As it also would not be consistent with the reasons offered for adopting the DACA process to extend health insurance subsidies under the Affordable Care Act to these individuals, HHS is amending its definition of ''lawfully present'' in the PCIP program, so that the PCIP program interim final rule does not inadvertently expand the scope of the DACA process.

Under the amended rule, individuals with deferred action under the DACA process are not eligible to enroll in the PCIP program. As the PCIP program definition of ''lawfully present'' is incorporated into the rules governing the Affordable Insurance Exchanges and the premium tax credits, individuals whose cases are deferred under the DACA process also will not be eligible to enroll in coverage through the Affordable Insurance Exchanges and, therefore, will not receive coverage that

[1] Section 1411 of the Affordable Care Act describes the procedures to be employed for determining eligibility for coverage through the Affordable Insurance Exchanges, and for the premium tax credits and cost-sharing reductions that will help eligible individuals afford such coverage.

[2] See State Health Official (SHO) Letter #10–006/ CHIPRA #17 at: *http://downloads.cms.gov/cmsgov/archived-downloads/SMDL/downloads/SHO10006.pdf.*

[3] June 15, 2012 Memorandum of Secretary of Homeland Security Janet Napolitano, at: *http://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf.*

[4] Consideration of Deferred Action for Childhood Arrivals, at: *http://www.uscis.gov/childhoodarrivals.*

[5] *See supra* nn. 4–5.

[6] *http://www.medicaid.gov/Federal-Policy-Guidance/Downloads/SHO-12-002.pdf.*

could make them eligible for premium tax credits under Treasury regulations (see 26 CFR 1.36–2(a)(1)) or for cost-sharing reductions starting in 2014.[7] This is consistent with the rationale above.

We invite comment on the determination to exclude these individuals from eligibility for the PCIP program and from eligibility for coverage through the Affordable Insurance Exchanges, with the consequences noted above with respect to the premium tax credits and the cost-sharing reductions.

III. Interim Final Regulation and Waiver of Delay of Effective Date

Under the Administrative Procedure Act (APA) (5 U.S.C. 551, *et seq.*), while a notice of proposed rulemaking and an opportunity for public comment is generally required before promulgation of regulations, this is not required when an agency, for good cause, finds that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest.

HHS has determined that issuing this regulation in proposed form, such that it would not become effective until after public comment, would be contrary to the public interest. Because the PCIP program—a temporary program with limited funding—is currently enrolling eligible individuals and providing benefits for such enrollees, it is important that we provide clarity with respect to eligibility for this new and unforeseen group of individuals as soon as possible, before anyone with deferred action under the DACA process applies to enroll in the PCIP program.

HHS is issuing this amendment as an interim final rule with comment so as to provide the public with an opportunity for comment on the amendment, including to gather public comment on the implications of the amendment.

The APA also generally requires that a final rule be effective no sooner than 30 days after the date of publication in the **Federal Register**. This 30-day delay in effective date can be waived, however, if an agency finds good cause as to why the effective date should not be delayed, and the agency incorporates a statement of the finding and its reason in the rule issued.

For the same reason that we are issuing an interim final rule, we are making it effective immediately; that is, because the PCIP program—a temporary program with limited funding—is currently enrolling eligible individuals and providing benefits for such enrollees, it is important that we provide clarity with respect to the eligibility of this new and unforeseen group of individuals as soon as possible, before anyone with deferred action under the DACA process applies to enroll in the PCIP program.

IV. Executive Orders 13563 and 12866

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a ''significant regulatory action,'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

V. Statutory Authority

The amendment to the interim final regulation is adopted pursuant to the authority contained in section 1101 of the Patient Protection and Affordable Care Act (Pub. L. 111–148).

List of Subjects in 45 CFR Part 152

Administrative practice and procedure, Health care, Health insurance, Penalties, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Department of Health and Human Services amends 45 CFR part 152 as follows:

PART 152—PRE-EXISTING CONDITION INSURANCE PLAN PROGRAM

■ 1. The authority citation for part 152 continues to read as follows:

Authority: Sec. 1101 of the Patient Protection and Affordable Care Act (Pub. L. 111–148).

■ 2. Section 152.2 is amended by adding paragraph (8) to the definition of ''lawfully present'' to read as follows:

§ 152.2 Definitions.

* * * * *

Lawfully present means— * * *

* * * * *

(8) *Exception.* An individual with deferred action under the Department of Homeland Security's deferred action for childhood arrivals process, as described in the Secretary of Homeland Security's June 15, 2012, memorandum, shall not be considered to be lawfully present with respect to any of the above categories in paragraphs (1) through (7) of this definition.

* * * * *

Dated: August 24, 2012.

Marilyn Tavenner,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: August 27, 2012.

Kathleen Sebelius,

Secretary, Department of Health and Human Services.

[FR Doc. 2012–21519 Filed 8–28–12; 4:15 pm]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket Nos. 10–90, 07–135, 05–337, 03–109; GN Docket No. 09–51; CC Docket Nos. 01–92, 96–45; WT Docket No. 10–208; DA 12–1155]

Connect America Fund

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this Order, the Wireline Competition Bureau (Bureau) clarifies certain rules relating to Phase I of the Connect America Fund. Commission staff have received informal inquiries from price cap companies on certain implementation aspects of the rules governing Connect America Fund Phase I. The Bureau also makes an amendment to one of the Commission's rules to fix a clerical error relating to the support for carriers serving remote areas of Alaska.

DATES: Effective October 1, 2012.

FOR FURTHER INFORMATION CONTACT: Joseph Cavender, Wireline Competition Bureau, (202) 418–7400 or TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Wireline Competition Bureau Order in WC Docket Nos. 10–90, 07–135, 05–337, 03–109; GN Docket No. 09–51; CC Docket Nos. 01–92, 96–45; WT Docket No. 10–208; DA 12–1155, released on July 18, 2012. The full text

[7] This is consistent with prior guidance issued by DHS: ''If my case is deferred, will I be eligible for premium tax credits and reduced cost sharing through Affordable Insurance Exchanges starting in 2014? No. The Departments of Health and Human Services and the Treasury intend to conform the relevant regulations to the extent necessary to exempt individuals with deferred action for childhood arrivals from eligibility for premium tax credits and reduced cost sharing. This is consistent with the policy under S. 3992, the Development, Relief, and Education for Alien Minors (DREAM) Act of 2010.'' See Consideration of Deferred Action for Childhood Arrivals, *http://www.uscis.gov/childhoodarrivals.*

of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street SW., Washington, DC 20554. Or at the following Internet address: *http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0718/DA-12-1155A1.pdf.*

I. Introduction

1. In this Order, the Wireline Competition Bureau (Bureau) clarifies certain rules relating to Phase I of the Connect America Fund. Commission staff have received informal inquiries from price cap companies on certain implementation aspects of the rules governing Connect America Fund Phase I. The Bureau also makes an amendment to one of the Commission's rules to fix a clerical error relating to the support for carriers serving remote areas of Alaska.

II. Background

2. In the *USF/ICC Transformation Order,* 76 FR 73830 (November 29, 2011), the Commission adopted a framework for the Connect America Fund to provide support in the territories of price cap carriers and their rate-of-return affiliates based on a combination of competitive bidding and a forward-looking cost model. The Commission observed that developing a new cost model and bidding mechanism could be expected to take some time. To spur broadband deployment even as those mechanisms are being developed, the Commission established Phase I of the Connect America Fund, a transition mechanism from the old high-cost support mechanisms for price cap carriers to the new Connect America Fund. In Phase I, the Commission froze current high-cost support for price cap carriers and their affiliates, and, in addition, committed up to $300 million in incremental support to promote broadband deployment. The $300 million in incremental support was allocated among price cap carriers using a formula to estimate wire center costs that was based on the prior high-cost proxy model.

3. Participation in the Connect America Fund Phase I incremental support program is optional. But carriers that accept funding are required to deploy broadband to a number of locations, currently unserved by fixed broadband, equal to the amount of incremental support the carrier accepts divided by $775. Each carrier accepting funding must identify the areas, by wire center and census block, in which it intends to deploy broadband to meet its obligation, when it files its notice of acceptance. Carriers are required to complete deployment to no fewer than two-thirds of the required number of locations within two years and all required locations within three years, and they must certify that they have done so as part of their annual certifications under § 54.313 of the Commission's rules. The Commission also provided that ''[c]arriers failing to meet a deployment milestone will be required to return the incremental support distributed in connection with that deployment obligation and will be potentially subject to other penalties, including additional forfeitures, as the Commission deems appropriate.'' However, the Commission continued, ''[i]f a carrier fails to meet the two-thirds deployment milestone within two years and returns the incremental support provided, and then meets its full deployment obligation associated with that support by the third year, it will be eligible to have support it returned restored to it.''

III. Discussion

4. First, the Bureau clarifies how to calculate the amount of support a carrier must return for failing to meet its deployment requirements. Specifically, if a carrier fails to meet its deployment obligations, it will be required to return to the Commission an amount equal to $775 multiplied by the number of locations to which the carrier was required to deploy to but did not, but a carrier will not be required to ''pay twice'' for any failure to meet a requirement. For example, if a carrier accepted $6,975,000 and committed to deploying to 9,000 locations over three years, but only deployed to 5,800 by the end of two years, rather than the 6,000 required at that milestone, the carrier would be required to return $155,000 of its incremental support (200 locations times $775). Similarly, a carrier that accepted the same amount and deployed to all 6,000 locations by the second year but deployed to only 8,900 by the end of the third year would be required to return $77,500 (100 locations times $775). However, if the same carrier deployed to 5,800 of its required 6,000 locations by the second year, returned the $155,000 required, and then continued its deployment, reaching 8,900 by the end of the third year, it would have $77,500 of its returned support restored. The Bureau notes that this discussion does not address any additional penalties that the Commission may choose to impose on any carrier that fails to meet its deployment obligation, as stated in the *Order.*

5. Second, the Bureau clarifies that when a carrier files its notice of acceptance of funding, identifying the wire centers and census blocks in which it intends to deploy, it is not binding itself to deploy only in those areas, nor is it committing to deploy to every unserved location in those areas. The Bureau clarifies that carriers are expected to make a good faith effort to identify where they will deploy when they file their notices of acceptance. The Bureau observes, in this regard, that there are a number of practical obstacles that may make it difficult for carriers to commit irrevocably to a particular deployment plan by July 24th. For example, carriers may not have perfect information now about the number of locations in every potential area, the number of locations in an area may change over time, and the aggressive schedule for identifying intended buildout locations may make it difficult for carriers to gain complete information about potential deployments prior to filing their notices of acceptance. Accordingly, the Bureau clarifies that carriers may, in satisfaction of their deployment requirement, deploy to eligible locations not identified in their notices of acceptance, but will be required to identify subsequently where deployment actually occurred. Similarly, if a carrier finds that deploying to an area it intended to deploy to would be impractical, it will not be subject to penalties on account of its failure to deploy broadband to that particular area.

6. Third, the Bureau clarifies that the certification associated with carriers' two- and three-year deployment milestones, which carriers must include as part of their annual filings under § 54.313(b) of the Commission's rules, must specify the number of locations in a census block-wire center combination to which they have actually built. Carriers must identify the precise number of locations so that appropriate adjustments, if any, can be made to support previously provided, if a carrier fails to meet its deployment obligation. To facilitate the ability of USAC and the Commission to validate that carriers have, in fact, met their deployment obligations, carriers must be prepared, upon request, to provide sufficient information regarding the location of actual deployment to confirm the availability of service at that location.

7. Fourth, the Bureau clarifies that the certifications each carrier makes when it accepts incremental support—that the locations to be deployed to are shown on the National Broadband Map as unserved by fixed broadband by any provider other than the certifying entity

itself or an affiliate; that, to the best of the carrier's knowledge, the locations are, in fact, unserved by fixed broadband; that the carrier's capital improvement plan did not already include plans to complete broadband deployment within the next three years to the locations to be counted to satisfy the deployment obligation; and that incremental support will not be used to satisfy any merger commitment or similar regulatory obligation—are certifications that apply to all locations that in fact the carrier extends broadband to, using Connect America Phase I incremental support. That is, if a carrier finds it necessary to deploy to locations other than the locations identified in its initial acceptance filing, those other locations may not be in areas, for example, that were shown on the National Broadband Map, at the time of acceptance, as served.

8. Fifth, the Bureau clarifies that when a carrier certifies that the locations to which it will deploy are shown as unserved by fixed broadband on the ''current'' version of the National Broadband Map, the ''current'' version of the National Broadband Map is the version that was publicly available on the National Broadband Map Web site on the date eligible support amounts were announced. The Commission intended for carriers to have 90 days to determine how much incremental support they would accept and which wire centers and census blocks they would deploy to in order to meet their Connect America Phase I commitments. To the extent the National Broadband Map data is updated during the 90-day period in which carriers are evaluating how much incremental support they will accept, that could leave carriers with less time to evaluate the updated version of the map. Potentially altering Connect America Phase I incremental support deployment plans before the deadline for them to accept funding would be unreasonable and contrary to the Commission's framework for Connect America Phase I funding, and we clarify the requirement to ensure that carriers have a full 90 days to make their Connect America I Phase plans.

9. Sixth, the Bureau further clarifies that the term ''fixed broadband'' for the purposes of Connect America Phase I includes any technology identified on the then-current version of the National Broadband map that is not identified as a mobile technology or a satellite-based technology. In this regard, the Bureau observes that the technologies reported on the National Broadband Map at the time the *Order* was issued varied from the technologies listed on the Broadband Map currently. The Commission in the *Order* distinguished fixed terrestrial broadband technologies from mobile and satellite broadband technologies, determining that only fixed terrestrial broadband technologies are relevant to the determination of whether an area is served for the purposes of Connect America Phase I; the clarification the Bureau provides here reflects this distinction.

10. Finally, the Bureau corrects § 54.307(e)(5) of the Commission's rules. Paragraph 180 of the first erratum to the *USF/ICC Transformation Order* corrected § 54.307(e)(5) to replace ''described in paragraph (e)(2)(iv) of this section'' with ''described in paragraph (e)(2)(iii) of this section.'' The text to be replaced appeared twice in § 54.307(e)(5), but, through a clerical error, only the second instance of that text in the rule was corrected. We now correct the rule to replace the remaining instance of that text.

IV. Procedural Matters

A. Paperwork Reduction Act

11. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. 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. Final Regulatory Flexibility Act Certification

12. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that ''the rule will not have a significant economic impact on a substantial number of small entities.'' The RFA generally defines ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

13. This Order clarifies, but does not otherwise modify, the *USF/ICC Transformation Order.* These clarifications do not create any burdens, benefits, or requirements that were not addressed by the Final Regulatory Flexibility Analysis attached to *USF/ICC Transformation Order.* Therefore, the Bureau certifies that the requirements of this Order will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the Order including a copy of this final certification in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the Order and this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the **Federal Register**.

C. Congressional Review Act

14. The Commission will send a copy of this Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act.

V. Ordering Clauses

15. Accordingly, *it is ordered,* pursuant to the authority contained in sections 1, 2, 4(i), 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, and 403 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 151, 152, 154(i), 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, 403, 1302, and pursuant to §§ 0.91, 0.201(d), 0.291, 1.3, and 1.427 of the Commission's rules, 47 CFR 0.91, 0.201(d), 0.291, 1.3, 1.427 and pursuant to the delegation of authority in paragraph 1404 of FCC 11–161 (rel. Nov. 18, 2011), that this Order *is adopted, effective* October 1, 2012.

Federal Communications Commission.

Trent Harkrader,

Division Chief, Telecommunications Access Policy Division, Wireline Competition Bureau.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 54 to read 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), 201, 205, 214, 219, 220, 254, 303(r), 403, and 1302 unless otherwise noted.

■ 2. Amend § 54.307 by revising paragraph (e)(5) to read as follows:

§ 54.307 Support to a competitive eligible telecommunications carrier.

* * * * *

(e) * * *

(5) *Implementation of Mobility Fund Phase II Required.* In the event that the implementation of Mobility Fund Phase II has not occurred by June 30, 2014, competitive eligible telecommunications carriers will continue to receive support at the level described in paragraph (e)(2)(iii) of this section until Mobility Fund Phase II is implemented. In the event that Mobility Fund Phase II for Tribal lands is not implemented by June 30, 2014, competitive eligible telecommunications carriers serving Tribal lands shall continue to receive support at the level described in paragraph (e)(2)(iii) of this section until Mobility Fund Phase II for Tribal lands is implemented, except that competitive eligible telecommunications carriers serving remote areas in Alaska and subject to paragraph (e)(3) of this section shall continue to receive support at the level described in paragraph (e)(3)(v) of this section.

* * * * *

[FR Doc. 2012–21314 Filed 8–29–12; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 595

[Docket No. NHTSA–2012–0078]

RIN 2127–AL19

Make Inoperative Exemptions; Retrofit On-Off Switches for Air Bags

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: NHTSA has a regulation that permits motor vehicle dealers and repair businesses to install retrofit on-off switches for air bags in vehicles owned by or used by persons whose request for a switch has been approved by the agency. This regulation is only available for motor vehicles manufactured before September 1, 2012. This document extends the availability of this regulation for three additional years, so that it applies to motor vehicles manufactured before September 1, 2015.

DATES: *Effective Date:* This rule is effective August 30, 2012. *Petitions:* Petitions for reconsideration must be received by October 15, 2012.

ADDRESSES: Any petitions for reconsideration should refer to the docket number of this document and be submitted to: Administrator, National Highway Traffic Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT:

For non-legal issues: Ms. Carla Rush, Office of Crashworthiness Standards, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590 (telephone 202–366–1740, fax 202–493–2739).

For legal issues: Mr. William Shakely, Office of the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590 (telephone 202–366–2992, fax 202–366–3820).

SUPPLEMENTARY INFORMATION:

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I. Background [1]

To prevent or mitigate the risk of injuries or fatalities in frontal crashes, Federal Motor Vehicle Safety Standard (FMVSS) No. 208, ''Occupant crash protection'' (49 CFR 571.208), requires that vehicles be equipped with seat belts and frontal air bags.

In the 1990s, while air bags proved to be highly effective in reducing fatalities from frontal crashes, they were found to cause a small number of fatalities, especially to unrestrained, out-of-position children, in relatively low speed crashes.[2] To address this problem, NHTSA developed a plan that included an array of immediate, interim and long-term measures. As one of the interim measures, on November 21, 1997, NHTSA published in the **Federal Register** (62 FR 62406) a final rule permitting motor vehicle dealers and repair businesses to install retrofit on-off switches for frontal air bags in vehicles owned by or used by persons whose request for a switch had been approved by the agency (subpart B of 49 CFR Part 595). This rule provided a limited exemption from a statutory provision that generally prohibits motor vehicle dealers and repair businesses from making inoperative any part of a device or element of design installed on or in a motor vehicle or motor vehicle equipment in compliance with an applicable FMVSS.[3]

Under the procedures set forth in the 1997 rule, vehicle owners can request a retrofit air bag on-off switch by completing an agency request form (Appendix B of Part 595) and submitting the form to the agency. Owners must certify that they have read the information brochure, in Appendix A of Part 595, discussing air bag safety and risks. The brochure describes the steps that the vast majority of people can take to minimize the risk of serious injuries from air bags while preserving the benefits of air bags, without going to the expense of buying an on-off switch. The agency developed the brochure to enable owners to determine whether they are, or a user of their vehicle is, in one of the groups of people at risk of a serious air bag injury and to make a careful, informed decision about requesting an on-off switch.[4] Owners also must certify that they or another user of their vehicle is a member of one of the risk groups. Since the risk groups for drivers are different from those for passengers, a separate certification must be made on the request form for each frontal air bag to be equipped with a retrofit air bag on-off switch.

If NHTSA approves a request, the agency will send the owner a letter authorizing the installation of one or more on-off switches in the owner's vehicle. The owner may give the authorization letter to a dealer or repair business, which may then install an on-off switch for the driver or passenger air bag or both, as approved by the agency. The retrofit air bag on-off switch must meet certain criteria, such as being equipped with a telltale light to alert vehicle occupants when an air bag has been turned off. The dealer or repair

[1] For a more detailed discussion, see the June 8, 2012 Notice of Proposed Rulemaking (77 FR 33998).

[2] See preamble to agency final rule on advanced air bags, 65 FR 30680, 30682–83, May 12, 2000.

[3] The ''make inoperative'' provision is at 49 U.S.C. 30122.

[4] At NHTSA's request, an expert panel of physicians convened to formulate recommendations on specific medical indications for air bag deactivation. The panel concluded that air bags are effective lifesavers and that a medical condition does not warrant turning off an air bag unless the condition makes it impossible for a person to maintain an adequate distance from the air bag. Specifically, the panel recommended disconnecting an air bag if a safe sitting distance or position cannot be maintained by a: driver or front passenger because of scoliosis, osteoporosis/arthritis; driver because of achondroplasia; or passenger because of Down syndrome and atlantoaxial instability. The panel also warranted the disconnection of air bags if the need for wheelchair related modifications made it necessary or if there is a medical condition that requires an infant or child to be placed in the front passenger seat for monitoring purposes. (The Ronald Reagan Institute of Emergency Medicine Department of Emergency Medicine and The National Crash Analysis Center, ''National Conference on Medical Indications for Air Bag Disconnection,'' July 16–18, 1997.)

business must then fill in information about itself and its installation in a form in the letter and return the form to the agency.

On May 12, 2000, NHTSA published in the **Federal Register** (65 FR 30680) its final rule to require advanced frontal air bags. The rule required that future air bags be designed to reduce the risk of serious air bag-induced injuries compared to then-current air bags, particularly for small-statured women and young children; and provide improved frontal crash protection for all occupants, by means that include advanced air bag technology.

In the preamble to the May 2000 advanced air bag final rule, the agency decided to continue the exemption procedures for retrofit air bag on-off switches for vehicles manufactured through August 31, 2012. This provided time to allow manufacturers to perfect the suppression and low-risk deployment systems for air bags in all of their vehicles. It also provided a number of years to verify the reliability of advanced air bags based on real-world experience.

NHTSA also indicated in the advanced air bag final rule that there would be a need for deactivation of some sort (via on-off switch or permanently) for at-risk individuals who cannot be accommodated through sensors or other suppression technology (such as individuals with disabilities or certain medical conditions). The agency stated at that time that it believed such needs could be best accommodated through the authorization system for deactivation of air bags in current use by NHTSA (65 FR at 30722).

In addition to the exemption provided by subpart B of Part 595, on February 27, 2001, NHTSA published a final rule in the **Federal Register** (66 FR 12638) providing a limited exemption from the make inoperative prohibition covering various provisions in a number of safety standards, to facilitate the mobility of persons with disabilities. This disability exemption, which is in subpart C of Part 595, permits the installation of air bag on-off switches or the permanent disconnection of air bags in certain, significantly more limited circumstances than provided for in subpart B of that part. However, unlike subpart B, prior agency approval is not required for an exemption under subpart C.

II. NPRM Summary

On June 8, 2012, the agency published a Notice of Proposed Rulemaking (NPRM) to extend the availability of the existing regulation (Subpart B of 49 CFR part 595) that permits motor vehicle dealers and repair businesses to install retrofit on-off switches for air bags in vehicles owned by or used by persons whose request for a switch has been approved by the agency. The proposed extension was for three additional years, so that it would apply to motor vehicles manufactured before September 1, 2015 (77 FR 33998; Docket No. NHTSA–2012–0078).

The NPRM stated that the agency plans to use the three-year extension to evaluate several aspects of the regulation. Specifically, the agency would evaluate the criteria for granting the retrofit on-off switches (at-risk groups) in light of the existence of advanced air bag technology and the retrofit switch brochures and forms that were included in Part 595. The agency would also consider other topics that have arisen over the years such as our continued use of prosecutorial discretion for circumstances not covered by Part 595 (e.g., the application of retrofit switches for emergency and law enforcement vehicles).

The NPRM also explained that given the imminence of the September 1, 2012 date, it would not be possible for the agency to complete the necessary evaluation and possible rulemaking before that time, and the extension would avoid any gap in the availability of the retrofit on-off air bag switches while the agency considers further rulemaking that could permanently allow such switches in specified circumstances. The agency expects to be able to fully analyze the issues surrounding such a rulemaking within these three additional years.

III. Discussion of Comments and Agency Decision

The comment period for the NPRM closed on July 9, 2012. The agency received two comments. Advocates for Highway and Auto Safety (Advocates) supported the proposed extension.[5] Advocates stated that although advances in air bag design and other vehicle safety systems have minimized the need for air bag on-off switches, the organization recognized a continuing need for on-off switches to accommodate certain at-risk individuals who could not be accommodated by current technologies, including individuals with disabilities or certain medical conditions, as well as younger passengers in child restraint systems in vehicles without rear seats. Advocates asserted that a three-year extension of the exemption procedures to allow timely review of the regulation by the agency will pose minimal risk and permit the regulation to be updated to reflect state-of-the-art safety technology.

The National Automobile Dealer Association (NADA), an organization representing automobile and truck dealers, urged NHTSA to conduct a more expeditious evaluation of the air bag on-off exemption regulation than the three-year period proposed in the NPRM.[6] NADA asserted that it should not take NHTSA long to conduct an analysis of the number and nature of switch installation and air bag deactivation requests received since the regulation was promulgated. NADA cited anecdotal evidence that information requests submitted to NADA by dealerships regarding the air bag on-off exemption have dropped to near zero. NADA asserted that this evidence indicated a drop in demand for retrofit on-off switches and air bag deactivations consistent with the rate at which advanced air bags and switch-equipped two-passenger vehicles have penetrated the market.

The agency has considered NADA's comments urging a more expeditious evaluation period than the three year period proposed in the NPRM. However, the agency declines to adopt NADA's suggestion. NADA's reasoning is that a review of the number and nature of requests for exemptions should not take long, asserting that the organization's anecdotal evidence indicates a drop in demand for such exemptions.

First, the agency would like to emphasize that the demand for retrofit switches is certainly a factor that the agency will consider as we evaluate subpart B of part 595, but it is not the only factor the agency will be examining. We will also reexamine the at-risk groups in light of advanced air bag technology, the brochures and forms included in Part 595, and the need for the continued use of prosecutorial discretion for circumstances not covered by Part 595, among other things. Accordingly, the time needed to examine the demand for retrofit on-off switches does not reflect the total time needed to evaluate the issue.

Additionally, as explained in the NPRM, the three-year extension period is intended not only to provide the agency time to evaluate this issue, but to potentially conduct rulemaking to update subpart B. Finally, NADA did not describe any benefits that would result from a shorter extension period or any consequences associated with the three-year period proposed in the

[5] Advocates Comment, Docket No. NHTSA–2012–0078–0002.

[6] NADA Comment, Docket No. NHTSA–2012–0078–0003.

NPRM. Therefore, for the reasons expressed in the NPRM, this final rule adopts the three-year extension period proposed in the NPRM and amends Subpart B of 49 CFR Part 595 to extend the availability of retrofit on-off switches for air bags so that it will apply to motor vehicles manufactured before September 1, 2015.

IV. Rulemaking Analyses and Notices

A. Executive Order (E.O.) 12866, E.O. 13563, and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under Executive Orders 12866 and 13563, and the Department of Transportation's regulatory policies and procedures (44 FR 11034 (Feb. 26, 1979)). This action was not reviewed by the Office of Management and Budget under these executive orders. It is not considered to be significant under the Department's regulatory policies and procedures.

This document delays the sunset date of an existing exemption for retrofit on-off switches for frontal air bags. They are currently available, under specified circumstances, for vehicles manufactured before September 1, 2012. We are extending that date so that they will be available for vehicles manufactured before September 1, 2015.

This final rule does not require a motor vehicle manufacturer, dealer or repair business to take any action or bear any costs except in instances in which a dealer or repair business agrees to install an on-off switch for an air bag. For consumers, the purchasing and installation of on-off switches is permissive, not prescriptive.

When an eligible consumer obtains the agency's authorization for the installation of a retrofit on-off switch and a dealer or repair business agrees to install the switch, there will be costs associated with that action. The agency estimates that the installation of an on-off switch would typically require less than one hour of shop time, at the average national labor rate of approximately $80 per hour. NHTSA estimates that the cost of an air bag on-off switch for one seating position is $51 to $84 and the cost of an on-off switch for two seating positions is $68 to $101. The agency estimates that approximately 500 air bag on-off switch requests are received and authorized annually. However, we are uncertain about how many people actually pay to get them installed after we authorize it. Given the relatively low number of vehicle owners who will ultimately get the retrofit air bag on-off switches installed and the above estimated costs, the annual net economic impact of the actions taken under this final rule will not exceed $100 million per year.

Moreover, given the above, the fact that this has been a longstanding exemption available for consumers and since the agency is merely extending the availability of this exemption for an additional three years of vehicle production, the impacts are so minimal that a full regulatory evaluation is not needed.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of proposed rulemaking or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR part 121 define a small business, in part, as a business entity "which operates primarily within the United States." (13 CFR 121.105(a)). No regulatory flexibility analysis is required if the head of an agency certifies the proposal will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a proposal will not have a significant economic impact on a substantial number of small entities.

I hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities. This final rule would merely extend the sunset provision in Subpart B of Part 595. No other changes are being made in this document. Small organizations and small governmental units will not be significantly affected since the potential cost impacts associated with this action will be insignificant.

C. Executive Order 13132 (Federalism)

NHTSA has examined today's rule pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments or their representatives is mandated beyond the rulemaking process. The agency has concluded that the rulemaking does not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The final rule does not have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Today's final rule does not impose any additional requirements. Instead, it delays the sunset date of an existing exemption for retrofit on-off switches for frontal air bags, thereby lessening burdens on the exempted entities.

NHTSA rules can preempt in two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemption provision: when a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter. 49 U.S.C. 30103(b)(1). It is this statutory command by Congress that preempts any non-identical State legislative and administrative law addressing the same aspect of performance. This provision is not relevant to this final rule as this final rule does not involve the establishing, amending or revoking of a Federal motor vehicle safety standard. However, general principles of preemption law could apply so as to displace any conflicting state law or regulations. We are unaware of any State law or action that would prohibit the actions that this exemption would permit.

This second way that NHTSA rules can preempt is dependent upon there being an actual conflict between a NHTSA regulation and the higher standard that would effectively be imposed on regulated entities if someone obtained a State common law tort judgment against a regulated entity, notwithstanding the regulated entity's compliance with the NHTSA regulation. Because most NHTSA standards established by an FMVSS are minimum standards, a State common law tort cause of action that seeks to impose a higher standard on regulated entities will generally not be preempted. However, if and when such a conflict does exist—for example, when the standard at issue is both a minimum and a maximum standard—the State common law tort cause of action is impliedly preempted. See *Geier* v. *American Honda Motor Co.,* 529 U.S. 861 (2000).

Although this final rule does not establish, amend, or revoke an FMVSS, NHTSA has considered, pursuant to Executive Orders 13132 and 12988, whether this final rule could or should preempt State common law causes of action. The agency's ability to announce its conclusion regarding the preemptive effect of one of its rules reduces the likelihood that preemption will be an issue in any subsequent tort litigation.

To this end, the agency has examined the nature (e.g., the language and structure of the regulatory text) and objectives of today's final rule and finds that this final rule would increase flexibility for certain exempted entities. As such, NHTSA does not intend that this final rule would preempt state tort law that would effectively impose a higher standard on regulated entities than that would be established by today's rule. Establishment of a higher standard by means of State tort law would not conflict with the exemption. Without any conflict, there could not be any implied preemption of a State common law tort cause of action.

D. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted annually for inflation, with base year of 1995). UMRA also requires an agency issuing a final rule subject to the Act to select the ''least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule.'' This final rule will not result in a Federal mandate that will likely result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted annually for inflation, with base year of 1995).

E. National Environmental Policy Act

NHTSA has analyzed this final rule for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

F. Executive Order 12778 (Civil Justice Reform)

When promulgating a regulation, agencies are required under Executive Order 12988 to make every reasonable effort to ensure that the regulation, as appropriate: (1) Specifies in clear language the preemptive effect; (2) specifies in clear language the effect on existing Federal law or regulation, including all provisions repealed, circumscribed, displaced, impaired, or modified; (3) provides a clear legal standard for affected conduct rather than a general standard, while promoting simplification and burden reduction; (4) specifies in clear language the retroactive effect; (5) specifies whether administrative proceedings are to be required before parties may file suit in court; (6) explicitly or implicitly defines key terms; and (7) addresses other important issues affecting clarity and general draftsmanship of regulations.

Pursuant to this Order, NHTSA notes as follows. The preemptive effect of this final rule is discussed above. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceeding before they may file suit in court.

G. Paperwork Reduction Act (PRA)

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. Several of the conditions placed by this exemption from the make inoperative prohibition are considered to be information collection requirements as defined by the OMB in 5 CFR part 1320. Specifically, this exemption from the make inoperative prohibition for motor vehicle dealers and repair businesses is conditioned upon vehicle owners filling out and submitting a request form to the agency, obtaining an authorization letter from the agency and then presenting the letter to a dealer or repair business. The exemption is also conditioned upon the dealer or repair business filling in information about itself and the installation of the retrofit on-off switch in the form provided for that purpose in the authorization letter and then returning the form to NHTSA. These information collection requirements in Part 595 have been approved by OMB (OMB Control No. 2127–0588) through June 30, 2013, pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq*). NHTSA will request an extension of this approval in a timely manner.

H. National Technology Transfer and Advancement Act

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Pub. L. 104–113), all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the International Organization for Standardization (ISO) and the Society of Automotive Engineers (SAE). The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards. There are no voluntary consensus standards developed by voluntary consensus standards bodies pertaining to this rule.

I. Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

NHTSA has considered these questions and attempted to use plain language in promulgating this final rule.

J. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

K. Privacy Act

Petitions for reconsideration will be placed in the docket. Anyone is able to search the electronic form of all petitions received into any of our dockets by the name of the individual submitting the petition (or signing the petition, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

List of Subjects in 49 CFR Part 595

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, NHTSA is amending 49 CFR part 595 as follows:

PART 595—MAKE INOPERATIVE EXEMPTIONS

■ 1. The authority citation for part 595 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30122 and 30166; delegation of authority at 49 CFR 1.50.

■ 2. Amend § 595.5 by revising paragraph (a) to read as follows:

§ 595.5 Requirements.

(a) Beginning January 19, 1998, a dealer or motor vehicle repair business may modify a motor vehicle manufactured before September 1, 2015, by installing an on-off switch that allows an occupant of the vehicle to turn off an air bag in that vehicle, subject to the conditions in paragraphs (b)(1) through (5) of this section.

* * * * *

Issued on: August 24, 2012.

David L. Strickland,

Administrator.

[FR Doc. 2012–21468 Filed 8–29–12; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 001005281–0369–02]

RIN 0648–XC196

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Trip Limit Reduction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; trip limit reduction.

SUMMARY: NMFS reduces the trip limit for the commercial sector of king mackerel in the eastern zone of the Gulf of Mexico (Gulf) in the northern Florida west coast subzone to 500 lb (227 kg) of king mackerel per day in or from the exclusive economic zone (EEZ). This trip limit reduction is necessary to protect the Gulf king mackerel resource.

DATES: This rule is effective 12:01 a.m., local time, August 30, 2012, through June 30, 2013, unless changed by further notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Susan Gerhart, telephone: 727–824–5305, email: *susan.gerhart@noaa.gov.*

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, and cobia) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

On April 27, 2000, NMFS implemented the final rule (65 FR 16336, March 28, 2000) that divided the king mackerel Gulf migratory group's Florida west coast subzone of the Gulf eastern zone into northern and southern subzones, and established their separate quotas. The quota for the northern Florida west coast subzone is 197,064 lb (89,397 kg) (50 CFR 622.42(c)(1)(i)(A)(*2*)(*ii*)).

The regulations at 50 CFR 622.44(a)(2)(ii)(B)(*2*), provide that when 75 percent of the northern Florida west coast subzone's quota has been harvested until a closure of the subzone has been effected or the fishing year ends, king mackerel in or from the EEZ may be possessed on board or landed from a permitted vessel in amounts not exceeding 500 lb (227 kg) per day.

NMFS has projected that 75 percent of the quota for Gulf group king mackerel from the northern Florida west coast subzone will be reached by August 30, 2012. Accordingly, a 500-lb (227-kg) trip limit applies to vessels in the commercial sector for king mackerel in or from the EEZ in the northern Florida west coast subzone effective 12:01 a.m., local time, August 30, 2012. The 500-lb (227-kg) trip limit will remain in effect until the fishery closes or until the end of the current fishing year (June 30, 2013), whichever occurs first.

The Florida west coast subzone is that part of the eastern zone located south and west of 25°20.4′ N. lat. (a line directly east from the Miami-Dade/Monroe County, FL boundary) along the west coast of Florida to 87°31.1′ W. long. (a line directly south from the Alabama/Florida boundary). The Florida west coast subzone is further divided into northern and southern subzones. The northern subzone is that part of the Florida west coast subzone that is between 26°19.8′ N. lat. (a line directly west from the Lee/Collier County, FL boundary) and 87°31.1′ W. long. (a line directly south from the Alabama/Florida boundary).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds that the need to immediately implement this trip limit reduction for the commercial sector constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), as such procedures would be unnecessary and contrary to the public interest. Such procedures would be unnecessary because the rule itself already has been subject to notice and comment, and all that remains is to notify the public of the trip limit reduction.

Allowing prior notice and opportunity for public comment is contrary to the public interest because the capacity of the fishing fleet allows for rapid harvest of the quota. Prior notice and opportunity for public comment could result in a harvest well in excess of the established quota. Immediate implementation of this action is needed to protect the fishery.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in effectiveness of this action under 5 U.S.C. 553(d)(3).

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 27, 2012.

Lindsay Fullenkamp,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2012–21426 Filed 8–27–12; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 120412408–2408–01]

RIN 0648–XC163

Fisheries of the Northeastern United States; Scup Fishery; Adjustment to the 2012 Winter II Quota

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; inseason adjustment.

SUMMARY: NMFS adjusts the 2012 Winter II commercial scup quota. This action complies with Framework Adjustment 3 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan, which established a process to allow the rollover of unused commercial scup quota from the Winter I period to the Winter II period.

DATES: Effective August 30, 2012, through December 31, 2012.

FOR FURTHER INFORMATION CONTACT: Carly Bari, Fishery Management Specialist, (978) 281–9224.

SUPPLEMENTARY INFORMATION: NMFS published a final rule in the **Federal Register** on November 3, 2003 (68 FR 62250), implementing a process, for years in which the full Winter I commercial scup quota is not harvested, to allow unused quota from the Winter I period (January 1 through April 30) to be added to the quota for the Winter II period (November 1 through December 31), and to allow adjustment of the commercial possession limit for the Winter II period commensurate with the amount of quota rolled over from the Winter I period.

For 2012, the initial Winter II quota is 4,448,627 lb (2,018 mt), and the best available landings information indicates that 7,186,694 lb (3,259 mt) remain of the Winter I quota of 12,589,558 lb (5,710 mt). Consistent with the intent of Framework 3, the full amount of unused 2012 Winter I quota is transferred to Winter II, resulting in a revised 2012 Winter II quota of 11,635,321 lb (5,277 mt). Because the amount transferred is greater than 2,000,000 lb (907 mt), the possession limit per trip will increase to 8,000 lb (3,629 kg) during the Winter II quota period, consistent with the final rule Winter I to Winter II possession limit increase table published in the 2012 final scup specifications Table 3, (77 FR 24151, April 23, 2012).

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA (AA), finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment on this in-season adjustment because it is impracticable and contrary to the public interest. The landings data upon which this action is based are not available on a real-time basis and were compiled only a short time before the determination was made that this action is warranted. If implementation of this in-season action is delayed to solicit prior public comment, the objective of the fishery management plan to achieve the optimum yield from the fishery could be compromised; deteriorating weather conditions during the later part of the fishery year will reduce fishing effort and could result in the annual quota from being fully harvested. This would conflict with the agency's legal obligation under the Magnuson-Stevens Fishery Conservation and Management Act to achieve the optimum yield from a fishery on a continuing basis, resulting in a negative economic impact on vessels permitted to fish in this fishery.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 27, 2012.

Lindsay Fullenkamp,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2012–21479 Filed 8–29–12; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 77, No. 169
Thursday, August 30, 2012

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.

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1201

Petition Requesting Rulemaking To Revise Test Procedures for Glazing Materials in Architectural Products

AGENCY: Consumer Product Safety Commission.

ACTION: Comment request.

SUMMARY: The U.S. Consumer Product Safety Commission (''Commission'' or ''we'') has received a petition (CP12–3) requesting that the Commission initiate rulemaking to replace the testing procedures for glazing materials in certain architectural products set forth in our regulations, with those testing procedures contained in ANSI Z97.1, ''American National Standard for Safety Glazing Materials Used in Building—Safety Performance Specifications and Methods of Test.'' We invite written comments concerning the petition.

DATES: The Office of the Secretary must receive comments on the petition by October 29, 2012.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2012–0049, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

To ensure timely processing of comments, the Commission is no longer accepting comments submitted by electronic mail (email), except through *www.regulations.gov*.

Written Submissions

Submit written submissions in the following way:

Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions), preferably in five copies, to: Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East-West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and petition number for this rulemaking. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to: *http://www.regulations.gov*. Do not submit confidential business information, trade secret information, or other sensitive or protected information electronically. Such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to: *http://www.regulations.gov*. A copy of the petition is available at *http://www.regulations.gov*, under Docket No. CPSC–2012–0049, Supporting and Related Materials.

FOR FURTHER INFORMATION CONTACT: Rochelle Hammond, Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East-West Highway, Bethesda, MD 20814; telephone (301) 504–6833.

SUPPLEMENTARY INFORMATION: The Commission has received a submission from William M. Hannay, Attorney at Law, Counsel for Safety Glazing Certification Council (''petitioner''), dated June 26, 2012, requesting that the Commission initiate a rulemaking to replace the current testing procedures for glazing materials codified at 16 CFR 1201.4, with those contained in ANSI Z97.1, ''American National Standard for Safety Glazing Materials Used in Building—Safety Performance Specifications and Methods of Test.'' The Commission is docketing this request as a petition under the Consumer Product Safety Act (CPSA). 15 U.S.C. 2056 and 2058. The current standard for architectural glazing materials applies to glazing materials used or intended to be used in the architectural products subject to the standard, i.e., storm doors or combination doors, doors, bathtub doors and enclosures, shower doors and enclosures and sliding glass doors. The testing procedures set forth in Section 1201.4 require impact tests and accelerated environment durability tests which are intended to determine if glazing materials used in these architectural products meet safety requirements designed to reduce or eliminate unreasonable risks of death or serious injury to consumers when glazing material is broken by human contact. The testing procedures further describe the testing equipment and apparatus required to be used, and the test result interpretation methodology to be employed in determining if the glazing materials being tested meet the safety requirements of the standard.

Petitioner asserts that consumers and the glazing industry would be better served by replacing the test procedures for glazing materials used in the above-referenced architectural products in 16 CFR 1201.4 with ANSI Z97.1's purportedly more efficient and more modern procedures. Petitioner notes that the testing procedures set forth in Section 1201.4 were promulgated in 1977 and have not been updated or clarified since their original adoption by the Commission. Petitioner points out that the ANSI standard for glazing materials has been updated periodically (in 1984, 1994, 2004 and 2009) since the mandatory standard was promulgated, and that these updates include modifications in testing equipment and procedures that provide better protection for consumers.

Petitioner asserts that the absence of updates to the mandatory standard during a period in which the ANSI standard was revised four times has resulted in different testing methods and qualifying procedures that has created confusion in the industry regarding which test methodology must be used in what circumstance. Petitioner claims that the existence of overlapping but divergent mandatory and voluntary standards has created confusion for manufacturers in determining which standard applies, and resulted in manufacturers being required to pay for dual qualification testing, because different specifying agencies reference one or both standards. Petitioner also includes the proposed language that would replace the current Section 1201.4, directing manufacturers and private labelers of glazing material to test and certify the compliance of their products to the current ANSI standard.

By this notice, we seek comments concerning this petition. Interested parties may obtain a copy of the petition by writing or calling the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330

East-West Highway, Bethesda, MD 20814; telephone (301) 504–7923. A copy of the petition is also available at *http://www.regulations.gov*, under Docket No. CPSC–2012–0049, Supporting and Related Materials.

Dated: August 24, 2012.

Todd A. Stevenson,

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. 2012–21364 Filed 8–29–12; 8:45 am]

BILLING CODE 6355–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Docket No. EPA–R02–OAR–2012–0504; FRL–9723–2]

Approval and Promulgation of Air Quality Implementation Plans; New York, New Jersey, and Connecticut; Determination of Attainment of the 2006 Fine Particle Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to determine that the New York-N. New Jersey-Long Island, NY-NJ-CT fine particle ($PM_{2.5}$) nonattainment area has attained the 2006 24-hour fine particle National Ambient Air Quality Standard (NAAQS). This proposed determination is based upon quality assured, quality controlled, and certified ambient air monitoring data that shows the area has monitored attainment of the 2006 24-hour $PM_{2.5}$ NAAQS for the 2007–2009 and 2008–2010 monitoring periods and continues to show attainment through 2011. If this proposed determination is made final, the requirements for this area to submit an attainment demonstration, reasonably available control measures, reasonable further progress plan, and contingency measures related to attainment of the 2006 24-hour $PM_{2.5}$ NAAQS shall be suspended for so long as the area continues to attain the 2006 24-hour $PM_{2.5}$ NAAQS.

DATES: Comments must be received on or before October 1, 2012.

ADDRESSES: Submit your comments, identified by Docket ID number EPA–R02–OAR–2012–0504, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: Werner.Raymond@epa.gov*
- *Fax:* 212–637–3901
- *Mail:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.
- *Hand Delivery:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R02–OAR–2012–0504. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The www.regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866. EPA requests, if at all possible, that you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions concerning today's proposed action related to New York or New Jersey, please contact Gavin Lau, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, telephone number (212) 637–3708, fax number (212) 637–3901, email *lau.gavin@epa.gov.*

If you have questions concerning today's proposed action related to Connecticut, please contact Alison C. Simcox, Air Quality Planning Unit, Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square—Suite 100, Mail Code OEP05–02, Boston, MA 02109–3912, telephone number (617) 918–1684, fax number (617) 918–0684, email *simcox.alison@epa.gov.*

SUPPLEMENTARY INFORMATION: For detailed information regarding this proposal, EPA prepared a Technical Support Document (TSD). The TSD can be viewed at *http://www.regulations.gov.*

The following table of contents describes the format of this notice:

I. What action is EPA proposing?

EPA is proposing to determine that the New York-N. New Jersey-Long Island, NY-NJ-CT $PM_{2.5}$ nonattainment area, referred to from this point forward as the NY-NJ-CT $PM_{2.5}$ nonattainment area, has attained the 2006 24-hour $PM_{2.5}$ NAAQS. This proposed determination is based upon quality-assured, quality-controlled, and certified ambient air monitoring data that show that the area has monitored attainment of the 2006 24-hour $PM_{2.5}$ NAAQS for the 2007–2009 and 2008–2010 monitoring periods and continues to attain through 2011. The New York portion of the NY-NJ-CT $PM_{2.5}$

nonattainment area contains the counties of Bronx, Kings, Nassau, New York, Orange, Queens, Richmond, Rockland, Suffolk, and Westchester. The New Jersey portion of the NY-NJ-CT $PM_{2.5}$ nonattainment area contains the counties of Bergen, Essex, Hudson, Mercer, Middlesex, Monmouth, Morris, Passaic, Somerset, and Union. The Connecticut portion of the NY-NJ-CT $PM_{2.5}$ nonattainment area includes the counties of Fairfield and New Haven.

EPA received requests from the States of Connecticut, New Jersey, and New York (States) for the determination of attainment for the 2006 24-hour $PM_{2.5}$ NY-NJ-CT $PM_{2.5}$ nonattainment area. The States submitted air monitoring data, design value trends, and summaries of $PM_{2.5}$ emissions control programs. The information provided by the States supports the proposed determination being made by EPA that the NY-NJ-CT $PM_{2.5}$ nonattainment area has attained and continues to attain the 2006 24-hour $PM_{2.5}$ NAAQS. Copies of the information submitted by the States are available in the TSD.

II. What is the effect of this action?

The proposed determination, if finalized, under the provisions of EPA's $PM_{2.5}$ implementation rule (see 40 CFR 51.1004(c) and further reaffirmed in the implementation guidance for the 2006 24-hour $PM_{2.5}$. NAAQS) [1] would: (1) Suspend the requirements for the NY-NJ-CT $PM_{2.5}$ nonattainment area to submit an attainment demonstration, reasonably available control measures, reasonable further progress plan, and contingency measures related to the attainment of the 2006 24-hour $PM_{2.5}$ NAAQS; (2) continue until such time, if any, that EPA subsequently determines that the area has violated the 2006 24-hour $PM_{2.5}$ NAAQS; (3) be separate from the designation determination or requirements for the NY-NJ-CT $PM_{2.5}$ nonattainment area based on the 1997 annual $PM_{2.5}$ NAAQS; and (4) remain in effect regardless of EPA's designation of this area as a nonattainment area for purposes of the 1997 annual $PM_{2.5}$ NAAQS. Furthermore, as described below, any such final determination would not be equivalent to the redesignation of the area to attainment based on the 2006 24-hour NAAQS.

If this rulemaking is finalized and EPA subsequently determines, after notice-and-comment rulemaking in the **Federal Register,** that the area has violated the 2006 24-hour $PM_{2.5}$ NAAQS, the basis for the suspension of the specific requirements, set forth at 40 CFR 51.1004(c), would no longer exist, and the area would thereafter have to address the pertinent requirements.

The determination that EPA proposes with this **Federal Register** action, that the air quality data shows attainment of the 2006 24-hour $PM_{2.5}$ NAAQS, is not equivalent to the redesignation of the area to attainment. This proposed action, if finalized, would not constitute a redesignation to attainment under section 107(d)(3) of the Clean Air Act (CAA), because we would not yet have approved a maintenance plan for the area as required under section 175A of the CAA, nor a determination that the area has met the other requirements for redesignation. The designation status of the area would remain nonattainment for the 2006 24-hour $PM_{2.5}$ NAAQS until such time as EPA determines that it meets the CAA requirements for redesignation to attainment.

This proposed action, if finalized, is limited to a determination that the NY-NJ-CT $PM_{2.5}$ nonattainment area has attained the 2006 24-hour $PM_{2.5}$ NAAQS. The 2006 24-hour $PM_{2.5}$ NAAQS became effective on December 18, 2006 (71 FR 61144, October 17, 2006) and is set forth at 40 CFR 50.13. Effective December 14, 2009, EPA made designation determinations, as required by CAA section 107(d)(1), for the 2006 24-hour $PM_{2.5}$ NAAQS (74 FR 58688, November 13, 2009). EPA's proposed rulemaking action here addresses only the 2006 24-hour $PM_{2.5}$ NAAQS, and has no bearing on any other NAAQS, including any future revised NAAQS. EPA's proposed rulemaking action in this notice is restricted to EPA's determination that the NY-NJ-CT $PM_{2.5}$ nonattainment area is attaining the 2006 24-hour $PM_{2.5}$. This proposed action has no effect on control measures, or air quality, in the area.

If this proposed determination is made final and the NY-NJ-CT $PM_{2.5}$ nonattainment area continues to monitor attainment of the 2006 24-hour $PM_{2.5}$ NAAQS, the requirements for the area to submit attainment demonstrations, reasonably available control measures, reasonable further progress plans, and contingency measures related to attainment of the 2006 24-hour $PM_{2.5}$ NAAQS would remain suspended.

III. What is the background for this action?

On September 21, 2006, EPA established a 24-hour $PM_{2.5}$ NAAQS at 35.0 micrograms per cubic meter (μg/m^3) based on a 3-year average of the 98th percentile of 24-hour concentrations and retained the annual $PM_{2.5}$ NAAQS at 15.0 μg/m^3 based on a 3-year average of the annual mean (71 FR 61144). EPA established the standards based on significant evidence and numerous health studies demonstrating that serious health effects are associated with exposures to particulate matter. The process for designating areas following promulgation of a new or revised NAAQS is contained in section 107(d)(1) of the CAA. EPA and state air quality agencies initiated the monitoring process for the $PM_{2.5}$ NAAQS in 1999, and deployed all air quality monitors by January 2001. On November 13, 2009, (74 FR 58688), EPA published its air quality designations with respect to the 2006 24-hour $PM_{2.5}$ NAAQS based upon air quality monitoring data from those monitors for calendar years 2006–2008. These designations became effective on December 14, 2009. The NY-NJ-CT $PM_{2.5}$ area was designated as nonattainment for the 2006 24-hour $PM_{2.5}$ NAAQS. This proposed determination addresses the 2006 24-hour standard only.

On November 15, 2010 (75 FR 69589), EPA made the determination that the NY-NJ-CT $PM_{2.5}$ nonattainment area attained the 1997 annual $PM_{2.5}$ NAAQS. On April 25, 2007 (72 FR 20586), EPA promulgated its implementation rule to assist states and tribes with the development of State Implementation Plans (SIPs) to demonstrate attainment of the annual and 24-hour 1997 $PM_{2.5}$ NAAQS, codified at 40 CFR part 51, subpart Z. This rule, at 40 CFR 51.1004(c), specifies some of the regulatory consequences of a determination of attainment of the standard.

On March 2, 2012, EPA provided implementation guidance for the 2006 24-hour $PM_{2.5}$ NAAQS. The 2012 guidance reaffirms and continues to use the framework and policy approaches of the April 25, 2007 rule. The 2006 24-hour $PM_{2.5}$ NAAQS implementation guidance includes additional guidance for states in developing their SIPs.

IV. What is EPA's analysis of the relevant air quality data?

EPA has reviewed the ambient air monitoring data for $PM_{2.5}$, consistent with the requirements contained in 40 CFR part 50 and recorded in the EPA Air Quality System database for the NY-NJ-CT $PM_{2.5}$ nonattainment area from 2006 through the present time. On the basis of that review, EPA has concluded that this area has attained the 2006 24-hour $PM_{2.5}$ NAAQS based on data for the 2007–2009 and 2008–2010

[1] EPA's implementation guidance for the 2006 24-hour $PM_{2.5}$ NAAQS was issued on March 2, 2012 and is available at *http://www.epa.gov/ttn/naaqs/pm/pdfs/20120302_implement_guidance_24-hr_pm2.5_naaqs.pdf.*

monitoring periods and continues to show attainment through 2011.

Under EPA regulations at 40 CFR 50.13(c): The 24-hour primary and secondary $PM_{2.5}$ standards are met when the 98th percentile 24-hour concentration, as determined in accordance with 40 CFR part 50, Appendix N, is less than or equal to 35.0 μg/m³.

Table 1 shows the design values by county (*i.e.,* the 3-year average of 98th percentile 24-hour $PM_{2.5}$ concentrations) for the 2006 24-hour $PM_{2.5}$ NAAQS for the NY-NJ-CT $PM_{2.5}$ nonattainment area monitors for the years 2006 through 2010 based on complete (except where otherwise noted), quality-assured and certified air quality monitoring data. As shown in Table 1, none of the design values for the periods of 2007–2009 and 2008–2010 in the NY-NJ-CT $PM_{2.5}$ nonattainment area exceed the 2006 24-hour $PM_{2.5}$ NAAQS of 35.0 μg/m³. Table 1 also provides certified, complete, and quality assured 98th percentile 24-hour concentrations for 2011 which show continued attainment of the 24-hour $PM_{2.5}$ NAAQS.

TABLE 1—DESIGN VALUES [2] BY COUNTY FOR THE 2006 24-HOUR $PM_{2.5}$ NAAQS FOR THE NY-NJ-CT MONITORS IN MICROGRAMS PER CUBIC METER (μG/M³)

[The standard for the 2006 24-hour $PM_{2.5}$ NAAQS is 35.0 μg/m³]

County	06–08 DV	07–09 DV	08–10 DV	2011 [3]
NY:				
Bronx	36	33	29	27
Kings	34	30	27	24
Nassau [4]	INC	INC	25	23
New York [5]	37	[6] 33	[6] 31	27
Orange	28	26	24	21
Queens	32	30	28	25
Richmond	30	29	26	24
Rockland	NM	NM	NM	NM
Suffolk	29	26	25	22
Westchester	32	29	28	23
NJ:				
Bergen	35	31	28	24
Essex [7]	INC	[6] 30	[6] 26	24
Hudson	38	32	29	26
Mercer	33	29	27	28
Middlesex	31	27	23	21
Monmouth	NM	NM	NM	NM
Morris	29	26	23	24
Passaic	33	30	INC	25
Somerset	NM	NM	NM	NM
Union	36	[6] 32	30	33
CT:				
Fairfield	33	31	28	29
New Haven	34	31	29	28

NM—No monitor located in county.
INC—All counties listed as INC did not meet 75 percent data completeness requirement for the relevant time period.

EPA's review of monitoring data indicates that, for the periods of 2007–2009 and 2008–2010 and 2011, the NY-NJ-CT $PM_{2.5}$ nonattainment area has met, and continues to meet, the 2006 24-hour $PM_{2.5}$ NAAQS. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

V. How did EPA address missing data?

Data handling conventions and computations necessary for determining whether areas have met the $PM_{2.5}$ NAAQS, including requirements for data completeness, are listed in Appendix N of 40 CFR part 50. A year meets data completeness requirements when at least 75 percent of the scheduled sampling days for each quarter have valid data. The use of less than complete data is subject to the approval of EPA, which may consider factors such as monitoring site closures/relocation, monitoring diligence, and nearby concentrations in determining whether to use such data as set forth at 40 CFR part 50, Appendix N, section 4.1(c). Five monitors in the NY-NJ-CT $PM_{2.5}$ nonattainment area with less than complete data were examined to determine if the monitors would have attained the 24-hour $PM_{2.5}$ NAAQS had

[2] $PM_{2.5}$ Design Values can be found at: *http://www.epa.gov/airtrends/values.html.*

[3] Data reported is the 98th percentile concentration from certified, complete, and quality assured data for the highest reading monitor in the county for 2011.

[4] The monitor located in Nassau County had incomplete data for 2007 which lead to the inability to calculate design values for the periods of 2005–2007, 2006–2008, and 2007–2009. The monitor did not show previous violations and therefore it was deemed that determining the design values though alternative procedures was not necessary. The 2008–2010 design value was 25 μg/m³.

[5] The monitor in New York County located at Public School 59 was the highest reading monitor in the County at the time EPA made designations for the 2006 $PM_{2.5}$ NAAQS. Midway through 2008, the monitor at PS 59 was shut down due to the demolition of the building site. Missing 2008 data had an effect on calculating the design value for the 24-hour standard. EPA used an alternative procedure to determine the design value for the 24-hour standard. A description of the alternate procedure can be found in Section V. Detailed information on this alternative procedure can be found in the Technical Support Document.

[6] Design Value was calculated using the alternative procedure described in Section V. Detailed information on this alternative procedure can be found in the Technical Support Document.

[7] The air monitor at the Newark Willis Center station in Essex County was discontinued on July 24, 2008 due to an unexpected loss of access, and replaced with a new monitor at the Newark Firehouse. $PM_{2.5}$ monitoring was established at the firehouse on May 13, 2009. EPA used an alternative procedure to determine the design value for the 24-hour standard. A description of the alternate procedure can be found in Section V. Detailed information on this alternative procedure can be found in the Technical Support Document.

they collected complete data. EPA had previously addressed less than complete data in the determination of attainment for the NY-NJ-CT $PM_{2.5}$ nonattainment area for the 1997 annual standard NAAQS (see 75 FR 45076, 45079 (August 2, 2010), 75 FR 69589 (November 15, 2010)). The same statistical based method used to examine less than complete data for the 1997 annual $PM_{2.5}$ NAAQS was used for this action regarding the 2006 24-hour $PM_{2.5}$ NAAQS.

The statistical method used addressed less than complete data by determining if a monitor would have been in attainment of the NAAQS had it operated to completeness from 2007–2009 and 2008–2010. The approach summarized in this section, and further described in the TSD, may or may not be appropriate for other areas with less than complete data. EPA will determine the appropriateness of this analytical approach for each area with less than complete data on a case-by-case basis. In this case, EPA has determined that it is appropriate to use this statistical method for the NY-NJ-CT $PM_{2.5}$ nonattainment area due to the adequateness of the monitoring network in the nonattainment area, historical air quality trends, and valid explanations for completeness issues.

EPA determined the adequacy of the monitoring network by examining the number and placement of monitors located in the nonattainment area through annual monitoring reviews and approval of network plans. The NY-NJ-CT $PM_{2.5}$ nonattainment area is required to have 3 monitors and the nonattainment area had 42 in 2009. The States of New York, New Jersey, and Connecticut meet annually with EPA to discuss issues or concerns with air monitoring, data, and network. The three states also have approved network plans. Copies of the approved annual network review letters are available in the TSD.

Methodology

The method used to determine the design value for monitors with incomplete data involves establishing a linear relationship between incomplete monitors and another site in the NY-NJ-CT $PM_{2.5}$ nonattainment area that has more complete data for the missing period and has a substantial number of samples in common over the period of interest. The same method was used for each incomplete monitor that had previously violated the NAAQS. The monitor in the nonattainment area that had complete data and had the highest correlation with an incomplete monitor was used to develop a regression equation. The regression equation was used to estimate values for the missing quarters of data for an incomplete monitor. The design value for each incomplete monitor was then calculated using the estimated values to fill in for the missing quarters. The estimated design value was then analyzed using a bootstrapping statistical method. Bootstrapping involves the use of regression residuals and repeating the regression analysis 1000 times. There were no exceedances of the NAAQS as a result of the bootstrapping analysis.

The result of the analysis determined that the design value for 5 monitoring sites that: (1) Had incomplete monitoring data during 2006–2008, 2007–2009, and/or 2008–2010, (2) had previously violated the 2006 annual $PM_{2.5}$ NAAQS, and (3) did not have clean data subsequent to their latest violation, would be below the 2006 24-hour $PM_{2.5}$ NAAQS of 35.0 $\mu g/m^3$ if they had operated the entire monitoring time period. The 5 previously incomplete sites in the NY-NJ-CT $PM_{2.5}$ nonattainment area were: Newark-Willis Center in Essex County, NJ; Elizabeth Lab in Union County, NJ (only incomplete for 2007–2009); and PS 59, Canal Street, and PS 19, in New York County, NY. The detailed statistical analysis performed to obtain the completed design values for these monitors can be found in the TSD.

VI. Proposed Action

EPA is proposing to determine that the NY-NJ-CT $PM_{2.5}$ nonattainment area for the 2006 24-hour $PM_{2.5}$ NAAQS has attained the 2006 24-hour $PM_{2.5}$ NAAQS for the 2007–2009 and 2008–2010 monitoring periods and continues to attain the standard based on data through 2011. As provided in 40 CFR 51.1004(c), if EPA finalizes this determination, it would suspend the requirements for this area to submit attainment demonstrations, reasonably available control measures, reasonable further progress plans, and contingency measures related to attainment of the 2006 24-hour $PM_{2.5}$ NAAQS so long as the area continues to attain the 2006 24-hour $PM_{2.5}$ NAAQS.

VIII. Statutory and Executive Order Reviews

This action proposes to make a determination based on air quality data, and would, if finalized, result in the suspension of certain Federal requirements. For that reason, this proposed action:

Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);

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 rule 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

Environmental protection, Air pollution control, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: July 31, 2012.

Judith A. Enck,

Regional Administrator, Region 2.

Dated: August 7, 2012.

H. Curtis Spalding,

Regional Administrator, Region 1.

[FR Doc. 2012–21483 Filed 8–29–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2010–1047; FRL–9720–3]

Approval and Promulgation of Air Quality Implementation Plans; Indiana; Volatile Organic Compounds; Architectural and Industrial Maintenance Coatings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve into the Indiana State Implementation Plan (SIP) the addition of a new rule that sets emissions limits on the amount of volatile organic compounds in architectural and industrial maintenance coatings that are sold, supplied, manufactured, or offered for sale in the state.

DATES: Comments must be received on or before October 1, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2010–1047, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: blakley.pamela@epa.gov.*
3. *Fax:* (312) 692–2450.
4. *Mail:* Pamela Blakley, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Pamela Blakley, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Anthony Maietta, Environmental Protection Specialist, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8777, *maietta.anthony@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If 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. 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 EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, 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 section of this **Federal Register**.

Dated: August 14, 2012.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2012–21240 Filed 8–29–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[OAR–2004–0091; FRL–9721–5]

Outer Continental Shelf Air Regulations Consistency Update for California

AGENCY: Environmental Protection Agency (''EPA'').

ACTION: Proposed rule.

SUMMARY: EPA is proposing to update a portion of the Outer Continental Shelf (''OCS'') Air Regulations. Requirements applying to OCS sources located within 25 miles of States' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area (''COA''), as mandated by section 328(a)(1) of the Clean Air Act, as amended in 1990 (''the Act''). The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources for which the Santa Barbara County Air Pollution Control District (''Santa Barbara APCD'' or ''District'') is the designated COA. The intended effect of approving the OCS requirements for the Santa Barbara APCD is to regulate emissions from OCS sources in accordance with the requirements onshore. The changes to the existing requirements discussed below are proposed to be incorporated by reference into the Code of Federal Regulations and listed in the appendix to the OCS air regulations.

DATES: Any comments must arrive by October 1, 2012.

ADDRESSES: Submit comments, identified by docket number OAR–2004–0091, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.
2. *Email: steckel.andrew@epa.gov.*
3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or email. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT:

Cynthia G. Allen, Air Division (Air-4), U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 947–4120, *allen.cynthia@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background and Purpose

On September 4, 1992, EPA promulgated 40 CFR part 55,[1] which established requirements to control air pollution from OCS sources in order to attain and maintain federal and state ambient air quality standards and to comply with the provisions of part C of title I of the Act. Part 55 applies to all OCS sources offshore of the States except those located in the Gulf of Mexico west of 87.5 degrees longitude. Section 328 of the Act requires that for such sources located within 25 miles of a State's seaward boundary, the requirements shall be the same as would be applicable if the sources were located in the COA. Because the OCS requirements are based on onshore requirements, and onshore requirements may change, section 328(a)(1) requires that EPA update the OCS requirements as necessary to maintain consistency with onshore requirements.

Pursuant to section 55.12 of the OCS rule, consistency reviews will occur (1) At least annually; (2) upon receipt of a Notice of Intent under section 55.4; or (3) when a state or local agency submits a rule to EPA to be considered for incorporation by reference in part 55. This proposed action is being taken in response to the submittal of requirements by the Santa Barbara County APCD. Public comments received in writing within 30 days of publication of this document will be considered by EPA before publishing a final rule.

Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of States' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into part 55 as they exist onshore. This limits EPA's flexibility in deciding which requirements will be incorporated into part 55 and prevents EPA from making substantive changes to the requirements it incorporates. As a result, EPA may be incorporating rules into part 55 that do not conform to all of EPA's state implementation plan (SIP) guidance or certain requirements of the Act. Consistency updates may result in the inclusion of state or local rules or regulations into part 55, even though the same rules may ultimately be disapproved for inclusion as part of the SIP. Inclusion in the OCS rule does not imply that a rule meets the requirements of the Act for SIP approval, nor does it imply that the rule will be approved by EPA for inclusion in the SIP.

II. EPA's Evaluation

In updating 40 CFR part 55, EPA reviewed the rules submitted for inclusion in part 55 to ensure that they are rationally related to the attainment or maintenance of federal or state ambient air quality standards or part C of title I of the Act, that they are not designed expressly to prevent exploration and development of the OCS and that they are applicable to OCS sources. 40 CFR 55.1. EPA has also evaluated the rules to ensure they are not arbitrary or capricious. 40 CFR 55.12(e). EPA has excluded rules that regulate toxics, which are not related to the attainment and maintenance of federal and state ambient air quality standards.

EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. EPA will consider these comments before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Region IX Office listed in the **ADDRESSES** section of this **Federal Register**.

III. Proposed Action

1. After review of the requirements submitted by the Santa Barbara County APCD against the criteria set forth above and in 40 CFR part 55, EPA is proposing to make the following District requirements applicable to OCS sources. Earlier versions of these District rules are currently implemented on the OCS:

Rule No.	Name	Adoption or amended date
102	Definitions	6/21/12
202	Exemptions to Rule 201	6/21/12
321	Solvent Cleaning Machines and Solvent Cleaning	6/21/12
330	Surface Coating of Metal Parts and Products	6/21/12
349	Polyester Resin Operations	6/21/12
352	Natural Gas-Fired Fan-Type Central Furnaces and Small Water Heaters	10/20/11
353	Adhesives and Sealants	6/21/12

The District also submitted the following new rule which is not currently in effect on the OCS, for incorporation into Part 55. We are proposing to incorporate this rule into part 55:

349	Polyester Resin Operations	6/21/12

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to establish requirements to control air pollution from OCS sources located within 25 miles of States' seaward boundaries that are the same as onshore air control requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into part 55 as they exist onshore. 42 U.S.C. 7627(a)(1); 40 CFR 55.12. Thus, in promulgating OCS consistency updates, EPA's role is to maintain consistency between OCS regulations and the regulations of onshore areas, provided that they meet the criteria of

[1] See Notice of Proposed Rulemaking, December 5, 1991 (56 FR 63774), and the preamble to the final rule promulgated September 4, 1992 (57 FR 40792) for further background and information on the OCS regulations.

the Clean Air Act. Accordingly, this action simply proposes to update the existing OCS requirements to make them consistent with requirements onshore, without the exercise of any policy discretion by EPA. For that reason, this proposed action:

• Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);

• 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 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 rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, nor does it impose substantial direct compliance costs on tribal governments, nor preempt tribal law.

Under the provisions of the Paperwork Reduction Act, 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 currently valid OMB control number. OMB has approved the information collection requirements contained in 40 CFR part 55 and, by extension, this update to the rules, and has assigned OMB control number 2060–0249. Notice of OMB's approval of EPA Information Collection Request (''ICR'') No. 1601.07 was published in the **Federal Register** on February 17, 2009 (74 FR 7432). The approval expires January 31, 2012. As EPA previously indicated (70 FR 65897–65898 (November 1, 2005)), the annual public reporting and recordkeeping burden for collection of information under 40 CFR part 55 is estimated to average 549 hours per response, using the definition of burden provided in 44 U.S.C. 3502(2).

List of Subjects in 40 CFR Part 55

Environmental protection, Administrative practice and procedure, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Nitrogen oxides, Outer Continental Shelf, Ozone, Particulate matter, Permits, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: August 3, 2012.

Jared Blumenfeld,

Regional Administrator, Region IX.

Title 40 of the Code of Federal Regulations, Part 55, is proposed to be amended as follows:

PART 55—[AMENDED]

1. The authority citation for part 55 continues to read as follows:

Authority: Section 328 of the Clean Air Act (42 U.S.C. 7401 *et seq.*) as amended by Pub. L. 101–549.

2. Section 55.14 is amended by revising paragraph (e)(3)(ii)(F) to read as follows:

§ 55.14 Requirements that apply to OCS sources located within 25 miles of states seaward boundaries, by state.

* * * * *

(e) * * *

(3) * * *

(ii) * * *

(F) *Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources.*

* * * * *

3. Appendix A to CFR part 55 is amended by revising paragraph (b)(6) under the heading ''California'' to read as follows:

Appendix A to Part 55—Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State

* * * * *

California

* * * * *

(b) * * *

(6) The following requirements are contained in *Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources:*

Rule 102 Definitions (Adopted 06/21/12)
Rule 103 Severability (Adopted 10/23/78)
Rule 106 Notice to Comply for Minor Violations (Repealed 01/01/2001)
Rule 107 Emergencies (Adopted 04/19/01)
Rule 201 Permits Required (Adopted 06/19/08)
Rule 202 Exemptions to Rule 201 (Adopted 06/21/12)
Rule 203 Transfer (Adopted 04/17/97)
Rule 204 Applications (Adopted 04/17/97)
Rule 205 Standards for Granting Permits (Adopted 04/17/97)
Rule 206 Conditional Approval of Authority to Construct or Permit to Operate (Adopted 10/15/91)
Rule 207 Denial of Application (Adopted 10/23/78)
Rule 210 Fees (Adopted 03/17/05)
Rule 212 Emission Statements (Adopted 10/20/92)
Rule 301 Circumvention (Adopted 10/23/78)
Rule 302 Visible Emissions (Adopted 10/23/78)
Rule 304 Particulate Matter-Northern Zone (Adopted 10/23/78)
Rule 305 Particulate Matter Concentration-Southern Zone (Adopted 10/23/78)
Rule 306 Dust and Fumes-Northern Zone (Adopted 10/23/78)
Rule 307 Particulate Matter Emission Weight Rate-Southern Zone (Adopted 10/23/78)
Rule 308 Incinerator Burning (Adopted 10/23/78)
Rule 309 Specific Contaminants (Adopted 10/23/78)
Rule 310 Odorous Organic Sulfides (Adopted 10/23/78)
Rule 311 Sulfur Content of Fuels (Adopted 10/23/78)
Rule 312 Open Fires (Adopted 10/02/90)
Rule 316 Storage and Transfer of Gasoline (Adopted 01/15/09)
Rule 317 Organic Solvents (Adopted 10/23/78)
Rule 318 Vacuum Producing Devices or Systems-Southern Zone (Adopted 10/23/78)
Rule 321 Solvent Cleaning Operations (Adopted 06/21/12)
Rule 322 Metal Surface Coating Thinner and Reducer (Adopted 10/23/78)
Rule 323 Architectural Coatings (Adopted 11/15/01)
Rule 324 Disposal and Evaporation of Solvents (Adopted 10/23/78)
Rule 325 Crude Oil Production and Separation (Adopted 07/19/01)
Rule 326 Storage of Reactive Organic Compound Liquids (Adopted 01/18/01)
Rule 327 Organic Liquid Cargo Tank Vessel Loading (Adopted 12/16/85)
Rule 328 Continuous Emission Monitoring (Adopted 10/23/78)
Rule 330 Surface Coating of Metal Parts and Products (Adopted 06/21/12)
Rule 331 Fugitive Emissions Inspection and Maintenance (Adopted 12/10/91)
Rule 332 Petroleum Refinery Vacuum Producing Systems, Wastewater Separators

and Process Turnarounds (Adopted 06/11/79)
Rule 333 Control of Emissions from Reciprocating Internal Combustion Engines (Adopted 06/19/08)
Rule 342 Control of Oxides of Nitrogen (NO_X) from Boilers, Steam Generators and Process Heaters) (Adopted 04/17/97)
Rule 343 Petroleum Storage Tank Degassing (Adopted 12/14/93)
Rule 344 Petroleum Sumps, Pits, and Well Cellars (Adopted 11/10/94)
Rule 346 Loading of Organic Liquid Cargo Vessels (Adopted 01/18/01)
Rule 349 Polyester Resin Operations (Adopted 06/21/12)
Rule 352 Natural Gas-Fired Fan-Type Central Furnaces and Residential Water Heaters (Adopted 06/21/12)
Rule 353 Adhesives and Sealants (Adopted 06/21/12)
Rule 359 Flares and Thermal Oxidizers (Adopted 06/28/94)
Rule 360 Emissions of Oxides of Nitrogen from Large Water Heaters and Small Boilers (Adopted 10/17/02)
Rule 361 Small Boilers, Steam Generators, and Process Heaters (Adopted 01/17/08)
Rule 370 Potential to Emit—Limitations for Part 70 Sources (Adopted 01/20/11)
Rule 505 Breakdown Conditions Sections A., B.1,. and D. only (Adopted 10/23/78)
Rule 603 Emergency Episode Plans (Adopted 06/15/81)
Rule 702 General Conformity (Adopted 10/20/94)
Rule 801 New Source Review (Adopted 04/17/97)
Rule 802 Nonattainment Review (Adopted 04/17/97)
Rule 803 Prevention of Significant Deterioration (Adopted 04/17/97)
Rule 804 Emission Offsets (Adopted 04/17/97)
Rule 805 Air Quality Impact Analysis and Modeling (Adopted 04/17/97)
Rule 808 New Source Review for Major Sources of Hazardous Air Pollutants (Adopted 05/20/99)
Rule 810 Federal Prevention of Significant Deterioration (Adopted 01/20/11)
Rule 1301 Part 70 Operating Permits—General Information (Adopted 01/20/11)
Rule 1302 Part 70 Operating Permits—Permit Application (Adopted 11/09/93)
Rule 1303 Part 70 Operating Permits—Permits (Adopted 11/09/93)
Rule 1304 Part 70 Operating Permits—Issuance, Renewal, Modification and Reopening (Adopted 11/09/93)
Rule 1305 Part 70 Operating Permits—Enforcement (Adopted 11/09/93)

* * * * *

[FR Doc. 2012–21470 Filed 8–29–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141 and 142

[FRL–9723–9]

Notice of a Public Meeting: Stakeholder Meeting Concerning EPA's Intent To Regulate Perchlorate Levels in Drinking Water

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: The U. S. Environmental Protection Agency (EPA) is holding a public meeting and webcast to share information with the public related to treatment technologies, analytical methods and other information pertaining to the development of a proposed National Primary Drinking Water Regulation for Perchlorate.

DATES: The public meeting and webcast will be held on September 20, 2012 (10 a.m. to 4 p.m., Eastern Time (ET)). Persons wishing to attend the meeting or webcast must register in advance as described in the **SUPPLEMENTARY INFORMATION** section below.

ADDRESSES: The meeting will be held at EPA, Potomac Yards South, first floor conference room located at 2777 South Crystal Drive, Arlington, VA 22202. A government issued photo ID is required to obtain access to the building.

FOR FURTHER INFORMATION CONTACT: More information on Perchlorate is available at the following Web site: *http://water.epa.gov/drink/contaminants/unregulated/perchlorate.cfm.* For questions about this specific meeting, contact Russ Perkinson, Office of Ground Water and Drinking Water, U.S. Environmental Protection Agency; telephone (202) 564–4901 or by email to *perkinson.russ@epa.gov.*

SUPPLEMENTARY INFORMATION: To participate in the in-person meeting, you must register in advance no later than 5 p.m., Eastern Time (ET) on September 17, 2012, by contacting Junie Percy of IntelliTech by email to *junie.percy@itsysteminc.com* or by phone at (937) 427–4148 ext. 210. Seating for the public is limited and will be available on a first-come, first-served basis for those persons registered.

To participate in the webcast, you must register in advance at the following Web address: *https://www3.gotomeeting.com/register/369407742.* The number of connections available for the webcast is limited and will be available on a first-come, first-served basis.

During the meeting and webcast, there will be a segment for public questions and input. EPA encourages public input and will allocate time to receive verbal statements on a first-come, first-serve basis. Participants will be provided with a set time frame for their statements. To ensure adequate time for public input, individuals or organizations interested in presenting an oral statement should notify Junie Percy by email at *junie.percy@itsysteminc.com* no later than 5 p.m., ET on September 17, 2012.

Special Accommodations: To request special accommodations for individuals with disabilities, please contact Junie Percy at (937) 427–4148 ext. 210 or by email to *junie.percy@itsysteminc.com.* Please allow at least five business days prior to the meeting to allow time to process your request.

Dated: August 23, 2012.

Pamela Barr,

Acting Director, Office of Ground Water and Drinking Water.

[FR Doc. 2012–21480 Filed 8–29–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[WT Docket No. 02–55; DA 12–1343]

Public Safety and Homeland Security Bureau Seeks Comment on Post-Reconfiguration 800 MHz Band Plan Along the U.S.-Mexico Border

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document seeks comment on post-reconfiguration 800 MHz band channel plans along the U.S.-Mexico border. The Public Safety and Homeland Security Bureau (Bureau), by this action, affords interested parties an opportunity to submit comments and reply comments on proposals for establishing and implementing reconfigured 800 MHz channel plans along the U.S.-Mexico border.

DATES: Comments are due on or before October 1, 2012 and reply comments are due on or before October 15, 2012.

ADDRESSES: You may submit comments, identified by WT Docket 02–55, by any of the following methods:

- *Federal Communications Commission's Web Site: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format

documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Brian Marenco, Policy and Licensing Division, Public Safety and Homeland Security Bureau, (202) 418–0838.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Fourth Further Notice of Proposed Rulemaking, DA 12–1343, released on August 17, 2012. The document is available for download at *http://fjallfoss.fcc.gov/edocs_public/.* The complete text may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160, or via email to *fcc@bcpiweb.com.*

Summary

1. In a July 2004 Report and Order, the Commission reconfigured the 800 MHz band to eliminate interference to public safety and other land mobile communication systems operating in the band, 69 FR 67823, November 22, 2004. However, the Commission deferred consideration of band reconfiguration plans for the border areas, noting that ''implementing the band plan in areas of the United States bordering Mexico and Canada will require modifications to international agreements for use of the 800 MHz band in the border areas.'' The Commission stated that ''the details of the border plans will be determined in our ongoing discussions with the Mexican and Canadian governments.''

2. In a Second Memorandum Opinion and Order, adopted in May 2007, the Commission delegated authority to Public Safety and Homeland Security Bureau to propose and adopt border area band plans once agreements are reached with Canada and Mexico, 72 FR 39756, July 20, 2007. Specifically, the Commission noted that ''once those discussions are completed, and any necessary modifications to our international agreements have been made, we will need to amend our rules to implement the agreements and identify the portions of the 800 MHz band that will be available to U.S. licensees on a primary basis. In addition, we will need to adopt a band plan for the border regions that specifies the ESMR and non-ESMR portions of the band and the distribution of channels to public safety, B/ILT, and SMR licensees.''

3. On June 8, 2012, the United States and Mexico signed an agreement modifying the international apportionment of 800 MHz spectrum in the U.S.-Mexico border region, which enables the U.S. to proceed with 800 MHz band reconfiguration along the U.S.-Mexico border. In the Fourth Further Notice of Proposed Rulemaking, the Public Safety and Homeland Security Bureau, on delegated authority, seeks comment on proposals for establishing and implementing reconfigured 800 MHz channel plans along the U.S.-Mexico border.

4. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. All filings related to this *Fourth Further Notice of Proposed Rulemaking* (*Fourth FNPRM*) should refer to WT Docket No. 02–55. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs* or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the Web site for submitting comments.
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

5. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington, DC 20554.

6. Interested parties may view documents filed in this proceeding on the Commission's Electronic Comment Filing System (ECFS) using the following steps: (1) Access ECFS at *http://www.fcc.gov/cgb/ecfs.* (2) In the introductory screen, click on ''Search for Filed Comments.'' (3) In the ''Proceeding'' box, enter the numerals in the docket number. (4) Click on the box marked ''Retrieve Document List.'' A link to each document is provided in the document list. The public may inspect and copy filings and comments during regular business hours at the FCC Reference Information Center, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The public may also purchase filings and comments from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160, or via email to *fcc@bcpiweb.com.* The public may also download this Fourth Further Notice of Proposed Rulemaking from the Commission's web site at *http://www.fcc.gov/.*

7. *People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

8. Commenters who file information that they believe should be withheld from public inspection may request confidential treatment pursuant to Section 0.459 of the Commission's rules. Commenters should file both their original comments for which they request confidentiality and redacted comments, along with their request for confidential treatment. Commenters should not file proprietary information electronically. *See* Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission, *Report and Order,* 13 FCC Rcd 24816 (1998), *Order on Reconsideration,* 14 FCC Rcd 20128 (1999). Even if the Commission grants confidential treatment, information that does not fall within a specific exemption pursuant to the Freedom of Information Act (FOIA) must be publicly disclosed pursuant to

an appropriate request. *See* 47 CFR 0.461; 5 U.S.C. 552. We note that the Commission may grant requests for confidential treatment either conditionally or unconditionally. As such, we note that the Commission has the discretion to release information on public interest grounds that does fall within the scope of a FOIA exemption.

9. This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's ex parte rules. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with 47 CFR 1.1206(b). In proceedings governed by 47 CFR 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

Procedural Matters

A. Initial Regulatory Flexibility Analysis

10. Pursuant to the Regulatory Flexibility Act (RFA), the Federal Communications Commission's Public Safety and Homeland Security Bureau (Bureau) has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the proposals considered in this *Fourth FNPRM.* The text of the IRFA is set forth in Appendix A. Written public comments are requested on this IRFA. Comments must be filed in accordance with the same filing deadlines for comments on the Fourth FNPRM, and they should have a separate and distinct heading designating them as responses to the IRFA. The Bureau will send a copy of the Fourth FNPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

B. Initial Paperwork Reduction Act of 1995 Analysis

11. This document proposes no additional information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13 beyond those already approved for this proceeding. *See* OMB Control No. 3060–1080 for Improving Public Safety Communications in the 800 MHz Band (exp. September 30, 2014). Therefore, it contains no 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).

Initial Regulatory Flexibility Analysis

12. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Federal Communications Commission's Public Safety and Homeland Security Bureau (Bureau) has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this *Fourth Further Notice of Proposed Rule Making* (*Fourth FNPRM*). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the first page of the *Fourth FNPRM.* The Commission will send a copy of this Fourth FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *Fourth FNPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rules

13. In the *Fourth FNPRM,* the Bureau proposes channels plans for reconfiguring the 800 MHz band along the U.S.-Mexico border. The channel plans we propose in the *Fourth FNPRM* will be incorporated into the Commission's rules and are needed to implement and complete the Commission's band reconfiguration program along the U.S.-Mexico border. The Commission ordered reconfiguration of the 800 MHz band to address an ongoing nationwide problem of interference created by a fundamentally incompatible mix of technologies in the band. The Commission resolves the interference by reconfiguring the band to spectrally separate incompatible technologies. The Commission delegated authority to the Bureau in May 2007 to propose and adopt channel plans for implementing band reconfiguration along the U.S.-Mexico border. The band plans we propose in the *Fourth FNPRM* will separate incompatible technologies along the U.S.-Mexico border and thus resolve the ongoing interference problem in that region.

B. Legal Basis

14. The proposed action is authorized under Sections 4(i), 301, 302, 303(e), 303(f), 303(r), 304 and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 301, 302, 303(e), 303(f), 303(r), 304 and 307.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

15. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.'' Below, we further describe and estimate the number of small entities that may be affected by the rules

changes proposed in this Fourth FNPRM.

16. *Private Land Mobile Radio Licensees (PLMR).* PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by entities of all sizes operating in all U.S. business and public sector categories, and are often used in support of the licensee's primary (non-telecommunications) operations. For the purpose of determining whether a licensee of a PLMR system is a small entity as defined by the SBA, we use the broad census category, Wireless Telecommunications Carriers (except Satellite). This definition provides that a small entity is any such entity employing no more than 1,500 persons. The Commission does not require PLMR licensees to disclose information about number of employees, so the Commission does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. We note that PLMR licensees generally use the licensed facilities in support of other business and governmental activities, and therefore, it would also be helpful to assess PLMR licensees under the standards applied to the particular industry subsector to which the licensee belongs.

17. As of May 2012, there were approximately 220 PLMR licensees operating in the PLMR band between 806–824/851–869 MHz along the U.S.—Mexico border. We note that many government and commercial actors are eligible to hold a PLMR license, and that any revised rules in this context could therefore potentially impact small entities covering a great variety of industries.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

18. The *Fourth FNPRM* does not propose a rule that will entail additional reporting, recordkeeping, and/or third-party consultation or other compliance efforts beyond those already approved for this proceeding. *See* OMB Control No. 3060–1080 for Improving Public Safety Communications in the 800 MHz Band (exp. September 30, 2014).

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

19. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

20. The *Fourth FNPRM* will create no significant economic impact on small entities because Sprint Nextel Corporation will pay all reasonable costs associated with retuning incumbent licensees to the post-reconfiguration channel plans proposed by the Bureau. Further, once the channel plans proposed in the *Fourth FNPRM* are implemented, licensees will no longer be subject to on-going interference in the band and will therefore save costs that would otherwise be associated with resolving interference. Finally, the Bureau specifically seeks comment on alternatives to the proposed channel plans it proposes and will consider such alternatives as may be recommended in comments to the *Fourth FNPRM.*

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

21. None.

Ordering Clauses

22. Accordingly, *it is ordered,* pursuant to sections 4(i) and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 332, that this *Fourth Further Notice of Proposed Rulemaking is adopted.*

23. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Fourth Further Notice of Proposed Rulemaking,* including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

David S. Turetsky,

Chief, Public Safety and Homeland Security Bureau.

[FR Doc. 2012–21450 Filed 8–29–12; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 107, 172, and 173

[Docket No. PHMSA–2010–0320 (HM–257)]

RIN 2137–AE70

Hazardous Materials: Revision to Fireworks Regulations (RRR)

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: PHMSA is proposing to revise the Hazardous Materials Regulations applicable to the approval of Division 1.4G consumer fireworks (UN0336 Fireworks) and establish DOT-approved fireworks certification agencies that will provide an alternative to the approval process for Division 1.4G consumer fireworks. PHMSA is also proposing to revise procedural regulations pertaining to certification agencies. These proposed actions, if adopted, will clarify regulations with respect to PHMSA's fireworks approval process and provide regulatory flexibility in seeking authorization for the transportation of Division 1.4G consumer fireworks.

DATES: Comments must be received by October 29, 2012. To the extent possible, PHMSA will consider late-filed comments as a final rule is developed.

ADDRESSES: You may submit comments by identification of the docket number (PHMSA–2010–0320 (HM–257)) by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Operations, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, Routing Symbol M–30, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* To Docket Operations, Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number for this notice at the beginning of the comment. All comments received will be posted without change to the Federal Docket Management System

(FDMS), including any personal information.

Docket: For access to the dockets to read background documents or comments received, go to *http://www.regulations.gov* or DOT's Docket Operations Office (see **ADDRESSES**).

FOR FURTHER INFORMATION CONTACT: Rob Benedict, or Lisa O'Donnell, Standards and Rulemaking Division, Office Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, at (202) 366–8553.

SUPPLEMENTARY INFORMATION:

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I. Executive Summary

The pyrotechnic industry is a global logistics supply chain comprised of mostly foreign fireworks manufacturers and domestic importers, retailers, distributors, and consumers. Prior to the transportation into and throughout the U.S., all explosives, including Division 1.4 consumer fireworks, must be classed, approved, and issued a DOT EX classification approval number (EX number) by PHMSA. The EX number is a unique identifier that indicates a firework device has been classed and approved for transportation into and throughout the U.S.

PHMSA is committed to maintaining the exemplary transportation safety record that Division 1.4G consumer fireworks have displayed over the past forty years, but seeks to reduce burden and increase flexibility for the regulated community by providing an alternative to PHMSA's approval process. PHMSA has conducted an intensive retrospective review of the fireworks approval program and has determined that there is a delay in the processing of EX approval applications under the current regulatory scheme. PHMSA proposes an alternative option for Division 1.4G consumer fireworks in which applicants will submit applications for certification to a Fireworks Certification Agency (FCA), in lieu of submitting applications for approval to PHMSA. To ensure oversight of the proposed FCAs, this proposal includes reporting and recordkeeping requirements.

Additionally, PHMSA is proposing to define consumer fireworks and clarify the approval process for designation as a certification agency.

This NPRM affects the following entities and proposes the following requirements:

Affected entities	Proposals
• Division 1.4G consumer fireworks manufacturers complying with Part 173. • Division 1.4G consumer fireworks importers complying with Part 173 • Division 1.4G consumer fireworks transporters complying with Part 173. • FCAs certifying compliance with the requirements for Division 1.4G consumer fireworks. • State and local fire service and law enforcement agencies that utilize Division 1.4G consumer fireworks classifications and approvals under the HMR to enforce additional state and local requirements and bans. • Lighter Testing Agencies. • Package Testing Laboratories.	• Provide for alternative method to certify Division 1.4G consumer fireworks for transportation. • Require retention of a record by certifying agencies, manufacturers and importers indicating a Division 1.4G consumer fireworks classification has been certified in a manner consistent with the proposed requirements. • Clarify approval process for designation as a certification agency and provide for reconsideration of decisions to modify, terminate, or suspend a designation.

To monetize the costs and benefits of the proposals in this NPRM, PHMSA used a number of assumptions to develop a base case. The overall costs and benefits of the proposals are dependent on the assumption that all affected entities are currently complying with the regulations and that 50 to 90 percent of applicants will choose a DOT-approved FCA to certify that Division 1.4G consumer fireworks complies with the American Pyrotechnics Association's (APA) Standard 87–1 (IBR, see § 171.7), in lieu of filing an approval application with PHMSA.[1] We believe this alternative process will be attractive to the fireworks industry as it will expedite the transportation process without compromising the current level of safety, enable shipments of Division 1.4G consumer fireworks to reach the market in a more timely manner, and consequently provide a cost savings. Cost in this scenario, includes the cost attributed to shipments that are delayed while approval applications are pending with PHMSA.

Costs associated with the proposals are primarily comprised of fees that FCAs may assess on manufacturers of Division 1.4G fireworks. There may also be costs associated with proposed recordkeeping requirements.[2] Benefits will be derived from the expedited processing of consumer fireworks applications, resulting in faster time to market for each firework device. PHMSA estimates that the economic effects of this rulemaking, once finalized and adopted, will be sustained indefinitely. However, because of the difficulty of and uncertainty associated with forecasting industry effects into the far future, we assume a 10-year timeframe to outline, quantify, and monetize the costs and benefits of the

[1] PHMSA based the percentage range (fifty to ninety percent) used in this rulemaking on the fact that over eighty percent of firework importers and manufacturers voluntarily participate in American Fireworks Standards Laboratory (AFSL) testing program to comply with the Consumer Product Safety Commission (CPSC) requirements. A range was chosen to demonstrate some level of uncertainty and to provide a tolerance for fluctuations in use of FCAs.

[2] PHMSA assumed that, absent relevant information on document retention practices of the fireworks industry, 50 percent of records will be stored in paper format and 50 percent of records will be stored in electronic format. Based on this assumption PHMSA estimated the record keeping cost to be approximately $610 per U.S. importer/manufacturer per year.

proposals and to demonstrate the net effects of the proposals.

If the proposals in this NPRM are adopted, PHMSA estimates total annual benefits will be between approximately $14.5 million and $26.5 million, and total annual costs will be between $4 million and $7 million, resulting in total annual net benefits of between $11 million and $19 million. The table below summarizes the calculated cost and benefits associated with the NPRM.

ANNUAL NET BENEFITS

	Low redirected application rate (50%)	High redirected application rate (90%)
BENEFITS		
Expected Annual Private-Sector Benefits of Expedited Verification	$14,680,000	$26,430,000
TOTAL ANNUAL BENEFITS	14,680,000	26,430,000
COSTS		
Record Retention Costs:		
Costs of 2 Additional Years of Paper Record Retention, All U.S. Importers per year	10,200	58,000
Cost for Required Electronic Storage Space, All U.S. Importers and Manufacturers per year	Negligible	Negligible
Total Annual Record Retention Costs	10,200	58,000
FCA Processing Costs:		
Costs of application processing conducted by FCAs **	3,937,500	7,087,500
Total Annual FCA Processing Costs	3,937,500	7,087,500
TOTAL ANNUAL COSTS	3,947,700	7,145,500
TOTAL ANNUAL NET BENEFITS	10,732,300	19,284,500

PHMSA estimates the 10-year present value of the net benefits is about $80 million to $143 million (discounted at a 3 percent rate) or $55 million to $98 million (discounted at a 7 percent rate). PHMSA concludes that the aggregate benefits justify the aggregate costs. A summary of the range of expected annual costs and benefits is provided in the table below.[3]

Annual Benefit ($2012)	$14.5–26.5 million.
Annual Cost ($2012)	$4–7 million.
Benefit-Cost Ratio	3.70–3.71.
Net Benefit	$11–19 million.

PHMSA requests specific comments on the analysis underlying these estimates, including the percentage of entities that will choose to have their 1.4G consumer fireworks certified by FCAs instead of being approved by PHMSA, the manner in which records will be kept (i.e., electronic or paper), the estimated cost of the recordkeeping requirements, the number of affected entities (e.g., manufacturers and importers), and the estimated fee an FCA would charge for certification. We are also asking for general comments or suggestions regarding approaches to reduce the costs of this rule while maintaining or increasing the benefits. Additionally, PHMSA seeks comments on possible changes that might improve the rule and increase regulatory flexibility.

II. Background

The requirements for the classification and packaging of Class 1 explosive materials are specified in Subpart C of Part 173 of the Hazardous Materials Regulations (HMR; 49 CFR parts 171—180). Fireworks are considered a Class 1 explosive material and must be classified under one of five hazard divisions and compatibility groups (1.1G, 1.2G, 1.3G, 1.4G, and 1.4S). As currently specified in Subpart C of Part 173 of the HMR, prior to transportation into and within the U.S., all explosives, including fireworks, must be approved and assigned a classification by PHMSA based on actual testing. Division 1.3 and 1.4 fireworks may also be approved in accordance with the American Pyrotechnics Association (APA) Standard 87–1.

PHMSA's Current Fireworks Regulations

Division 1.1 fireworks must be examined by a DOT-approved explosives test laboratory and assigned a recommended shipping description, division, and compatibility group in accordance with §§ 173.56(b), 173.56(f) or 173.56(i). Division 1.3 and 1.4 fireworks may either be approved in accordance with §§ 173.56(b), 173.56(f) or 173.56(i), or in accordance with § 173.56(j), which provides an option for obtaining an EX number and approval without prior testing by a DOT-approved explosives test laboratory.

Section 173.56(j) requires that the firework device is manufactured in accordance with APA Standard 87–1 and passes a thermal stability test. An applicant requesting PHMSA approval based on § 173.56(j) submits an application that contains required information specified in APA Standard 87–1. For example, the standard requires that the size of the device, as well as the various formulas and weights of each type of chemical composition contained in the device must be specified in the application. Only formulas containing chemicals identified in APA Standard 87–1, Table of ''Standard Fireworks Chemicals'' can be approved under the provisions of APA Standard 87–1. PHMSA has expanded on the Table of ''Standard Fireworks Chemicals'' to further detail chemicals that are permitted and prohibited in consumer fireworks devices.[4] The manufacturer must submit a signed application with a detailed diagram of the device and certify that

[3] Figures are rounded.

[4] PHMSA's expanded list of permitted and prohibited chemicals for consumer fireworks devices can be found at the following URL: *http://www.phmsa.dot.gov/staticfiles/PHMSA/DownloadableFiles/Hazmat/Regulations/Approved%20and%20Prohibited%20Fireworks%20Chemicals-02-21-2012.pdf.*

the device complies with APA Standard 87–1.

While both §§ 173.56(b) and 173.56(j) require the applicant to submit an application to PHMSA's Approvals and Permits Division for approval, the HMR provides a couple of alternatives. Under § 173.56(i), if experience or other data demonstrates that the hazard of a firework device containing an explosive chemical composition is greater or less than indicated according to the definition and criteria specified in §§ 173.50, 173.56, and 173.58, the Associate Administrator may specify a classification (including determining that it is forbidden from transportation), or except the device from the HMR. The HMR also permits the transport of firework devices the Associate Administrator approves on the basis of an approval issued by the competent authority of a foreign government, or when examination of the explosive by a person approved by the Associate Administrator is impracticable, on the basis of reports of tests conducted by disinterested third parties, as specified in § 173.56(f).

Regulatory Review of PHMSA's Fireworks Program

On May 10, 2012, President Obama issued Executive Order 13610 (Identifying and Reducing Regulatory Burdens) reaffirming the goals of Executive Order 13563 (Improving Regulation and Regulatory Review) issued January 18, 2011, and Executive Order 12866 (Regulatory Planning and Review) issued September 30, 1993. Executive Order 13610 directs agencies to prioritize ''those initiatives that will produce significant quantifiable monetary savings or significant quantifiable reductions in paperwork burdens while protecting public health, welfare, safety, and our environment.'' Executive Order 13610 further instructs agencies to give consideration to the cumulative effects of their regulations, including cumulative burdens, and prioritize reforms that will significantly reduce burdens.

Executive Order 13563, which supplements Executive Order 12866, directs federal agencies to periodically review existing significant regulations, retrospectively analyze rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and modify, streamline, expand, or repeal regulatory requirements that are no longer justified. Agencies are also directed to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public.

In light of these Executive Orders and the President's continued efforts to streamline government regulations, we have evaluated our fireworks approval program to identify areas where we can improve efficiency, reduce burdens, and increase regulatory flexibility without diminishing safety. Specifically, we analyzed the timeline for reviewing applications for approval of fireworks devices. We found that over the past two years, PHMSA has reviewed roughly 30,000 applications for approval of fireworks devices. Approximately seventy-five percent of these applications sought approval for Division 1.4G consumer fireworks devices.

Due to the high volume of applications submitted for Division 1.4G consumer fireworks devices, the approximate review time per application is 120 days. Review time may be extended if applications are rejected for minor flaws, such as mathematical errors, or denied for safety issues. If an application is rejected, the applicant often resubmits the application placing it at the end of the review queue. If an application is denied, the applicant may file for reconsideration and subsequently may appeal to the Administrator; thereby delaying the final disposition of the application.

Consequently, the delay in processing applications can have an economic impact on the fireworks industry. For example, the lengthy approval process interrupts the supply chain and delays devices from reaching retail stores, which results in substantial revenue losses for U.S. importers, distributors and retail stores, many of whom are small businesses. Also, manufacturers of fireworks devices often charge U.S. purchasers storage fees for devices purchased that are pending approval and cannot be transported into and throughout the U.S.

After significant review of our fireworks program, we have identified areas that should be modified to decrease the delay in processing approvals. PHMSA is proposing to revise the HMR to provide an alternative option that will expedite the process for obtaining authorization to transport Division 1.4G consumer fireworks into and throughout the U.S., without compromising the current level of safety. PHMSA believes the revisions proposed in this NPRM will reduce burdens and enhance flexibility for the regulated community, while maintaining an equivalent level of safety provided in the HMR.[5]

III. Proposed Amendments

In an effort to reduce regulatory burden and provide regulatory flexibility, without diminishing safety, PHMSA proposes structural changes to the regulations relating to PHMSA's fireworks program. Under the proposed revision, PHMSA will continue to approve Division 1.4G consumer fireworks in accordance with the current requirements specified in §§ 173.56(b), 173.56(f), 173.56(i), or 173.56(j). In addition to the current approval process, PHMSA proposes a new alternative that will permit manufacturers to apply to a DOT-approved Fireworks Certification Agency (FCA) to review and certify that Division 1.4G consumer fireworks comply with APA Standard 87–1 and are safe for transportation in commerce. To provide oversight of the DOT-approved FCAs, PHMSA is proposing reporting and recordkeeping requirements. PHMSA is also proposing to revise subpart E of part 107 to clarify the approval process for designation as a certification agency and provide for reconsideration of decisions to modify, terminate, or suspend a designation.

Fireworks Certification Agency (FCA)

The proposed alternative process for Division 1.4G consumer fireworks will parallel the current requirements under § 173.56(j), except that, rather than submitting an approval application to PHMSA, the manufacturer or their U.S. designated agent will submit a certification application to a DOT-approved FCA to review and certify that the firework devices match the chemical compositions, sizes, and weights detailed in the application and that they meet the defining criteria set forth in APA Standard 87–1 to be classified as a Division 1.4G consumer firework.

In addition, PHMSA proposes to require the DOT-approved FCA conduct a physical examination of a sample of the Division 1.4G consumer firework design. This proposal is consistent with the requirements for other DOT-approved certification agencies. A DOT-approved FCA will be analogous to lighter certification agencies, which certify lighter designs, and independent

[5] Over the past forty years, there have been 35 reported transportation incidents in the U.S. involving fireworks that were declared hazardous materials. During this same period, there has never been a death or major injury attributed to fireworks while in transportation when there was compliance with the regulations. While there have been two incidents that resulted in fatalities in that forty year period, both involved the improper setup or storage of display fireworks, and were not attributed to the transportation of Division 1.4G consumer fireworks. Detailed hazardous materials incident reports for hazardous materials incidents specified in § 171.16 may be found at the PHMSA Web site at the following URL: *https://hazmatonline.phmsa.dot.gov/IncidentReportsSearch/Search.aspx.*

inspection agencies, which evaluate and certify cylinder manufacturers. These entities physically examine the product (i.e., lighters or cylinders) to determine whether the product meets certain criteria specified in the HMR to ensure safe transportation of the product. Likewise, PHMSA proposes to require the DOT-approved FCAs physically examine a sample of the Division 1.4G consumer firework design type prior to initial shipment to determine whether the device meets the requirements of APA Standard 87–1 and matches the dimensions, chemical composition, and device type specified in the application for certification.

To become a DOT-approved FCA, the applicant will be required to submit an application with all procedures it will use to review and certify Division 1.4G consumer fireworks, in accordance with the provisions in subpart E of part 107. These procedures will be designed by the applicant; however, PHMSA will review the applicant's procedures to determine whether they are adequate to certify compliance with APA-Standard 87–1 and whether they provide an equivalent or greater level of safety to the current approval process. PHMSA plans to develop a guidance document for FCAs addressing standard procedures for the certification of Division 1.4G consumer fireworks.

Any domestic or foreign entity may apply to become a DOT-approved FCA provided that it is not directly or indirectly controlled by, or have a financial involvement with, any entity that manufactures, transports, or imports fireworks, except for providing services as an FCA. To qualify as a DOT-approved FCA, each applicant must: (1) Meet specific criteria designed to ensure that the FCA is an impartial, independent, unbiased, and qualified entity; (2) submit an application, including certification procedures; and (3) successfully complete a facility inspection performed by PHMSA. To meet the specific qualification criteria, the applicant will be required to demonstrate knowledge of the applicable regulations, including subpart C of part 173 of the HMR and the APA standard 87–1, the ability to review and evaluate design drawings and applications in accordance with the APA standard 87–1, and the ability to review and evaluate the qualifications of materials and fabrication procedures. If approved, PHMSA will issue an approval and an identifying number unique to that FCA. This number will provide traceability and enable PHMSA to seek corrective action or suspend or terminate certification authority if the requirements of the HMR or the FCA approval are not met.

Fireworks Identification Scheme

Currently, all Division 1.4G fireworks devices are approved by PHMSA and assigned an EX number that represents that the fireworks article or device is in compliance with the classification requirements of the HMR. A current EX number approval begins with the letters ''EX'' followed by the year of issuance (e.g. 2012), the month of issuance, (e.g. 07), and the approval number issued that month, where ''0001'' indicates the first approval of the month. An example of the entire string of numbers appears as follows: ''EX2012070001.''

To differentiate between an approval issued by PHMSA and a DOT-approved FCA certification, PHMSA proposes to use an FX numbering scheme. Instead of issuing an EX number and approval through PHMSA for a fireworks device, which is an inherently governmental function that cannot be reassigned, the DOT-approved FCA will issue a unique identifier (FX number) for devices it certifies as Division 1.4G consumer fireworks. The FX number will identify the DOT-approved FCA, the device, and the manufacturer. An example of an FX number would be ''FX123–456.'' In this example ''123'' will correspond to the DOT-approved FCA conducting the review and certification. This portion of the numbering sequence will be issued to the FCA by PHMSA. The ''456'' will represent a unique certification identifier traceable to both the manufacturer of the Division 1.4G consumer firework device and the device itself. This portion of the numbering sequence will be issued by the DOT-approved FCA. Each Division 1.4G consumer firework certified in this manner will be required to be marked and labeled in accordance with subpart D and E of part 172. As with EX numbers, marking the package with the FX number will not be required provided the FX number for each fireworks device is indicated on an accompanying shipping paper. The introduction of the FX numbering scheme will result in some Division 1.4G consumer fireworks being assigned an EX number when approved by PHMSA, and others being assigned an FX number when certified by a DOT-approved FCA.

Given the long history and wide recognition of the EX numbering scheme, PHMSA seeks specific comments on the supply chain implications, the economic impact and safety concerns associated with the proposed FX numbering system, as well as comments on how to implement the changes if they are adopted. For example, will the use of different alpha designators (i.e., EX and FX) pose complications or confusion within the transportation system?

PHMSA also seeks comments regarding alternative methods that may be used to identify Division 1.4G consumer fireworks devices that have been certified by a DOT-approved FCA, including suggestions in the alpha-numeric sequence that will facilitate transport while providing a clear distinction between PHMSA approved devices and devices certified by an FCA as compliant with APA standard 87–1.

Reporting and Recordkeeping Requirements

PHMSA is proposing specific reporting and recordkeeping requirements to ensure that the DOT-approved FCAs are correctly certifying Division 1.4G consumer fireworks and are in compliance with the HMR and the FCA approval. As a condition of the FCA approval, each DOT-approved FCA will be required to submit to PHMSA electronic reports of the results of all devices submitted for certification on a schedule specified in the approval.

Additionally, for each firework device certified and issued an FX number, the DOT-approved FCA that reviewed the application, the manufacturer, and the importer will be required to maintain the device's thermal stability test report and a copy of the application. Currently, most consumer fireworks manufactured or assembled in the U.S. and those imported into the U.S. are voluntarily tested to ensure that they comply with the Consumer Product Safety Commission (CPSC) requirements. The testing facility, the manufacturers, and the importers utilizing this voluntary process are required to maintain records of these tests for three years.[6] As it is current industry practice for importers to maintain similar records under the CPSC requirements, there will be limited additional paperwork burden for importers. The DOT-approved FCA will also be required to maintain a copy of the certification procedures used for each device certified. We propose that

[6] Importers and domestic manufacturers participating in a voluntary program implemented by American Fireworks Standards Laboratory (AFSL) may use the test results obtained from AFSL to support certifications that the tested fireworks comply with all rules, bans, standards, or regulations applicable under the Consumer Product Safety Improvement Act of 2008. AFSL estimates that over 80% of U.S. importers and manufacturers currently utilize this voluntary program. All Participants in this voluntary program must maintain all records and documents for three (3) years from date of generation. See *http://www.afsl.org/images/Domestic_Certification_Program_Final_012511.pdf* (last visited June 12, 2012).

FCAs, manufacturers and importers maintain these records for a period of five years; however, PHMSA will maintain the records for up to 10 years consistent with current practices for other approvals. The Associate Administrator, or designated official, may inspect the DOT-approved FCA's facilities and records to verify compliance with the recordkeeping requirements, the HMR, and the FCA approval.

PHMSA recognizes that under the proposed system manufacturers or their U.S. designated agents may attempt to submit duplicate applications to both a DOT-approved FCA and to PHMSA concurrently. As this new process is designed to promote efficiency while maintaining safety, the submission of duplicate applications under both processes may result in confusion, slower processing, and diminished safety. With this in mind, PHMSA proposes to require a signed certification statement on all applications submitted to either PHMSA or a DOT-approved FCA stating that an application was not submitted to any other entity. PHMSA will be able to verify that duplicative applications are not being submitted by reviewing the certification reports the DOT-approved FCAs will be required to submit to PHMSA. If a manufacturer or its U.S. designated agent submits identical applications to both a DOT-approved FCA and PHMSA, the manufacturer and its U.S. designated agent will be in violation of the HMR and the approval and may be fined under 18 United States Code, or imprisoned for not more than 5 years, or both, except the maximum amount of imprisonment may be 10 years in any case in which the violation involves the release of a hazardous material which results in death or bodily injury to any person (See § 107.333).

PHMSA anticipates that the proposed alternative certification process will reduce the processing time that it takes to evaluate an application. As a result, economic burdens caused by a delay in processing approvals will be reduced. Further, it may also promote innovation and potentially create new jobs, as currently no DOT-approved FCAs exist. Additionally, PHMSA will continue to require that Division 1.4G consumer fireworks comply with all other requirements in the HMR, including the shipping paper, marking, labeling, placarding, and incident reporting requirements to ensure safety is not diminished.

Should the proposed alternative option be adopted in a future rulemaking, PHMSA plans to develop a guidance document addressing standard operating procedures for the certification of Division 1.4G consumer fireworks. The publication of this guidance document will coincide with the final rule publication.

PHMSA seeks general comments on the proposed changes to the fireworks program. PHMSA seeks specific comments on the need for revision of the fireworks program, the economic impact of the proposed changes, safety concerns associated with the proposed changes, as well as comments on how to implement the changes if they are adopted. PHMSA also seeks comments on whether the proposed record retention period of five years is adequate or if the retention period should be expanded to address the longer shelf life of some consumer fireworks. In addition, PHMSA invites all stakeholders and affected entities, including the CPSC, the Bureau of Alcohol, Tobacco, Firearms and Explosives, Customs and Border Patrol, and state and/or local fire and police departments to comment on the proposals.

IV. Summary Review of Proposed Amendments

In an effort to reduce regulatory burden and provide industry more flexibility, we are proposing structural changes to the regulations relating to PHMSA's fireworks program. Specifically, PHMSA proposes to revise the requirements in five sections (§§ 107.402, 107.403, 172.320, 173.56 and 173.59), add two new sections (§§ 173.64 and 173.65), and reserve one section (§ 107.405). The specific revisions and additions to these sections are detailed below by topic.

Fireworks Approval Program

We propose moving the current requirements of § 173.56(j) to a standalone new § 173.64 entitled ''Exceptions for Division 1.3 and 1.4 Fireworks.'' In addition, we propose the addition of a new § 173.65 entitled ''Exceptions for Division 1.4G Consumer Fireworks'' that will detail the alternative certification process for Division 1.4G consumer fireworks. To correspond to the changes proposed in this NPRM, we will revise the entry ''UN0336 Fireworks'' in § 172.101 Hazardous Materials Table. Further, a definition for ''consumer firework'' will be added to § 173.59. No modifications are proposed for §§ 173.56(f) and 173.56(i).

The hazard communication requirements for Division 1.4G consumer fireworks will be specified in paragraph (c) of the new § 173.65 and the revised § 172.320. Specifically, § 172.320 will be revised to reflect the addition of FX numbers.

Fireworks Certification Agency (FCA)

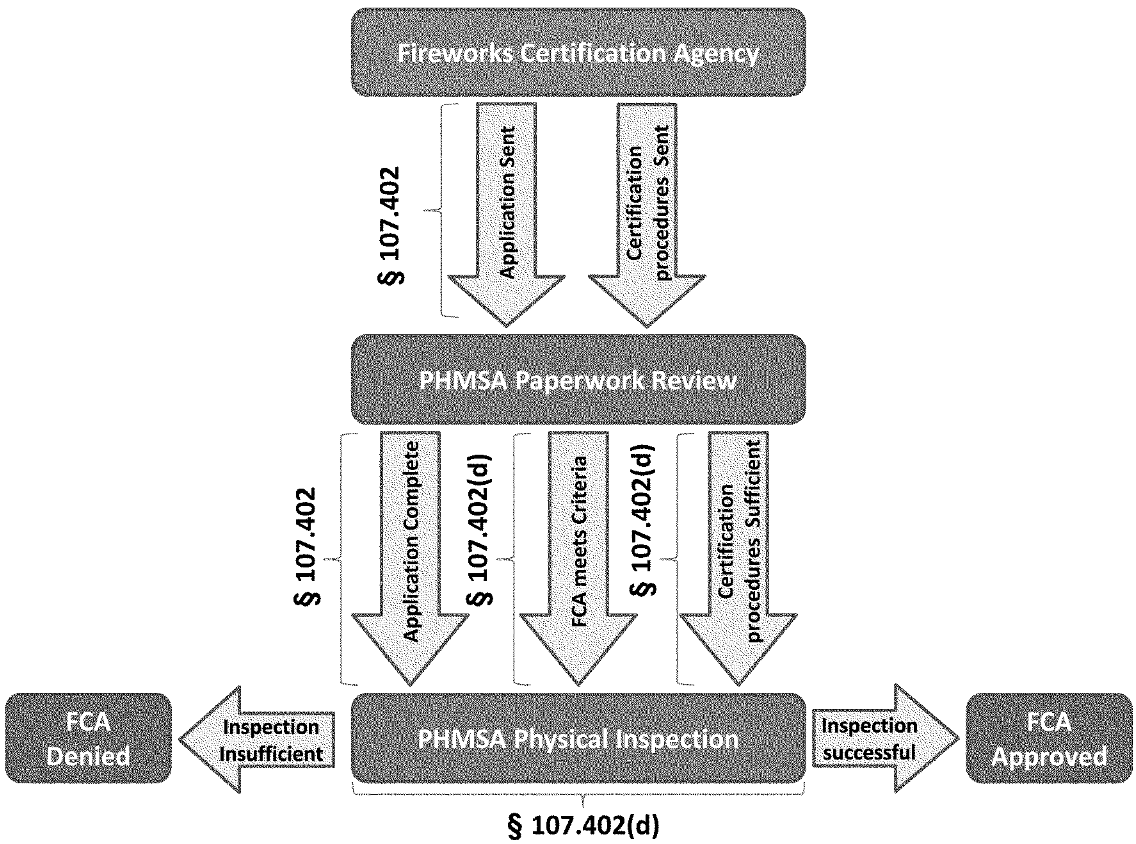
The process for applying for an approval to operate as a DOT-approved FCA will be found in the proposed revised § 107.402 entitled ''Application for designation as a certification agency.'' General application requirements for designation as a certification agency will be moved to § 107.402(b). No new general application requirements are being proposed in this NPRM. Application requirements specific to Packing and Lighter Certification Agencies will be moved to § 107.402(c). No new application requirements specific to Packing and Lighter Certification Agencies are being proposed in this NPRM. Application requirements to become a DOT-approved FCA will be found in the proposed § 107.402(d).

To clarify and provide consistency in the procedural process for designation as a certification agency, the subpart E heading will be entitled ''Designation of Certification Agencies.'' The words ''as an approval or'' will be removed from § 107.402. The word ''approval'' will be replaced with ''certification'' in the § 107.403 heading.

Reconsideration for a denial of designation as a fireworks certification agency will be found in § 107.403(c), which will be revised to provide that the procedural requirements of subpart H of this part apply to the process for reconsideration of denials of designations. A new subparagraph (d) will be added to § 107.403 to provide that the procedural requirements of subpart H of this part will also apply to the process for modification, suspension, and termination of designations. Section 107.405 will be deleted and reserved.

An overview of the proposed process to be recognized by PHMSA as a DOT-approved FCA is detailed in Figure 1 below.

Figure 1: Proposed Fireworks Certification Agency Approval Process



Alternative Process for Division 1.4G Consumer Fireworks

The procedures for a manufacturer of Division 1.4G consumer fireworks or its U.S. designated agent to submit an application for certification to a DOT-approved FCA will be specified in the new § 173.65(a). These requirements parallel those currently in § 173.56(j); however, they address certification by a DOT-approved FCA, as opposed to PHMSA approval, and describe that fireworks utilizing this review process will be issued an FX number, in lieu of an EX number. The current approval process will continue to be available; however, manufacturers and their U.S. designated agents may voluntarily use the FCA process as an alternative.

Diagrams of the current (Figure 2) and proposed (Figure 3) consumer fireworks application processes are shown below.

Figure 2: Current Division 1.4G Consumer Firework Review Process

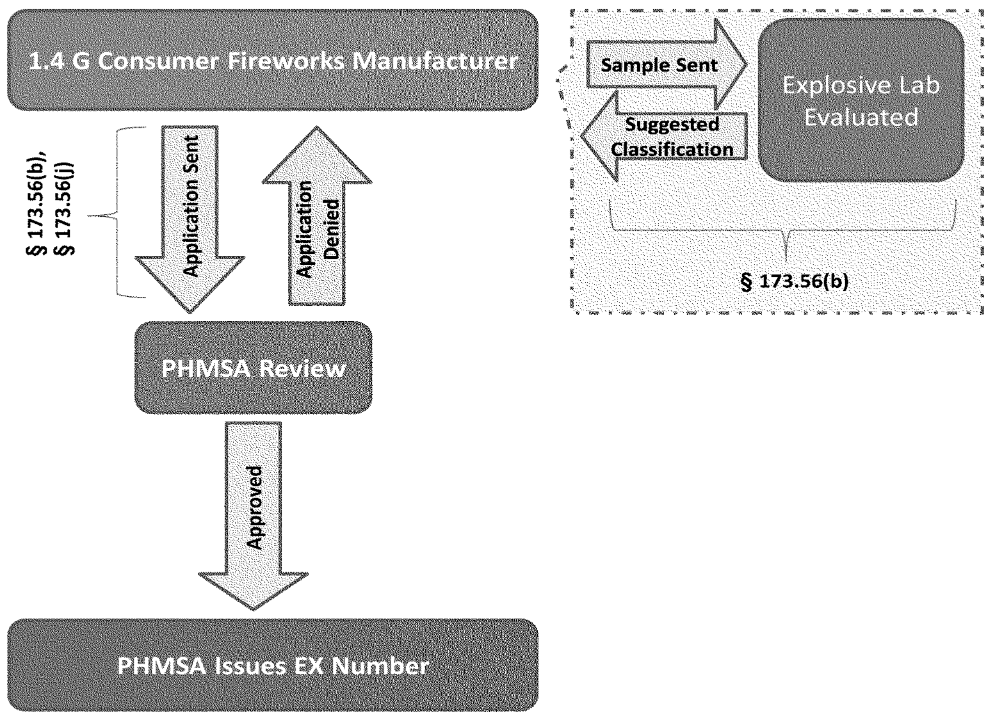
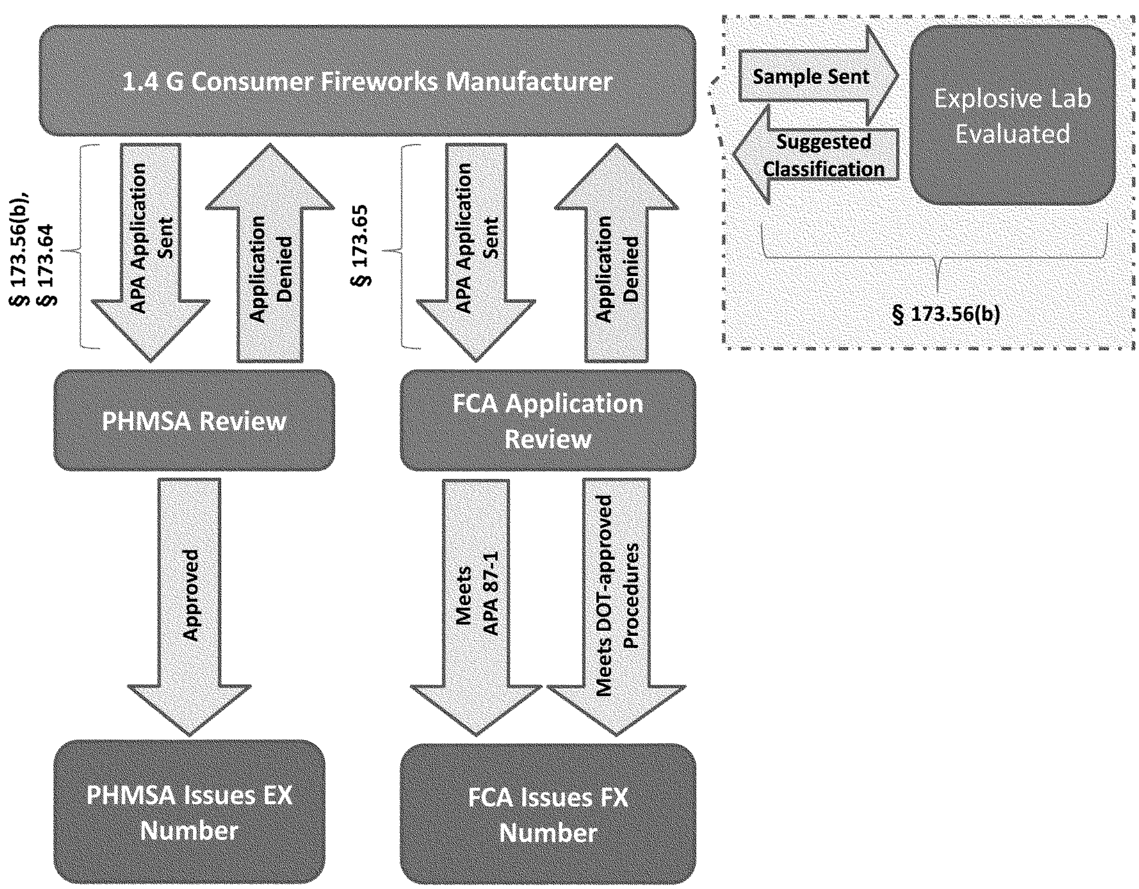


Figure 3: Proposed Division 1.4G Consumer Firework Review Process



Reporting and Recordkeeping Requirements

DOT-approved FCA reporting requirements on certification activities will be found in § 107.402(d)(8). Recordkeeping requirements requiring the manufacturer, importer, and fireworks certification agency to maintain a record or an electronic image of the record demonstrating compliance with § 173.65 will be found in § 173.65(b).

V. Regulatory Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This notice of proposed rulemaking (NPRM) is published under the authority of the Federal Hazardous Materials Transportation Law, 49 U.S.C. 5101 *et seq.* Section 5103(b) authorizes the Secretary to prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce. This NPRM provides an alternative to the current process for approving Division 1.4G consumer fireworks more quickly and efficiently, without compromising safety. Furthermore, section 5120(b) authorizes the Secretary of Transportation to ensure that, to the extent practicable, regulations governing the transportation of hazardous materials in commerce are consistent with standards adopted by international authorities.

B. Executive Order 13610, Executive Order 13563, Executive Order 12866, and DOT Regulatory Policies and Procedures

This NPRM is not considered a significant regulatory action under section 3(f) Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget (OMB). The proposed rule is not considered a significant rule under the Regulatory Policies and Procedures order issued by the U.S. Department of Transportation (44 FR 11034).

Executive Order 13563 is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review that were established in Executive Order 12866 Regulatory Planning and Review of September 30, 1993. Executive Order 13563, issued January 18, 2011, notes that our nation's current regulatory system must not only protect public health, welfare, safety, and our environment but also promote economic growth, innovation, competitiveness, and job creation.[7] Further, this executive order urges government agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. In addition, federal agencies are asked to periodically review existing significant regulations, retrospectively analyze rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and modify, streamline, expand, or repeal regulatory requirements in accordance with what has been learned.

Executive Order 13610, issued May 10, 2012, urges agencies to conduct retrospective analyses of existing rules to examine whether they remain justified and whether they should be modified or streamlined in light of changed circumstances, including the rise of new technologies.[8]

By building off of each other, these three Executive Orders require agencies to regulate in the ''most cost-effective manner,'' to make a ''reasoned determination that the benefits of the intended regulation justify its costs,'' and to develop regulations that ''impose the least burden on society.''

PHMSA has evaluated our fireworks approval program for effectiveness and identified areas that could be modified to enhance the program and increase flexibility for the regulated community. In this NPRM, the proposed amendments to the HMR will not impose increased compliance costs on the regulated industry. By proposing to amend the HMR to allow for an alternative to the approval process for Division 1.4G consumer firework devices, PHMSA will reduce regulatory burden and increase flexibility to industry, while maintaining an equivalent level of safety.

A summary of the regulatory evaluation used to support the proposals presented in this NPRM are discussed below.

Regulatory Evaluation

For the regulatory evaluation of this NPRM, PHMSA assumes:

- Between 50 and 90 percent of applicants will choose to file a Division 1.4G consumer fireworks application with a DOT-approved FCA instead of filing an application with PHMSA.
- Domestic manufacturers and importers of Division 1.4G fireworks that participate in the voluntary CPSC Domestic Testing Program will choose certification by a DOT-approved FCA.
- The existing DOT-approved explosive test laboratories will likely apply for approval as a DOT-approved FCA.
- A 10-year timeframe to outline, quantify, and monetize the costs and benefits of the proposal and to demonstrate the net effects of the proposal

PHMSA's current fireworks approval process has proven effective in achieving a high level of transportation safety. This high level of transportation safety is demonstrated by the fact that no transportation incidents resulting in death or serious injury have been attributed to the transport of consumer fireworks in the past 40 years. While continuing to maintain this high level of safety, we expect the implementation of the proposals in this NPRM will result in the benefits outweighing the costs.

We anticipate the primary costs will be (1) costs attributed to the proposed five year recordkeeping requirement; and (2) potential fees assessed by the DOT-approved FCAs for certification services. The recordkeeping costs will apply to DOT-approved FCAs, manufactures that choose certification by a DOT-approved FCA, and importers of fireworks certified by a DOT-approved FCA. The proposed recordkeeping requirement is similar to the requirement that requires participants in the voluntary CPSC Domestic Testing Program keep a certification of compliance with CPSC standards for three years. This documentation contains much of the same information PHMSA proposes to require. Assuming the domestic manufacturers and importers of Division 1.4G consumer fireworks that participate in the voluntary CPSC Domestic Testing Program will choose certification by a DOT-approved FCA, we anticipate the recordkeeping costs will be minimal. While the proposed recordkeeping requirement is similar to CPSC's recordkeeping requirement, PHMSA acknowledges that the retention requirement being two years longer than CPSC's requirement may impose some cost. Also, there may be recordkeeping costs for those who do not participate in the voluntary CPSC Domestic Testing Program.

PHMSA assumes that a DOT-approved FCA will likely assess an explicit cost for its certification services and fireworks manufacturers will individually consider their business' potential to benefit from expedited processing against the expected costs of this certification fee. PHMSA anticipates the benefits of certification derived from the expedited processing of consumer fireworks applications,

[7] See *http://www.whitehouse.gov/the-press-office/2011/01/18/improving-regulation-and-regulatory-review-executive-order.*

[8] See *http://www.gpo.gov/fdsys/pkg/FR-2012-05-14/pdf/2012-11798.pdf.*

resulting in faster time to market for each firework device, outweighs the cost of any fees assessed by the DOT-approved FCA. PHMSA also anticipates these benefits will be realized without diminishing the exemplary transportation safety record that Division 1.4G consumer fireworks have demonstrated over the past forty years. The benefit-cost ratio for this NPRM is estimated to be between 3.70 and 3.71. These benefit and cost figures depend on the assumptions mentioned above.

Total annual benefits derived from this NPRM are expected to be approximately between $14.5 and 26.5 million, and total annual costs are expected to be approximately between $4 and $7 million with total annual net benefits of approximately between $11 and $19 million. Based on this net positive value, we conclude that adopting the proposed requirements will result in an increase in overall societal welfare.

The 10-year present value of the net benefits is approximately $80 million to $143 million (discounted at a 3 percent rate) or $55 million to $98 million (discounted at a 7 percent rate). We expect adopting this proposal will make regulation of hazardous materials more efficient, provide regulatory relief to industry, and have no negative effect on the safe transportation of hazardous materials in the United States. A summary of the annual costs and benefits and calculated annual net benefits is displayed in the table below.

ANNUAL NET BENEFITS [9]

	Low redirected application rate (50%)	High redirected application rate (90%)
BENEFITS		
Expected Annual Private-Sector Benefits of Expedited Verification	$14,680,000	$26,430,000
TOTAL ANNUAL BENEFITS	14,680,000	26,430,000
COSTS		
Record Retention Costs:		
Costs of 2 Additional Years of Paper Record Retention, All U.S. Importers per year	10,200	58,000
Cost for Required Electronic Storage Space, All U.S. Importers and Manufacturers per year	Negligible	Negligible
Total Annual Record Retention Costs	10,200	58,000
FCA Processing Costs:		
Costs of application processing conducted by FCAs [10]	3,937,500	7,087,500
Total Annual FCA Processing Costs	3,937,500	7,087,500
TOTAL ANNUAL COSTS	3,947,700	7,145,500
TOTAL ANNUAL NET BENEFITS	10,732,300	19,284,500

C. Executive Order 13132

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''), and the President's memorandum on ''Preemption'' published in the **Federal Register** on May 22, 2009 (74 FR 24693). This proposed rule will preempt State, local, and Indian tribe requirements but does not propose any regulation that has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

[9] Figures are rounded.

[10] Cost calculated by multiplying the estimated cost of $700 per application by number of Division 1.4G consumer firework applications redirected to an FCA (i.e. for 50% redirected 5,625 × $700 and for 90%.

The Federal hazardous materials transportation law, 49 U.S.C. 5101–5128, contains an express preemption provision (49 U.S.C. 5125 (b)) that preempts State, local, and Indian tribe requirements on the following subjects:

(1) The designation, description, and classification of hazardous materials;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; and

(5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This proposed rule addresses all the covered subject areas above. If adopted as final, this rule will preempt any State, local, or Indian tribe requirements concerning these subjects unless the non-Federal requirements are ''substantively the same'' as the Federal requirements. Furthermore, this proposed rule is necessary to update, clarify, and provide relief from regulatory requirements.

Federal hazardous materials transportation law provides at § 5125(b)(2) that, if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. PHMSA has determined that the effective date of Federal preemption for these requirements will be one year from the date of publication of a final rule in the **Federal Register**.

D. Executive Order 13175

This NPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this NPRM does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. The total number of U.S. importers that are expected to be impacted by the proposed rulemaking is estimated to be between 62 and 206. PHMSA chose to use a range to reflect an uncertainty in the number of U.S. importers. This uncertainty is a result of the high turnover in the fireworks industry resulting in large year-to-year fluctuations in the number of importers. This range is a result of combining estimated import data with data provided by a consumer fireworks trade association. The figure of 62 was derived from import data obtained from a publically available business directory and PHMSA's approvals database; while the figure of 206 was derived from statistics provided by AFSL, a consumer fireworks trade association. Specifically, the figure of 206 is derived from the AFSL Consumer Fireworks Membership list that shows 175 members. AFSL claims to represent 85 percent of all U.S. consumer fireworks importers in the U.S., therefore, we calculated a total of 206 (175/.85 = 206). PHMSA believes the actual number of U.S. importers lies somewhere between 62 and 206. PHMSA estimates the number of U.S. manufacturers to be five, based on the number of hazmat registrants. This results in a range from 67 to 211 U.S. manufacturers and importers. PHMSA seeks comment specifically on the accuracy of these numbers.

The proposed rule provides an additional, voluntary option for manufacturers to apply to a DOT-approved FCA for certification of Division 1.4 consumer fireworks, in lieu of submitting an application to PHMSA for approval. The expected costs associated with this rulemaking relate to recordkeeping since copies of documentation will have to be retained for two additional years over current practice (for U.S. importers and fireworks manufacturers who elect to examine and certify new devices with an FCA instead of seeking an approval from PHMSA). Fireworks manufacturers may pay fees assessed by FCAs for certification services. PHMSA assumes that most will see the benefits of FCA certification as justifying the fees involved. However, the costs are voluntary costs.

Benefits of the proposed certification option will be derived from the expedited processing of consumer fireworks applications, resulting in faster time to market for each firework device. Benefits may be realized from the reduction in PHMSA's approvals application workload, which allows for administrative cost savings and more resources for PHMSA Approvals and Permits staff. These resources may allow for additional scrutiny to higher risk hazardous materials approvals applications. Total annual benefits are expected to be between approximately $14.5 million and $26.5 million, and total annual costs are expected to be approximately between $4 and $7 million, resulting in total annual net benefits of between approximately $11 million and $19 million.

Overall, by proposing increased regulatory flexibility, this proposed rule should reduce the compliance burden on the regulated industry, including small entities, without compromising transportation safety. Therefore, we certify that this proposed rulemaking will not have a significant or negative economic impact on a substantial number of small entities. Further information on the estimates and assumptions used to evaluate the potential impacts to small entities is available in the Regulatory Impact Assessment that has been placed in the public docket for this rulemaking. In this notice, PHMSA is soliciting comments on the number of affected entities and the preliminary conclusion that the proposals in this NPRM will not cause a significant economic impact on a substantial number of small entities.

This notice has been developed in accordance with Executive Order 13272 (''Proper Consideration of Small Entities in Agency Rulemaking'') and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of draft rules on small entities are properly considered.

F. Paperwork Reduction Act

PHMSA currently has an approved information collection under OMB Control Number 2137–0557, entitled ''Approvals for Hazardous Materials,'' with an expiration date of May 31, 2014. While this NPRM may result in a slight increase in the annual burden and cost to OMB Control Number 2137–0557 for proposed minor record-keeping requirements under §§ 173.64 and 173.65, this NPRM should result in a decrease in the burden on the fireworks industry by increasing regulatory flexibility, which will provide manufacturers of Division 1.4 consumer fireworks with an alternative that should be more efficient than the current approval process.

Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it has been approved by OMB and displays a valid OMB control number. Section 1320.8(d), title 5, Code of Federal Regulations requires that PHMSA provide interested members of the public and affected agencies an opportunity to comment on information and recordkeeping requests.

This notice identifies revised information collection requests that PHMSA will submit to OMB for approval based on the requirements in this proposed rule. PHMSA has developed burden estimates to reflect changes in this proposed rule and estimates that the information collection and recordkeeping burdens will be revised as follows:

OMB Control No. 2137–0557:

Increase in Annual Number of Respondents: 211.
Increase in Annual Responses: 5,175.
Increase in Annual Burden Hours: 430.
Increase in Annual Burden Costs: $14,875.

PHMSA specifically requests comments on the information collection and recordkeeping burdens associated with developing, implementing, and maintaining these requirements for approval under this proposed rule.

Requests for a copy of this information collection should be directed to Steven Andrews or T. Glenn Foster, Office of Hazardous Materials Standards (PHH–12), Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590–0001, Telephone (202) 366–8553.

Address written comments to the Dockets Unit as identified in the **ADDRESSES** section of this rulemaking. We must receive comments regarding information collection burdens prior to the close of the comment period identified in the **DATES** section of this rulemaking. In addition, you may submit comments specifically related to the information collection burden to the PHMSA Desk Officer, Office of Management and Budget, at fax number (202) 395–6974.

G. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

H. Unfunded Mandates Reform Act of 1995

This proposed rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $141.3 million or more to either state, local or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

I. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321–4347), and implementing regulations by the Council on Environmental Quality (40 CFR part 1500) require Federal agencies to consider the consequences of Federal actions and prepare a detailed statement on actions that significantly affect the quality of the human environment.

The purpose of this rulemaking is to allow for an alternative to the approval process for Division 1.4G consumer fireworks. The alternatives considered in the environmental analysis include: (1) the proposed action, that is, permitting an alternative process for Division 1.4G consumer fireworks to be certified by a DOT-approved FCA; and (2) the ''no action'' alternative, meaning that the regulatory scheme will stay the same and the proposed new alternative will not be implemented. PHMSA believes that both alternatives present little or no environmental impact on the quality of the human environment because both alternatives deal with the processing of applications. Furthermore, the proposed amendments only affect the authorization process that deems Division 1.4G consumer fireworks safe for transport and has no impact on any other transport requirements (e.g. packaging, hazard communication, etc.). The proposed action would provide an additional application process that would not impact the exemplary safety record that Division 1.4G consumer fireworks have demonstrated over the past forty years. Therefore, PHMSA has initially determined that the implementation of the proposed rule will not have any significant impact on the quality of the human environment. PHMSA, however, invites comments about environmental impacts that the proposed rule might pose.

J. Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://www.dot.gov.*

K. International Trade Analysis

Under E.O. 13609, agencies must consider whether the impacts associated with significant variations between domestic and international regulatory approaches are unnecessary or may impair the ability of American business to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or will be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

Similarly, the Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. For purposes of these requirements, Federal agencies may participate in the establishment of international standards, so long as the standards have a legitimate domestic objective, such as providing for safety, and do not operate to exclude imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

PHMSA participates in the establishment of international standards in order to protect the safety of the American public. We have assessed the effects of the proposed rule, and find that because the proposed alternative process mirrors the current approval process, it will not cause unnecessary obstacles to foreign trade. Accordingly, this rulemaking is consistent with Executive Order 13609 and PHMSA's obligations under the Trade Agreement Act, as amended.

L. National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) directs federal agencies to use voluntary consensus standards in their regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g. specification of materials, test methods, or performance requirements) that are developed or adopted by voluntary consensus standard bodies.

This proposed rulemaking involves one technical standard: American Pyrotechnics Association (APA), APA Standard 87–1 Standard for Construction and Approval for Transportation of Fireworks, Novelties, and Theatrical Pyrotechnics, December 1, 2001 version. This technical standard is listed in 49 CFR 171.7.

VI. List of Subjects

49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements.

49 CFR Part 172

Education, Hazardous materials transportation, Hazardous waste, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

In consideration of the foregoing, 49 CFR chapter I is proposed to be amended as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

1. The authority citation for part 107 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; Pub. L. 101–410 section 4 (28 U.S.C. 2461 note), Pub. L. 104–121 sections 212–213; Pub. L. 104–134 section 31001; 49 CFR 1.45 and 1.53.

2. In Part 107, revise subpart E to read as follows:

Subpart E—Designation of Certification Agency

§ 107.402 Application for designation as a certification agency.

(a) Any person seeking designation as a certification agency must apply in writing to the Associate Administrator for Hazardous Materials Safety (PHH–32), Department of Transportation, East Building, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Alternatively, the application with any attached supporting documentation in an appropriate format may be submitted by facsimile (fax) to: (202) 366–3753 or (202) 366–3308 or by electronic mail (email) to: *approvals@dot.gov.* Each application must be signed and certified to be correct by the applicant or, if the applicant is an organization, by an authorized officer or official representative of the organization. Any false statement or representation, or the knowing and willful concealment of a material fact, may subject the applicant to prosecution under the provisions of 18 U.S.C. 1001, and result in the denial or termination of a designation.

(b) Each application for designation as a certification agency must be in English and include the following information:

(1) Name and address of the applicant, including place of incorporation if a corporation. In addition, if the applicant is not a resident of the United States, the name and address of a permanent resident of the United States designated in accordance with § 105.40 to serve as agent for service of process.

(2) A statement that the applicant will allow the Associate Administrator or a designated official to inspect its records and facilities in so far as they relate to the certification activities and will cooperate in the conduct of such inspections.

(3) Any additional information relevant to the applicant's qualifications, if requested by the Associate Administrator.

(4) Information required by the provisions in subpart H of this part.

(c) Packaging and Lighter Certification Agencies. In addition to the requirements in (b), the application must include the following information:

(1) A listing, by DOT specification (or special permit) number, or U.N. designation, of the types of packagings for which certification authority is sought.

(2) A personnel qualifications plan listing the qualifications that the applicant will require of each person to be used in the performance of each packaging certification function. As a minimum, these qualifications must include:

(i) The ability to review and evaluate design drawings, design and stress calculations;

(ii) A knowledge of the applicable regulations of subchapter C of this chapter and, when applicable, U.N. standards; and

(iii) The ability to conduct or monitor and evaluate test procedures and results; and

(iv) The ability to review and evaluate the qualifications of materials and fabrication procedures.

(3) A statement that the applicant will perform its functions independent of the manufacturers and owners of the packagings concerned.

(4) If the applicant's principal place of business is in a country other than the United States, a copy of the designation from the Competent Authority of that country delegating to the applicant an approval or designated agency authority for the type of packaging for which a DOT designation is sought, and a statement that the Competent Authority also delegates similar authority to U.S. Citizens or organizations having designations under this subpart from PHMSA.

(d) Fireworks Certification Agency. Prior to reviewing, and certifying Division 1.4G consumer fireworks for compliance with APA Standard 87–1 as specified in part 173 of this chapter, a person must apply to, and be approved by, the Associate Administrator to act as a firework certification agency. A person approved as a firework certification agency is not a PHMSA agent or representative. In addition to (b), the application must include the following information:

(1) Name, address, and country of each facility where Division 1.4G consumer fireworks test results and application materials are reviewed and certified;

(2) Detailed description of the applicant's qualifications and ability to inspect, review, and certify that the requirements specified by part 173 of this chapter have been meet. At a minimum, these qualifications must include ability to:

(i) Review and evaluate design drawings, fabrication procedures, and applications to certify that they are in accordance with the APA Standard 87–1; and

(ii) Evaluate thermal stability test procedures and results.

(3) Detailed description of the operating procedures to be used by the firework certification agency to review, and certify that a Division 1.4G consumer fireworks application meets the requirements specified by part 173 of this chapter;

(4) Name, address, and principal business activity of each person having any direct or indirect ownership interest in the applicant greater than three percent and any direct or indirect ownership interest in each subsidiary or division of the applicant;

(5) Name and a statement of qualifications of each individual the applicant proposes to employ to inspect, review, and certify test results and certify that application materials comply with APA Standard 87–1;

(6) A statement that the applicant will perform its functions independent of the manufacturers, transporters, importers, and owners of the fireworks; and

(7) A signed certification declaring that the information provided in the approval application is true and correct and the application has not been submitted to any other entity, and the date on which this certification was signed.

(8) If approved, the results of fireworks certification evaluation must be submitted to PHMSA on a schedule and in a manner specified in the DOT-issued designation approval.

* * * * *

§ 107.403 Designation of certification agencies.

* * * * *

(c) Within 30 days of an initial denial of an application under paragraph (b) of this section, the application may file an amended application. If the application for designation is denied, the applicant may file for reconsideration in accordance with the provisions in subpart H of this part.

(d) The provisions in subpart H will apply to the modification, suspension, and termination of an approval submitted under this subpart.

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§ 107.405 Termination of certification agencies.

* * * * *

§ 107.405 [Reserved]

* * * * *

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, TRAINING REQUIREMENTS, AND SECURITY PLANS

3. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.53.

4. In § 172.101, the Hazardous Materials Table is amended by revising entries under ''[REVISE]'' in the appropriate alphabetical sequence to read as follows:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

§ 172.101—HAZARDOUS MATERIALS TABLE

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification Nos.	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	[REVISE]												
	*	*			*		*		*	*		*	
	Fireworks ..	1.4G	UN 0336	II	1.4G	108	65	62	None	Forbidden	75 kg	06	
	*	*			*		*		*	*		*	

5. In § 172.320, paragraph (b) and paragraph (d) are revised to read as follows:

§ 172.320 Explosive hazardous materials.

* * * * *

(b) Except for fireworks approved in accordance with § 173.64 of this subchapter, a package of Class 1 materials may be marked as follows, in lieu of the EX number required by paragraph (a) of this section:

(1) With a national stock number issued by the Department of Defense or identifying information, such as a product code required by regulations for commercial explosives specified in 27 CFR part 555, if the national stock number or identifying information can be specifically associated with the EX number assigned; or

(2) For Division 1.4G consumer fireworks, with a FX number issued by a fireworks certification agency approved in accordance with 49 CFR part 107 subpart E and classified in accordance with § 173.65.

* * * * *

(d) The requirements of this section do not apply if the EX number, FX number, product code or national stock number of each explosive item described under a proper shipping description is shown in association with the shipping description required by § 172.202(a) of this part. Product codes and national stock numbers must be traceable to the specific EX number assigned by the Associate Administrator or FX number assigned by a DOT approved fireworks certification agency.

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

6. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45, 1.53.

7. In § 173.56, the introductory text for paragraph (b) is revised to read as follows, and paragraph (j) is removed and reserved.

§ 173.56 New explosives—definitions and procedures for classification and approval.

* * * * *

(b) Examination, classification and approval. Except as provided in §§ 173.64 and 173.65 of this subpart, no person may offer a new explosive for transportation unless that person has specified to the examining agency the ranges of composition of ingredients and compounds, showing the intended manufacturing tolerances in the composition of substances or design of articles which will be allowed in that material or device, and unless it has been examined, classed and approved as follows:

* * * * *

(j) *[Reserved]*

* * * * *

8. In § 173.59, add new definition for ''consumer firework'' in appropriate alphabetical sequence to read as follows:

§ 173.59 Description of terms for explosives.

* * * * *

Consumer firework. Any completed firework device that is packaged in a form intended for use by the public that complies with the construction, performance, chemical composition, and labeling requirements codified by the U.S. Consumer Product Safety Commission in Title 16, CFR parts 1500 and 1507. A consumer firework does not include firework devices, kits or components banned by the U.S. Consumer Product Safety Commission in 16 CFR 1500.17 (a)(8).

* * * * *

9. Add new section § 173.64 to read as follows:

§ 173.64 Exceptions for Division 1.3 and 1.4 fireworks.

(a) Notwithstanding the requirements of § 173.56(b), Division 1.3 and 1.4 fireworks (see § 173.65 for Division 1.4G consumer fireworks) may be classed and approved by the Associate Administrator without prior examination and offered for transportation if the following conditions are met:

(1) The fireworks are manufactured in accordance with the applicable requirements in APA Standard 87–1 (IBR, see § 171.7 of this subchapter);

(2) The device must pass a thermal stability test conducted by a third-party laboratory, or the manufacturer. The test must be performed by maintaining the device, or a representative prototype of a large device such as a display shell, at a temperature of 75 °C (167 °F) for 48 consecutive hours. When a device contains more than one component, those components that could be in physical contact with each other in the finished device must be placed in contact with each other during the thermal stability test;

(3) The manufacturer applies in writing to the Associate Administrator following the applicable requirements in APA Standard 87–1, and is notified in writing by the Associate

Administrator that the fireworks have been classed, approved, and assigned an EX number. Each application must be complete and include all relevant background data and copies of all applicable drawings, test results, and any other pertinent information on each device for which approval is being requested. The manufacturer must sign the application and certify that the device for which approval is requested conforms to APA Standard 87–1, that the descriptions and technical information contained in the application are complete and accurate, and that no duplicate application has been submitted to a DOT-approved fireworks certification agency. If the application is denied, the manufacturer will be notified in writing of the reasons for the denial. The Associate Administrator may require that the fireworks be examined by an agency listed in § 173.56(b)(1).

* * * * *

10. Add new section § 173.65 to read as follows.

§ 173.65 Exceptions for Division 1.4G Consumer Fireworks.

(a) Notwithstanding the requirements of paragraphs §§ 173.56(b), 173.56(f), 173.56(i), and 173.64, Division 1.4G consumer fireworks may be offered for transportation provided the following conditions are met:

(1) The fireworks are manufactured in accordance with the applicable requirements in APA Standard 87–1 (IBR, see § 171.7 of this subchapter);

(2) The device must pass a thermal stability test. The test must be performed by maintaining the device, or a representative prototype of the device at a temperature of 75 °C (167 °F) for 48 consecutive hours. When a device contains more than one component, those components that could be in physical contact with each other in the finished device must be placed in contact with each other during the thermal stability test;

(3) The manufacturer of the Division 1.4G consumer firework applies in writing to a DOT-approved fireworks certification agency, and is notified in writing by the fireworks certification agency that the firework has been:

(i) Evaluated, and examined, as required, for a Division 1.4G consumer firework;

(ii) Certified that it complies with APA Standard 87–1, and meets the requirements of this section; and

(iii) Assigned an FX number followed by a corresponding certification report identifier (e.g., FX–XXX–YYY, where XXX represents the firework certification agency and YYY represents the certification report identifier that is traceable to the specific manufacturer and firework device transported).

(4) The manufacturer's application must be complete and include relevant background data, copies of all applicable drawings, test results, and any other pertinent information on each device for which certification is being requested. The manufacturer must sign the application and certify that the device for which certification is requested conforms to APA Standard 87–1, that the descriptions and technical information contained in the application are complete and accurate, and that no duplicate applications have been submitted to PHMSA. If the application is denied, the DOT-approved fireworks certification agency must notify the manufacturer in writing of the reasons for the denial. Following the issuance of a denial from a DOT-approved fireworks certification agency, a manufacturer may submit the denial and original application to PHMSA for reconsideration in accordance with subpart H.

(b) *Recordkeeping requirements.* Following the certification of each Division 1.4G consumer firework as permitted by paragraph (a) of this section, the manufacturer, importer, and fireworks certification agency must maintain a record or an electronic image of the record demonstrating compliance with this section. This record must be accessible at or through its principal place of business and be made available, upon request, to an authorized official of a Federal, State, or local government agency at a reasonable time and location. A copy of this record must be retained for five years after the material is imported. Records complying with firework requirements of other Federal or international agencies may be used to satisfy the recordkeeping requirements of this paragraph to the extent that such records address the recordkeeping components specified in this section. For Division 1.4G consumer fireworks certified by a DOT-approved fireworks certification agency, the record must include:

(1) The FX number of the entity that certified that the firework device complies with APA Standard 87–1, including a certification report identifier that is traceable to the manufacturer and specific firework device transported;

(2) A copy of the approval application submitted to the DOT-approved fireworks certification agency; and

(3) A copy of any certification documentation completed by the fireworks certification agency in accordance with the DOT-approved procedures.

(c) *Hazard Communication.* Following the certification of each Division 1.4G consumer firework as permitted by paragraph (a) of this section, each package containing a Division 1.4G consumer firework must be marked and labeled in accordance with subpart D and E of part 172.

* * * * *

Issued in Washington, DC, on August 24, 2012, under authority delegated in 49 CFR part 106.

Magdy El-Sibaie,

Associate Administrator for Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2012–21360 Filed 8–29–12; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R6–ES–2012–0040; 4500030113]

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List the Platte River Caddisfly as Endangered or Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on a petition to list the Platte River caddisfly (*Ironoquia plattensis*) as an endangered or threatened species and to designate critical habitat under the Endangered Species Act of 1973, as amended. After review of all available scientific and commercial information, we find that listing the Platte River caddisfly as an endangered or threatened species is not warranted at this time. However, we ask the public to submit to us any new information that becomes available concerning the threats to the Platte River caddisfly or its habitat at any time.

DATES: The finding announced in this document was made on August 30, 2012.

ADDRESSES: This finding is available on the Internet at *http://www.regulations.gov* at Docket Number FWS–R6–ES–2012–0040. Supporting documentation we used in preparing this finding is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Nebraska Field

Office, Federal Building, 2nd Floor, 203 West 2nd Street, Grand Island, NE 68801. Please submit any new information, materials, comments, or questions concerning this finding to the above street address.

FOR FURTHER INFORMATION CONTACT: Michael D. George, Field Supervisor, Nebraska Field Office (see **ADDRESSES**); by telephone (308–382–6468, extension 12); or by facsimile (308–384–8835). *mail to:* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that, for any petition to revise the Federal Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific or commercial information that listing a species may be warranted, we make a finding within 12 months of the date of receipt of the petition. In this finding, we will determine that the petitioned action is: (1) Not warranted, (2) warranted, or (3) warranted, but the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are either an endangered or threatened species, and expeditious progress is being made to add or remove qualified species from the Federal Lists of Endangered and Threatened Wildlife and Plants. Section 4(b)(3)(C) of the Act requires that we treat a petition for which the requested action is found to be warranted but precluded as though resubmitted on the date of such finding, that is, requiring a subsequent finding to be made within 12 months. We must publish these 12-month findings in the **Federal Register**.

Previous Federal Actions

On July 30, 2007, we received a petition dated July 24, 2007, from Forest Guardians (now WildEarth Guardians), requesting that 206 species in the Mountain-Prairie Region, including the Platte River caddisfly, be listed as an endangered or threatened species under the Act, and critical habitat be designated. Included in the petition were analyses, references, and documentation provided by NatureServe in its online database at *http://www.natureserve.org/*. We acknowledged receipt of the petition in a letter to the petitioners, dated August 24, 2007, and stated that, based on preliminary review, we found no compelling evidence to support an emergency listing for any of the species covered by the petition. In that letter we also stated that we would begin to assess the information provided in the petition in October 2007.

We published a partial 90-day finding for 38 of the petition's 206 species in the **Federal Register** (74 FR 41649) on August 18, 2009; the Platte River caddisfly was one of 29 species for which we found there was substantial information indicating that listing may be warranted under the Act. In that document, we announced that we were initiating a status review. On January 12, 2010, WildEarth Guardians filed a complaint indicating that the Service failed to comply with the statutory deadline to complete a 12-month finding for the Platte River caddisfly. This complaint was consolidated with several others, and a multi-district settlement agreement with WildEarth Guardians was approved on September 9, 2011, which included an agreement that the Service would complete the 12-month finding for the Platte River caddisfly by the end of Fiscal Year 2012. Funding for completing the 12-month finding became available in Fiscal Year 2011, and we began work at that time. This notice constitutes the 12-month finding on the July 24, 2007, petition to list the Platte River caddisfly as an endangered or threatened species.

Species Information

Species Description

The Platte River caddisfly (*Ironoquia plattensis*) adult is a small, brown, moth-like insect with a body length of 5.5–6.5 millimeters (mm) (0.21–0.26 inches (in)) and forewing length of 6.5–8.0 mm (0.26–0.31 in) (Alexander and Whiles 2000, p. 2). Wing membranes and veins are light or iridescent brown with white spotting (Alexander and Whiles 2000, p. 2). The Platte River caddisfly has a short proboscis (tubular mouthpart used for feeding) and long antennae, similar to other species of caddisflies (Holzenthal *et al.* 2007, p. 648). Platte River caddisfly adults can be distinguished from those of other species in the *Ironoquia* genus by their much smaller size (forewing length of 6.5–8.0 mm (0.26–0.31 in) in Platte River caddisflies contrasting with >14 mm (0.55 in) in most other *Ironoquia* species) (Alexander and Whiles 2000, p. 2).

Like several caddisfly species, Platte River caddisfly larvae construct a case around the abdomen (Mackay and Wiggins 1979, p. 186). All caddisflies produce silk from modified salivary glands, and case-making caddisfly larvae use this silk to fuse together organic or mineral material from the surrounding environment (Mackay and Wiggins 1979, pp. 185–186; Holzenthal *et al.* 2007, p. 644). Cases are generally thought to protect larvae by providing camouflage against predation or resistance to crushing (Mackay and Wiggins 1979, p. 200; Otto and Svensson 1980, p. 855). The Platte River caddisfly case is composed of sand grains and can be up to 16.0 mm (0.63 in) long, while larvae can attain sizes up to 14.0 mm (0.55 in) in length (Vivian 2010, pers. obs.).

Platte River caddisfly larvae have a light brown head and thorax and a yellowish to whitish abdomen (Vivian 2010, pers. obs.), much like the larvae of *Ironoquia parvula* (no common name) (Flint 1958, p. 59). Larvae in the *Ironoquia* genus can be distinguished from larvae in other caddisfly genera by four morphological characteristics that are distinguishable under a microscope (Flint 1958, p. 59; Wiggins 1977, p. 248). Differences in larval size (Alexander and Whiles 2000, p. 1) and case material among species have also been noted (Wiggins 1977, p. 248).

Taxonomy

The Platte River caddisfly was formally described as a new species in the order Trichoptera (caddisflies) in 2000 by Alexander and Whiles (2000, p. 2). The Platte River caddisfly is in the family Limnephilidae, or the northern caddisflies, subfamily Dicosmoceniae, and genus *Ironoquia* (Wiggins 1977, p. 181; Alexander and Whiles 2000, p. 1).

The caddisfly family Limnephilidae is considered to be the most ecologically diverse family of Trichoptera (Holzenthal *et al.* 2007, p. 674) and is the largest caddisfly family in North America, with over 900 species in more than 100 genera (Holzenthal *et al.* 2007, p. 674). The Limnephilidae family is dominant at higher latitudes and elevations, has the widest distribution of any caddisfly family, and comprises one-third of all Nearctic (ecozone comprising Arctic and temperate areas of North America and Greenland) caddisfly species (Wiggins 1977, p. 179). Caddisflies in this family may be collected from springs, pools, seeps, marshes, bogs, fens, streams, rivers, and lakes (Wiggins 1977, p. 179). Limnephilids largely feed on larger bits of plant material, such as fallen leaves, or organic materials that form atop rock surfaces (Wiggins 1977, p. 179).

The *Ironoquia* genus belongs to the subfamily Dicosmoceniae, which mostly occurs in cool, lotic (running water) environments, except for *Ironoquia,* which occurs in temporary pools (Flint

1958, p. 59; Wiggins 1977, p. 248). The genus *Ironoquia* is comprised of six species: the Platte River caddisfly (*I. plattensis*), *I. punctatissima* (no common name) (Walker 1852), *I. parvula* (no common name) (Flint 1958), *I. dubia* (no common name) (Stephens 1837), *I. lyrata* (no common name) (Ross 1938), and *I. kaskaskia* (no common name) (Ross 1944), with the Platte River caddisfly being the most recently described (Encyclopedia of Life 2011, entire). All of these species except *I. dubia* (Europe) occur only in North America (Williams and Williams 1975, p. 829; Ćuk and Vučković 2010, pp. 232, 234).

Ironoquia is the only genus within the Dicosmoceniae subfamily that occurs in temporary waters (Wiggins 1977, p. 248). In North America, *Ironoquia* is mostly found throughout the central and eastern portions of the United States (Wiggins 1977, p. 248) and is most often collected from temporary pools or wetlands but can also occur in perennial waters (Flint 1958, p. 61; Ćuk and Vučković 2010, p. 234). The Platte River caddisfly has been found to co-occur with *I. punctatissima,* which is a common species on the Great Plains, but *I. punctatissima* is morphologically distinct and much larger than the Platte River caddisfly (Alexander and Whiles 2000, p. 1; Geluso *et al.* 2011, p. 1024).

The Platte River caddisfly is thought to be most closely related to *I. parvula* (Alexander and Whiles 2000, p. 1), which occurs in Ohio and the northeastern United States (Flint 1958, p. 59; Wiggins 1977, p. 248; Swegman *et al.* 1981, p. 141; Garono and MacLean 1988, p. 148). Platte River caddisfly adults are smaller and have lighter color and more pronounced spotting on the wings than *I. parvula* (Alexander and Whiles 2000, p. 2). We find that Alexander and Whiles (2000, entire) provide the best available information on the taxonomy of the Platte River caddisfly, and no other challenges to the taxonomy have been raised since the Platte River caddisfly was described. Therefore, we consider the Platte River caddisfly a valid species for listing under the Act.

Habitat Description

The Platte River caddisfly was discovered in 1997, in a warm-water slough (backwater area or marsh that is groundwater fed) in south-central Nebraska along the Platte River on Mormon Island (hereafter type locality), which is land owned by the Platte River Whooping Crane Maintenance Trust (hereafter Crane Trust (a conservation organization)) southwest of Grand Island, Nebraska (Whiles *et al.* 1999, p. 534; Goldowitz 2012, pers. comm.). This slough had an intermittent hydroperiod (duration of inundation) and held water 75–90 percent of the time or about 275–330 days out of the year (Whiles *et al.* 1999, p. 534; Goldowitz 2004, pp. 2–3). The area lacked trees (Whiles *et al.* 1999, p. 534) and was located within the largest remaining tract of native prairie in the Central Platte Valley (Goldowitz 2004, p. 2).

Intermittent wetlands, such as the type locality, have been described as any water body that holds water for about 8 to 10 months during the year (Wiggins *et al.* 1980, p. 100); some intermittent sites may or may not completely dry in a year (Tarr and Babbitt 2007, p. 6). These wetlands differ from ephemeral wetlands (that hold water for a relatively short period of time (e.g., 4 months)) and permanent wetlands (rarely dry) (Tarr and Babbit 2007, p. 6). Intermittent wetlands dry when the groundwater table drops below the ground surface.

Since the Platte River caddisfly was discovered, surveys have mostly found the caddisfly in sloughs with intermittent hydroperiods; however, the caddisfly has also been found in sloughs with permanent hydroperiods (Goldowitz 2004, p. 5; Meyer and Whiles 2008, p. 632; Vivian 2010, p. 54; Geluso *et al.* 2011, p. 1024). In sloughs with permanent hydroperiods, the caddisfly has been observed in lower numbers, which is true of other *Ironoquia* species, likely because of the presence of more predators in permanent waters (Wiggins *et al.* 1980, p. 148; Vivian 2010, p. 54). The caddisfly has not been observed in ephemeral wetlands (Vivian 2009, pers. obs.).

In general, the intermittent wetlands where the caddisfly occurs are found along the floodplains of the Platte, Loup, and Elkhorn Rivers in central Nebraska (LaGrange 2004, p. 15) and are shallow, linear depressions that are historical channel remnants of these river systems (Friesen *et al.* 2000, p. 4–8). The presence of water in these sloughs is influenced by groundwater levels and trapped surface run-in (Friesen *et al.* 2000, p. 4–8). Groundwater levels are controlled by river stage (flows), precipitation, and evapotranspiration (Wesche *et al.* 1994, p, iii). Platte River flows are principally tied to snowmelt from the Rocky Mountains and local precipitation events (Simons and Associates 2000, pp. 2–5), while Loup River and Elkhorn River flows are tied to the Ogallala Aquifer (Peterson *et al.* 2008, p. 5). Sloughs that support the caddisfly vary in their distance to the main river channel. Most sloughs are adjacent to the main channel, while some occur in areas more than 0.4 kilometers (km) (0.25 miles (mi)) away.

Sloughs with the Platte River caddisfly are typically described as lentic (with little to no flow) (Whiles *et al.* 1999, p. 533; Alexander and Whiles 2000, p. 2). However, two sites do contain some flow, and the caddisfly appears to occur in higher densities in areas with flowing water than in stagnant areas (Harner 2012, pers. comm.). Because of their groundwater connection, sloughs with the caddisfly may maintain thick ice cover on surface waters through the winter without completely freezing to the bottom (Whiles *et al.* 1999, p. 534; Goldowitz 2004, p. 2). Slough substrata often consist of a thick layer of detritus and silt overlying sand (Whiles *et al.* 1999, p. 534; Alexander and Whiles 2000, p. 6). Soils in the sloughs consist of a mixture of loam, sand, and gravelly sand and tend to be frequently flooded and poorly drained (Natural Resources Conservation Service (NRCS) Web Soil Survey 2009, entire).

Because it is an inhabitant of intermittent waters, the Platte River caddisfly is tolerant of large fluctuations in water chemistry (Williams 1996, p. 634; Whiles *et al.* 1999, p. 534). Large variations in water quality (e.g., pH, conductivity, total dissolved solids, dissolved oxygen, turbidity, and temperature) have been observed among five forested sites where the caddisfly occurs (Vivian 2010, pp. 81, 96). Furthermore, average conductivity and pH in sloughs with the caddisfly reported by Vivian (2010, pp. 81, 96) differed from the average values reported by Whiles *et al.* (1999, p. 534) and Geluso *et al.* (2011, p. 1022). The gradient of water chemistry observed between forested sloughs and the type locality is likely a result of the differences in habitat types, and demonstrates that the Platte River caddisfly can withstand a broad range of water quality.

Vegetation in sloughs occupied by the caddisfly is typical wetland flora, such as *Typha* spp. (cattails), *Schoenoplectus fluviatilis* (river bulrush), *Eleocharis* spp. and *Cyperus* spp. (sedges), and *Lemna* spp. (duckweed); some sloughs support nonnative, invasive vegetation, including *Phalaris arundinacea* (reed canarygrass), *Phragmites* (common reed), and *Lythrum salicaria* (purple loosestrife). Plant species along slough banks and margins include woody species, such as *Fraxinus pennsylvanica* (green ash) and *Populus deltoides* (cottonwood), and grass species, such as *Spartina pectinata* (prairie cordgrass) and smooth brome (*Bromus inermis,* invasive). Various forbs are also present throughout the slough. Most areas where the Platte River caddisfly has been observed since it was described have an abundance of woody vegetation, which contrasts with the treeless, wet meadow environment encountered at the type locality and one other population at the Crane Trust (Whiles *et al.* 1999, p. 534; Vivian 2010, p. 56; Vivian 2011, pp. 33–35). Overall, the Platte River caddisfly is tolerant of a range of conditions, including variations in hydroperiod, water quality, and vegetation, but thrives in intermittent sloughs.

Life History and Ecology

The Platte River caddisfly lifecycle was characterized by Whiles *et al.* (1999, entire). The caddisfly is univoltine (one generation per year). The adult flight period for the Platte River caddisfly is between late September and mid-October. Adults first emerge around late-September and live for about 7 to 10 days, with the entire emergence period lasting 3 to 4 weeks. While active, adults oviposit (lay eggs) on the surface film of the water, the eggs sink to the bottom of the slough, and larvae hatch as first instars (life stage between molts) sometime in November. Aquatic larvae overwinter in the slough as first instars. In late winter, larvae construct their case (Vivian 2010, pers. obs.) and begin feeding and growing rapidly and proceed through four more instars. Between late April and early June, fifth (final) instars climb upslope from the water and aestivate (pass stressful time periods in a dormant condition) during the summer months when it is typically dry along the adjacent slough banks (Whiles *et al.* 1999, pp. 535–536; Geluso *et al.* 2011, p. 1023). Platte River caddisfly larvae eventually pupate (metamorphose between larva and adult) along slough margins in the larval case. Pupation lasts about 4 weeks until adult emergence in late September.

While in its aquatic stage, the Platte River caddisfly is considered a shredder and largely feeds upon senescent (aged) plant tissue (Whiles *et al.* 1999, pp. 542–543). As one of the few shredders present in sloughs, the Platte River caddisfly plays an important role in the decomposition of organic matter in these systems (Whiles *et al.* 1999, pp. 539, 543). In its terrestrial stage, the Platte River caddisfly does not feed (Whiles *et al.* 1999, p. 537), and as an adult, the species has the ability to ingest liquids (Holzenthal *et al.* 2007, p. 648).

The Platte River caddisfly likely has a lifecycle adapted to the intermittent wetlands found along the Platte, Loup, and Elkhorn River systems (Whiles *et al.* 1999, p. 537; Vivian 2010, pers. obs.). For example, larval emigration to adjacent mesic grassland habitat and adult emergence were found to coincide with early summer drying and fall inundation of the wetlands, respectively (Whiles *et al.* 1999, pp. 537, 542). The Platte River caddisfly is dependent upon water for the egg and larval stages of its lifecycle, (e.g., for at least 7 to 8 months out of the year) (Whiles *et al.* 1999, pp. 537–539).

While most caddisflies have an entirely aquatic larval phase, all *Ironoquia* species are known to aestivate in leaf litter near the receding water line during the summer months prior to pupating (Flint 1958, p. 61; Williams and Williams 1975, p. 830; Wiggins 1977, p. 248; Johansson and Nilsson 1994, p. 21; Whiles *et al.* 1999, p. 534). However, some aestivating Platte River caddisfly larvae have been found to burrow beneath the ground surface (Geluso *et al.* 2011, p. 1024). This behavior may be a way to withstand summer drying of sloughs or to avoid desiccation, as reported for other caddisflies (Mackay and Wiggins 1979, p. 187; Wiggins *et al.* 1980, p. 179; Johannson and Nilsson 1994, p. 21; Geluso *et al.* 2011, p. 1024), as soil temperatures in unshaded areas can reach 54 degrees Celsius (°C) (129 degrees Fahrenheit (°F)) in the summer (Vivian 2010, pers. obs.). This behavior could protect aestivating larvae against late spring (May-June) flows, which are characteristic of the Platte River system and could scour (wash) larvae downstream (Simon and Associates 2000, p. 8) and other disturbances characteristic of the Great Plains ecosystem, such as livestock grazing (Geluso *et al.* 2011, p. 1024).

Historical Range and Distribution

Data collection on the range of the Platte River caddisfly began in 1999, shortly after it was discovered, and continued in 2004 (Goldowitz 2004, p. 3). Surveys were conducted at 48 locations along the Platte and Loup Rivers, and the Platte River caddisfly was found at 9 of these sites (Goldowitz 2004, p. 5). These populations occupied an approximately 100-km (60-mi) stretch of the central Platte River that extends from south of Gibbon, Nebraska (Kearney County), to Central City, Nebraska (Merrick County). Surveys for the caddisfly on the Loup River were negative (Goldowitz 2004, p. 9). Monitoring efforts in 2004 did not find the caddisfly at the type locality, despite a consistent adult emergence pattern in the preceding 7 years and the species' prior abundance at that site (Goldowitz 2004, p. 8). Because of its apparent rarity, the caddisfly was designated a Tier 1 species in Nebraska as per the State's natural legacy plan (Schneider *et al.* 2005, p. 93). Tier 1 species are those that are at risk of extinction on a global scale or at risk of becoming extirpated from Nebraska (Schneider *et al.* 2005, p. 17).

Current Range and Distribution

Through 2004, the Platte River caddisfly was only known from the Platte River (Goldowitz 2004, p. 9). However, surveys for new Platte River caddisfly populations resulted in the discovery of the species on the Loup and Elkhorn Rivers in Nebraska in 2009 and 2010 (Vivian 2010, p. 50). Close visual examination of adults and larvae at sites on the Loup and Elkhorn Rivers demonstrated that the species was not *I. parvula* and confirmed the presence of the Platte River caddisfly on these systems. However, because of the distance between some caddisfly populations on the Platte, Loup, and Elkhorn Rivers, we determined there was a need to identify potential genetic differences for the species among sites. Genetic analyses indicated that there is a low amount of gene flow among all three rivers, and that a population tested on the Elkhorn River was genetically divergent, but not different, from the populations on the Platte and Loup Rivers (Cavallaro *et al.* 2011, p. 7). This genetic divergence appears to be a product of geographic isolation as opposed to habitat fragmentation.

The Platte River is formed at the confluence of the North Platte and South Platte Rivers in west-central Nebraska, just east of North Platte, and generally flows east until it meets the Missouri River along the eastern edge of Nebraska (Williams 1978, pp. 1–2). The North Platte River originates in the Rocky Mountains of Colorado, flows north through central Wyoming and then southeast into Nebraska (Williams 1978, p. 1); the South Platte River originates in Colorado and flows northeast until it meets the Platte River at North Platte, Nebraska (Simons and Associates 2000, p. 2). Platte River flows are largely dependent upon snowmelt from the Rocky Mountains and local precipitation events (Simons and Associates 2000, pp. 2–5).

The Loup and Elkhorn Rivers are tributaries of the Platte River system. The Loup River contains several tributaries, including the North Loup, Middle Loup, South Loup, and Cedar Rivers in Nebraska. The Loup River is formed at the confluence of the Middle Loup and North Loup Rivers near St. Paul, Nebraska, and flows east until it meets the Platte River at Columbus, Nebraska, in the eastern third of the State. The Loup River drains groundwater from the Sandhills and the underlying Ogallala Aquifer, and its tributaries flow northwest to southeast, while the Loup flows east or northeast until it meets the Platte River (Peterson *et al.* 2008, pp. 2–5). The Elkhorn River drains wet meadows and plains in north-central Nebraska, and flows east-southeast until it meets the Platte River near Omaha, Nebraska (Peterson *et al.* 2008, pp. 2–5).

In Nebraska, there is a gradient of precipitation from west to east. Just east of the Rocky Mountains in central Nebraska there is a predominant rain shadow effect that results in low amounts of precipitation in western Nebraska. Precipitation generally increases as one travels east towards Nebraska's eastern border (Simon and Associates 2000, p. 2).

Surveys for the Platte River caddisfly between 2009 and 2011 identified 35 caddisfly populations out of 115 sites visited, including 5 of the 9 sites identified by Goldowitz (2004, entire) (Vivian 2010, p. 46; Geluso *et al.* 2011, entire; Figure 1 below). With these recent survey efforts, the caddisfly is now known from a 390-km (240-mi) stretch of the Platte River that runs from near Sutherland, Nebraska (Lincoln County), to near Schuyler, Nebraska (Platte County), and from the Loup and Elkhorn River systems (Figure 1 below). Within this range, there is approximately a 155-km (93-mi) gap in the distribution of the caddisfly between Hershey, Nebraska, and Elm Creek, Nebraska (Vivian 2010, p. 51). Twenty-four surveys for the caddisfly were conducted in this gap, and the caddisfly was not found (Vivian 2010, p. 50).

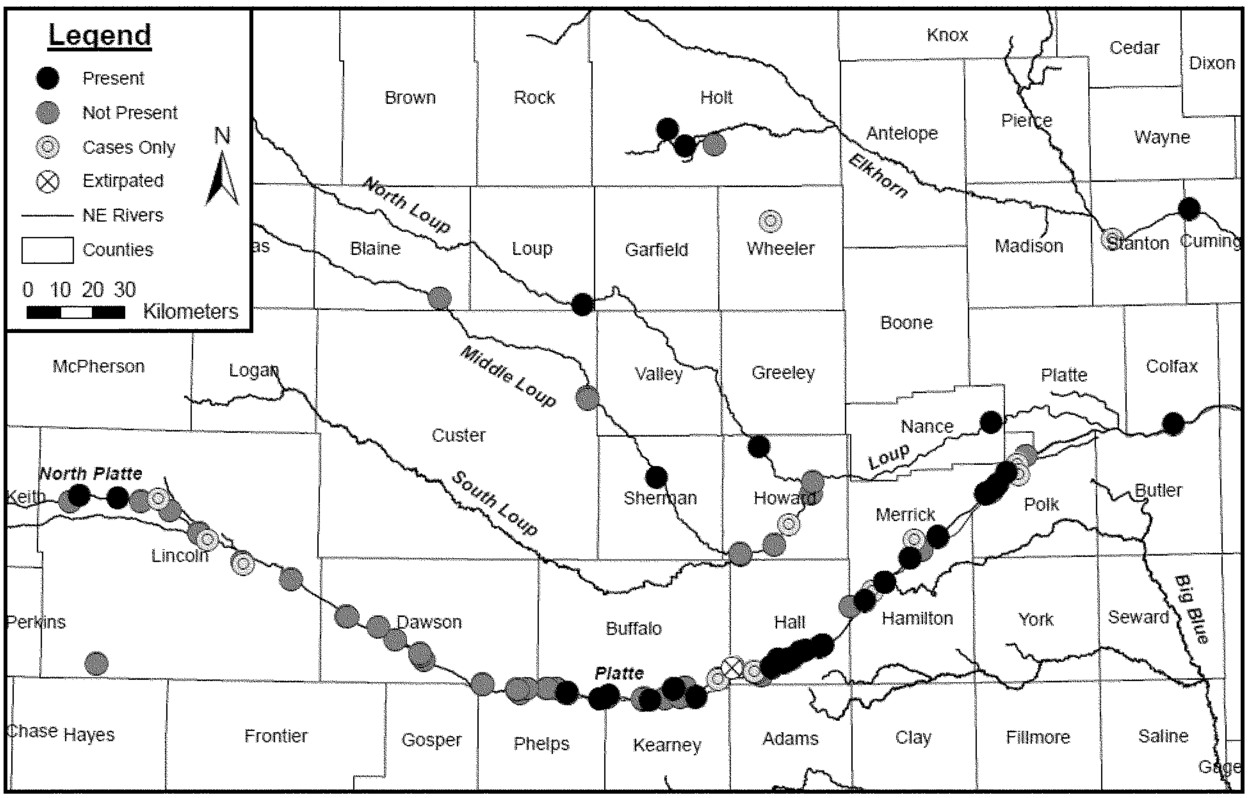

Figure 1. Survey results for the Platte River caddisfly from 1999 and 2004 (Goldowitz 2004, entire) and 2009-2011 (Vivian 2010, pp. 46-47; Geluso *et al.* 2011, p. 1024).

From recent survey efforts, one site near Shelton, Nebraska, is presumed extirpated (Riens and Hoback 2008, p. 1; Vivian 2010, p. 48). Also, the Platte River caddisfly was observed at the type locality in 2010 (Geluso *et al.* 2011, p. 1023), after not having been observed there during surveys in 2004 and 2007–2009 (Goldowitz 2004, p. 8; Riens and Hoback 2008, p. 1; Vivian 2010, p. 53). Survey work in 2009–2011 also identified 13 sites along the Platte, Loup, Elkhorn, and Cedar Rivers that contained discarded larval cases but no live individuals (Vivian 2010, p. 46). Finding a site with a caddisfly case in a slough along the Cedar River indicates that the Platte River caddisfly is likely present in the basin. However, observing live individuals at a site is needed to confirm its presence there, because it is thought that discarded larval cases degrade slowly and could represent generations from previous years (Vivian 2010, pp. 49, 55–56).

Aside from the Cedar River, it appears that more surveys for the Platte River caddisfly could result in the discovery of additional populations on other river drainages in Nebraska, including the Niobrara and Republican Rivers. More survey work on the Platte, Loup, and Elkhorn drainages would likely result in the discovery of new populations on these systems as well. Between 2009 and 2011, satellite imagery was used to identify potential caddisfly habitat throughout Nebraska prior to conducting surveys (Vivian 2010, p. 38). There are additional areas of remaining potential Platte River caddisfly habitat along Nebraska's major river systems that have yet to be surveyed (Vivian 2011, pers. obs.). Thus, ongoing surveys are likely to expand the known range of the Platte River caddisfly.

Population Densities

At the type locality, the Platte River caddisfly was considered an abundant component of the slough ecosystem. In 1997–1998, an average of 805 ± 194 larvae per square meter (m^2) was observed throughout the aquatic life stage of the caddisfly lifecycle, and 410.67 larvae per m^2 were present in the aquatic environment in May 1998 (Whiles *et al.* 1999, pp. 537, 540). Geluso *et al.* (2011, p. 1022) reported a mean density of 553 ± 284 Platte River caddisfly larvae per m^2 (n = 19) from a site at the Crane Trust on Shoemaker Island (hereafter ''Wild Rose Slough''), which is located about 5 km (3.2 mi) upstream of the type locality. With the exception of these two sites, the Platte River caddisfly has been found to occur in lower densities (Whiles *et al.* 1999, pp. 539–540).

In May of 2009 and 2010, aquatic larval densities were measured at 18 sites with a Platte River caddisfly population on the Platte River only, and larval densities ranged from zero to 125.7 individuals per m^2 (Vivian 2010, p. 64). Aestivating (terrestrial life stage) larval densities at 12 of 13 sites sampled ranged from zero to 116 individuals per m^2 (Vivian 2010, p. 65). Day and nighttime sampling found anywhere between zero and eight adults per hour of observation (Vivian 2010, pp. 65–66).

The aquatic and terrestrial larval densities reported by Vivian (2010, pp. 40–41) are not directly comparable to Whiles *et al.* (1999, p. 535), because different methodologies were used, and a different volume of sediment was sampled during the aquatic sampling period (Meyer *et al.* 2011, p. 110). Meanwhile, Geluso *et al.* (2011, p. 1022) used the same aquatic sampling method as Vivian (2010, pp. 40–41) but sampled slightly earlier in 2010. Nonetheless, the methods used during 2009–2010 sampling were internally consistent, and these results demonstrate that the caddisfly occurs in varying densities across its range (Vivian 2010, pp. 40–41; Harner 2012, pers. comm.). Although some densities reported by Vivian (2010) are low compared to what has been reported for other caddisfly species (Mayer and Likens 1987, p. 266; Roeding and Smock 1989, p. 152; Bunn and Hughes 1997, pp. 343–344; Stewart and Downing 2008, p. 145), observations on the numbers and density variations of Platte River caddisfly larvae and adults are consistent with those reported for other *Ironoquia* species (Flint 1958, p. 60; Swegman *et al.* 1981, p. 131; MacLean and MacLean 1984, p. 56; Garono and MacLean 1988, p. 147; Gray and Johnson 1988, p. 180; Ćuk and Vučković 2010, pp. 233–234). Therefore, the Platte River caddisfly and *Ironoquia* spp., in general, are more abundant in some areas than in others.

Although population densities have been reported for over half of all known Platte River caddisfly populations, there is a lack of general information on population trends for this species, with the exception of a few sites, including the type locality, Wild Rose Slough, one site near Shelton, Nebraska, and one site near Chapman, Nebraska, where restoration work conducted by the Service in 2007 resulted in a population decline at that site. Sites with lower population densities may always remain naturally low. Therefore, with the information available and the increase in the number of known populations, it is difficult to discern if the number of Platte River caddisfly individuals and populations is remaining steady, increasing, or decreasing.

Summary of Information Pertaining to the Five Factors

Section 4 of the Act (16 U.S.C. section 1533) and implementing regulations (50 CFR part 424) set forth procedures for adding species to, removing species from, or reclassifying species on the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, a species may be determined to be an endangered or threatened species based on any of the following five factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

In making this finding, information pertaining to the Platte River caddisfly in relation to the five factors provided in section 4(a)(1) of the Act is discussed below. In considering what factors might constitute threats to a species, we must look beyond the exposure of the species to a particular factor to evaluate whether the species may respond to that factor in a way that causes actual impacts to the species. If there is exposure to a factor and the species responds negatively, the factor may be a threat and, during the status review, we attempt to determine how significant a threat it is. The threat is significant if it drives, or contributes to, the risk of extinction of the species such that the species warrants listing as endangered or threatened as those terms are defined in the Act. However, the identification of factors that could impact a species negatively may not be sufficient to compel a finding that the species warrants listing. The information must include evidence sufficient to suggest that these factors are operative threats that act on the species to the point that the species may meet the definition of an endangered or threatened species under the Act.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

Landscape-Level Changes in Hydrology

Reductions in groundwater levels or river flows as a result of water development can adversely impact aquatic habitats and their associated macroinvertebrate communities. Existing and future water development along the Platte, Loup, and Elkhorn Rivers could adversely impact the Platte River caddisfly and its habitat. Adverse impacts could occur through the loss of water during critical life stages or changes in hydrology that result in intermittent wetlands becoming too ephemeral to support the Platte River caddisfly. We examine this topic in detail below.

Hydroperiod can be an important factor in determining the composition of macroinvertebrate communities in wetlands. For instance, Whiles and Goldowitz (2005, p. 466) found that slough hydroperiod influenced macroinvertebrate taxa diversity and abundance, with more taxa present in intermittent sloughs than in sloughs with more ephemeral or permanent hydroperiods. Sloughs with intermittent hydroperiods typically have fewer predators than permanent wetlands and can offer safe refugia for various taxa if they can withstand habitat drying (Williams 1996, p. 634; Wissinger *et al.* 1999, p. 2103; Tarr and Babbitt 2007, p. 3). Sites with more permanent hydroperiods likely offer a more suitable environment for potential predators of the caddisfly, such as fish and amphibians, thereby reducing larval densities (Whiles and Goldowitz 2001,

p. 1836; Whiles and Goldowitz 2005, pp. 468, 470). Certain permanent sloughs with the Platte River caddisfly also appear to be more food-limited than others as these areas have less standing vegetation (Vivian 2011, p. 18). The amount of available food can limit the abundance of shredder species (Roeding and Smock 1989, p. 149), such as the Platte River caddisfly (Vivian 2011, p. 18).

The type locality from which the Platte River caddisfly was described had an intermittent hydroperiod (Whiles *et al.* 1999, p. 536). The Platte River caddisfly was not found at four other sloughs near the type locality during the time of the life history study; these sloughs had hydroperiods that differed from that of the type locality—they were thought to be either too ephemeral or permanent for the caddisfly (Whiles *et al.* 1999, p. 542; Whiles and Goldowitz 2001, p. 1832; Whiles and Goldowitz 2005, p. 466). Also, the Wild Rose Slough site contains ephemeral, intermittent, and permanent reaches, and the Platte River caddisfly has only been observed in the intermittent (Vivian 2010, pers. obs.) and permanent reaches of the slough (Geluso *et al.* 2011, p. 1022). In other parts of its range, the Platte River caddisfly has been found in sloughs with more permanent hydroperiods, albeit in lower numbers than in sloughs with intermittent hydroperiods (Vivian 2010, p. 54; Geluso *et al.* 2011, p. 1022).

The caddisfly occurs in higher densities in intermittent sloughs than in sloughs with permanent hydroperiods. For instance, the type locality and Wild Rose Slough have intermittent hydroperiods (Vivian 2010, pers. obs.) and have supported or currently support the largest known larval densities of the Platte River caddisfly (Whiles *et al.* 1999, p. 536; Vivian 2010, pers. obs.; Geluso *et al.* 2011, p. 1022). Relatively low densities of the caddisfly have been found at other sites that have longer hydroperiods and experience less water level fluctuation (Vivian 2010, p. 54). Thus, it is thought that sloughs with intermittent hydroperiods are ideal for the Platte River caddisfly. Although intermittent wetlands represent ideal Platte River caddisfly habitat, permanent wetlands may become important during and following a drought as sites that support source populations for recolonization following extended dry periods. However, ephemeral wetlands do not remain wet long enough to support the species' lifecycle.

Overall, landscape-level changes in hydrology that result from reservoir construction, river channel diversions, and groundwater withdrawal for irrigation could adversely impact the Platte River caddisfly and its habitat through the loss of water during critical life stages or degradation of its habitat. Since European settlement in the 1850s, the Platte, Loup, and Elkhorn Rivers have all experienced some degree of water development for various purposes; the Platte River has experienced the largest amount of modification of these systems. Starting in the mid-1800s, the tributaries of the Platte River were gradually developed to deliver water for irrigation via main and lateral canals, and eventually larger water storage projects along the main channels of the river were constructed (Eschner *et al.* 1981, pp. 3, 5). Water development projects were implemented to make the region more suitable for agriculture, and more than 7,000 canals were constructed along the river between 1851 and 1930 (Simons and Associates 2000, pp. 5–9). Over-appropriation of water in the Platte Basin became an issue as early as 1876, and dams were constructed to create more reliable supplies of water (Eschner *et al.* 1981, p. 10; Simons and Associates 2000, pp. 7–8).

Several hundred storage reservoirs and six principal dams are present in the Platte River Basin, and together they impound more than 7.6 million acre-feet of water for irrigation (Simons and Associates 2000, p. 8). Each reservoir project contains several miles of associated canals (Simons and Associates 2000, p. 13). Because of dams and diversions along the Platte Basin, over 70 percent of the Platte River flow is estimated to be diverted before it reaches Lexington, Nebraska (Currier *et al.* 1985, p. 120; Sidle *et al.* 1989, p. 91), which is about 48 km (30 mi) upstream of where most Platte River caddisfly populations along the Platte River are found. As a result of this development, the river has been described as one of the most heavily managed river systems in the United States (Simons and Associates 2000, p. 14; LaGrange 2004, 274 15).

The Loup River has also been impacted by water development projects. The Loup Basin includes the North, Middle, and South Loup Rivers, and within the basin there are four mainstem diversion dams (U.S. Bureau of Reclamation (USBR) 2011, entire). The largest diversion dam, the Loup Diversion Dam, diverts around 69 percent of the Loup River flow away from the main channel for a distance of 35 miles in Nance and Platte Counties in Nebraska (Loup Power District and HDR Engineering 2008, p. 4–39). Each diversion dam has several miles of associated lateral canals to divert water to irrigated farmland (USBR 2011, entire). Also, three impoundments are present along tributaries of the Loup River Basin (Loup Power District and HDR Engineering 2008, pp. 3–5), but the system lacks mainstem dams. The Elkhorn River is generally free of impoundments and diversions (LaGrange 2004, p. 21; Peterson *et al.* 2008, p. 5).

Habitat Loss Resulting From Changes in Hydrology

Dams and diversion projects are known to result in changes in hydrological, geophysical, and ecological characteristics of river systems (Simons and Associates 2000, p. 15; Schramm *et al.* 2008, pp. 237–238). Dams and diversions dampen the natural flow regime and change the hydrology of river systems, contribute to the downcutting and degradation of the river bed, reduce the amount of sediment flowing downstream, and reduce the amount of water reaching floodplain wetlands (Kingsford 2000, p. 109; Bowen *et al.* 2003, p. 809). These changes affect the ability of managed river systems to remain in a state of dynamic equilibrium, which contributes to the creation and maintenance of a diversity of habitats along a river's floodplain (Bowen *et al.* 2003, p. 809). Water development projects may ultimately cause a river to become disconnected from its floodplain (Bowen *et al.* 2003, p. 809) and reduce the ability of rivers to continually inundate and create new backwater habitats via peak flows (Schramm *et al.* 2008, pp. 237–238).

Channel Narrowing

As a result of reduced flow through the Platte River system, the main channel of the Platte River narrowed by about 65 to 80 percent between the mid-19th century and 1969 (Williams 1978, p. 8; Eschner *et al.* 1981, p. 45) and further narrowed by up to 25 percent between 1970 and 1999 (Murphy *et al.* 2004, p. 102). Channel narrowing has resulted in a reduction in wetland habitat along the Platte River through a drying of adjacent sloughs. Between 1938 and 1982, an estimated 45.2 percent of wet meadow habitat along the central Platte River was lost (Sidle *et al.* 1989, pp. 98–99), and this corresponded to a 53.4 percent reduction in active channel width during the same time period (Peake *et al.* 1985, entire; Sidle *et al.* 1989, pp. 98–99). The drying of linear slough depressions along the river also facilitated the development of row crops along what used to be wet bottomlands (Currier *et al.* 1985, p. 113).

Many wetlands were initially converted to cropland through wetland draining via ditches and land leveling (Currier *et al.* 1985, p. 113). Wetland losses and channel shrinkage data for the Loup River are currently unavailable; however, wetland losses have likely occurred concurrent with the narrowing of the river channel downstream of diversion projects.

Historically, channel narrowing on the Platte and Loup River systems resulting from water development likely resulted in direct losses of suitable Platte River caddisfly habitat prior to the species' discovery in the late-1990s. During recent survey efforts, the Platte River caddisfly was not found between Hershey and Elm Creek, Nebraska, despite 24 surveys being conducted in this reach (Vivian 2010, p. 50). We do not know if the caddisfly ever occurred in this stretch of river, but it is present upstream and downstream of Hershey and Elm Creek, Nebraska, respectively (Vivian 2010, p. 50), and this stretch is likely one of the most dewatered and incised (disconnect of a river from its floodplain as a result of a decline in river bed elevation) portions of the Platte River (Murphy *et al.* 2004, p. 56). Since the species was first described in 2000, no known population losses have occurred as a result of channel narrowing and subsequent wetland drying.

Aside from the draining of adjacent wetlands, channel narrowing has resulted in an increase in woody vegetation cover along the Platte River (Johnson 1994, entire). Downstream of Kearney, Nebraska, channel narrowing continues to reduce the amount of active channel area, and the amount of forest cover continues to increase (Murphy *et al.* 2004, p. 95), despite no new impoundments having been constructed in the Platte basin since 1956 (Johnson 1994, pp. 77–78). The establishment and proliferation of woody vegetation along the river acts to stabilize the river and can further contribute to channel narrowing through the trapping of sediments (Friedman *et al.* 1996, p. 341). Meanwhile, an increase in forest cover is not thought to have an adverse impact on the Platte River caddisfly, because most known caddisfly populations are found in forested wetlands, and some forested sloughs support relatively high larval densities of the Platte River caddisfly (Vivian 2010, p. 64). It is unlikely that any future increases in forest cover will adversely affect the Platte River caddisfly.

Channel Degradation

Aside from channel narrowing, impoundments and diversions can contribute to the downstream degradation of river systems, and these projects can have lasting impacts. Impacts to the Platte River resulting from past water development projects, which may affect the caddisfly, are ongoing. For instance, reduced sediment loads resulting from impoundments that block the passage of sediments and water discharges below diversion returns and dams are known to impact river systems and result in channel bed degradation. The North Platte River historically provided the majority of the sandy sediment to the Platte River system, but the amount of sediment inputs to the river greatly declined with the closing of the mainstem dams on the North Platte River (Murphy *et al.* 2004, p. 101). Near Overton, Nebraska, the Johnson-2 (J–2) diversion return releases sediment-free water into the Platte River and creates localized scour and an additional sediment imbalance.

As a result of impoundments and diversion returns, less sediment flows into the Platte River than flows out, and this contributes to the erosion and a lowering of elevation of the river bed (Murphy *et al.* 2004, p. 101). Erosion may also result from a coarsening of sediments in the river, which is a result of coarser sediment being supplied from the South Platte River as opposed to the fine sands that used to come from the North Platte River (Murphy *et al.* 2004, p. 115). Erosion results from a change in sediment size, because smaller sediment is transported downstream more quickly than coarser sediments (Murphy *et al.* 2004, p. 119). This downcutting (or incision) further narrows the active channel and acts to drain adjacent floodplain wetlands (Murphy *et al.* 2004, p. 129). Channel incision resulting from the sediment imbalance along the Platte River is thought to be largely complete upstream of Kearney, Nebraska, but has only slightly affected the river between Kearney and Grand Island, Nebraska, indicating that the trend of degradation is moving downstream (Murphy *et al.* 2004, pp. 113, 129). Channel incision and degradation resulting from the sediment imbalance in the Platte River and a coarsening of sediments is anticipated to take decades to be fully complete (Murphy *et al.* 2004, pp. 128–130).

The effects of channel degradation and its impacts on the Platte River caddisfly and its habitat can be observed downstream of the J–2 return. Diversion returns, like the J–2 return, that put clear water directly into the main channel of the Platte River, can contribute to the downcutting of the river bed and subsequent draining of adjacent floodplain wetlands. For instance, in 2010, surveys for the Platte River caddisfly were conducted downstream of the J–2 return near Overton, Nebraska, at Dogwood Wildlife Management Area (WMA). Within the WMA, several linear depressions were observed, and these areas were dry but showed signs of past beaver (*Castor canadensis*) activity, indicating that the area had once supported slough habitat (Vivian 2010, p. 51). Given that the depressions were dry, habitat for the caddisfly was absent (and so was the species) and, therefore, it seems that the downcutting of the Platte River near Overton, Nebraska, has contributed to the loss of potentially suitable caddisfly habitat at Dogwood WMA.

The effects of the J–2 return can be observed up to 29 km (18 mi) downstream of the return, although these effects are most pronounced closest to the return (Murphy *et al.* 2004, p. 142). Between 1989 and 2002, the Platte River bed depth eroded 1.8 meters (6 feet) immediately downstream of the J–2 return, and eroded 0.76-meter (2.5 feet) 29 km (18 mi) downstream from the return during the same time period (Murphy *et al.* 2004, p. 106). At Grand Island, Nebraska, the river bed eroded 0.27-meter (0.89-foot) between 1933 and 1995 (Murphy *et al.* 2004, p. 113). It is anticipated that the process of incision as a result of the J–2 return will continue downstream all the way to Grand Island, but it is expected to progress slowly (Murphy *et al.* 2004, pp. 113–114). For instance, the river could incise by 0.60-meter (2 feet) from 1940 bed elevation levels within 100 years, 48 km (30 mi) downstream of the return. However, these same impacts are expected to take 400 years to affect the area 100 km (60 mi) downstream of the return (Murphy *et al.* 2004, p. 114), an area where seven of the 35 known Platte River caddisfly populations occur. This incision could further narrow the central Platte River and contribute to the draining of adjacent wetlands and sloughs occupied by the Platte River caddisfly.

It is likely that channel incision has contributed to a loss in available Platte River caddisfly slough habitat in the past and could adversely affect the remaining sloughs on the central Platte River (Lexington, Nebraska to Chapman, Nebraska, where several populations of the Platte River caddisfly occur) in the future. The impacts of channel degradation on Platte River caddisfly habitat are best demonstrated by the effects observed at Dogwood WMA and at the Crane Trust on Shoemaker and Mormon Islands. Harner and Whited (2011, pp. 17–18; Harner 2012, pers. comm.) demonstrated that although there was two times more river discharge in the Platte River in 1999 than in 1951, less slough habitat was available at the Crane Trust in 1999 than was present in 1951. Between 1951 and 1999, the amount of available slough habitat declined by 0.3-hectare (0.8-acre) at Wild Rose Slough (which is deeper and more entrenched, resulting in less surface area lost) on Shoemaker Island and 3.6 hectares (8.8 acres), or about 28 percent, at the type locality on Mormon Island (Harner and Whited 2011, pp. 17–18). Declines in the amount of slough habitat were attributed to channel incision of the Platte River, or a drop in the groundwater table, or both, as land leveling has not occurred along the stretch of the river owned by the Crane Trust. These results demonstrate that even though river discharge in 1999 was greater than in 1951, more water in the Platte River does not necessarily mean that the floodplain will be inundated enough by elevated groundwater to support sloughs where the Platte River caddisfly occurs (Harner and Whited 2011, p. 23).

Currently, the Crane Trust area supports the highest known densities of the Platte River caddisfly (Whiles *et al.* 1999, p. 537; Vivian 2010, p. 47; Geluso *et al.* 2011, p. 1022) and is one of the largest remaining stretches of intact prairie in the Central Platte Valley. However, although the Crane Trust protects the parcel where the caddisfly occurs, this area is not buffered from the effects of upstream water development and nearby groundwater pumping (Harner and Whited 2011, pp. 23–24; Harner 2011, pers. comm.). The documented decline in the amount of available slough habitat between 1951 and 1999 (Harner and Whited 2011, entire) illustrates that effects of past and current degradation to the river channel are ongoing even though there have been no major water projects implemented on the Platte River since 1956 (Johnson 1994, p. 78). If left unchecked (Murphy *et al.* 2004, p. 114), future channel degradation could eventually result in as much as a total loss of Platte River caddisfly habitat at the Crane Trust and other nearby sloughs. For instance, Harner and Whited (2011, p. 14) demonstrated that groundwater declines greater than 0.5-meter (1.5–2.0 feet) from 1999 levels could result in slough drying at the type locality in years with similar precipitation and river discharge (Harner and Whited 2011, p. 20).

Although Harner and Whited (2011) demonstrated an ongoing trend in channel degradation within the central Platte River near the Crane Trust at Alda, Nebraska, the Platte River caddisfly is still present at the type locality and Wild Rose Slough more than 10 years following 1999 (year of reference used in the study). There are also extant Platte River caddisfly populations upstream of the Crane Trust, where the effects of channel degradation are more pronounced, such as near Elm Creek, Nebraska, where the channel bed incised by 0.76-meter (2.5 feet) between 1989 and 2002 (Murphy *et al.* 2004, p. 106). Meanwhile, the type locality and Wild Rose Slough occur more off channel than the forested sloughs adjacent to the river channel and may be less buffered from the effects of channel incision, because hydroperiod is known to decrease with increasing distance from the river channel (Whiles *et al.* 1999, p. 533). Therefore, habitat loss at the Crane Trust likely does not represent the norm throughout the range of the Platte River caddisfly.

If left unchecked, future channel degradation could result in future losses in slough habitat and subsequent extirpation of the Platte River caddisfly from the central Platte River. However, various programs and entities are acting to maintain current habitat conditions on the central Platte River. The central Platte River is actively managed by several organizations to benefit endangered (E) and threatened (T) species (whooping crane (*Grus americana*) (E), interior least tern (*Sterna antillarum athalassos*) (E), piping plover (*Charadrius melodus*) (T), and pallid sturgeon (*Scaphirhynchus albus*) (E)) that depend on an open and braided river system. One such organization is the Headwaters Corporation, which is the nongovernmental organization responsible for overseeing the Platte River Recovery Implementation Program (PRRIP) (discussed more below and under Factor D).

PRRIP was established in 2006, by an agreement between the Bureau of Reclamation, the Service, and the States of Colorado, Wyoming, and Nebraska to manage Platte River flows and habitat to meet the needs of endangered and threatened species that use the Platte River. For instance, PRRIP plans to clear and lower vegetated islands in the river to create a more open channel to benefit endangered species, and this action would increase the amount of sediment in the river (Murphy *et al.* 2004, p. 143; U.S. Department of the Interior (DOI) 2006, p. 5–60). PRRIP also seeks to offset the sediment imbalance in the river by adding sand to the central Platte River (DOI 2006, p. 5–55) and release pulse flows to maintain present channel conditions (DOI 2006, p. 3–11). Outside PRRIP, some work of removing riparian vegetation has already been executed by organizations such as the Nebraska Public Power District (Kinzel *et al.* 2006, entire). Other entities, such as the Partners for Fish and Wildlife Program (PFW), are actively restoring sloughs along the central Platte River to benefit wildlife, and these areas could eventually provide suitable habitat for the Platte River caddisfly. Ongoing efforts to maintain and improve current conditions along the central Platte River should help stem the ongoing degradation of the river and reduce the amount of potential losses of slough habitat throughout the Platte River portion of the species' range.

As mentioned previously, water development on the Loup and Elkhorn Rivers has not been as extensive as it has along the Platte River. While there are diversions in place along the Loup River, these diversions have not resulted in extensive channel incision and degradation as has been observed along the Platte River. This can be demonstrated by the lack of vegetation encroachment onto the active river bed. Channel narrowing downstream of diversion projects on the Loup River Basin has likely resulted in a loss of slough habitat in the past. However, the Platte River caddisfly is present immediately upstream of Kent Diversion Dam, and the species is present immediately downstream of the Loup Diversion Dam. The populations in the vicinity of these projects appear secure, because there appears to be ample slough habitat to support the caddisfly at these sites (Vivian 2010, pers. obs.). Potentially suitable habitat that has not been surveyed is also present downstream of all four main diversion projects in the Loup River Basin (Vivian 2012, pers. obs.). Meanwhile, no large-scale projects on the Loup or Elkhorn Rivers are planned. Because of ongoing efforts to maintain present channel conditions in the central Platte River, which is the most degraded portion of the range of the Platte River caddisfly, and because of a general lack of channel degradation on the Loup and Elkhorn Rivers, we conclude that channel degradation does not pose a threat to the Platte River caddisfly.

Altered Hydrograph

An altered hydrograph (graph of stream flow through time) can result from dams and diversion projects. For instance, dams impound water and reduce the amount of water flowing through a river system. Diversion projects can result in a changed hydrograph by altering the timing of flows through a river system and can reduce the amount of water flowing downstream. Historically, the Platte River received a late-spring rise as a result of runoff from Rocky Mountain snowmelt, and water levels then receded through the summer months, with the river nearly drying completely in some years (Eschner *et al.* 1981, pp. 19–20; Simons and Associates 2000, p. 8). Because of water development projects, primarily dams, the historical hydrologic regime of the Platte River has been altered. For instance, at North Platte, Nebraska, peak flows declined from 20,000 cubic feet per second (cfs) in the late 1800s to less than 5,000 cfs after 1940 (Simons and Associates 2000, p. 16). Dams are also known to augment base flows in a river system, meaning that some floodplain wetlands never go dry (Kingsford 2000, p. 111). Following water development on the Platte River, periods of no or little flow have decreased (Simons and Associates 2000, p. 44). A reduction in natural periods of low flow could impact the intermittency of sloughs where the Platte River caddisfly occurs by increasing the permanency of water in certain areas. Despite the potential for sloughs along the Platte and Loup Rivers to be more permanent, the Platte River caddisfly has presumably existed with the presence of dams on the landscape for over 100 years. The species also occurs in permanent sloughs, and these areas could become important source populations for other intermittent wetlands following extended dry periods or drought. Wetlands that were historically intermittent may have become ephemeral wetlands unsuitable for the caddisfly concurrent with water development. However, we have no information to indicate that this has occurred since the species was described in 2000.

At this time, there is no available information to indicate that an altered hydrograph is adversely affecting any populations of the Platte River caddisfly or has resulted in population losses throughout its range. Therefore, we do not consider a changed hydrograph to pose a threat to the Platte River caddisfly.

Invasive Species

Along the Platte River, changes in hydrology have contributed significantly to the encroachment of woody and exotic vegetation onto what used to be the active river bed (Currier *et al.* 1985, p. 119; Johnson 1994, p. 47). In 2002, several areas of the Platte River went completely dry for 2 months because of drought, and in 2003, low to zero flows were recorded for extended periods of time within the Big Bend reach of the Platte (80-mile stretch of the Platte River between Overton and Chapman, Nebraska) (Service 2006, p. 113). During this time, dense invasive vegetation grew within the Platte River channel as a result of lower flows. *Phragmites australis* (common reed or *Phragmites*) and *Phalaris arundinacea* (reed canarygrass), two non-native, invasive species, have proliferated on previously barren sandbars and in wetlands along the Platte River in the last decade. Historically, encroaching vegetation would have been washed away by ice scour, or high spring flows (now dampened by water development), or both (Service 2006 p. 163), but active removal is now required to keep invasive species in check. Invasive species have not proliferated on the Loup and Elkhorn Rivers as much as on the Platte. Only *P. arundinacea* has been observed in sloughs along the Loup River and in lower abundances than in sloughs along the Platte River.

In the United States, there are introduced and native varieties of *Phragmites australis,* and the introduced and hybridized forms have become highly invasive in several States, including Nebraska (NRCS 2002, entire; Blossey 2003, entire). *P. australis* can be up to 15 feet tall and quickly crowds out native wetland species once established (Michigan Department of Environmental Quality 2011, entire). There are also native and introduced ecotypes of *Phalaris arundinacea,* and the species can be aggressive and invade wetlands. *P. arundinacea* has been observed to form dense, monotypic stands and impenetrable mats of stems and leaves and crowd out native plant species (Wisconsin Department of Natural Resources 2007, entire). *P. arundinacea* was introduced from Europe for agricultural use (Maurer *et al.* 2003, p. 16) and may be the most pervasive emergent plant in wetlands in the Midwest (Spyreas *et al.* 2010, p. 1254). Both *P. australis* and *P. arundinacea* have likely spread along the Platte River as a result of deliberate introductions and changes in hydrology (Andersen *et al.* 2004, p. 787; Strayer *et al.* 2006, p. 649).

Both *Phragmites australis* and *Phalaris arundinacea* have been observed in sloughs where the Platte River caddisfly occurs; however, *P. arundinacea* is more abundant and more often encountered in these wetlands (Vivian 2010, pers. obs.). These invasive plant species have been observed at 24 out of 35 sites with the caddisfly (Vivian 2011, pers. obs.) and appear to have degraded habitat at five sites with the caddisfly along the Platte River. At three sites, *P. arundinacea* appears to have grown thick enough to completely dry out slough margins and to have reduced the amount of available Platte River caddisfly habitat at these sites (Vivian 2009, pers. obs.). *P. australis* is or was the dominant vegetation present at two sloughs where the caddisfly occurs when these areas were surveyed (Vivian 2009, pers. obs.); this plant has potentially reduced the habitat quality at these sites, as these sites support the lowest known densities of the Platte River caddisfly (Vivian 2010, p. 64.). Nonetheless, no extirpations have been observed as a result of displacement by invasive species, and work is underway along the central Platte River to control and reduce the spread of *P. australis* (The Nature Conservancy 2011, entire). In other sloughs that support exotic vegetation, there is no evidence to suggest that *P. australis* or *P. arundinacea* are encroaching to the point where habitat quality is being reduced or will be reduced in the near future. Because invasive species appear to be impacting the Platte River caddisfly at only a small number of sites throughout its range, we do not consider invasive plant species to pose a threat to the Platte River caddisfly.

Groundwater Development

Following dam construction in the Platte Basin, irrigation demands were met through the pumping of groundwater (Eschner *et al.* 1981, p. 10), particularly along the central Platte River (Currier *et al.* 1985, p. 87). The central Platte River remains the most heavily irrigated region in Nebraska, with an average of 2 to 16 registered groundwater wells per mile (University of Nebraska at Lincoln, School of Natural Resources (UNL–SNR) 2011a, entire). As of 2008, there were 1.3 million acres of irrigated cropland within the Loup Basin (Loup Power District and HDR Engineering 2008, p. 3–1). Throughout most of the Loup and Elkhorn Basins, there are up to 4 registered irrigation wells per mile, but there can be up to 16 wells per square mile in the Loup Basin (UNL–SNR 2011a, entire).

Groundwater pumping can result in a lowering of the water table and contribute to subsequent wetland drying and loss (van der Kamp and Hayashi 1998, p. 51; LaGrange 2004, p. 13). It is possible that pumping groundwater for irrigation contributed to some Platte River caddisfly habitat loss historically throughout the species' range, particularly in the central Platte River (Big Bend reach) where irrigation dominates the valley (Currier *et al.* 1985, p. 87). However, available data on monitored groundwater levels do not indicate that this has occurred or is occurring on a wide scale throughout the range of the Platte River caddisfly.

Along the eastern portion of the central Platte River (east of Buffalo County line), groundwater levels in some isolated areas near the river declined 1.5 to 3.0 meters (5 to 10 feet) between pre-development (1950 or later for some parts of Nebraska) (McGuire 2011, pp. 1, 4) and spring 2011 (UNL–SNR 2011b, entire). The remainder of the groundwater table near the Platte River experienced little to no change or an increase (UNL–SNR 2011b, entire). Throughout the entire central Platte region and near the river, the groundwater table declined 0.3 to 1.5 meters (1 to 5 feet) between spring 2001 (species described in 2000) and spring 2011 (UNL–SNR 2011c, entire) but increased 0.6 to 1.5 meters (2 to 5 feet) between spring 2006 and spring 2011 (UNL–SNR 2011d, entire). The groundwater level declines observed between 2001 and 2011 may be attributed to drought conditions in Nebraska during the first half of the 2000s (see Climate Change, below).

Aside from a few small, isolated areas where groundwater levels declined close to the Loup River, between 1950 and 2011, groundwater levels increased by at least 1.5 meters (5 feet) throughout most of the Loup and part of the Elkhorn Basins (UNL–SNR 2011b, entire). Elsewhere in the Elkhorn Basin, there was no change in observed groundwater levels between 1950 and 2011 (UNL–SNR 2011b, entire). It is unlikely that observed increases in the groundwater table along the Loup and Elkhorn Rivers have contributed to losses in the amount of slough habitat available to the caddisfly.

Where groundwater levels have dropped within the range of the Platte River caddisfly, it is possible that a loss in slough habitat has occurred through the loss of inundated wetland acres. However, since the species was described, drops in the groundwater table due to pumping are not known to have resulted in extirpations of any caddisfly populations. Also, the amount of loss in slough habitat is likely limited, because the groundwater table dropped in only three isolated areas within the range of the caddisfly between 1950 and 2011 (UNL–SNR 2011b, entire). Only one of these areas overlaps with extant Platte River caddisfly populations, and this area is along the central Platte River. The other two areas near where groundwater levels have declined since pre-development support slough habitat that has not yet been surveyed for the caddisfly.

There is the potential for ongoing and future groundwater withdrawals to adversely impact the Platte River caddisfly and its habitat in the future, particularly given the recent increase in demand for grain. For instance, in the Lower Loup Natural Resources District (LLNRD), which encompasses the Loup River and its tributaries upstream of Columbus, Nebraska, to the west end of Loup and Custer Counties, 10,000 additional acres were approved to be added to the amount of irrigated acres between 2010 and 2013 (Lower Loup Natural Resources District 2011, entire), and so the groundwater table in that region may see declines with the increase in irrigation. Within the Central Platte Natural Resources District (CPNRD), 2,500 new acres were opened for development in 2012 downstream of Chapman, Nebraska. Future declines in the amount of slough habitat on the Platte, Loup, and Elkhorn Rivers associated with the increased demand for groundwater usage may occur.

Although the amount of slough habitat available to the caddisfly has the potential to decline in the future concomitant with the increase in grain production across at least some of the species' range, existing regulations are likely to limit the extent to which this can occur. Along most of the central Platte River, we have determined that groundwater sources are relatively secure, because, presently, there is a moratorium on new groundwater wells that pump more than 50 gallons per minute, and no new well permits can be issued unless the amount of consumptive water use is offset (retired elsewhere in the basin) (CPNRD 2011, pp. 3–4). Therefore, current conditions are not anticipated to worsen with respect to groundwater pumping in the central Platte Basin, which is considered to be the most degraded portion of the species' range. Also, because the sloughs along the Platte River are closely tied to surface water flows within 0.8 km (0.5 mi) of the river (Hurr 1981, p. H7), efforts to increase shortages to target flows in the Platte River under the PRRIP should maintain current conditions in sloughs along the river. Elsewhere in the Loup and Elkhorn Basins, groundwater and surface water resources are being managed by Nebraska's natural resources districts, and by State law, these areas cannot exceed the fully appropriated designation.

As part of Nebraska State law LB 962, passed by the State legislature in 2004, groundwater well permits and surface water permits are carefully managed so that river flows do not reach the over-appropriated designation, because it has been recognized that surface flows are tied to groundwater levels near the river and vice versa. Nebraska State law requires that there be a balanced use of ground and surface waters in Nebraska to ensure the long-term sustainability of these supplies (Peterson *et al.* 2008, p. 2). Limited numbers of acres are being allowed for well drilling on an annual basis in the Loup and Elkhorn Basins. However, stays are placed on the construction of new wells once a river basin is deemed fully appropriated (Ostdiek 2009, p. 2). A fully appropriated designation ((Neb. Rev. Stat. § 46–713(3) (Reissue 2004, as amended)) means that based on current groundwater and surface water usage, average streamflows are insufficient to meet the long-term demands within a basin (Peterson *et al.* 2008, p. 5). Following any fully appropriated designation, the Nebraska Department of Natural Resources (NDNR) and applicable natural resource district must create an integrated management plan to achieve a sustainable balance between water demands and supplies (Peterson *et al.* 2008, p. 5). If an area becomes over-appropriated, State law requires that the applicable natural resource district work with its stakeholders on returning the basin to a fully appropriated status (Ostdiek 2009, p. 2).

Since the Platte River caddisfly was described in 2000, no information has become available to indicate that any net loss in slough habitat has occurred as a result of groundwater pumping. At this time, the Service does not have data showing that the quantity of water has been lowered or that the current water withdrawals are impacting the Platte River caddisfly habitat or will impact the Platte River caddisfly in the near future. Declines in the groundwater table due to drought resulted in two localized caddisfly extirpations; however, the species is now found again at the type locality, and the groundwater table has since rebounded in that area. If habitat loss has occurred, we estimate that the amount has been negligible, because groundwater declines between 1950 and 2011 have occurred only within a small portion of the species' range. The Platte River caddisfly is extant in the area of the Platte River where the largest documented drops in the groundwater table have occurred. The species is also present in the area of the Platte River where there is the highest density of registered irrigation wells (UNL–SNR 2011a, entire). Elsewhere, groundwater levels have increased, possibly because of seeps that parallel the river channel (Murphy *et al.* 2004, p. 47) and groundwater recharge from lateral canals (Peterson *et al.* 2008, p. 13), and, therefore, habitat losses cannot be attributed to a declining aquifer.

Current moratoria in the Platte Basin, which includes a moratorium on new surface water diversions (NDNR 2008, entire), should prevent current conditions from worsening throughout the most degraded portion of the species' range along the central Platte River. Current State law and management by the State's various natural resources districts on the Loup and Elkhorn Rivers should maintain the groundwater table at sustainable levels in those areas. For instance, the Loup and Elkhorn River Basins are subject to limited surface water appropriations, because the NDNR has to ensure adequate flows exist in the Lower Platte Basin for endangered species, such as the pallid sturgeon (NDNR 2006, p. E–11). Overall, we have determined that groundwater withdrawal does not pose a threat to the species. However, additional stress from water demand is likely to be placed on Nebraska's river systems in the future as a result of climate change and projected increases in floods and droughts (discussed below).

Climate Change

Global climate change is a concern, because it has the potential to reconfigure the spatial distribution of species and their habitats worldwide throughout the 21st century and beyond. Our analyses under the Act include consideration of ongoing and projected changes in climate. The terms ''climate'' and ''climate change'' are defined by the Intergovernmental Panel on Climate Change (IPCC). The term ''climate'' refers to the mean and variability of different types of weather conditions over time, with 30 years being a typical period for such measurements, although shorter or longer periods also may be used (IPCC 2007a, p. 78). The term ''climate change'' thus refers to a change in the mean or variability of one or more measures of climate (e.g., temperature or precipitation) that persists for an extended period, typically decades or longer, whether the change is due to natural variability, human activity, or both (IPCC 2007a, p. 78).

Scientific measurements spanning several decades demonstrate that changes in climate are occurring, and that the rate of change has been faster since the 1950s. Examples include warming of the global climate system, and substantial increases in precipitation in some regions of the world and decreases in other regions (IPCC 2007a, p. 30; Solomon *et al.* 2007, pp. 35–54, 82–85). Results of scientific analyses presented by the IPCC show that most of the observed increase in global average temperature since the mid-20th century cannot be explained by natural variability in climate, and is ''very likely'' (defined by the IPCC as 90 percent or higher probability) due to the observed increase in greenhouse gas (GHG) concentrations in the atmosphere as a result of human activities, particularly carbon dioxide emissions from use of fossil fuels (IPCC 2007a, pp. 5–6 and figures SPM.3 and SPM.4; Solomon *et al.* 2007, pp. 21–35). Further confirmation of the role of GHGs comes from analyses by Huber and Knutti (2011, p. 4), who concluded it is extremely likely that approximately 75 percent of global warming since 1950 has been caused by human activities.

Scientists use a variety of climate models, which include consideration of natural processes and variability, as well as various scenarios of potential levels and timing of GHG emissions, to evaluate the causes of changes already observed and to project future changes in temperature and other climate conditions (e.g., Meehl *et al.* 2007, entire; Ganguly *et al.* 2009, pp. 11555, 15558; Prinn *et al.* 2011, pp. 527, 529). All combinations of models and emissions scenarios yield very similar projections of increases in the most common measure of climate change, average global surface temperature (commonly known as global warming), until about 2030. Although projections of the magnitude and rate of warming differ after about 2030, the overall trajectory of all the projections is one of increased global warming through the end of this century, even for the projections based on scenarios that assume that GHG emissions will stabilize or decline. Thus, there is strong scientific support for projections that warming will continue through the 21st century, and that the magnitude and rate of change will be influenced substantially by the extent of GHG emissions (IPCC 2007a, pp. 44–45; Meehl *et al.* 2007, pp. 760–764, 797–811; Ganguly *et al.* 2009, pp. 15555–15558; Prinn *et al.* 2011, pp. 527, 529). (See IPCC 2007b, p. 8, for a summary of other global projections of climate-related changes, such as frequency of heat waves and changes in precipitation. Also see IPCC 2011 (entire) for a summary of observations and projections of extreme climate events.)

Various changes in climate may have direct or indirect effects on species. These effects may be positive, neutral, or negative, and they may change over time, depending on the species and other relevant considerations, such as interactions of climate with other variables (e.g., habitat fragmentation) (IPCC 2007a, pp. 8–14, 18–19). Identifying likely effects often involves aspects of climate change vulnerability analysis. Vulnerability refers to the degree to which a species (or system) is susceptible to, and unable to cope with, adverse effects of climate change, including climate variability and extremes. Vulnerability is a function of the type, magnitude, and rate of climate change and variation to which a species is exposed, its sensitivity, and its adaptive capacity (IPCC 2007a, p. 89; see also Glick *et al.* 2011, pp. 19–22). There is no single method for conducting such analyses that applies to all situations (Glick *et al.* 2011, p. 3). We use our expert judgment and appropriate analytical approaches to weigh relevant information, including uncertainty, in our consideration of various aspects of climate change.

As is the case with all stressors that we assess, even if we conclude that a species is currently affected or is likely to be affected in a negative way by one or more climate-related impacts, it does not necessarily follow that the species meets the definition of an ''endangered species'' or a ''threatened species'' under the Act. If a species is listed as endangered or threatened, knowledge regarding the vulnerability of the species to, and known or anticipated impacts from, climate-associated changes in environmental conditions can be used to help devise appropriate strategies for its recovery.

The effects of climate change, such as an increase in the global average air surface temperature since 1970, are already being felt in North America and around the world (U.S. Global Change Research Program (USGCRP) 2009, pp. 9, 17). In the Rocky Mountains and Northern Hemisphere, there has been a decrease in overall snowpack cover over the past 100 years (IPCC 2007, p. 30), and the proportion of precipitation falling as snow is decreasing (USGCRP 2009, p. 43). More precipitation now falls in the form of extreme rain events (Rieman and Isaak 2010, p. 4). A decrease in annual snowpack is projected to lead to earlier spring snowmelt and runoff, reduced runoff and stream flow, decreased recharge of aquifers, an increase in drought frequency and intensity, and shorter wetland hydroperiods (USGCRP 2009, p. 45; Johnson *et al.* 2010, p. 137; Rieman and Isaak 2010, pp. 4, 6, 8). Flooding risk is also projected to increase in association with warmer winters and earlier snowmelts (Saunders and Maxwell 2005, p. 1), and summer flows are expected to be lower (USGCRP 2009, p. 46). Decreases in the amount of snowfall and earlier snowmelt in the Rocky Mountains are most likely to affect the sloughs along the Platte River, because its flows are tied to Rocky Mountain snowmelt, while Loup and Elkhorn River flows are tied to the Ogallala Aquifer and local precipitation events.

In the Great Plains, the average annual temperature has increased by 0.83 °C (1.5 °F) since the 1970s and is expected to increase 2.5 °C (4.5 °F) by 2050 (USGCRP 2009, p. 123) and between 4.2 °C (8 °F) and 5.0 °C (9 °F) by the 2080s across the range of the Platte River caddisfly (The Nature Conservancy 2007, entire). Should GHG continue at the current rate, average annual precipitation is expected to remain steady or decrease by 5 percent from today's levels across the range of the Platte River caddisfly by 2050 (The Nature Conservancy 2007, entire).

Between the 1930s and 2011, average maximum temperatures have remained steady in the Lower Platte Basin (downstream of the North Platte/South Platte confluence), while there has been an increase in average maximum temperatures in the Upper Platte Basin (upstream of the confluence) for the same time period (Stamm 2012, pers. comm.). During the same time period, there has been a wetting trend in the Lower Platte Basin and a drying trend in the Upper Platte Basin (Stamm 2012, pers. comm.). Meanwhile, average minimum temperatures increased across the entire Platte Basin between the 1930s and the decade ending in 2011 (Stamm 2012, pers. comm.). Available models for the Loup and Elkhorn River Basins demonstrate similar trends (*http://www.climatewizard.org/,* accessed June 25, 2012).

Should worldwide GHG emissions remain the same as today's levels, starting in 2030, average temperatures are projected to increase dramatically across the entire Platte Basin and continue increasing through at least 2050, and precipitation is projected to remain steady or decrease slightly compared to the decade ending in 2011 (*http://www.climatewizard.org/,* accessed June 25, 2012). Average winter, spring, and fall temperatures are projected to increase by 1.0–2.5 °C (2.7–4.5 °F), and summer temperatures will likely increase by 3.5–4.0 °C (6.3–7.2 °F) by 2050 when compared to the decade ending in 2011 (*http://www.climatewizard.org/,* accessed June 25, 2012).

Compared to the decade ending in 2011, by 2030, fall and winter precipitation is projected to remain steady or slightly decrease; spring precipitation could decline by 20–30 mm, and summer precipitation is projected to decrease by 50–60 mm for the Lower Platte Basin (*http://www.climatewizard.org/,* accessed June 25, 2012). Conditions are also expected to become hotter and drier in the Upper Platte overall (*http://www.climatewizard.org/,* accessed June 25, 2012). Because the sloughs along the Platte River receive snowmelt from the Rocky Mountains (Williams 1978, p. 1) and there is anticipated to be reduced snowpack, sloughs along the Platte River are likely to be more vulnerable to drying than sloughs along the Loup and Elkhorn Rivers during droughts.

Although some models indicate parts of the range of the Platte River caddisfly could experience wetter winters and springs, projected increases in temperature could negate the effects of increased precipitation through increases in evaporation and transpiration (evaporation of water from plant leaves), particularly in the summer months (Sorenson *et al.* 1998, pp. 344–345, 355–356; Johnson *et al.* 2010, p. 128). Increased evapotranspiration (combined effect of evaporation and transpiration) is expected to create drier conditions in the northern Great Plains, thereby increasing the frequency and severity of droughts (Sorenson *et al.* 1998, pp. 344–345; USGCRP 2009, p. 126). Overall, by 2030, the entire area will likely be hotter and drier compared to the decade ending in 2011 (Stamm 2012, pers. comm.). A hotter and drier climate represents the worst-case scenario for the Platte River caddisfly.

The Great Plains system is known for its extensive inter-annual climate variability (Ojima *et al.* 1999, p. 1445), and episodic floods and droughts are characteristic of prairie streams (Dodds *et al.* 2004, pp. 205–206) where the Platte River caddisfly occurs. Species found in Great Plains aquatic systems and in intermittent waters, such as the Platte River caddisfly, are well-suited to survive these disturbance events and environmental extremes (Lytle 2002, pp. 370, 371). However, disturbances that occur outside the time when such events normally occur could cause mortality to species such as the Platte River caddisfly.

Despite the projected increase in the frequency of droughts, projected increase in temperature, and projected decrease in hydroperiod length, the Platte River caddisfly presumably survived historical drought periods, particularly through the Dust Bowl (1930s). In 2004, following a dry spring, the type locality for the caddisfly was dry by early April, and adults were not found at that site in the fall of 2004, despite consistent emergence in the 7 years prior (Goldowitz 2004, p. 8). Platte River caddisfly adults were also not observed during surveys between 2007 and 2009 (Riens and Hoback 2008, p. 1; Vivian 2010, p. 48). In 2007 and 2009, the Platte River caddisfly was not observed at one site near Shelton, Nebraska, following the drought in central Nebraska in the early 2000s, and this site is still presumed to be extirpated (Riens and Hoback 2008, p. 1; Vivian 2010, p. 48). Following wetter years in 2008 and 2009, the caddisfly was found at the type locality in 2010 (Geluso *et al.* 2011, p. 1023), indicating the species has the ability to recolonize suitable habitats following disturbance events. Alternatively, Platte River caddisfly population levels could have decreased to undetectable levels and then rebounded following wetter conditions, as it is easy to miss individual adults when conducting surveys in the autumn (Harner 2012, pers. comm.). It is unknown if the species has recolonized the site near Shelton, Nebraska.

In normal years, the Platte River caddisfly is able to withstand normal summer dry periods through aestivation (Whiles *et al.* 1999, p. 542). The burial behavior observed during the aestivation period in the Platte River caddisfly lifecycle likely protects the species against heat and desiccation (Geluso *et al.* 2011, p. 1024), and affords the species added protection during extended droughts. Furthermore, the related *Ironoquia punctatissima* (no common name) has been found to lay its eggs in a gelatinous matrix on a dry streambed with the larvae hatching once waters return (Clifford 1966, entire). It is unknown how long the eggs of this species or the Platte River caddisfly could survive without water, but this adaptation could provide the Platte River caddisfly protection in years with shorter hydroperiods, if it does exhibit this behavior. A shorter hydroperiod would likely be more detrimental in the spring if a slough dried too early as it could prompt the caddisfly to emigrate earlier from the aquatic environment, possibly reducing the size of the larva and overall fitness of the individual (Harner 2011, pers. comm.).

Recent modeling efforts demonstrated the potential effects of shorter periods of slough inundation on the Platte River caddisfly. Using long-term well data, Harner and Whited (2011, entire) created a model that demonstrated that during a dry period in the record (2000–2003), the type locality slough held water for approximately 249 days, whereas during a wet period (1997–1999), the slough was wet for approximately 340 days (Harner and Whited 2011, p. 21). Most of this drying occurred in summer and fall, and adults were observed in 2003. Larvae were also present at the type locality in the spring of 2004; however, the slough dried more than 2 months earlier in 2004 than what had been observed in years prior, and adults were not observed in the autumn of 2004 (Goldowitz 2004, p. 9). Therefore, droughts that result in sloughs drying too early would likely be more detrimental to the caddisfly than prolonged drying into the autumn and could lead to localized extirpations.

Drought has been implicated in at least the temporary loss of two Platte River caddisfly populations, one of them being the formerly robust type locality. Following the drought, the caddisfly is now again present at the type locality (Geluso *et al.* 2011, p. 1024) and possibly could have migrated downstream to a more permanent portion of the slough during the extended drought of the early 2000s (Vivian 2011, pers. obs.). Also, the type locality and population near Shelton, Nebraska, occur farther away from the main channel of the Platte River; these areas are less likely to withstand droughts than sloughs closer to the main channel, because hydroperiod decreases with increasing distance from the river (Whiles *et al.* 1999, p. 533). Throughout the rest of the range of the Platte River caddisfly, historical aerial imagery from 2003–2006, a period of drought, indicates that the remaining 33 sloughs where the caddisfly is known to occur likely held enough water to support the caddisfly (Vivian 2012, pers. obs.). Thus, it appears that the recent drought had localized effects on a few populations but was not an issue across the range of the species.

Hotter and drier summers in the future are likely to result in increases in evapotranspiration, which may also lead to drier soil conditions (Sorenson *et al.* 1998, p. 344; Johnson *et al.* 2010, p. 134), and these conditions could impact aestivating caddisfly larvae in areas with an open canopy. However, most caddisfly populations occur in sloughs surrounded by a forest canopy, and this shade cover is likely to provide some protection against evaporative losses from soil and reduce the risk of desiccation (Vivian 2009–2010, pers. obs). The distribution and habitat of the Platte River caddisfly likely confer added protection for the species during times of drought and future climatic extremes. For instance, the species is known from the Platte, Loup, and Elkhorn Rivers, and the Loup and Elkhorn Rivers are tied more to groundwater inputs than snowmelt and precipitation. However, the sloughs along all three river systems are tied to groundwater levels to some degree, and groundwater-fed wetlands are thought to be less vulnerable to climate change than those more tied to inputs of precipitation (Winter 2000, p. 308). Because the caddisfly: (1) Presumably survived the Dust Bowl, a period of extreme dryness on the magnitude expected by climate change; (2) exhibits behaviors that enable it to survive extended dry periods; (3) spans a large geographic area that encompasses a range of annual average precipitation; and (4) is present in more than one habitat type across its range, including in areas that maintain water during droughts, we have determined that habitat impacts associated with climate change do not pose a threat to the caddisfly throughout its range.

Flooding

The frequency and intensity of floods are projected to increase with the onset of climate change (Saunders and Maxwell 2005, p. 1). However, flooding is not likely to pose a significant threat to the Platte River caddisfly and could be of some benefit. Flooding events can scour aquatic organisms downstream in some systems (Feminella and Resh 1990, p. 2083), but the velocity at which Platte River caddisfly larvae are moved downstream is unknown. The caddisfly may not be subject to scouring flows, because it is found in lentic waters. *Ironoquia punctatissima* survives flood events with discharges of 100 cm/s by seeking refuge in tangled grass roots (Williams and Williams 1975, p. 829), and the Platte River caddisfly may exhibit similar behavior. It has also been recognized that the hyporheic zone (saturated subsurface region, area where groundwater and surface water mixing occurs (del Rosario and Resh 2000)) can be important in the recolonization of benthic macroinvertebrates following flood events (Williams and Hynes 1974, p. 234; Williams and Hynes 1976, p. 266; Boulton *et al.* 1998, p. 64), and the Platte River caddisfly has been found within the hyporheic zone in all five instar stages (Whiles *et al.* 1999, p. 535; Vivian 2010, pers. obs.). After high water in May to June 2010, which is during the terrestrial stage of the Platte River caddisfly lifecycle, several live individuals were found along the slough banks at two sites immediately after flood waters had receded (Vivian 2010, p. 52). The burial behavior observed in the Platte River caddisfly may protect a certain portion of terrestrial larvae from late spring floods (Geluso *et al.* 2011, p. 1024).

Even if mortality of larvae were to occur due to scouring, flooding is likely important in the creation of backwater habitats and the subsequent increase in habitat availability to the Platte River caddisfly. Downstream larval drift is considered an important means of dispersal (Neves 1979, p. 58), but only in habitats that are connected by water (Petersen *et al.* 2004, p. 934). Caddisflies found in isolated habitats or pools are more likely to disperse via flight than by downstream larval drift, because these habitats are not connected (Williams 1996, p. 644; Petersen *et al.* 2004, p. 934). Some inhabitants of temporary wetlands may be strong fliers, such as some limnephilids (Svensson 1974, p. 174); however, observations conducted during the adult life stage suggest the Platte River caddisfly is a weak flier (Vivian 2010, p. 39). An increase in habitat availability due to flooding may increase the chances for the species to colonize new populations and link up areas of suitable habitat. Overall, flooding could increase the amount of suitable habitat for the Platte River caddisfly, and this would likely benefit the species. Because of various behaviors exhibited by the Platte River caddisfly that likely enable it to withstand flooding events, we do not consider flooding or the projected increase in flooding to pose a threat to the caddisfly.

Wetland Conversion and Modification

As previously mentioned, historical water development in the Platte Basin contributed to a decline in the active floodplain, and opened up former wet bottomlands for crop development (Currier *et al.* 1985, p. 113). Active efforts to drain wetlands to make an area suitable for row crops also historically contributed to wetland habitat loss, and there has been an estimated 73.5 percent loss of meadows within 3.5 miles of the Platte River as a result of channel narrowing and conversion for agriculture (Currier *et al.* 1985, p. 119). As of 1911, approximately 1.5 million acres of grassland had been converted to row crops in the Platte Valley (Currier *et al.* 1985, p. 113). Agriculture, including the production of row crops, is the predominant land use in Nebraska, and in recent years, a rise in ethanol production has led to an increase in grain prices, which in turn has led to an increase in the number of acres of corn planted in Nebraska (Nebraska Corn Board 2011, entire). Currently, the United States produces around 13 billion gallons of ethanol annually, but the Energy Independence and Security Act of 2007 (42 U.S.C. 17001 *et seq.*) mandates that this number increase to 36 billion gallons by 2022. Increases in the world's population also will likely lead to an increase in the demand for grain, and, in Nebraska, increasing grain production is contributing to a decline in grassland habitat.

Concurrent with the increase in the planting of more acres of corn in Nebraska, ongoing wetland modification may result from the conversion of adjacent grasslands to row crops at a limited number of sites. In 2011, we consulted with the NRCS on approximately 70 sodbuster applications received from Nebraska landowners. Sodbuster applications are submitted by individuals who desire to convert highly erodible grassland into crop production. The increase in sodbuster applications demonstrates that grassland habitats are continually vulnerable to the development of row crops.

The Platte River caddisfly was discovered in a large, grassland complex. At the type locality and Wild Rose Slough, the caddisfly uses adjacent grassland habitat in which to aestivate and complete adult emergence. However, most Platte River caddisfly populations occur in forested sloughs adjacent to the main river channel, and these areas are thought to be buffered against conversion into row crops. Sloughs adjacent to the river also appear to be too deep to be suitable for filling and conversion for agriculture, and these sloughs are also protected from fill under the U.S. Army Corps of Engineers (Corps) 404 program (discussed under Factor D). Therefore, there is not likely to be much overlap between the ongoing conversion of grassland into corn and Platte River caddisfly habitat. As a result, we do not consider wetland conversion to constitute a threat to the species.

Wetland Restoration

Several nongovernmental organizations (NGOs) are actively restoring degraded wetlands in the central Platte region (Whiles and Goldowitz 2005, p. 462); however, restored wetlands often do not equal natural wetlands in terms of floral and faunal diversity (Galatowitsch and van der Walk 1996, entire). Differences in wetland hydrology between natural and restored wetlands can affect the outcomes of restoration projects (Galatowitsch and van der Walk 1996, entire; Meyer and Whiles 2008, entire). For instance, in central Nebraska, it has been shown that some aquatic taxa are missing entirely from restored sloughs as compared to natural sloughs (Meyer and Whiles, 2008, entire).

Restored wetlands, although beneficial in providing habitat for some species, may not immediately provide suitable habitat for the Platte River caddisfly. Between 2009 and 2010, 12 restored sloughs were surveyed for the Platte River caddisfly, and only one slough had evidence of caddisfly presence (Vivian 2010, p. 46). One discarded case was found at this site, and it is unknown whether there is an extant population at this location, as no live individuals were found (Vivian 2010, p. 17). When surveyed, restoration work had occurred 4 years prior to the survey (Schroeder 2011, pers. comm.), and it is unknown if the caddisfly was present before the restoration work had occurred. One other restored slough on Crane Trust property was previously found to support the Platte River caddisfly, but the site supported a low number of individuals. This site was near the type locality (Meyer and Whiles 2008, p. 632; Meyer 2009, pers. comm.), which may represent a source population. These observations suggest that restored sloughs may not be immediately suitable to the caddisfly but could become more suitable over time as the restored sloughs become established.

To date, only one restoration project is known to have resulted in adverse impacts to the Platte River caddisfly. At Bader Park near Chapman, Nebraska, a 2007 restoration project within a slough where the caddisfly was known to occur resulted in a decline in larval densities at that site (Harms 2009, pers. comm.). The caddisfly still occurs at that site, but at a density of less than one individual per m^2 (Vivian 2010, p. 64), possibly because the slough now harbors various fish species that were not present before the restoration activities occurred. Since the Bader Park project, the Service has drafted guidelines to avoid adverse impacts to the caddisfly while conducting restoration work in sloughs where the species occurs. Overall, we think that restoration projects, if conducted with the Platte River caddisfly in mind, could provide benefits to the caddisfly in terms of an increase in the amount of available habitat, particularly in the long term. Thus, we have determined that wetland modification done as a part of restoration work does not pose a threat to the Platte River caddisfly.

Urbanization and Infrastructure

It is likely that urbanization of the Platte River valley has impacted the habitat of the Platte River caddisfly in the past. For instance, 14 bridges span the North Platte and Platte Rivers between Chapman, Nebraska, and Lewellen, Nebraska, a distance of about 380 km (240 mi) (Currier *et al.* 1985, p. 56). Bridge construction can result in localized channel narrowing, because sediments get deposited upstream of the bridge site, and scour occurs downstream of the bridge site for at least a half-mile (Simons and Associates 2000, p. 67). Underneath bridges, channel incision may occur, leading to the degradation of adjacent wetlands as incision can lead to drawdowns of alluvial aquifers (Kondolf 1997, p. 542). Bridge choke points (areas immediately upstream and downstream of bridges where the river has narrowed) can also become open to sandpit development following channel narrowing.

Beginning in the 1980s, the Federal Highway Administration (FHWA) implemented new requirements for bridges to prevent the encroachment of bridge embankments into river channels (Murphy *et al.* 2004, p. 52). Therefore, any present and future bridge projects are required to allow for sufficient room for a river to migrate and create and maintain backwater habitats. Ongoing effects to Platte River caddisfly habitat can be expected at bridge choke points, because no new habitat is being created in those areas. Recently, FHWA contacted the Service to coordinate ways to avoid and minimize impacts to slough habitat during a bridge project at Fullerton, Nebraska. No survey for the Platte River caddisfly has been conducted at that site, but coordination with FWHA demonstrates that potential adverse impacts on the caddisfly resulting from current and future bridge projects can be avoided. For bridge projects and other projects that are federally funded or authorized, the Service has the opportunity and does provide comments to addresses any concerns to listed species, candidate species, and species of concern, such as the Platte River caddisfly (see Factor D).

Along Interstate 80, several sandpit lakes were created to extract gravel used for interstate construction in the 1960s (Currier *et al.* 1985, p. 70); these past operations have been linked to wetland losses along the Platte River (Sidle *et al.* 1989, p. 99). Many of these areas now support housing developments adjacent to the river, and these developments further confine the river to its banks through bank armoring, which reduces the ability of the river to create new channels and backwater areas (Schramm *et al.* 2008, p. 238), which are important habitat for the caddisfly. The construction of Interstate 80 has also contributed to a large amount of direct wetland losses north of the Platte River as the interstate runs within 0.25 mile of the river for over 100 miles in Nebraska (Currier *et al.* 1985, p. 122).

Bank stabilization and armoring projects constructed to protect property against erosion can also cause the localized scouring of a river channel and have the potential to lead to the drying of adjacent wetlands. Bank stabilization efforts, particularly under the Corps' nationwide permitting process, are ongoing throughout Nebraska and have the potential to impact occupied sloughs. However, only one of 35 sites with the caddisfly is currently adjacent to a bank stabilization project, and this site is just upstream of a bridge and does not appear to be degrading the quality of the slough (Vivian 2009, pers. obs.). We have no evidence to indicate that bank armoring along the Platte, Loup, and Elkhorn Rivers is occurring at a large enough scale to adversely impact the caddisfly and its habitat. We do not know of any current or future bank stabilization projects that are scheduled to occur near areas where the caddisfly has been found. Most Platte River caddisfly populations are considered to be protected from bank armoring projects, as 21 out of 35 sites with the caddisfly occur on protected lands.

Overall, most impacts from urbanization and infrastructure projects largely occurred in the past and are localized in their effects. Since the Platte River caddisfly was described in 2000, there is no available information that suggests any habitat losses as a result of bridge construction, road, sandpit, or bank armoring development have occurred. We are not aware of planned projects within caddisfly habitat, and therefore we conclude that urbanization and infrastructure are not likely to pose threats to the Platte River caddisfly.

Livestock Grazing

The Platte River caddisfly and its habitat could be adversely impacted by some cattle grazing regimes. Cattle have a strong affinity for riparian areas because of the availability of water, shade, and high-quality forage (Kauffman and Krueger 1984, p. 431). Cattle can impact wetlands through the reduction of vegetation cover along wetland bottoms and shorelines, increased sedimentation and erosion, increased nutrient and organic inputs from urine and manure, increased water temperatures, and degraded water quality, particularly when cattle have unrestricted access to streams (Schulz and Leininger 1990, pp. 297–298; Fleischner 1994, pp. 631–636; Evans and Norris 1997, p. 627; Downes *et al.* 2000, p. 569; Braccia and Voshell 2006a, p. 269; Braccia and Voshell 2006b, p. 2). A reduction in vegetation cover can lead to decreases in the inputs of coarse particulate organic matter on which the Platte River caddisfly feeds (Kauffman and Krueger 1984, p. 43; Braccia and Voshell 2006a, p. 269). Despite potential impacts, we have no evidence that the species is currently being adversely affected by cattle grazing to the point that grazing would contribute to localized extirpations. Cattle grazing occurs at or adjacent to 6 of 35 Platte River caddisfly sites, and there is no evidence of grazing occurring directly in the sloughs (Vivian 2010, pers. obs.). Also, Wild Rose Slough, which is one of the six sites where grazing occurs, supports the largest known caddisfly population.

A study conducted at Wild Rose Slough to investigate the effects of grazing on the Platte River caddisfly found vegetation productivity to be lower in grazed plots than in ungrazed plots 6 months following the removal of cattle from the study site in spring 2010 (Harner and Geluso 2012, p. 391). In September 2010, fewer adult caddisflies were observed in grazed plots than in ungrazed plots, and in 2011, lower densities of aquatic caddisfly larvae were found in grazed plots than in ungrazed plots (Harner and Geluso 2012, pp. 391–392). Meanwhile, a positive relationship between vegetation productivity and larval densities was observed (Harner and Geluso 2012, pp. 391–392).

Results from the cattle grazing study demonstrated that although cattle were not allowed access to the study area in 2011, the effects of grazing on caddisfly larval densities could still be observed up to one year after grazing occurred (Harner and Geluso 2012, p. 392). These data also suggest that reduced vegetation cover contributed to decreased larval densities in intensely grazed areas within the study plots (Harner and Geluso 2012, p. 392). However, because larvae were not eliminated in grazed areas, this study demonstrates that intense grazing may not be detrimental to the caddisfly for short time periods or under a rotational grazing regime (Harner and Geluso 2012, p. 392) and that this species can likely withstand moderate amounts of grazing, particularly at sites where larval densities are relatively high. Continuous grazing in areas where the caddisfly is less abundant could contribute to localized extirpations, and the caddisfly has not been found at sites that show signs of intense grazing (e.g., more than 40 percent of the bank exposed) (Braccia and Voshell 2006a, p. 271; Vivian 2010, p. 52). However, none of the six sites with the Platte River caddisfly where grazing occurs show signs of overgrazing (Vivian 2010, pers. obs.). Therefore, we have determined that grazing is not likely to pose a threat to the caddisfly.

Pesticides and Herbicides

Corn and soybean fields dominate the river valleys of Nebraska, and both represent potential sources of pesticide exposure to the Platte River caddisfly and its habitat. Should insecticides and herbicides enter occupied habitats of the Platte River caddisfly through runoff, they have the potential to directly impact the species through mortality or indirectly through mortality of aquatic vegetation in the aquatic environment (Fleeger *et al.* 2003, entire; Liess and Von Der Ohe 2005, entire). Pesticides also may enter wetlands through groundwater inputs and could affect aquatic organisms (Spalding *et al.* 2003, p. 92). Surfactants designed to facilitate pesticide and herbicide application have also been shown to have direct and indirect effects on caddisfly larvae (Belanger *et al.* 2000, entire; Fleeger *et al.* 2003, entire, respectively).

There have been no studies to evaluate the potential effects of pesticide exposure on the Platte River caddisfly. Past studies have demonstrated mortality in other species of caddisflies exposed to pesticides (Liess and Schulz 1996, entire) and documented the absence of caddisflies from polluted waters (Ketelaars and Frantzen 1995, entire). Reduced abundances of aquatic insect species considered sensitive to poor water quality have been observed in habitat adjacent to agricultural areas (Liess and Von Der Ohe 2005, entire) that would presumably contain pesticide runoff.

Aside from agricultural runoff, one potential source of herbicides in Platte River caddisfly habitat is chemicals used for the control of exotic vegetation, such as *Phragmites.* Because of the establishment of *Phragmites* along the Platte River, efforts have been taken to control the invasive vegetation using herbicide application. In 2009, the aquatic-safe herbicide Habitat® was sprayed in areas with *Phragmites* in the main channel of the Platte River (The

Nature Conservancy 2011, entire), and it is possible that drift could cause Habitat® to enter sloughs where the caddisfly occurs. Habitat® may result in lower amounts of dissolved oxygen in sloughs as a result of plant decomposition (BASF® 2010, entire). Some spraying for *Phragmites* occurred in 2009, during the early autumn when Platte River caddisfly adults are active (Vivian 2009, pers. obs.). Lower amounts of dissolved oxygen could impact developing caddisfly eggs or reduce the amount of potentially important shade cover in areas where willow (*Salix* spp.) co-occurs with *Phragmites* (Vivian 2010, pers. obs.).

Despite potential adverse impacts to the caddisfly, there is no evidence that population declines or extirpations have occurred as a result of pesticide or herbicide exposure. Following the spraying of *Phragmites* in 2009, the Platte River caddisfly was found again at three of three sites where overlap between spraying and habitat occurred. Most Platte River caddisfly populations are also likely protected from pesticide or herbicide exposure by sufficient buffer strips. For instance, two populations located adjacent to or very near cornfields are likely protected from runoff by a tree and grass buffer of at least 40 meters (131 feet), as the larval densities at these two sites are among the highest of known populations. The 21 populations that occur on protected lands are likely protected from most spray activities typically associated with agriculture. Furthermore, the caddisfly lifecycle likely protects it from some pesticide exposure, because larvae have been observed emigrating from the water as early as mid-April before most crops are in the ground, and the majority of pesticides would enter waterways during the typical farming season in Nebraska of May through October.

Local Conservation Planning

In addition to existing regulatory mechanisms and provisions (discussed under Factor D, below), 60 percent (21 of 35) of Platte River caddisfly populations occur on nongovernmental organization or State lands that are protected for conservation or managed as wilderness areas. These conservation efforts may afford protection of Platte River caddisfly habitat now and into the future. Such examples include Nebraska's Wildlife Management Areas (WMAs) and land owned and managed by the Headwaters Corporation, the group responsible for implementing and overseeing PRRIP. To date, Headwaters has been involved in several discussions with the Service on ways to avoid adverse impacts to the caddisfly with projects in and near Platte River caddisfly habitat. Currently, three Platte River caddisfly populations occur on Headwaters lands, and these sites are likely to be protected from future development by way of a conservation easement. Two other populations occur along roadsides in areas managed by the Nebraska Department of Roads (NDOR), and the Service works with NDOR to avoid and minimize impacts to wetlands on road projects.

The Crane Trust is another entity whose lands provide protection for the Platte River caddisfly. The Trust manages 10,000 acres of land in the central Platte region that have been set aside for wildlife in perpetuity. Four Platte River caddisfly populations are known to occur on land owned by the Crane Trust, and these sites support the largest Platte River caddisfly larval densities currently known. In addition, two Platte River caddisfly populations occur on land owned by The Nature Conservancy (TNC), and the organization is aware of these populations and has taken measures to avoid adverse impacts to the species at these sites.

In areas not protected for conservation, many agencies and organizations have been kept apprised of the Platte River caddisfly and have been engaged with the Service on ways to avoid and minimize impacts to the species and its habitat. For instance, the Federal Highway Administration has coordinated with the Service on ways to avoid and minimize impacts during a bridge reconstruction project near potentially suitable habitat (where the caddisfly was thought to occur) near Fullerton, Nebraska (Vivian 2010, pers. obs.). Also, PFW has noted they are willing to consider the Platte River caddisfly in their wetland restoration work that occurs on public and private lands (Schroeder 2012, pers. comm.). In 2011, PFW and TNC involved the Service in discussions on how to avoid adverse impacts to the caddisfly during restoration work at a site on TNC property. In 2010, the Service's Nebraska Field Office held a workshop for personnel from various local, State, and Federal agencies and organizations on the Platte River caddisfly, its habitat, and survey methodology. This workshop equipped agencies outside the Service with the knowledge to be able to avoid impacts to the caddisfly and its habitat.

PRRIP is a program that affords the Platte River caddisfly protection now and into the future throughout the most degraded portion of its range. Objectives of PRRIP that may benefit the Platte River caddisfly include: (1) Preventing the need to list more basin-associated (Platte River) species under the Act; (2) offsetting through mitigation any adverse impacts of new water-related activities on Service-targeted flows in the Platte River basin (target flows are comprised of species flows and annual pulse flows, which have been identified as flows needed to maintain survival of four target species and wildlife that use the Platte River, and to maintain present channel width and keep islands unvegetated (USDOI 2006, pp. 3–11, 3–12)); (3) using available resources to manage program lands for the benefit of non-listed species of concern, like the Platte River caddisfly; (4) providing sufficient water in the central Platte River (Lexington, Nebraska to Chapman, Nebraska) for the benefit of PRRIP's target species (whooping crane, Interior least tern, piping plover, pallid sturgeon) through water conservation projects; and (5) protecting and restoring 29,000 acres of habitat in the central Platte River for the benefit of the four target species (USDOI 2006, pp., 1–3, 1–17). This agreement was put in place to specifically benefit other endangered and threatened species, but should help maintain the backwaters where the Platte River caddisfly occurs, particularly through PRRIP's goal of maintaining current flows in the central Platte River.

Overall, existing programs and organizations that manage land for conservation provide adequate protection for the species and its habitat. Proactive planning efforts with Federal, State, and local agencies, as well as nongovernmental organizations, also help to avoid and minimize impacts to the caddisfly.

Summary of Factor A

Changes in hydrology resulting from water development and its associated effects, including channel degradation and narrowing, invasive species encroachment, urbanization, cropland conversion, groundwater withdrawal, cattle grazing, climate change, pesticides, and floods and droughts, all occur or are likely to occur within the range of the Platte River caddisfly. These environmental stressors will likely continue in the future on each of the river systems where the Platte River caddisfly is known to occur. However, while these stressors are ongoing, when considered individually and collectively, we have determined that they do not pose a threat to the Platte River caddisfly.

The Platte River caddisfly has life-history traits that enable it to survive in an extreme environment, such as the

Great Plains, where climatic extremes are common. These traits are common among species that inhabit temporary (intermittent or ephemeral) wetlands and enable these species to adapt relatively quickly to changing conditions. The Platte River caddisfly can withstand habitat drying, drought, and flooding by burrowing in the soil, aestivating during a time when its habitat is most likely to go dry, inhabiting the hyporheic zone, and possibly laying its eggs in the absence of water (like *Ironoquia punctatissima*). These life history traits likely render the Platte River caddisfly well-suited to withstand future climatic changes.

We also conclude that the aforementioned stressors do not pose a threat to the species, because the Platte River caddisfly occurs in more than one habitat type and on multiple river systems. Surveys have shown that the caddisfly occupies intermittent and permanent sloughs, forested sloughs, and sloughs with an open canopy. While the type locality and intermittent sloughs most likely represent ideal Platte River caddisfly habitat, the species is found in permanent sloughs, and these may be important during times of drought, as they are likely to hold water longer and serve as a refuge during extended dry periods. Forested canopies may offer an additional source of protection against a warmer and drier climate.

Currently, available information does not indicate whether Platte River caddisfly population levels are increasing or decreasing, or if the amount of potential habitat is increasing or decreasing. Overall, we have documented that the species is more common than previously thought and likely is more abundant now than during the drought in the early 2000s. Also, an increase in surveys is likely to result in an increase in the known range of the caddisfly, given the amount of potential habitat that has yet to be surveyed. Additional survey work would likely result in populations being found on more river systems, such as the Cedar, Niobrara, and Republican Rivers in Nebraska.

Currently, the Platte River caddisfly is known from three river systems, and most of the potential threats occur along the Platte River. Historically, the species likely occupied a much greater portion of the Platte River than today. However, despite all of the water development that has occurred on the Platte River system, the caddisfly still occurs along the majority of the reach surveyed between 2009 and 2011. While ongoing degradation poses a threat to the river and the remaining slough habitat available to the caddisfly, several agencies and nongovernmental entities are working to stem future habitat losses. Therefore, conditions are not anticipated to deteriorate on the Platte River, and we consider the majority of caddisfly populations on the river to be secure.

Currently, the Loup and Elkhorn Rivers have less water development and are less degraded than the Platte River, and the best available information indicates that there is sufficient habitat available (including sloughs not yet surveyed) to sustain the Platte River caddisfly on these systems. Future changes to these river systems are anticipated to occur through increasing sodbusting activities and groundwater withdrawal; however, these activities have little overlap with Platte River caddisfly habitat, and current laws and regulations, such as Nebraska State law LB 962, limit the extent to which this can occur.

After a review of the best available information, we have determined that the present or threatened destruction, modification, or curtailment of its habitat or range does not pose a threat to the Platte River caddisfly.

Factor B. Overutilization for Commercial, Recreation, Scientific or Educational Purposes

There is no indication that the Platte River caddisfly is being over collected by hobbyists or researchers, or will be in the future. Collecting of Platte River caddisfly larvae has occurred for scientific purposes (e.g., identification, museum archiving, lab experiments, and genetic analyses), but this has been limited, and largely done at sites supporting the greatest densities of the insect (Alexander and Whiles 2000, p. 1; Vivian 2010, pp. 74–77; Geluso *et al.* 2011, p. 1022; Cavallaro *et al.* 2011, p. 5). The caddisfly is not known to have been collected for educational purposes.

Insect collectors have not been known to take Platte River caddisfly adults for their collections, likely because caddisfly adults are not as showy as other groups of insects, such as butterflies. Also, caddisfly adults are active during a narrow window (i.e., 3 weeks), and the sites where the species occurs are isolated from urban areas and difficult to access.

Summary of Factor B

There is no evidence that overutilization presents a threat to the Platte River caddisfly. Although small, isolated collections of larvae will likely continue for research purposes, we have determined that these collections do not constitute a threat to the species because, to date, these collections have only been conducted at sites with relatively high larval densities. Therefore, we conclude that the best scientific and commercial information available does not indicate that overutilization for commercial, recreational, scientific, or educational purposes is a threat to the Platte River caddisfly.

Factor C. Disease or Predation

Disease and predation play important roles in the natural dynamics of populations and ecosystems. Natural predators of the Platte River caddisfly evolved in conjunction with the caddisfly and do not normally pose a threat to the survival of the species in the absence of other threats. The Platte River caddisfly could be a prey item for predators that are commonly observed in its habitat during its aquatic, terrestrial, and adult stages. Predators of caddisflies in temporary habitats may include large aquatic insects (dragonflies, beetles), amphibians (frogs, salamanders) (Batzer and Wissinger 1996, entire; Wellborn *et al.* 1996, entire), or fish, particularly in more permanent wetlands (Wissinger *et al.* 1999, entire). Aquatic insects, amphibians, and several fish species have all been observed at sites with the Platte River caddisfly, but the sand-grained case of the Platte River caddisfly likely offers it some protection from predators in its environment, as larvae in mineral cases can better withstand crushing than larvae in cases composed of organic material (Otto and Svensson 1980, p. 857).

Despite having mineral cases that can withstand crushing, the brook stickleback (*Culaea inconstans*) readily consumed Platte River caddisfly larvae in a laboratory setting, typically after the fish removed the larvae from their cases (Cavallaro 2011, pers. comm). The brook stickleback has been found to reduce macroinvertebrate biomass in wetlands in the Western Boreal Forest (Hornung and Foote 2006, entire), and the brook stickleback has been found at five sites with the Platte River caddisfly, but these sites do not support markedly lower densities of the Platte River caddisfly. Also, the caddisfly is well camouflaged in its environment, and field trials have not been conducted to determine if the brook stickleback consumes the Platte River caddisfly in its natural environment. Furthermore, the brook stickleback has been collected upstream and downstream of the central Platte River since 1942, and from the central Platte River since 1987 and possibly earlier (Chadwick *et al.* 1997, p. 285), and the fish is considered native to

Nebraska (Fischer and Paukert 2008, pp. 372–373). Therefore, the caddisfly and stickleback have likely overlapped in their ranges prior to the discovery of the Platte River caddisfly, and there is no available information to indicate that brook sticklebacks have contributed, or are contributing, to localized extirpations of the caddisfly.

In addition to the brook stickleback, the Platte River caddisfly has been found to occur with other fish predators, including the redear sunfish (*Lepomis microlophus*), fathead minnow (*Pimephales promelas*), common carp (*Cyprinus carpio*), and largemouth bass (*Micropterus salmoides*) (Vivian 2011, p. 14). However, there is no indication that these fish predators are resulting in population declines at these sites or that these sites support lower densities of the Platte River caddisfly compared to sites without these predators. Therefore, we conclude that predation during the aquatic stage does not pose a threat to the Platte River caddisfly.

The Platte River caddisfly is likely impacted by predation in its terrestrial larval and adult stages. Several caddisfly cases have been recovered that show signs of predation possibly by ants or beetles and small mammals, such as shrews. Signs of predation include tears in the cases or holes at the posterior end of the case (Vivian 2009, pers. obs.). However, the sand-grained larval case likely offers some protection to terrestrial larvae through camouflage and defense against crushing (Otto and Svensson 1980, p. 857). Adults are likely eaten by migratory birds and waterfowl (Whiles *et al.* 1999, p. 543). At sites with relatively low numbers of caddisflies, predation on larvae in the terrestrial stage and adults could pose a threat to this species in the future. However, there is no available evidence that the predation of terrestrial larvae or adults is impacting populations of the Platte River caddisfly. Therefore, we do not consider predation during the terrestrial larval and adult life stages to constitute a threat to the species.

Given the small number of individuals at some sites, it is possible that disease could pose a threat to the Platte River caddisfly. However, we have no evidence to suggest that any disease is currently affecting the Platte River caddisfly.

Summary of Factor C

Although the Platte River caddisfly is likely a prey item for various predators (native and non-native), there is no evidence that suggests current levels of predation or disease on the Platte River caddisfly are currently affecting populations or will in the future. Therefore, we conclude that the best scientific and commercial information available indicates that neither disease nor predation poses a threat to the Platte River caddisfly.

Factor D. Inadequacy of Existing Regulatory Mechanisms

Existing Federal, State, and local laws; regulations; and policies that may provide a moderate level of protection for the Platte River caddisfly and its habitat include: The National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), the Fish and Wildlife Coordination Act (FWCA; 16 U.S.C. 661 *et seq.*), section 404 of the Clean Water Act (CWA; 33 U.S.C. 1251 *et seq.*), and Nebraska State law LB 962.

For all federally funded or authorized projects, Federal actions, or projects occurring on Federal lands, an Environmental Assessment or Environmental Impact Statement is required under NEPA. NEPA is a procedural statute that requires federal agencies to consider the environmental impacts of a proposed project and reasonable alternatives to project actions. It also requires full disclosure of all direct, indirect, and cumulative environmental impacts of the project. However, NEPA does not require protection of a particular species or its habitat, nor does it require the selection of a particular course of action. Therefore, NEPA may only provide a limited amount of protection to the caddisfly in situations where NEPA was applicable.

NEPA does not apply to non-Federal projects on private lands or privately funded projects, and about 34 percent (12 of 35 sites) of the known populations of the Platte River caddisfly occur on private lands or near road ditches. Projects occurring on public hunting grounds or access areas, land under the management of conservation groups, and roadsides often receive Federal dollars, and, therefore, NEPA would apply to 66 percent of sites with the Platte River caddisfly. However, as stated above, NEPA does not provide protection to species. There is no available information regarding any development projects, private or otherwise, occurring within Platte River caddisfly habitat. Overall, we conclude that NEPA would provide some protection to the Platte River caddisfly in the event that development projects and slough habitat overlap in the future.

FWCA requires that proponents of Federal water development projects, including those involving stream diversion, channel deepening, impoundment construction, and/or general modifications to water bodies, consider their impacts to fish and wildlife resources. FWCA also requires that impacts to water bodies be offset through mitigation measures developed in coordination with the Service and the appropriate State wildlife agency. FWCA would provide adequate protection to the Platte River caddisfly in the event that water development projects and Platte River caddisfly habitat overlap. However, there is currently no information regarding any current or planned water development projects within the range of the Platte River caddisfly. Should future water development projects occur within Platte River caddisfly habitat, we have determined that FWCA would adequately protect the caddisfly and its habitat, because the Service would be provided an opportunity to address potential concerns with fish and wildlife resources, including the caddisfly.

The U.S. Army Corps of Engineers (Corps), acting under the authority of section 404 of the CWA, regulates the placement of fill materials into waters under Federal jurisdiction, including the filling of wetlands. Historically, according to a 1977 Corps definition, waters under Federal jurisdiction applied to ''waters of the United States,'' and included intermittent streams, wetlands, sloughs, prairie potholes, and wet meadows. This definition provided protection to nearly all wetlands in the United States (Petrie *et al.* 2001, p. 1). However, two Supreme Court rulings in 2001 and 2006 limited Federal authority under the CWA to regulate certain isolated wetlands (*Solid Waste Agency of Northern Cook County* v. *U.S. Army Corps of Engineers,* 531 U.S. 159, (*SWANCC*) (2001) and *Rapanos* v. *United States,* 547 U.S. 715 (2006)). Following the *SWANCC* and *Rapanos* decisions, it was unknown how the Corps would interpret its jurisdictional lines (Petrie *et al.* 2001, p. 3). According to 2008 guidance documents of the Corps and Environmental Protection Agency, the CWA applies to wetlands adjacent to navigable waters of the United States. This means wetlands must have an unbroken surface or shallow sub-surface connection to jurisdictional waters (even if the connection is intermittent), be physically separated from jurisdictional waters by manmade dikes or barriers or natural river berms, or be in close proximity to navigable waters, supporting the science-based inference that such wetlands have an ecological interconnection with jurisdictional waters.

Currently, most Corps permit applications in central Nebraska are for restoration work along the Platte River by groups such as the PFW, NGPC, and Ducks Unlimited (Moeschen 2011, pers. comm.). Typically, the Service is made aware of these projects and has educated restoration proponents on the Platte River caddisfly and its habitat so as to avoid potential adverse impacts to extant populations. Also, sand and gravel mining operations, if occurring within wetlands along the river, would require a Corps permit. A Corps permit would provide the Service with adequate opportunity to address concerns regarding fish and wildlife resources, and any issued permit would require mitigation (offset impacts, restore area of equal habitat value) at a minimum ratio of 1:1 (Corps 2005, p. 18). Furthermore, the Corps has been kept apprised of all sites where the caddisfly occurs, and two Corps representatives attended a workshop in 2010 that educated various agency personnel on the Platte River caddisfly and its habitat.

Most sloughs that support a Platte River caddisfly population occur in areas directly connected to or adjacent to the main channel of the Platte, Loup, and Elkhorn Rivers. Adjacency under CWA is easily determined for these sloughs. Four of the 35 sites occur in more off-channel areas, and adjacency for these sloughs may not be as easily determined. Despite occurring in more off-channel areas, these four sloughs still likely receive protection from fill. For instance, two sites on the Elkhorn River occur along roadsides, and FHWA and the Nebraska Department of Roads notifies the Service when work within or near wetland areas is scheduled to occur. If these areas become subject to fill activities in the future, the Service would have an opportunity to recommend ways to avoid and minimize impacts to the wetlands. Meanwhile, Wild Rose Slough and the type locality on Crane Trust property are protected from fill activities by way of a conservation easement. Overall, 23 of 35 caddisfly populations occur within WMAs or lands managed for conservation or roadsides and are protected from most fill and development activities in wetlands (with the exception of restoration work). Thus, the CWA adequately protects the Platte River caddisfly and its habitat from fill and development activities now and into the future, because: (1) The CWA would apply to the majority of populations should such activities occur in the future; (2) 66 percent of populations occur in protected areas; and (3) the Service and Corps have engaged in proactive planning efforts so as to avoid impact to the caddisfly and its habitat.

Several governmental and nongovernmental agencies are working to secure water rights for environmental benefits and endangered and threatened species in Nebraska; however, instream flow appropriations do not ensure a stream will always contain water (Czaplewski 2009, entire). Instream appropriations only ensure that the minimum flow needs of species will be met before any future water development projects can occur (Czaplewski 2009, entire). Therefore, in times of drought and low flows, pre-existing water rights will be met before the minimum flow needs of fish and wildlife species are met. However, we previously determined that the Platte River caddisfly can withstand drought to a certain degree even when coupled with existing water development projects.

The Central Platte Natural Resources District (CPNRD) and NGPC each have protected instream flow rights along the Platte River; however, these are not enough to cover ''target flows'' outlined by the PRRIP (NGPC 2008, p. 7). The PRRIP is working to address shortages to target flows by managing an environmental account from reservoirs along the Platte River in Nebraska and leasing water rights from willing landowners. The PRRIP also has a goal of offsetting new depletions to the system that occurred after July 1997 and restoring flows to the river by 130,000 to 150,000 acre-feet per year between 2007 and 2019. Efforts to augment current Platte River flows should provide adequate protection for the Platte River caddisfly populations along the Platte River, possibly with the exception of the type locality and Wild Rose Slough. For instance, as discussed under Factor A, even with more water in the river channel, the type locality and Wild Rose Slough may not become inundated or remain inundated long enough to meet the needs of the Platte River caddisfly (Harner and Whited 2011, entire). Furthermore, the PRRIP seeks to augment sediment inputs to the central Platte River, which should also help prevent future channel degradation from impacting sloughs where the caddisfly occurs.

Passed in 2004, Nebraska State law LB 962 requires the Nebraska Department of Natural Resources to work with each of the 23 Nebraska Natural Resource Districts (NRDs) to address surface water and groundwater appropriations in fully or over-appropriated basins. Basins designated as fully appropriated are required to place a moratorium on any new groundwater wells until an integrated management plan to address depletion issues can be developed (NGPC 2008, p. 18). The law does not prevent new groundwater wells from being drilled outside fully appropriated basins, such as some areas on the Loup River. Future groundwater well construction could contribute to some future loss in slough habitat on the Loup and Elkhorn Rivers as has been observed on the Platte, leading to future caddisfly habitat loss. However, we estimate that the amount of habitat that could be impacted is small, because new development is done on a limited basis, and each NRD monitors groundwater and stream levels annually to ensure water resources are not being depleted.

Summary of Factor D

Given that 66 percent of Platte River caddisfly populations occur on protected lands, and current laws and regulations provide adequate protection for slough habitat on private lands should future activities occur within slough habitat, we conclude that the inadequacy of existing regulatory mechanisms does not pose a threat to the Platte River caddisfly.

Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence

Small Population Size

Small insect populations may be vulnerable to extirpation as a result of random genetic drift, naturally occurring stochastic events, or demographic stochasticity (Pimm *et al.* 1988, p. 757; Boyce 1992, p. 482; Purvis *et al.* 2000, p. 1949; Melbourne and Hastings 2008, p. 3). Extinction of small populations is also likely to happen more quickly than extinction of larger populations due to inbreeding (Brook *et al.* 2002, pp. 3–4), and this could affect the Platte River caddisfly in the future.

We do not know the true population size of any of the known Platte River caddisfly populations, but we do have information on the numbers of individuals at 18 sites with the caddisfly. We previously discussed that some sites support relatively low densities of the Platte River caddisfly, but determined that finding low numbers of individuals at a site is typical of the *Ironoquia* genus. We also determined that varying population levels across the range of the Platte River caddisfly likely represent the norm for the species, and varying population densities are likely a product of the species occurring in more than one type of habitat. Also, because of various life history traits that enable the caddisfly to survive in temporary habitats, the caddisfly is more able to withstand stochastic events than species less tolerant of extreme weather events. Therefore, we have determined that small population size does not pose a threat to the caddisfly.

Limited Dispersal Ability

The adult stage likely represents the most probable means of dispersal (Williams 1996, p. 644; Petersen *et al.* 2004, p. 934) for the Platte River caddisfly. Poor adult flight capabilities and a short window of adult activity indicate that Platte River caddisfly dispersal to new habitats and between populations is likely a rare event. Observations when adults are active have found individuals underneath vegetation and on or near the ground, particularly when it is windy, and above vegetation or immediately adjacent to standing water in slough habitat during more favorable weather conditions (Vivian 2009, pers. obs.; Vivian 2010, pers. obs.; Geluso *et al.* 2011, p. 1024). When active, the caddisfly has only once been observed to fly more than 10 meters, and wind seemed to greatly influence that individual (Vivian 2009, pers. obs.; Vivian 2010, pers. obs.). Platte River caddisfly adults are also active for a short period of time (i.e., about 2 to 3 weeks) (Whiles *et al.* 1999, p. 539; Goldowitz 2004, p. 6), and this likely limits the species' dispersal ability compared to other caddisflies with longer adult lifespans (Svensson 1972; entire) and could reduce the amount of genetic variability within populations.

Genetics techniques can be used to assess a species' dispersal ability in the absence of direct observations of significant dispersal events (Kelly *et al.* 2002, p. 1642). Amplified Fragment Length Polymorphism has been used to determine the amount of genetic similarity among five caddisfly populations from the Platte, Loup, and Elkhorn Rivers (Cavallaro *et al.* 2011, entire). It was found that one Platte River caddisfly population from near Sutherland, Nebraska, and one near Kearney, Nebraska, had more genetic similarity to each other than the population near Kearney did to a population near Gibbon, Nebraska, despite the closer proximity of Kearney and Gibbon. Also, the population near Gibbon was found to be more closely related to the population near Loup City, Nebraska, even though Loup City is farther from Gibbon than Kearney (~21 km or 13.1 mi) (Bunn and Hughes 1997, p. 341; Cavallaro *et al.* 2011, pp. 12, 15). The Elkhorn River population tested was found to be the most dissimilar from all other populations (Cavallaro *et al.* 2011, p. 7), but this may be more a product of geographic isolation as opposed to habitat fragmentation. It was also established that there is a low amount of gene flow among existing Platte River caddisfly populations and more intra-population variation than inter-population variation (Cavallaro *et al.* 2011, pp. 6–7).

The amount of genetic variability observed in the Platte River caddisfly (Cavallaro *et al.* 2011, p. 7) is similar to what has been observed in the caddisfly *Wormaldia tagananana,* which is identified as having a limited range and presumed limited dispersal ability (Kelly *et al.* 2002, p. 1646). Low gene flow between Platte River caddisfly populations further corroborates that the caddisfly has a limited ability to disperse to new habitats (e.g., restored sloughs, sites that were previously extirpated), and that successful dispersal to new habitats likely depends upon just a few individuals (Schmidt *et al.* 1995, p. 154; Cavallaro *et al.* 2011, pp. 6–7).

Although it has been identified that the Platte River caddisfly is a poor disperser, this is a natural life-history trait. This behavior would be detrimental to the species if the existing populations remained isolated from one another. However, we have not identified that habitat loss is presently occurring to the extent that the fragmentation of Platte River caddisfly populations poses a threat to the species. While sloughs on the different river systems and on both sides of the 155-km (93-mi) distribution gap between Hershey and Elm Creek, Nebraska, are isolated from one another, there is evidence of gamete (male and female reproductive cells) exchange across river systems given the similarity between the sites near Gibbon and Loup City and between Kearney and Sutherland. Furthermore, there have been live individuals or cases found at two restored sites. These observations indicate that there is a limited amount of dispersal occurring within relatively short time periods across short distances.

Summary of Factor E

In summary, although small population size and limited dispersal ability have the potential to adversely impact the Platte River caddisfly, there is no evidence that this is occurring or is likely to occur in the near future. For instance, there are no known caddisfly population extirpations that have occurred as a result of small population size. We previously established that the Platte River caddisfly has the ability to recolonize sloughs following stochastic events and is well adapted to the environmental extremes found in the Great Plains. Therefore, we conclude that other natural or manmade factors do not pose a threat to the species.

Cumulative Impacts

Some of the threats discussed in this finding can work in concert with one another to cumulatively create situations that will impact the Platte River caddisfly beyond the scope of each individual threat. For example, as mentioned under Factor A, the impacts of water development on Platte River caddisfly habitat could be exacerbated by the effects of drought and the projected increases in drought resulting from climate change. In the absence of water development projects across the landscape, the Platte River caddisfly is naturally tolerant of drought because of its semi-terrestrial lifecycle and ability to recolonize sloughs once they become inundated again following extended dry periods. However, in the presence of water development, projects that remove water from the Platte, Loup, and Elkhorn Rivers have the potential to reduce the amount of available habitat across the landscape to the point that, during drought, enough refugia may not be available to sustain existing populations. Also, because of climate change, the frequency of droughts is expected to increase, and this will likely be exacerbated by ongoing water development. Water development has the ability to exacerbate the effects of drought (climate change-related or otherwise), because less water is flowing through the system than what there would be in the absence of water development. Future, extreme droughts and climate change are also expected to facilitate the spread of non-native vegetation, and this could result in a loss in habitat due to the encroachment of exotic vegetation in sloughs. Because of these relationships, we will analyze the cumulative impact of drought (as a result of climate change), water development (human-caused water reduction), and invasive species.

Water Development, Drought, and Invasive Species

As mentioned previously, under normal conditions and otherwise, the Platte River caddisfly has the ability to withstand drought, because it enters into a dormant phase during the typical summer dry period. However, extreme drought can adversely impact the caddisfly to the point that it results in localized extirpations. For instance, extreme drought resulted in the extirpation of the type locality and one site near Shelton, Nebraska, in the early 2000s. The species has since recolonized the type locality. The Shelton site has not been surveyed since 2009, but it is possible the Platte River caddisfly has recolonized this area. This indicates that there was likely sufficient habitat available near the type locality during the drought to serve as refugia for the caddisfly, and that within a short period of time following disturbance, the species founded new populations in previously occupied habitat.

The drought in the early 2000s occurred during a time when water development projects, such as dams and diversions, were prevalent across the landscape, particularly along the Platte River. The Platte River is considered to be the most degraded portion of the range of the caddisfly, but no new, large water projects have been implemented since 1956. Under current laws and regulations, we anticipate that current conditions with respect to water development are not anticipated to deteriorate along the Platte River or appreciably diminish on the Loup and Elkhorn Rivers.

The caddisfly has already been shown to withstand the combined effects of extreme drought and water-related impacts to its habitat. The species is also still present following the proliferation of invasive species along the Platte River during the drought in the early 2000s. Meanwhile, there are no new, large-scale water development projects planned within the range of the caddisfly. Therefore, the amount of habitat available to the caddisfly is not anticipated to greatly diminish because of water development now or into the future. While future, extreme droughts could result in extirpations of the caddisfly at a local scale, from examining satellite imagery to identify slough habitat, we find there is sufficient habitat available surrounding current populations to serve as refugia for the species during drought. Thus, there is no information to suggest that future, extreme droughts resulting from climate change and current water development projects will reduce the ability of existing caddisfly populations to sustain themselves under a warmer and drier climate.

We previously identified that at three Platte River caddisfly sites along the Platte River, *Phalaris arundinacea* (reed canarygrass) may encroach enough in the future to contribute to the extirpation of the caddisfly at these locations. There is no evidence that suggests *Phalaris arundinacea* is resulting in habitat loss at the remaining 32 sites where the species occurs. Because of the current small number of sites affected by invasive species (3 of 35), and our inability to predict the future effects of invasive species on other caddisfly sites, we do not find that invasive species pose a threat to the species now or in the future.

Finding

As required by the Act, we considered the five factors in assessing whether the Platte River caddisfly is endangered or threatened throughout all of its range. We examined the best scientific and commercial information available regarding the past, present, and future threats faced by the Platte River caddisfly. We reviewed the petition, information available in our files, other available published and unpublished information, and we consulted with recognized caddisfly, slough, and hydrology experts and other Federal, State, and nongovernmental entities. On the basis of the best scientific and commercial information available, we find that the Platte River caddisfly is not in danger of extinction (endangered species) now or likely to become an endangered species within the foreseeable future (threatened species), throughout all or a significant portion of its range. Therefore, we find that listing the Platte River caddisfly as an endangered or threatened species is not warranted throughout its range at this time.

The Platte River caddisfly is currently known from 35 locations across three river systems, and the number of populations would most likely increase with additional survey efforts, because potentially suitable habitat has been identified but has not been surveyed. Meanwhile, with the exception of the type locality, there is a lack of information on population trends. It appears that the caddisfly naturally occurs at varying densities depending on habitat type and may even be classified as a habitat generalist. Because the species occurs in more than one habitat type on three different river systems, the caddisfly is well-represented across the landscape and is resilient to the various stressors present throughout its range.

In this finding, we identified a number of potential stressors under Factor A. The stressor most likely to constitute a threat to the Platte River caddisfly and its habitat in the future is landscape-level changes in hydrology. The Platte River is one of the most managed river systems in the United States and contains several impoundments, diversions, and groundwater withdrawals that have resulted in hydrological and morphological changes to the floodplain. The dewatering of the Platte River likely resulted in historical losses of Platte River caddisfly habitat. Nonetheless, we have established that most remaining populations are likely to remain adequately protected across this portion of the species' range because of programs, such as PRRIP and PFW, and the existence of protected areas where many Platte River caddisfly populations occur. Although ongoing and future Platte River channel degradation could potentially affect the Platte River caddisfly and its habitat in the future, particularly at the Crane Trust, restoration efforts are ongoing along the central Platte River to stem this trend. These efforts should protect caddisfly populations along the Platte River, where most stressors are concentrated, now and into the future.

Climate change is a concern and is likely to render the range of the Platte River caddisfly hotter and drier. Nonetheless, we have determined that the species should withstand future climatic changes because of various life-history traits that are common among semi-terrestrial caddisflies and because of the distribution of its habitat across the landscape. We have determined that the present or threatened destruction, modification, or curtailment of its habitat or range (Factor A) is not a threat to the Platte River caddisfly at this time.

We have determined that overutilization for commercial, recreational, or scientific use (Factor B) is not a threat to the species at this time. Neither disease nor predation (Factor C) is known or expected to be a threat to the species. We have determined that the inadequacy of existing regulatory mechanisms (Factor D) is not a threat to the Platte River caddisfly, and that regulatory mechanisms currently in place provide protection to the species. Regarding other natural or manmade factors affecting its continued existence (Factor E), we do not consider small population size or limited dispersal ability to constitute a threat to the species. The available information does not indicate that the caddisfly is being impacted genetically, or in any other way, as a result of small population size or limited dispersal ability, or that it will become an endangered or threatened species in the foreseeable future due to stochastic events. We have also examined the cumulative impact of various stressors acting together and whether those pose a threat to the caddisfly. We have determined that, when examined together, the cumulative impact of various stressors does not pose a threat to the caddisfly.

Significant Portion of the Range

Having determined that the Platte River caddisfly is not an endangered or threatened species throughout its range, we must next consider whether there are any significant portions of its range where the species is in danger of extinction or is likely to become an endangered species in the foreseeable future. The Act defines ''endangered species'' as any species which is ''in danger of extinction throughout all or a significant portion of its range,'' and ''threatened species'' as any species which is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The phrase ''significant portion of its range'' (SPR) is not defined by the statute, and we have no regulation governing SPR.

We interpret the phrase ''significant portion of its range'' in the Act's definitions of ''endangered species'' and ''threatened species'' to provide an independent basis for listing; thus, there are two situations (or factual bases) under which a species would qualify for listing: A species may be an endangered or threatened species throughout all of its range; or a species may be an endangered or threatened species in only a significant portion of its range. If a species is in danger of extinction throughout an SPR, the species is an ''endangered species.'' The same analysis applies to ''threatened species.'' Based on this interpretation and supported by existing case law, the consequence of finding that a species is an endangered or threatened species in only a significant portion of its range is that the entire species will be listed as an endangered or threatened species, respectively, and the Act's protections will be applied across the species' entire range. Because ''significant portion of its range'' provides an independent basis for listing and protecting the entire species, we next turn to the meaning of ''significant'' to determine the threshold for when such an independent basis for listing exists.

Although there are potentially many ways to determine whether a portion of a species' range is ''significant,'' the significance of the portion of the range should be determined based on its biological contribution to the conservation of the species. For this reason, we describe the threshold for ''significant'' in terms of an increase in the risk of extinction for the species. We conclude that a biologically based definition of ''significant'' best conforms to the purposes of the Act, is consistent with judicial interpretations, and best ensures species' conservation. Thus, as explained further below, a portion of the range of a species is ''significant'' if its contribution to the viability of the species is so important that without that portion, the species would be in danger of extinction.

We evaluate biological significance based on the principles of conservation biology using the concepts of redundancy, resiliency, and representation. *Resiliency* describes the characteristics of a species and its habitat that allow it to recover from periodic disturbance. *Redundancy* (having multiple populations distributed across the landscape) may be needed to provide a margin of safety for the species to withstand catastrophic events. *Representation* (the range of variation found in a species) ensures that the species' adaptive capabilities are conserved. Redundancy, resiliency, and representation are not independent of each other, and some characteristic of a species or area may contribute to all three. For example, distribution across a wide variety of habitat types is an indicator of representation, but it may also may indicate a broad geographic distribution contributing to redundancy (decreasing the chance that any one event affects the entire species), and the likelihood that some habitat types are less susceptible to certain threats, contributing to resiliency (the ability of the species to recover from disturbance). None of these concepts is intended to be mutually exclusive, and a portion of a species' range may be determined to be ''significant'' due to its contributions under any one or more of these concepts.

We determine if a portion's biological contribution is so important that the portion qualifies as ''significant'' by asking whether *without that portion,* the representation, redundancy, or resiliency of the species would be so impaired that the species would have an increased vulnerability to threats to the point that the overall species would be in danger of extinction (i.e., would be ''an endangered species''). Conversely, we would not consider the portion of the range at issue to be ''significant'' if there is sufficient resiliency, redundancy, and representation elsewhere in the species' range that the species would not be in danger of extinction throughout its range if the population in that portion of the range in question became extirpated (extinct locally).

We recognize that this definition of ''significant'' (a portion of the range of a species is ''significant'' if its contribution to the viability of the species is so important that without that portion, the species would be in danger of extinction) establishes a threshold that is relatively high. On the one hand, given that the consequences of finding a species to be an endangered or threatened species in an SPR would be listing the species throughout its entire range, it is important to use a threshold for ''significant'' that is robust. It would not be meaningful or appropriate to establish a very low threshold whereby a portion of the range can be considered ''significant'' even if only a negligible increase in extinction risk would result from its loss. Because nearly any portion of a species' range can be said to contribute some increment to a species' viability, use of such a low threshold would require us to impose restrictions and expend conservation resources disproportionately to achieve conservation benefits. This would result in the listing being rangewide, even if only a portion of the range of minor conservation importance to the species is imperiled. On the other hand, it would be inappropriate to establish a threshold for ''significant'' that is too high. This would be the case if the standard were, for example, that a portion of the range can be considered ''significant'' only if threats in that portion result in the entire species' being currently endangered or threatened. Such a high bar would not give the SPR phrase independent meaning, as the Ninth Circuit held in *Defenders of Wildlife* v. *Norton,* 258 F.3d 1136 (9th Cir. 2001).

The definition of ''significant'' used in this finding carefully balances these concerns. By setting a relatively high threshold, we minimize the degree to which restrictions will be imposed or resources expended that do not contribute substantially to species conservation. But we have not set the threshold so high that the phrase ''in a significant portion of its range'' loses independent meaning. Specifically, we have not set the threshold as high as it was under the interpretation presented by the Service in the *Defenders* litigation. Under that interpretation, the portion of the range would have to be so important that current imperilment there would mean that the species would be *currently* imperiled everywhere. Under the definition of ''significant,'' the portion of the range need not rise to such an exceptionally high level of biological significance. (We recognize that if the species is imperiled in a portion that rises to that level of biological significance, then we should conclude that the species is in fact imperiled throughout all of its range, and that we would not need to rely on the SPR language for such a listing.)

Rather, under this interpretation we ask whether the species would be an endangered species everywhere without that portion, i.e., if that portion were completely extirpated. In other words, the portion of the range need not be so important that even the species being in danger of extinction in that portion would be sufficient to cause the species in the remainder of the range to be an endangered species; rather, the *complete extirpation* (in a hypothetical future) of the species in that portion would be required to cause the species in the remainder of the range to be an endangered species.

The range of a species can theoretically be divided into portions in an infinite number of ways. However, there is no purpose to analyzing portions of the range that have no reasonable potential to be significant or to analyzing portions of the range in which there is no reasonable potential for the species to be an endangered or threatened species. To identify only those portions that warrant further consideration, we determine whether there is substantial information indicating that: (1) The portions may be ''significant,'' *and* (2) the species may be in danger of extinction there or likely to become so within the foreseeable future. Depending on the biology of the species, its range, and the threats it faces, it might be more efficient for us to address the significance question first or the status question first. Thus, if we determine that a portion of the range is not ''significant,'' we do not need to determine whether the species is an endangered or threatened species there; if we determine that the species is not endangered or threatened in a portion of its range, we do not need to determine if that portion is ''significant.'' In practice, a key part of the determination that a species is in danger of extinction in a significant portion of its range is whether the threats are geographically concentrated in some way. If the threats to the species are essentially uniform throughout its range, no portion is likely to warrant further consideration. Moreover, if any concentration of threats to the species occurs only in portions of the species' range that clearly would not meet the biologically based definition of ''significant,'' such portions will not warrant further consideration.

To determine whether the Platte River caddisfly could be considered an endangered or threatened species in a ''significant portion of its range'', we reviewed the best scientific information with respect to the geographic concentration of threats and the significance of portions of the range to the conservation of the species. We first evaluated whether substantial information indicated (i) the threats are so concentrated in any portion of the species' range that the species may be currently in danger of extinction in that portion; and (ii) if so, whether those portions may be significant to the conservation of the species. Our rangewide review of the species concluded that the Platte River caddisfly is not an endangered or threatened species. As described above, to establish whether any areas may warrant further consideration, we reviewed our analysis of the five listing factors to determine whether any of the potential threats identified were so concentrated among the 35 populations that some portion of the range of the Platte River caddisfly may be in danger of extinction now or in the foreseeable future.

We found that most potential threats evaluated in this rule were concentrated on the Platte River, and we have determined that these potential threats, including but not limited to: landscape level changes in hydrology, invasive species, climate change, drought, flooding, grazing, inadequacy of existing regulatory mechanisms, and poor dispersal ability, are not resulting in current losses of slough habitat or losses of any of the 28 populations of the Platte River caddisfly along the Platte River, nor are they likely to do so in the foreseeable future. In addition, we find that the Platte River portion of the range of the caddisfly is not endangered or threatened because of existing programs and entities that are striving to protect current channel conditions. There is also no information to indicate that the potential threats analyzed under the five factors are contributing to a decline in the number of Platte River caddisfly populations or amount of slough habitat available along the central Platte River. For instance, we analyzed projected increases in the frequency of droughts in central Nebraska and how this could impact the Platte River caddisfly and its habitat. We also considered how the effects of climate change may be compounded by current levels of water development and have determined that these threats are not likely to pose a threat to the Platte River caddisfly across its range. Therefore, based on our review, the available information does not indicate that any of the potential threats we evaluated in all the factors under the Act were so concentrated in any portion of the species' range as to find that the Platte River caddisfly may currently be in danger of extinction in that portion of its range. Because we find that the Platte River caddisfly is not an endangered species in any portion of its range now or in the foreseeable future, we need not address the question of whether any portion may be significant.

Conclusion

Our review of the information pertaining to the five factors does not support the assertion that there are threats acting on the species or its habitat that have rendered the Platte River caddisfly to be in danger of extinction or likely to become so in the foreseeable future, throughout all or a significant portion of its range. Therefore, listing the Platte River caddisfly as an endangered or threatened species under the Act is not warranted at this time.

We request that you submit any new information concerning the status of, or threats to, the Platte River caddisfly to our Nebraska Field Office (see **ADDRESSES**) whenever it becomes available. New information will help us monitor the Platte River caddisfly and encourage its conservation. If an emergency situation develops for the Platte River caddisfly or any other species, we will act to provide immediate protection.

References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Nebraska Field Office (see **ADDRESSES**).

Authors

The primary authors of this notice are the staff members of the Nebraska Field Office.

Authority

The authority for this action is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: August 20, 2012.

Benjamin N. Tuggle,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2012–21352 Filed 8–29–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

RIN 0648–XA975

Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish Fisheries in the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public scoping meeting for an environmental impact statement; request for written comments.

SUMMARY: NMFS, in coordination with the North Pacific Fishery Management Council (NPFMC), will hold a public scoping meeting and accept written comments from the public to determine the issues of concern; the appropriate range of management alternatives; and the direct, indirect, and cumulative impacts to be addressed in the Environmental Impact Statement (EIS) for the Steller Sea Lion Protection Measures for the Groundfish Fisheries in the Bering Sea and Aleutian Islands Management Area (BSAI). The EIS is being prepared in accordance with the National Environmental Policy Act of 1969 (NEPA). The proposed action would restrict groundfish fishing in the BSAI to ensure the groundfish fisheries are not likely to result in jeopardy of continued existence or adverse modification or destruction of designated critical habitat (JAM) for the western distinct population segment (DPS) of Steller sea lions. The western DPS of Steller sea lions is listed as endangered under the Endangered Species Act (ESA), and NMFS must ensure that the groundfish fisheries are not likely to result in JAM for this DPS. NMFS intends to work with stakeholders to develop fisheries restrictions that avoid the likelihood of JAM and minimize the potential economic impact on the fishing industry to the extent practicable while meeting the requirements of the ESA. The analysis in the EIS will determine the impacts to the human environment resulting from this proposed action and the alternatives.

DATES: Written comments must be received by October 15, 2012. A scoping meeting will be held on Tuesday, October 2, 2012, from 5:30 to 7:30 p.m., Alaska local time.

ADDRESSES: The scoping meeting will be held in the Dillingham/Katmai room at the Hilton Hotel, 500 West 3rd Street, Anchorage, AK.

You may submit comments on this action, identified by NOAA–NMFS–2012–0013, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal *www.regulations.gov.* To submit comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter NOAA–NMFS–2012–0013 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Submit a Comment'' icon on that line.
- *Mail:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.
- *Fax:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Fax comments to 907–586–7557.
- *Hand delivery to the Federal Building:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Deliver comments to 709 West 9th Street, Room 420A, Juneau, AK.
- Hand delivery during the October 2, 2012 scoping meeting to Melanie Brown, NMFS.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

Electronic copies of the 2010 environmental assessment and biological opinion prepared for the Steller sea lion protection measures are available from *http://www.regulations.gov* or from the NMFS Alaska Region Web page at *http://alaskafisheries.noaa.gov/sustainablefisheries/sslpm/.*

FOR FURTHER INFORMATION CONTACT: Melanie Brown, (907) 586–7228.

SUPPLEMENTARY INFORMATION: A description of the legal authority, history of the Steller sea lion protection measures, potential alternatives, and issues for analysis are in the **Federal Register** notice of intent for the preparation of the EIS (77 FR 22750, April 17, 2012). Detailed descriptions of the current Steller sea lion protection measures and the development of the EIS are available from the NMFS Alaska Region Web page at *http://www.alaskafisheries.noaa.gov/sustainablefisheries/sslpm/.*

Public Involvement

NMFS is seeking written public comments on the scope of issues that should be addressed in the EIS and alternatives that should be considered in revising the Steller sea lion protection measures. NMFS will accept comments in writing at the address above (see **ADDRESSES**). Written comments should be as specific as possible to be the most helpful.

The public is invited to attend the scoping meeting on Tuesday, October 2, 2012, in Anchorage, AK, which will be held in coordination with the NPFMC meeting. At the scoping meeting, NMFS will present background on the development of the EIS and scoping issues that have been identified. The public will have the opportunity to ask questions of NMFS staff regarding the EIS and may submit written comments at that time (see **ADDRESSES**).

Please visit the NMFS Alaska Region Web page at *http://www.alaskafisheries.noaa.gov/sustainablefisheries/sslpm/for* more information on this EIS, guidance for submitting effective public comments, and to order a draft EIS. NMFS estimates that a draft EIS will be available in May 2013.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen, NPFMC, 907–271–2809, at least five days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 27, 2012.

Lindsay Fullenkamp,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2012–21477 Filed 8–29–12; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 77, No. 169

Thursday, August 30, 2012

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

August 24, 2012.

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 regarding (a) 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; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

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.

Rural Utilities Service

Title: 7 CFR 1730, Review Rating Summary.

OMB Control Number: 0572–0025.

Summary of Collection: The Rural Utilities Service (RUS) manages loan programs in accordance with the Rural Electrification Act (RE Act) of 1936, 7 U.S.C. 901 *et seq.,* as amended. An important part of safeguarding loan security is to see that RUS financed facilities are being responsible used, adequately operated, and adequately maintained. Future needs have to be anticipated to ensure that facilities will continue to produce revenue and loans will be repaid as required by the RUS mortgage. Regular periodic operations and maintenance (O&M) review can identify and correct inadequate O&M practices before they cause extensive harm to the system. Inadequate O&M practices can result in public safety hazards, increased power outages for consumers, added expense for emergency maintenance, and premature aging of the borrower's systems, which could increase the loan security risk to RUS.

Need and Use of the Information: RUS will collect information using form 300 Review Rate Summary to identity items that may be in need of additional attention; to plan corrective actions when needed; to budget funds and manpower for needed work; and to initiate ongoing programs as necessary to avoid or minimize the need for ''catch-up'' programs.

Description of Respondents: Not-for-profit institutions; Business or other for-profit .

Number of Respondents: 217.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 868.

Title: Operating Reports for Telecommunications and Broadband Borrowers.

OMB Control Number: 0572–0031.

Summary of Collection: The Rural Utilities Service's (RUS) is a credit agency of the Department of Agriculture. The Rural Electrification Act of 1936, as amended (RE Act) (7 U.S.C. 901 *et seq*) authorizes the Secretary to make mortgage loans and loan guarantees to finance electric, telecommunications, broadband, and water and waste facilities in rural areas. In addition to providing loans and loan guarantees, one of RUS' main objectives is to safeguard loan security until the loan is repaid. The RE Act also authorizes the Secretary to make studies, investigations, and reports concerning the progress of borrowers' furnishing of adequate telephone service and publish and disseminate this information.

Need and Use of the Information: Information from the Operating Report for both telecommunication and broadband borrowers provides RUS with vital financial information needed to ensure the maintenance of the security for the Government's loans and service data which enables RUS to ensure the provision of quality telecommunications and broadband service as mandated by the RE Act of 1936. Form 674, ''Certificate of Authority to Submit or Grant Access to Data'' will allow telecommunication and broadband borrowers to file electronic Operating Reports with the agency using the new USDA Data Collection System. Accompanied by a Board Resolution, it will identify the name and USDA eAuthentication ID for a certifier and security administrator that will have access to the system for purposes of filing electronic Operating Reports.

Description of Respondents: Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 597.

Frequency of Responses: Reporting: On occasion; Quarterly; Annually.

Total Burden Hours: 2,910.

Title: 7 CFR Part 1786, Prepayment of RUS Guaranteed and Insured Loans to Electric and Telephone Borrowers.

OMB Control Number: 0572–0088.

Summary of Collection: The Rural Electrification (RE) Act of 1936, as amended, authorizes and empowers the Administrator of RUS to make loans in the States and Territories of the United States for rural electrification and for the purpose of furnishing and improving electric and telephone service in rural areas and to assist electric borrowers to implement demand side management, energy conservation programs, and on-grid and off-grid renewable energy systems. 7 CFR part 1786, subparts E and F are authorized by this section.

Need and Use of the Information: The information will be collected from borrowers requesting to prepay their notes and to determine that the borrower is qualified to prepay under the authorizing statues. The overall goal of Subparts E and F is to allow RUS borrowers to prepay their RUS loan and the overall goal of Subpart G is to refinance.

Description of Respondents: Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 5.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 16.

Title: 7 CFR 1773, Policy on Audits of RUS Borrowers.

OMB Control Number: 0572–0095.

Summary of Collection: Under the authority of the Rural Electrification Act of 1936 (ACT), as amended 7 U.S.C. 901 *et seq.,* the Administrator is authorized and empowered to make loans under certain specified circumstances for the purpose of furnishing and improving telephone service in rural areas. RUS, in representing the Federal Government as Mortgagee, relies on the information provided by the borrowers in their financial statements to make lending decisions as to borrowers' credit worthiness and to assure that loan funds are approved, advanced and disbursed for proper Act purposes. Borrowers are required to furnish a full and complete report of their financial condition, operations and cash flows, in form and substance satisfactory to RUS.

Need and Use of the Information: RUS will collect information to evaluate borrowers' financial performance, determine whether current loans are at financial risk, and determine the credit worthiness of future losses. If information is not collected, it would delay RUS' analysis of the borrowers' financial strength, thereby adversely impacting current lending decisions.

Description of Respondents: Not-for-profit institutions; Business or other for-profit.

Number of Respondents: 1,250.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 13,927.

Title: 7 CFR 1744–E, Borrower Investments—Telecommunications Loan Program.

OMB Control Number: 0572–0098.

Summary of Collection: The Rural Economic Development Act of 1990, Title XXIII of the Farm Bill, Public Law 101–624, authorized qualified Rural Utilities Service (RUS) borrowers to make investments in rural development projects without the prior approval of the RUS Administrator, provided, however that such investments do not cause the borrower to exceed its allowable qualified investment level as determined in accordance with the procedures set forth in 7 CFR part 1744, subpart E. RUS requests that the borrower submit (1) A description of the rural development project and type of investment; (2) a reasonable estimate of the amount the borrower is committed to provide to the project including future expenditures; and (3) a pro forma balance sheet and cash flow statement for the period covering the borrower's future commitments to determine that the *''excess''* or proposed *''excess''* investments will not impair the borrower's ability to repay the loan or cause financial hardship.

Need and Use of the Information: RUS will collect information to consider whether or not to approve a borrower's request to make an investment in a rural development project when such an investment would cause the borrower to exceed its allowable investment level. If this information was not collected, RUS could not thoroughly assess the economic impact of such an investment.

Description of Respondents: Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 2.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 1.

Title: 7 CFR 1751 Subpart B/State Telecommunications Modernization Plan.

OMB Control Number: 0572–0104.

Summary of Collection: The Rural Electrification Loan Restructuring Act (RELRA, Pub. L. 103–129), November 1, 1993, amended the Rural Electrification Act of 1936, 7 U.S.C. 901 *et seq.* (the RE Act). RELRA required that a State Telecommunications Modernization Plan (Modernization Plan or Plan), meet all the statutory requirements of RELRA (Part 1751, Subpart B). The plan at a minimum must provide for: (1) The elimination of party line service; (2) the availability of telecommunications services for improved business, educational, and medical services; (3) must encourage computer networks and information highways for subscribers in rural areas; (4) must provide for subscribers in rural areas to be able to receive through telephone lines: (a) conference calling; (b) video images; and (c) data at a rate of 1 million bits of information per second; and, the proper routing of information to subscribers.

Need and Use of the Information: The Rural Utilities Service (RUS) telecommunications program staff will review the Modernization Plan and approve the plans, if it complies with the requirements of the regulation. If the proposed Modernization Plan is approved, RUS will notify the developer of the approval. If not, RUS will make specific written comments and suggestions for modifying the proposed Modernization Plan so that it will comply with the requirements of the regulation. If the information is not collected, RUS' authority to make loans under the Rural Electrification Act will be restricted.

Description of Respondents: Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 1.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 350.

Title: 7 CFR 1717 Subpart D, Mergers and Consolidations of Electric Borrowers.

OMB Control Number: 0572–0114.

Summary of Collection: The Rural Utilities Service (RUS) is a credit agency of the U.S. Department of Agriculture. It makes mortgage loans and loan guarantees to finance electric, telecommunications, water and waste and water facilities in rural areas. Loan programs are managed in accordance with the Rural Electrification Act (RE Act) of 1936, 7 U.S.C. 901 *et seq.,* as amended and as prescribed by the Office of Management and Budget (OMB) Circular A–129, Policies for Federal Credit Programs and Non-tax Receivable, states that agencies must base on a review of a loan application determine that an applicant complies with statutory, regulatory, and administrative eligibility requirements for loan assistance.

Need and Use of the Information: RUS will collect information to streamline procedures and allow borrowers the flexibility to meet new business challenges and opportunities. The information is necessary for RUS to conduct business with successor entity while protecting the security of Government loans and avoiding defaults and to grant merger approval when required.

Description of Respondents: Business or other for-profit.

Number of Respondents: 12.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 170.

Title: Use of Consultants Funded by Borrowers, 7 CFR 1789.

OMB Control Number: 0572–0115.

Summary of Collection: The Rural Utilities Service (RUS) is a credit agency of the Department of Agriculture that makes mortgage loans and loan guarantees to finance electric, telecommunications, and water and waste facilities in rural areas. The loan programs are managed in accordance with the Rural Electrification Act (RE Act) of 1936, 7 U.S.C. 901 *et seq.,* as amended, and as prescribed by Office of Management and Budget Circular A–129, Policies for Federal Credit Programs and Non-Tax Receivable, which states that agencies must, based on a review of a loan application, determine that an applicant complies with statutory, regulatory, and administrative eligibility requirements for loan assistance. RUS has the authority to use consultants voluntarily funded by borrowers for financial, legal, engineering, and other technical services. However, all RUS borrowers are eligible to fund consultant services but are not required to fund consultants.

Need and Use of the Information: RUS will collect information to determine whether it is appropriate to use a consultant voluntarily funded by the borrower to expedite a particular borrower application. If the information were not submitted, RUS would be unable to determine if using a consultant would accelerate the specific application process.

Description of Respondents: Not-for-profit institutions; Business or other for-profit.

Number of Respondents: 1.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 2.

Title: 7 CFR 1717 Subpart Y, Settlement of Debt Owed by Electric Borrowers.

OMB Control Number: 0572–0116.

Summary of Collection: The Rural Utilities Service (RUS) makes mortgage loans and loan guarantees to electric systems to provide and improve electric service in rural areas pursuant to the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*)(RE Act). Only those electric borrowers that are unable to fully repay their debts to the government and who apply to RUS for relief will be affected by this collection of information. The information collected will be similar to that which any prudent lender would need to determine whether debt settlement is required and the amount of relief that is needed.

Need and Use of the Information: RUS will collect information to determine the need for debt settlement; the amount of debt the borrower can repay; the future scheduling of debt repayment; and, the range of opportunities for enhancing the amount of debt that can be recovered.

Description of Respondents: Non-for-profit institutions; Business or other for-profit.

Number of Respondents: 1.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 2,000.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2012–21375 Filed 8–29–12; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

August 24, 2012.

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Comments regarding (a) 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; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, Washington, DC; *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602.

DATES: Comments regarding these information collections are best assured of having their full effect if received by October 1, 2012. Copies of the submission(s) may be obtained by calling (202) 720–8681.

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.

Agricultural Marketing Service

Title: Reporting Requirements under Regulations Governing Inspection and Grading Services of Manufactured or Processed Dairy Products.

OMB Control Number: 0581–0126.

Summary of Collection: The Agricultural Marketing Act (AMA) of 1946 (7 U.S.C. 1621–1627), directs and authorizes the Department to develop standards of quality, condition, quantity, grading programs, and services to enable a more orderly marketing of agricultural products. The Government, industry and consumer will be well served if the Government can help insure that dairy products are produced under sanitary conditions and that buyers have the choice of purchasing the quality of the product they desire. The dairy grading program is a voluntary user fee program. In order for a voluntary inspection program to perform satisfactorily with a minimum of confusion, information must be collected to determine what services are requested.

Need and Use of the Information: The information collected is used to identify the product offered for grading, to identify and contact the individuals responsible for payment of the grading fee and to identify the person responsible for administering the grade label program. The Agriculture Marketing service will use several forms to collect essential information to carry out and administer the inspection and grading program.

Description of Respondents: Business or other for profit.

Number of Respondents: 400.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 364.

Agricultural Marketing Service

Title: National Processed Raspberry Promotion, Research and Information Program.

OMB Control Number: 0581–0258.

Summary of Collection: The Processed Raspberry Promotion, Research, and Information Order (7 CFR part 1208) was established under the Commodity Promotion, Research, and Information Act of 1996, (Act) (7 U.S.C. 7411–7425). The program consists of projects relating to research, consumer information, advertising, sales promotion, producer information, market development and product research to assist, improve, or promote the marketing, distribution, and utilization of processed raspberries. The program is administered by a Council appointed by the Secretary of Agriculture and financed by a mandatory assessment on producers and importers of processed raspberries.

Need and Use of the Information: The Agricultural Marketing Service will use several forms to collect the necessary information. The forms require the minimum information necessary to carry out the intent of the Act. The objective in carrying out this responsibility includes assuring the following: (1) Funds are collected and properly accounted for; (2) expenditures of all funds are for the purposes authorized by the Act and Order; and (3) the council's administration of the programs conforms to USDA policy.

Description of Respondents: Producers, first handlers, importers, foreign producers, and at-large nominees.

Number of Respondents: 297.

Frequency of Responses: Reporting: On occasion; Weekly; Quarterly; Recordkeeping.

Total Burden Hours: 282.

Agricultural Marketing Service

Title: National Organic Program; NOP Import Certificate.

OMB Control Number: 0581–0280.

Summary of Collection: The National Organic Program (NOP) is authorized by the Organic Foods Production Act of 1990, as amended, (7 U.S.C. 6501 *et seq.*). Under 7 CFR 205.500(c)(2) of the NOP regulations, the Department of Agriculture will accept a foreign certifying agent's accreditation to certify organic production or handling operations if the foreign government authority that accredited the foreign certifying agent acted under an equivalency agreement negotiated between the United States and the foreign government. On February 12, 2012 the U.S. and the European Union (EU) finalized an equivalence arrangement that became effective on June 1, 2012.

Need and Use of the Information: Organic products certified to the USDA organic standards or EU organic standards may be sold, labeled, and represented as organic in both countries as long as the terms of the arrangement are met. Organic products exported for sale to the U.S. must be accompanied by an NOP Import Certificate. EU designated certification entities will issue NOP Import Certificates for each shipment of organic product from the EU to the U.S. The NOP Import Certificate is necessary to document that the organic products were certified under the EU organic regulations and meet all the requirements specified in the EU–U.S. organic equivalency arrangement.

Description of Respondents: EU Designated Certification Entities.

Number of Respondents: 205.

Frequency of Responses: Reporting: On Occasion; Recordkeeping.

Total Burden Hours: 1,091.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2012–21377 Filed 8–29–12; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Document Number AMS–NOP–12–0040; NOP–12–12]

Notice of Meeting of the National Organic Standards Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, (5 U.S.C. App.), the Agricultural Marketing Service (AMS) is announcing an upcoming meeting of the National Organic Standards Board (NOSB). Written public comments are invited in advance of the meeting, and the meeting will include scheduled time for oral comments from the public.

DATES: The meeting will be held October 15–18, 2012, from 8 a.m. to 6 p.m. each day. The deadline for public comments in advance of the meeting is Monday, September 24, 2012.

ADDRESSES: The meeting will take place at the Biltmore Hotel, 11 Dorrance Street, Providence, RI 02903. Information and instructions pertaining to the meeting are posted at the following Web site address: *http://www.ams.usda.gov/NOSBMeetings*. For printed materials, write to Ms. Michelle Arsenault, Special Assistant, National Organic Standards Board, USDA–AMS–NOP, 1400 Independence Ave. SW., Room 2648-So., Mail Stop 0268, Washington, DC 20250–0268; Phone: (202) 720–3252; Email: *nosb@ams.usda.gov*.

FOR FURTHER INFORMATION CONTACT: Ms. Michelle Arsenault, Special Assistant, National Organic Standards Board, USDA–AMS–NOP, 1400 Independence Ave. SW., Room 2648-So., Mail Stop 0268, Washington, DC 20250–0268; Phone: (202) 720–3252; Email: *nosb@ams.usda.gov*.

SUPPLEMENTARY INFORMATION: The purpose of the NOSB is to make recommendations about whether a substance should be allowed or prohibited in organic production or handling, to assist in the development of standards for organic production, and to advise the Secretary on other aspects of the implementation of the Organic Foods Production Act (7 U.S.C. 6501–6522). The NOSB currently has seven subcommittees working on various aspects of the organic program. The subcommittees are: Compliance, Accreditation, and Certification; Crops; Handling; Livestock; Materials; Policy Development; and the ad hoc Genetically Modified Organisms (GMO).

The primary purpose of NOSB meetings is to provide an opportunity for the organic community to weigh in on proposed NOSB recommendations and discussion items. These meetings also allow the NOSB to receive updates from the USDA National Organic Program (NOP) on issues pertaining to organic agriculture.

The meeting will be open to the public. The meeting agenda, NOSB proposals and discussion documents, instructions for submitting and viewing public comments, and instructions for requesting a time slot for oral comments are available on the NOP Web site at *http://www.ams.usda.gov/NOSBMeetings*. The discussion documents and proposals encompass a wide range of topics, including: substances petitioned to the National List of Allowed and Prohibited Substances (National List), information on research priorities for organic agriculture, updates from working groups on technical issues, and amendments to the NOSB Policies and Procedures Manual.

Written public comments will be accepted through September 24, 2012 via *www.regulations.gov*. Comments received after that date may not be reviewed by the NOSB before the meeting. The NOP strongly prefers comments to be submitted electronically, however, written comments may also be submitted by September 24, 2012 via mail to Ms. Michelle Arsenault, Special Assistant, National Organic Standards Board, USDA–AMS–NOP, 1400 Independence Ave. SW., Room 2648–S, Mail Stop 0268, Washington, DC 20250–0268. Instructions for viewing all comments are posted at *www.regulations.gov* and *http://www.ams.usda.gov/NOSBMeetings*.

The NOSB has scheduled time for oral comments from the public, and will accommodate as many individuals and organizations as possible during these sessions. Individuals and organizations wishing to make oral presentations at the meeting must pre-register to request one time slot by visiting *http://www.ams.usda.gov/NOSBMeetings* or by calling (202) 720–3252. All persons making oral presentations should also provide their comments in advance through the written comment process. Written submissions may contain supplemental information other than that presented in the oral presentation. Persons submitting written comments at the meeting are asked to provide sixteen copies. The meeting hotel is ADA Compliant, and the USDA provides reasonable accommodation to the individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, please notify Michelle Arsenault at *nosb@ams.usda.gov* or 202.720.0081. Determinations for reasonable accommodation will be made on a case-by-case basis.

Dated: August 22, 2012.

David R. Shipman,

Administrator, Agricultural Marketing Service.

[FR Doc. 2012–21355 Filed 8–29–12; 8:45 am]

BILLING CODE 3410–02–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Wisconsin Advisory Committee

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 a briefing meeting of the Wisconsin Advisory Committee to the Commission will convene at 6 p.m. and adjourn at 9 p.m. on September 12, 2012, at the Sikh Temple of Wisconsin, 7512 South Howell Avenue, Oak Creek, WI. The purpose of the meeting is to gather testimony on the civil rights issues confronting the Sikh community in Wisconsin. Members of the Sikh community and scholars in the field will be giving presentations on the topic.

Members of the public are entitled to submit written comments; the comments must be received in the regional office by October 12, 2012. The address is 55 W. Monroe St., Suite 410, Chicago, IL 60603. Persons wishing to email their comments, or to present their comments verbally at the meeting, or who desire additional information should contact Carolyn Allen, Administrative assistant, (312) 353–8311 or by email: *callen@usccr.gov.*

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Midwestern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *www.usccr.gov,* or to contact the Midwestern Regional Office at the above email or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, August 24, 2011.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2012–21381 Filed 8–29–12; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Scientific Advisory Committee

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Bureau of the Census (U.S. Census Bureau) is giving notice of a meeting of the Census Scientific Advisory Committee (C–SAC). The Committee will address policy, research, and technical issues relating to a full range of Census Bureau programs and activities, including communications, decennial, demographic, economic, field operations, geographic, information technology, and statistics. Last minute changes to the agenda are possible, which could prevent giving advance public notice of schedule adjustments.

DATES: September 20 and 21, 2012. On September 20, the meeting will begin at approximately 9 a.m. and adjourn at approximately 5 p.m. On September 21, the meeting will begin at approximately 9 a.m. and adjourn at 12:45 p.m.

ADDRESSES: The meeting will be held at the U.S. Census Bureau Conference Center, 4600 Silver Hill Road, Suitland, Maryland 20746.

FOR FURTHER INFORMATION CONTACT: Jeri Green, Committee Liaison Officer, Department of Commerce, U.S. Census Bureau, Room 8H182, 4600 Silver Hill Road, Washington, DC 20233, telephone 301–763–6590. For TTY callers, please use the Federal Relay Service 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Members of the C–SAC are appointed by the Director, U.S. Census Bureau. The Committee provides scientific and technical expertise, as appropriate, to address Census Bureau program needs and objectives. The Committee has been established in accordance with the Federal Advisory Committee Act (Title 5, United States Code, Appendix 2, Section 10).

The meeting is open to the public, and a brief period is set aside for public comments and questions. Persons with extensive questions or statements must submit them in writing at least three days before the meeting to the Committee Liaison Officer named above. If you plan to attend the meeting, please register by Monday, September 17, 2012. You may access the online registration form with the following link: *http://www.regonline.com/csacsep2012.* Seating is available to the public on a first-come, first-served basis.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should also be directed to the Committee Liaison Officer as soon as known, and preferably two weeks prior to the meeting.

Dated: August 22, 2012.

Thomas L. Mesenbourg, Jr.,

Acting Director, Bureau of the Census.

[FR Doc. 2012–21395 Filed 8–29–12; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–67–2012]

Foreign-Trade Zone 242—Boundary County, ID, Notification of Proposed Production Activity, AREVA Enrichment Services, LLC, (Gas Centrifuge Production Equipment), Bonneville County, ID

Boundary County, grantee of FTZ 242, submitted a notification of proposed production activity on behalf of AREVA Enrichment Services, LLC (AES), located in Bonneville County, Idaho. The notification conforming to the requirements of the regulations of the Board (15 CFR 400.22) was received on August 21, 2012.

A separate application for subzone status at the AES facility was submitted and will be processed under Section 400.31 of the Board's regulations. FTZ authority is being requested for the storage, manipulation, assembly and installation of gas centrifuge production equipment. Production under FTZ procedures could allow AES to choose the duty rates during customs entry procedures that apply to the finished cascades (duty rate 2.6%) for the foreign status inputs noted below.

Components and materials sourced from abroad include: plastic tubing, plastic pipework, centrifuge floor-mounting elements, UF6 pipework/fittings, parts of cascades, vacuum pumps, UF6 pumps, heat exchange units, autoclaves, stations, parts of stations, machinery parts, UF6 valves and centrifuge drive systems (duty rate ranges from duty-free to 5.7%).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 9, 2012.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

Dated: August 22, 2012.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2012–21454 Filed 8–29–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1850]

Reorganization and Expansion of Foreign-Trade Zone 219 Under Alternative Site Framework Yuma, AZ

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 Board adopted the alternative site framework (ASF) (74 FR 1170, 01/12/09; correction 74 FR 3987, 01/22/09; 75 FR 71069–71070, 11/22/10) as an option for the establishment or reorganization of zones;

Whereas, the Greater Yuma Economic Development Corporation, grantee of Foreign-Trade Zone 219, submitted an application to the Board (FTZ Docket 6–2012, filed 01/13/2012) for authority to reorganize and expand under the ASF with a service area of Yuma County, Arizona, in and adjacent to the San Luis U.S. Customs and Border Protection port of entry, FTZ 219's existing Sites 1 and 2 and new Site 4 would be categorized as magnet sites, Site 3 would be removed from the zone and the grantee proposes one initial usage-driven site (Site 5);

Whereas, notice inviting public comment was given in the **Federal Register** (77 FR 2957–2958, 01/20/2012) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendation of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that the proposal is in the public interest;

Now, Therefore, the Board hereby orders:

The application to reorganize and expand FTZ 219 under the alternative site framework is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13, to the Board's standard 2,000-acre activation limit for the zone, to a five-year ASF sunset provision for magnet sites that would terminate authority for Site 2 and Site 4 if not activated by August 31, 2017, and to a three-year ASF sunset provision for usage-driven sites that would terminate authority for Site 5 if no foreign-status merchandise is admitted for a *bona fide* customs purpose by August 31, 2015.

Signed at Washington, DC, this 17th day of August 2012.

Ronald K. Lorentzen,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2012–21325 Filed 8–29–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1847]

Reorganization and Expansion of Foreign-Trade Zone 87 Lake Charles, LA

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 Lake Charles Harbor & Terminal District, grantee of Foreign-Trade Zone 87, submitted an application to the Board for authority to reorganize and expand FTZ 87 in Lake Charles, Louisiana, to reduce acreage at *Site 1* (new acreage—41.10 acres), expand *Site 2* (new acreage—391.73 acres), remove *Site 4,* reduce acreage at *Site 5* (new acreage—365.26 acres), and remove a parcel and add additional acreage to Site 6 (new acreage—1628.27 acres), within the Lake Charles U.S. Customs and Border Protection port of entry (FTZ Docket 71–2011, filed November 8, 2011);

Whereas, notice inviting public comment has been given in the **Federal Register** (76 FR 70704, 11/15/2011) 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 report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to reorganize and expand FTZ 87 is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13, and further subject to the Board's standard 2,000-acre activation limit.

Signed at Washington, DC, this August 17, 2012.

Ronald K. Lorentzen,

Acting Assistant Secretary of Commerce, for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 2012–21347 Filed 8–29–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Wisconsin—Madison, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscope

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Room 3720, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC

Docket Number: 12–026. *Applicant:* University of Wisconsin—Madison, Madison, WI 53715–1218. *Instrument:* Electron Microscope. *Manufacturer:* FEI

Company, the Netherlands. *Intended Use:* See notice at 77 FR 42484, July 19, 2012.

Docket Number: 12–029. *Applicant:* University of Alabama at Birmingham, Birmingham, AL 35294–4461. *Instrument:* Electron Microscope. *Manufacturer:* FEI Company, Czech Republic. *Intended Use:* See notice at 77 FR 42484, July 19, 2012.

Docket Number: 12–030. *Applicant:* Ohio State University, Columbus, OH 43210. *Instrument:* Electron Microscope. *Manufacturer:* FEI Company, the Netherlands. *Intended Use:* See notice at 77 FR 42484, July 19, 2012.

Docket Number: 12–032. *Applicant:* Louisiana State University, Baton Rouge, LA 70803–1715. *Instrument:* Electron Microscope. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* See notice at 77 FR 42484, July 19, 2012.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, is being manufactured in the United States at the time the instrument was ordered. *Reasons:* Each foreign instrument is an electron microscope and is intended for research or scientific educational uses requiring an electron microscope. We know of no electron microscope, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of each instrument.

Dated: August 20, 2012.

Gregory W. Campbell,

Director, Subsidies Enforcement Office, Import Administration.

[FR Doc. 2012–21453 Filed 8–29–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–601]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Continuation of the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the Department of Commerce (''Department'') and the International Trade Commission (''ITC'') that revocation of the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished (''TRBs''), from the People's Republic of China (''PRC'') would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, the Department is publishing a notice of continuation of the antidumping duty order.

DATES: *Effective Date:* August 30, 2012.

FOR FURTHER INFORMATION CONTACT: Lindsey Novom, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–5256.

SUPPLEMENTARY INFORMATION: On August 1, 2011, the Department initiated the third sunset review of the antidumping duty order on TRBs from the PRC pursuant to section 751(c) of the Tariff Act of 1930, as amended (''Act'').[1]

As a result of its review, the Department determined that revocation of the antidumping duty order on TRBs from the PRC would likely lead to a continuation or recurrence of dumping and, therefore, notified the ITC of the magnitude of the margins likely to prevail should the order be revoked.[2]

On July 31, 2012, the ITC determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on TRBs from the PRC would likely lead to a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[3]

Scope of the Order

The products covered by the order are tapered roller bearings and parts thereof, finished and unfinished, from the PRC; flange, take up cartridge, and hanger units incorporating tapered roller bearings; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. These products are currently classifiable under Harmonized Tariff Schedule of the United States (''HTSUS'') item numbers 8482.20.00, 8482.91.00.50, 8482.99.15, 8482.99.45, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.80, 8708.99.80.15[4] and 8708.99.80.80.[5] Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the scope of the order and this review is dispositive.[6]

Continuation of the Order

As a result of these determinations by the Department and the ITC that revocation of the antidumping duty order on TRBs would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty order on TRBs from the PRC. U.S. Customs and Border Protection will continue to collect antidumping duty cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of the continuation of the order will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act, the Department intends to initiate the next five-year review of the order not later than 30 days prior to the fifth anniversary of the effective date of continuation.

This five-year sunset review and this notice are in accordance with section

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[1] *See Initiation of Five-Year (''Sunset'') Review,* 76 FR 45778 (August 1, 2011) (''*Sunset Initiation*'').

[2] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of the Expedited Third Sunset Review of the Antidumping Duty Order,* 76 FR 76143 (December 6, 2011).

[3] *See* Tapered Roller Bearings from China: Investigation No. 731–TA–344 (Third Review), USITC Publication 4343 (August 2012), and *Tapered Roller Bearings From China,* 77 FR 50716 (August 22, 2012).

[4] Effective January 1, 2007, the HTSUS subheading 8708.99.8015 is renumbered as 8708.99.8115. *See* ITC publication entitled, ''Modifications to the Harmonized Tariff Schedule of the United States Under Section 1206 of the Omnibus Trade and Competitiveness Act of 1988,'' USITC Publication 3898 (December 2006) found at *www.usitc.gov.*

[5] Effective January 1, 2007, the HTSUS subheading 8708.99.8080 is renumbered as 8708.99.8180. *Id.*

[6] Subsequent to the issuance of the order, the Department has issued numerous scope rulings. *See* Memorandum entitled ''Tapered Roller Bearings from the People's Republic of China: Final Scope Ruling on Blackstone OTR LLC and OTR Wheel Engineering, Inc.'s Wheel Hub Assemblies and TRBs,'' dated February 7, 2011 (finding Blackstone OTR LLC and OTR Wheel Engineering, Inc.'s wheel hub assemblies are within the scope of the order); Memorandum entitled, ''Tapered Roller Bearings from the People's Republic of China: Final Scope Ruling on New Trend Engineering Ltd.'s Wheel Hub Assemblies,'' dated April 18, 2011 (finding New Trend Engineering Limited's splined and non-splined wheel hub assemblies without antilock braking system (''ABS'') elements are included in the scope of the order and its wheel hub assemblies with ABS elements are also included in the scope of the order); Memorandum entitled ''Tapered Roller Bearings from the People's Republic of China Final Scope Determination on Bosda's Wheel Hub Assemblies,'' dated June 14, 2011 (finding Bosda International (USA) LLC's wheel hub assemblies are within the scope of the order); and Memorandum entitled ''Tapered Roller Bearings and Parts Thereof, finished and Unfinished, from the People's Republic of China—Final Scope Determination on DF Machinery's Agricultural Hub Units,'' dated August 3, 2011 (finding DF Machinery International, Inc.'s agricultural hub units are included in the scope of the order).

751(c) of the Act and published pursuant to section 777(i)(1) of the Act.

Dated: August 23, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–21447 Filed 8–29–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

UChicago Argonne, LLC, Notice of Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Room 3720, U.S. Department of Commerce, 14th and Constitution Ave. NW., Washington, DC

Docket Number: 12–033. *Applicant:* UChicago Argonne, LLC, Lemont, IL 60439. *Instrument:* Low-Temperature Scanning Tunneling Microscope System. *Manufacturer:* CreaTec, Germany. *Intended Use:* See notice at 77 FR 42483, July 19, 2012. *Comments:* None received. *Decision:* Approved. We know of no instruments of equivalent scientific value to the foreign instruments described below, for such purposes as this is intended to be used, that was being manufactured in the United States at the time of its order. *Reasons:* The instrument will be used to investigate properties of materials and novel phenomena related to nanoscale science. This instrument is specialized for creating artificial nanoscale structures on an atom-by-atom basis using nascent atom manipulation techniques. The instrument will be used to investigate the amount of force required to move one atom on a materials surface while simultaneously measuring local electronic structural changes during atom movement.

Requirements for this instrument include: simultaneous measurements of tunneling current and force signals at an atomic scale, STM scanner with q-Plus tuning fork type AFM set-up, single atom and single molecule manipulation capabilities, single atom/molecule tunneling spectroscopy, ultrahigh vacuum compatibility, bath cryostat with LHe hold time greater than 72 hours and a LN2 hold time greater than 72 hours, optical access at low temperature, at least 6 K substrate temperature should be achieved, maximum drift rate at base temperature less than 0.2 nm/h, and a computer software allowing manipulation of individual atoms and molecules.

Dated: August 24, 2012.

Gregory W. Campbell,

Director, Subsidies Enforcement Office, Import Administration.

[FR Doc. 2012–21448 Filed 8–29–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–912; C–570–913; A–570–910; C–570–911; A–570–916: C–570–917; A–570–914; C–570–915]

Implementation of Determinations Under Section 129 of the Uruguay Round Agreements Act: Certain New Pneumatic Off-the-Road Tires; Circular Welded Carbon Quality Steel Pipe; Laminated Woven Sacks; and Light-Walled Rectangular Pipe and Tube From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On August 21, 2012, the U.S. Trade Representative (''USTR'') instructed the Department of Commerce (''Department'') to implement its determinations under section 129 of the Uruguay Round Agreements Act (''URAA'') regarding the antidumping and countervailing duty investigations on certain new pneumatic off-the-road tires (''OTR Tires'') from the People's Republic of China (''PRC''), circular welded carbon quality steel pipe (''CWP'') from the PRC, laminated woven sacks (''Sacks'') from the PRC, and light-walled rectangular pipe and tube (''LWRPT'') from the PRC, which renders them not inconsistent with the World Trade Organization (''WTO'') dispute settlement findings in *United States—Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, WT/DS379/AB/R (March 11, 2011) (''DS 379''). The Department issued its final determinations in these section 129 proceedings on July 31, 2012.[1] The Department is now implementing these final determinations.

DATES: *Effective Date:* August 21, 2012.

FOR FURTHER INFORMATION CONTACT: Daniel Calhoun, Christopher Mutz, or Mark Hoadley, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1439, (202) 482–0235, or (202) 482–3148, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 22, 2011, the Department informed interested parties that it was initiating proceedings under section 129 of the URAA to implement the findings of the WTO dispute settlement panel in DS 379 with regard to the countervailing duty (''CVD'') investigations on OTR Tires and Sacks from the PRC. On September 27, 2011, the Department informed interested parties that it was initiating proceedings under section 129 of the URAA to implement the findings of the WTO dispute settlement panel in DS 379 with regard to the CVD investigations on CWP and LWRPT from the PRC. On May 14, 2012, the Department informed interested parties that it was initiating proceedings under section 129 of the URAA to implement the findings of the WTO dispute settlement panel in DS 379 with regard to the antidumping duty (''AD'') investigations on CWP, LWRPT, OTR Tires, and Sacks from the PRC.

Given the number and complexity of the issues involved, the Department addressed the Dispute Settlement Body's findings through separate preliminary determination memoranda with respect to each of the issues addressed in WTO DS 379. Specifically, the Department issued the preliminary determinations regarding:

A. Loan benchmarks on April 6, 2012;[2]

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[1] *See* Memoranda from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations to Paul Piquado, Assistant Secretary for Import Administration, dated July 31, 2012, regarding: (1) Final Determinations: Section 129 Proceedings Pursuant to the WTO Appellate Body's Findings in WTO DS 379 Regarding the Antidumping and Countervailing Duty Investigations of Certain New Pneumatic Off-the-Road Tires from the People's Republic of China (''OTR Tires Section 129 Final Determinations''); (2) Final Determinations: Section 129 Proceedings Pursuant to the WTO Appellate Body's Findings in WTO DS 379 Regarding the Antidumping and Countervailing Duty Investigations of Circular Welded Carbon Quality Steel Pipe from the People's Republic of China (''CWP Section 129 Final Determinations''); (3) Final Determinations: Section 129 Proceedings Pursuant to the WTO Appellate Body's Findings in WTO DS 379 Regarding the Antidumping and Countervailing Duty Investigations of Laminated Woven Sacks from the People's Republic of China (''Sacks Section 129 Final Determinations''); and (4) Final Determinations: Section 129 Proceedings Pursuant to the WTO Appellate Body's Findings in WTO DS 379 Regarding the Antidumping and Countervailing Duty Investigations of Light-Walled Rectangular Pipe and Tube from the People's Republic of China (''LWRPT Section 129 Final Determinations'').

[2] *See* Memorandum for Paul Piquado, Assistant Secretary for Import Administration, ''Preliminary Section 129 Determination of the Countervailing Duty Investigation of Certain New Pneumatic Off-the-Road Tires from the People's Republic of China (PRC); Definitive Anti-Dumping and Countervailing

Continued

B. Trading companies on April 6, 2012;[3]

C. Land specificity on April 9, 2012;[4]

D. Facts available on May 18, 2012;[5]

E. Public bodies on May 18, 2012;[6] and

F. Double remedies on May 31, 2012.[7]

Duties on Certain Products from the PRC (WTO DS 379),'' dated April 6, 2012.

[3] *Id.*

[4] *See* Memorandum for Paul Piquado, Assistant Secretary for Import Administration, ''Preliminary Section 129 Determination of the Countervailing Duty Investigation of Laminated Woven Sacks from the People's Republic of China (PRC); Definitive Anti-Dumping and Countervailing Duties on Certain Products from the PRC (WTO DS 379),'' dated April 9, 2012.

[5] *See* (1) Memorandum for Paul Piquado, Assistant Secretary for Import Administration, ''Preliminary Section 129 Determination Regarding Public Bodies and Facts Available in the Countervailing Duty Investigation of Circular Welded Carbon Quality Steel Pipe from the People's Republic of China; Definitive Anti-Dumping and Countervailing Duties on Certain Products from China (WTO DS 379),'' dated May 18, 2012 (''CWP Public Bodies and Facts Available Preliminary Determination Memorandum''); and (2) Memorandum for Paul Piquado, Assistant Secretary for Import Administration, ''Preliminary Section 129 Determination Regarding Public Bodies and Facts Available in the Countervailing Duty Investigation of Light-Walled Rectangular Pipe and Tube from the People's Republic of China; Definitive Anti-Dumping and Countervailing Duties on Certain Products from China (WTO DS 379),'' dated May 18, 2012 (''LWRPT Public Bodies and Facts Available Preliminary Determination Memorandum'').

[6] *See* (1) CWP Public Bodies and Facts Available Preliminary Determination Memorandum; (2) LWRPT Public Bodies and Facts Available Preliminary Determination Memorandum; (3) Memorandum for Paul Piquado, Assistant Secretary for Import Administration, ''Preliminary Section 129 Determination Regarding Public Bodies in the Countervailing Duty Investigation of Certain New Pneumatic Off-the-Road Tires from the People's Republic of China; Definitive Anti-Dumping and Countervailing Duties on Certain Products from China (WTO DS 379),'' dated May 18, 2012; and (4) Memorandum for Paul Piquado, Assistant Secretary for Import Administration, ''Preliminary Section 129 Determination Regarding Public Bodies in the Countervailing Duty Investigation of Laminated Woven Sacks from the People's Republic of China; Definitive Anti-Dumping and Countervailing Duties on Certain Products from China (WTO DS 379),'' dated May 18, 2012.

[7] *See* the following Memoranda for Paul Piquado, Assistant Secretary for Import Administration:

(1) ''Section 129 Determination of the Countervailing Duty Investigation of Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: 'Double Remedies' Analysis Pursuant to the WTO Appellate Body Findings in WTO DS 379,'' dated May 31, 2012;

(2) ''Section 129 Proceeding Pursuant to the WTO Appellate Body's Findings in WTO DS 379 Regarding the Antidumping Duty Investigation of Certain New Pneumatic Off-the-Road Tires (OTR Tires) from the People's Republic of China: Preliminary Determination of Adjustments to the Antidumping Duty Cash Deposit Rates,'' dated May 31, 2012;

(3) ''Section 129 Determination of the Countervailing Duty Investigation of Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: 'Double Remedies' Analysis Pursuant to the WTO Appellate Body Findings in WTO DS 379,'' dated May 31, 2012;

(4) ''Section 129 Proceeding Pursuant to the WTO Appellate Body's Findings in WTO DS 379 Regarding the Antidumping Duty Investigation of Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Preliminary Determination of Adjustments to the Antidumping Duty Cash Deposit Rates,'' dated May 31, 2012;

(5) ''Section 129 Determination of the Countervailing Duty Investigation of Certain New Pneumatic Laminated Woven Sacks from the People's Republic of China: 'Double Remedies' Analysis Pursuant to the WTO Appellate Body Findings in WTO DS 379,'' dated May 31, 2012;

(6) ''Section 129 Proceeding Pursuant to the WTO Appellate Body's Findings in WTO DS 379 Regarding the Antidumping Duty Investigation of Laminated Woven Sacks from the People's Republic of China: Preliminary Determination of Adjustments to the Antidumping Duty Cash Deposit Rates,'' dated May 31, 2012;

(7) ''Section 129 Determination of the Countervailing Duty Investigation of Light Walled Rectangular Pipe and Tube from the People's Republic of China: 'Double Remedies' Analysis Pursuant to the WTO Appellate Body Findings in WTO DS 379,'' dated May 31, 2012; and

(8) ''Section 129 Proceeding Pursuant to the WTO Appellate Body's Findings in WTO DS 379 Regarding the Antidumping Duty Investigation of Light Walled Rectangular Pipe and Tube from the People's Republic of China from the People's Republic of China: Preliminary Determination of Adjustments to the Antidumping Duty Cash Deposit Rates,'' dated May 31, 2012.

The Department invited interested parties to comment on each of the section 129 preliminary determinations. After receiving comments and rebuttal comments from the interested parties, the Department issued its final results for the section 129 determinations on July 31, 2012.[8]

In its August 21, 2012, letter, the USTR notified the Department that, consistent with section 129(b)(3) of the URAA, consultations with the Department and the appropriate congressional committees with respect to the July 31, 2012, determinations have been completed. Also on August 21, 2012, in accordance with section 129(b)(4) of the URAA, the USTR directed the Department to implement these determinations.

Nature of the Proceedings

Section 129 of the URAA governs the nature and effect of determinations issued by the Department to implement findings by WTO dispute settlement panels and the Appellate Body. Specifically, section 129(b)(2) of the URAA provides that ''notwithstanding any provision of the Tariff Act of 1930,'' upon a written request from the USTR, the Department shall issue a determination that would render its actions not inconsistent with an adverse finding of a WTO panel or the Appellate Body.[9] The Statement of Administrative Action, U.R.A.A., H. Doc. 316, Vol. 1, 103d Cong. (1994) (''SAA''), variously refers to such a determination by the Department as a ''new,'' ''second,'' and ''different'' determination.[10] After consulting with the Department and the appropriate congressional committees, the USTR may direct the Department to implement, in whole or in part, the new determination made under section 129 of the URAA.[11] Pursuant to section 129(c) of the URAA, the new determination shall apply with respect to unliquidated entries of the subject merchandise that are entered or withdrawn from warehouse, for consumption, on or after the date on which the USTR directs the Department to implement the new determination.[12] The new determination is subject to judicial review, separate and apart from judicial review of the Department's original determination.[13]

[8] *See* OTR Tires Section 129 Final Determinations; CWP Section 129 Final Determinations; Sacks Section 129 Final Determinations; and LWRPT Section 129 Final Determinations.

Final Determinations: Analysis of Comments Received

The issues raised in the comments and rebuttal comments submitted by interested parties to these proceedings are addressed in the respective final determinations. The issues included in the respective final determinations are as follows: (1) Loan benchmarks (OTR Tires); (2) trading companies (OTR Tires); (3) land specificity (Sacks); (4) adverse facts available (CWP and LWRPT); (5) public bodies (CWP, LWRPT, OTR Tires, and Sacks); and (6) double remedies (CWP, LWRPT, OTR Tires, and Sacks). The final determinations are public documents and are on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). Access to IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, complete versions of the final determinations can be accessed directly on the Internet at *http://www.trade.gov/ia/*. The signed versions of the final determinations and the electronic versions of the final determinations are identical in content.

Final Determinations: Recalculated Countervailing Duty Rates

The recalculated CVD rates, as included in the final determinations and

[9] *See* 19 U.S.C. 3538(b)(2).

[10] *See* SAA at 1025, 1027.

[11] *See* 19 U.S.C. 3538(b)(4).

[12] *See* 19 U.S.C. 3538(c).

[13] *See* 19 U.S.C. 1516a(a)(2)(B)(vii).

which remain unchanged from the preliminary determinations for each company, are as follows:

preliminary determinations for each company, are as follows:

AMENDED COUNTERVAILABLE SUBSIDY RATES (PERCENT)—CERTAIN NEW PNEUMATIC OFF-THE-ROAD TIRES FROM THE PRC

Exporter/Manufacturer	CVD Rate (investigation) [14]	Revised CVD rate [15]
Guizhou Tyre Co., Ltd	2.45	2.52
Hebei Starbright Co., Ltd./GPX International Tire Corporation, Ltd	14.00	14.00
Tianjin United Tire & Rubber International Co., Ltd. (TUTRIC)	6.85	6.85
All Others	5.62	5.65

AMENDED COUNTERVAILABLE SUBSIDY RATES (PERCENT)—CIRCULAR WELDED CARBON QUALITY STEEL PIPE FROM THE PRC

Exporter/Manufacturer	CVD Rate (investigation) [16]	Revised CVD rate [17]
Weifang East Steel Pipe Co., Ltd	29.62	29.83
Zhejiang Kingland Pipeline and Technologies Co., Ltd., and affiliated companies	44.93	48.18
Tianjin Shuangjie Steel Pipe Co., Ltd.; Tianjin Shuangjie Steel Pipe Group Co., Ltd.; Tianjin Wa Song Imp. & Exp. Co., Ltd.; and Tianjin Shuanglian Galvanizing Products Co., Ltd	616.83	620.08
All Others	37.28	39.01

AMENDED COUNTERVAILABLE SUBSIDY RATES (PERCENT)—LAMINATED WOVEN SACKS FROM THE PRC

Exporter/Manufacturer	CVD Rate (investigation) [18]	Revised CVD rate [19]
Zibo Aifudi Plastic Packaging Co., Ltd	29.54	83.34
Han Shing Chemical Co., Ltd	223.74	277.54
Ningbo Yong Feng Packaging Co., Ltd	223.74	277.54
Shandong Shouguang Jianyuan Chun Co., Ltd./Shandong Longxing Plastic Products Company Ltd	352.82	406.62
Shandong Qilu Plastic Fabric Group, Ltd	304.40	358.20
All Others	226.85	280.65

AMENDED COUNTERVAILABLE SUBSIDY RATES (PERCENT)—LIGHT-WALLED RECTANGULAR PIPE AND TUBE FROM THE PRC

Exporter/Manufacturer	CVD Rate (investigation) [20]	Revised CVD rate [21]
Kunshan Lets Win Steel Machinery Co., Ltd	2.17	2.20
Zhangjiagang Zhongyuan Pipe-making Co., Ltd., Jiangsu Qiyuan Group Co., Ltd	15.28	15.28
Qingdao Xiangxing Steel Pipe Co., Ltd	200.58	200.58
All-Others	15.28	15.28

[14] *See Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Negative Determination of Critical Circumstances,* 73 FR 40480, 40483 (July 15, 2008).

[15] *See* OTR Tires Section 129 Final Determinations at 38.

[16] *See Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Notice of Amended Final Affirmative Countervailing Duty Determination and Notice of Countervailing Duty Order,* 73 FR 42545, 42547 (July 22, 2008).

[17] *See* CWP Section 129 Final Determinations at 34.

[18] *See Laminated Woven Sacks From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances,* 73 FR 35639, 35641 (June 24, 2008).

[19] *See* Sacks Section 129 Final Determinations at 38.

[20] *See Light-Walled Rectangular Pipe and Tube From People's Republic of China: Final Affirmative Countervailing Duty Investigation Determination,* 73 FR 35642, 35645 (June 24, 2008).

[21] *See* LWRPT Section 129 Final Determinations at 34.

Final Determinations: Recalculated Antidumping Duty Cash Deposit Rates

The recalculated AD cash deposit rates, as included in the final determinations and which remain unchanged from the preliminary determinations for each company, are as follows:

AMENDED ANTIDUMPING DUTY CASH DEPOSIT RATES (PERCENT)—CERTAIN NEW PNEUMATIC OFF-THE-ROAD TIRES FROM THE PRC

Exporter	Producer	Weighted-average dumping margin (investigation) [22]	Revised AD cash deposit rate [23]
Guizhou Tyre Co., Ltd	Guizhou Advance Rubber	5.25	5.10
Guizhou Tyre Co., Ltd	Guizhou Tyre Co., Ltd	5.25	5.10
Hebei Starbright Co., Ltd./GPX International Tire Corporation, Ltd.	Hebei Starbright Co., Ltd	29.93	29.93
Tianjin United Tire & Rubber International Co., Ltd. (TUTRIC).	Tianjin United Tire & Rubber International Co., Ltd. (TUTRIC).	8.44	8.39
Xuzhou Xugong Tyres Co., Ltd	Xuzhou Xugong Tyres Co., Ltd	10.01	9.92
Aeolus Tyre Co., Ltd	Aeolus Tyre Co., Ltd	12.91	12.83
Double Coin Holdings Ltd	Double Coin Holdings Ltd	12.91	12.83
Double Coin Holdings Ltd	Double Coin Group Rugao Tyre Co., Ltd	12.91	12.83
Double Coin Holdings Ltd	Double Coin Group Shanghai Donghai Tyre Co., Ltd.	12.91	12.83
Double Happiness Tyre Industries Corp., Ltd	Double Happiness Tyre Industries Corp., Ltd	12.91	12.83
Jiangsu Feichi Co., Ltd	Jiangsu Feichi Co., Ltd	12.91	12.83
Kenda Rubber (China) Co., Ltd./Kenda Global Holding Co., Ltd (Cayman Islands).	Kenda Rubber (China) Co., Ltd	12.91	12.83
KS Holding Limited	Oriental Tyre Technology Ltd	12.91	12.83
KS Holding Limited	Shandong Taishan Tyre Co., Ltd	12.91	12.83
KS Holding Limited	Xu Zhou Xugong Tyres Co., Ltd	12.91	12.83
Laizhou Xiongying Rubber Industry Co., Ltd	Laizhou Xiongying Rubber Industry Co., Ltd	12.91	12.83
Oriental Tyre Technology Limited	Midland Off the Road Tire Co., Ltd	12.91	12.83
Oriental Tyre Technology Limited	Midland Specialty Tire Co., Ltd	12.91	12.83
Oriental Tyre Technology Limited	Xuzhou Hanbang Tyres Co., Ltd	12.91	12.83
Qingdao Aonuo Tyre Co., Ltd	Qingdao Aonuo Tyre Co., Ltd	12.91	12.83
Qingdao Etyre International Trade Co., Ltd	Shandong Xingda Tyre Co. Ltd	12.91	12.83
Qingdao Etyre International Trade Co., Ltd	Shandong Xingyuan International Trade Co. Ltd	12.91	12.83
Qingdao Etyre International Trade Co., Ltd	Shandong Xingyuan Rubber Co. Ltd	12.91	12.83
Qingdao Free Trade Zone Full-World International Trading Co., Ltd.	Qingdao Eastern Industrial Group Co., Ltd	12.91	12.83
Qingdao Free Trade Zone Full-World International Trading Co., Ltd.	Qingdao Qihang Tyre Co., Ltd	12.91	12.83
Qingdao Free Trade Zone Full-World International Trading Co., Ltd.	Qingdao Shuanghe Tyre Co., Ltd	12.91	12.83
Qingdao Free Trade Zone Full-World International Trading Co., Ltd.	Qingdao Yellowsea Tyre Factory	12.91	12.83
Qingdao Free Trade Zone Full-World International Trading Co., Ltd.	Shandong Zhentai Tyre Co., Ltd	12.91	12.83
Qingdao Hengda Tyres Co., Ltd	Qingdao Hengda Tyres Co., Ltd	12.91	12.83
Qingdao Milestone Tyre Co., Ltd	Qingdao Shuanghe Tyre Co., Ltd	12.91	12.83
Qingdao Milestone Tyre Co., Ltd	Shandong Zhentai Tyre Co., Ltd	12.91	12.83
Qingdao Milestone Tyre Co., Ltd	Shifeng Double-Star Tire Co., Ltd	12.91	12.83
Qingdao Milestone Tyre Co., Ltd	Weifang Longtai Tyre Co., Ltd	12.91	12.83
Qingdao Qihang Tyre Co., Ltd	Qingdao Qihang Tyre Co., Ltd	12.91	12.83
Qingdao Qizhou Rubber Co., Ltd	Qingdao Qizhou Rubber Co., Ltd	12.91	12.83
Qingdao Sinorient International Ltd	Qingdao Hengda Tyres Co., Ltd	12.91	12.83
Qingdao Sinorient International Ltd	Shifeng Double-Star Tire Co., Ltd	12.91	12.83
Qingdao Sinorient International Ltd	Tengzhou Broncho Tyre Co., Ltd	12.91	12.83
Shandong Huitong Tyre Co., Ltd	Shandong Huitong Tyre Co., Ltd	12.91	12.83
Shandong Jinyu Tyre Co., Ltd	Shandong Jinyu Tyre Co., Ltd	12.91	12.83
Shandong Taishan Tyre Co., Ltd	Shandong Taishan Tyre Co., Ltd	12.91	12.83
Shandong Wanda Boto Tyre Co., Ltd	Shandong Wanda Boto Tyre Co., Ltd	12.91	12.83
Shandong Xingyuan International Trading Co., Ltd.	Shangdong Xingda Tyre Co., Ltd	12.91	12.83
Shandong Xingyuan International Trading Co., Ltd.	Xingyuan Tyre Group Co., Ltd	12.91	12.83
Techking Tires Limited	Shandong Xingda Tyre Co. Ltd	12.91	12.83
Techking Tires Limited	Shandong Xingyuan International Trade Co. Ltd	12.91	12.83
Techking Tires Limited	Shandong Xingyuan Rubber Co. Ltd	12.91	12.83
Triangle Tyre Co., Ltd	Triangle Tyre Co., Ltd	12.91	12.83
Wendeng Sanfeng Tyre Co., Ltd	Wendeng Sanfeng Tyre Co., Ltd	12.91	12.83
Zhaoyuan Leo Rubber Co., Ltd	Zhaoyuan Leo Rubber Co., Ltd	12.91	12.83
PRC-Wide Entity		210.48	210.48

AMENDED ANTIDUMPING DUTY CASH DEPOSIT RATES (PERCENT)—CIRCULAR WELDED CARBON QUALITY STEEL PIPE FROM THE PRC

Exporter	Producer	Weighted-average dumping margin (Investigation)[24]	Revised AD cash deposit rate[25]
Beijing Sai Lin Ke Hardware Co., Ltd	Xuzhou Guang Huan Steel Tube Products Co., Ltd.	69.2	45.35
Wuxi Fastube Industry Co., Ltd	Wuxi Fastube Industry Co., Ltd	69.2	45.35
Jiangsu Guoqiang Zinc-Plating Industrial Co., Ltd.	Jiangsu Guoqiang Zinc-Plating Industrial Co., Ltd.	69.2	45.35
Wuxi Eric Steel Pipe Co., Ltd	Wuxi Eric Steel Pipe Co., Ltd	69.2	45.35
Qingdao Xiangxing Steel Pipe Co., Ltd	Qingdao Xiangxing Steel Pipe Co., Ltd	69.2	45.35
Wah Cit Enterprises	Guangdong Walsall Steel Pipe Industrial Co., Ltd.	69.2	45.35
Guangdong Walsall Steel Pipe Industrial Co., Ltd.	Guangdong Walsall Steel Pipe Industrial Co., Ltd.	69.2	45.35
Hengshui Jinghua Steel Pipe Co., Ltd	Hengshui Jinghua Steel Pipe Co., Ltd	69.2	45.35
Zhangjiagang Zhongyuan Pipe-Making Co., Ltd	Zhangjiagang Zhongyuan Pipe-Making Co., Ltd	69.2	45.35
Weifang East Steel Pipe Co., Ltd	Weifang East Steel Pipe Co., Ltd	69.2	45.35
Shijiazhuang Zhongqing Imp & Exp Co., Ltd	Bazhou Zhuofa Steel Pipe Co., Ltd	69.2	45.35
Tianjin Baolai Int'l Trade Co., Ltd	Tianjin Jinghai County Baolai Business and Industry Co., Ltd.	69.2	45.35
Wai Ming (Tianjin) Int'l Trading Co., Ltd	Bazhou Dong Sheng Hot-dipped Galvanized Steel Pipes Co., Ltd.	69.2	45.35
Kunshan Lets Win Steel Machinery Co., Ltd	Kunshan Lets Win Steel Machinery Co., Ltd	69.2	45.35
Shenyang Boyu M/E Co., Ltd	Bazhou Dong Sheng Hot-dipped Galvanized Steel Pipes Co., Ltd.	69.2	45.35
Dalian Brollo Steel Tubes Ltd	Dalian Brollo Steel Tubes Ltd	69.2	45.35
Benxi Northern Pipes Co., Ltd	Benxi Northern Pipes Co., Ltd	69.2	45.35
Shanghai Metals & Minerals Import & Export Corp.	Benxi Northern Pipes Co., Ltd	69.2	45.35
Huludao Steel Pipe Industrial Co	Huludao Steel Pipe Industrial Co	69.2	45.35
Tianjin Xingyuda Import & Export Co., Ltd	Tianjin Lifengyuanda Steel Group	69.2	45.35
Tianjin Xingyuda Import & Export Co., Ltd	Tianjin Xingyuda Steel Pipe Co	69.2	45.35
Tianjin Xingyuda Import & Export Co., Ltd	Tianjin Lituo Steel Products Co	69.2	45.35
Tianjin Xingyuda Import & Export Co., Ltd	Tangshan Fengnan District Xinlida Steel Pipe Co., Ltd.	69.2	45.35
Jiangyin Jianye Metal Products Co., Ltd	Jiangyin Jianye Metal Products Co., Ltd	69.2	45.35
Rizhao Xingye Import & Export Co., Ltd	Shandong Xinyuan Group Co., Ltd	69.2	45.35
Tianjin No. 1 Steel Rolled Co., Ltd	Tianjin Hexing Steel Co., Ltd	69.2	45.35
Tianjin No. 1 Steel Rolled Co., Ltd	Tianjin Ruitong Steel Co., Ltd	69.2	45.35
Tianjin No. 1 Steel Rolled Co., Ltd	Tianjin Yayi Industrial Co	69.2	45.35
Kunshan Hongyuan Machinery Manufacture Co., Ltd.	Kunshan Hongyuan Machinery Manufacture Co., Ltd.	69.2	45.35
Qingdao Yongjie Import & Export Co., Ltd	Shandong Xinyuan Group Co., Ltd	69.2	45.35
PRC-Wide Entity[26]		85.55	68.24

AMENDED ANTIDUMPING DUTY CASH DEPOSIT RATES (PERCENT)—LAMINATED WOVEN SACKS FROM THE PRC

Exporter	Producer	Weighted-average dumping margin (investigation)[27]	Revised AD cash deposit rate[28]
Zibo Aifudi Plastic Packaging Co., Ltd	Zibo Aifudi Plastic Packaging Co., Ltd	64.28	20.19
Polywell Industrial Co., A.K.A. First Way (H.K.) Limited.	Polywell Plastic Product Factory	64.28	20.19
Zibo Linzi Worun Packing Product Co., Ltd	Zibo Linzi Worun Packing Product Co., Ltd	64.28	20.19
Shandong Qikai Plastics Product Co., Ltd	Shandong Qikai Plastics Product Co., Ltd	64.28	20.19

[22] *See Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Notice of Amended Final Affirmative Determination of Sales at Less Than Fair Value and Antidumping Duty Order,* 73 FR 51624, 51626–27 (September 4, 2008); and *Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Notice of Amended Final Determination of Sales at Less Than Fair Value and Amended Antidumping Duty Order in Accordance With Final Court Decision,* 75 FR 49459, 49459 (August 13, 2010).

[23] *See* OTR Tires Section 129 Final Determinations at 39–41.

[24] *See Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Circular Welded Carbon Quality Steel Pipe from the People's Republic of China,* 73 FR 31970, 31973 (June 5, 2008).

[25] *See* CWP Section 129 Final Determinations at 35–36.

[26] The PRC-Wide Entity includes: Zhejiang Kingland Pipeline/Technologies Co., Ltd., and Tianjin Shuangjie Steel Pipe Co., Ltd./Shuangjie Steel Pipe Group Co., Ltd./Tianjin Wa Song Imp. & Exp. Co., Ltd./Tianjin Shuanglian Galvanizing Products Co., Ltd.; and Jiangsu Yulong Steel Pipe Co., Ltd.

AMENDED ANTIDUMPING DUTY CASH DEPOSIT RATES (PERCENT)—LAMINATED WOVEN SACKS FROM THE PRC—Continued

Exporter	Producer	Weighted-average dumping margin (investigation)[27]	Revised AD cash deposit rate[28]
Changle Baodu Plastic Co. Ltd	Changle Baodu Plastic Co. Ltd	64.28	20.19
Zibo Linzi Shuaiqiang Plastics Co. Ltd	Zibo Linzi Shuaiqiang Plastics Co. Ltd	64.28	20.19
Zibo Linzi Qitianli Plastic Fabric Co. Ltd	Zibo Linzi Qitianli Plastic Fabric Co. Ltd	64.28	20.19
Shandong Youlian Co. Ltd	Shandong Youlian Co. Ltd	64.28	20.19
Zibo Linzi Luitong Plastic Fabric Co. Ltd	Zibo Linzi Luitong Plastic Fabric Co. Ltd	64.28	20.19
Wenzhou Hotson Plastics Co. Ltd	Wenzhou Hotson Plastics Co. Ltd	64.28	20.19
Jiangsu Hotson Plastics Co. Ltd	Jiangsu Hotson Plastics Co. Ltd	64.28	20.19
Cangnan Color Make The Bag	Cangnan Color Make The Bag	64.28	20.19
Zibo Qigao Plastic Cement Co. Ltd	Zibo Qigao Plastic Cement Co. Ltd	64.28	20.19
PRC-Wide Entity[29]		91.73	47.64

AMENDED ANTIDUMPING DUTY CASH DEPOSIT RATES (PERCENT)—LIGHT-WALLED RECTANGULAR PIPE AND TUBE FROM THE PRC

Exporter	Producer	Weighted-average dumping margin (investigation)[30]	Revised AD cash deposit rate[31]
Zhangjiagang Zhongyuan Pipe-Making Co., Ltd	Zhangjiagang Zhongyuan Pipe-Making Co., Ltd	264.64	255.07
Kunshan Lets Win Steel Machinery Co., Ltd	Kunshan Lets Win Steel Machinery Co., Ltd	249.12	247.90
Wuxi Baishun Steel Pipe Co., Ltd	Wuxi Baishun Steel Pipe Co., Ltd	249.12	247.90
Guangdong Walsall Steel Pipe Industrial Co., Ltd.	Guangdong Walsall Steel Pipe Industrial Co., Ltd.	249.12	247.90
Wuxi Worldunion Trading Co., Ltd	Wuxi Hongcheng Bicycle Material Co., Ltd	249.12	247.90
Weifang East Steel Pipe Co., Ltd	Weifang East Steel Pipe Co., Ltd	249.12	247.90
Jiangyin Jianye Metal Products Co., Ltd	Jiangyin Jianye Metal Products Co., Ltd	249.12	247.90
PRC-Wide Entity[32]		264.64	255.07

Implementation of the Revised Cash Deposit Requirements

On August 21, 2012, in accordance with sections 129(b)(4) and 129(c)(1)(B) of the URAA and after consulting with the Department and Congress, the USTR directed the Department to implement these final determinations. With respect to each of these proceedings, unless the applicable cash deposit rate has been superseded by intervening administrative reviews, the Department will instruct U. S. Customs and Border Protection to require a cash deposit for estimated antidumping and countervailing duties at the appropriate rate for each exporter/producer specified above, for entries of subject merchandise, entered or withdrawn from warehouse, for consumption, on or after August 21, 2012. This notice of implementation of these section 129 final determinations is published in accordance with section 129(c)(2)(A) of the URAA.

Dated: August 23, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–21322 Filed 8–29–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with July anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department also received a request to revoke one antidumping duty order in part.

DATES: *Effective Date:* August 30, 2012.

FOR FURTHER INFORMATION CONTACT: Brenda E. Waters, Office of AD/CVD Operations, Customs Unit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–4735.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b), for administrative reviews of various antidumping and countervailing

[27] *See Laminated Woven Sacks from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances,* 73 FR 35646, 35648 (June 24, 2008).

[28] *See* Sacks Section 129 Final Determinations at 39.

[29] The PRC-Wide Entity includes Shandong Shouguang Jianyuanchun Co., Ltd. (''SSJ''); Han Shing Chemical Co., Ltd.; Ningbo Yong Feng packaging Co., Ltd.; and Shandong Qilu Plastic Fabric Group, Ltd.

[30] *See Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, in Part: Light-Walled Rectangular Pipe and Tube from the People's Republic of China,* 73 FR 35652, 35654 (June 24, 2008).

[31] *See* LWRPT Section 129 Final Determinations at 35.

[32] The PRC-Wide Entity includes Qingdao Xiangxing Steel Pipe Co., Ltd.

duty orders and findings with July anniversary dates. The Department also received a timely request to revoke in part the antidumping duty order on Purified Carboxymethylcellulose from the Netherlands for one exporter.

All deadlines for the submission of various types of information, certifications, or comments or actions by the Department discussed below refer to the number of calendar days from the applicable starting time.

Notice of No Sales

If a producer or exporter named in this notice of initiation had no exports, sales, or entries during the period of review (''POR''), it must notify the Department within 60 days of publication of this notice in the **Federal Register**. All submissions must be filed electronically at *http://iaaccess.trade.gov* in accordance with 19 CFR 351.303. *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011). Such submissions are subject to verification in accordance with section 782(i) of the Tariff Act of 1930, as amended (''Act''). Further, in accordance with 19 CFR 351.303(f)(3)(ii), a copy of each request must be served on the petitioner and each exporter or producer specified in the request.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews, the Department intends to select respondents based on U.S. Customs and Border Protection (''CBP'') data for U.S. imports during the POR. We intend to release the CBP data under Administrative Protective Order (''APO'') to all parties having an APO within seven days of publication of this initiation notice and to make our decision regarding respondent selection within 21 days of publication of this **Federal Register** notice. The Department invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the applicable review.

In the event the Department decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, the Department has found that determinations concerning whether particular companies should be ''collapsed'' (*i.e.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, the Department will not conduct collapsing analyses at the respondent selection phase of this review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.,* investigation, administrative review, new shipper review or changed circumstances review). For any company subject to this review, if the Department determined, or continued to treat, that company as collapsed with others, the Department will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, the Department will not collapse companies for purposes of respondent selection. Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete the Quantity and Value Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of this proceeding where the Department considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that has requested a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that the Department may extend this time if it is reasonable to do so. In order to provide parties additional certainty with respect to when the Department will exercise its discretion to extend this 90-day deadline, interested parties are advised that, with regard to reviews requested on the basis of anniversary months on or after August 2011, the Department does not intend to extend the 90-day deadline unless the requestor demonstrates that an extraordinary circumstance has prevented it from submitting a timely withdrawal request. Determinations by the Department to extend the 90-day deadline will be made on a case-by-case basis.

Separate Rates

In proceedings involving non-market economy (''NME'') countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to an administrative review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991), as amplified by *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994). In accordance with the separate rates criteria, the Department assigns separate rates to companies in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

All firms listed below that wish to qualify for separate rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate rate application or certification, as described below. For these administrative reviews, in order to demonstrate separate rate eligibility, the Department requires entities for whom a review was requested, that were assigned a separate rate in the most recent segment of this proceeding in which they participated, to certify that they continue to meet the criteria for obtaining a separate rate. The Separate Rate Certification form will be available on the Department's Web site at *http://www.trade.gov/ia* on the date of publication of this **Federal Register** notice. In responding to the certification, please follow the ''Instructions for Filing the Certification'' in the Separate Rate Certification. Separate Rate Certifications are due to the Department no later than 60 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Certification applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers who purchase and export subject merchandise to the United States.

Entities that currently do not have a separate rate from a completed segment of the proceeding [1] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. In addition, companies that received a separate rate in a completed segment of the proceeding that have subsequently made changes, including, but not limited to, changes to corporate structure, acquisitions of new companies or facilities, or changes to their official company name,[2] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. The Separate Rate Status Application will be available on the Department's Web site at *http://www.trade.gov/ia* on the date of publication of this **Federal Register** notice. In responding to the Separate Rate Status Application, refer to the instructions contained in the application. Separate Rate Status Applications are due to the Department no later than 60 calendar days of publication of this **Federal Register** notice. The deadline and requirement for submitting a Separate Rate Status Application applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers that purchase and export subject merchandise to the United States.

For exporters and producers who submit a separate-rate status application or certification and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for separate rate status unless they respond to all parts of the questionnaire as mandatory respondents.

Initiation of Reviews

In accordance with 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than July 31, 2013.

	Period to be Reviewed
Antidumping duty proceedings	
Finland: Purified Carboxymethylcellulose, A–405–803	7/1/11–6/30/12
CP Kelco Oy	
CP Kelco U.S. Inc	
J.M. Huber Corporation	
India: Polyethylene Terephthalate (PET) Film, A–533–824	7/1/11–6/30/12
Ester Industries Limited	
Garware Polyester Ltd	
Jindal Poly Films Limited	
Polplex Corporation Ltd	
SRF Limited	
Italy: Certain Pasta, A–475–818	7/1/11–6/30/12
Alberto Poiatti S.p.A	
Delverde Industrie Alimentari S.p.A	
Industria Alimentare Colavita, S.p.A	
Pasta Lensi S.r.L	
Pastificio Attilio Mastromauro-Pasta Granoro S.r.L	
Pastificio Gallo Natale & F. Ili S.r.L	
Fiamma Vesuviana S.r.L	
Pastificio Zaffiri S.r.L	
Rummo S.p.A. Molino e Pastificio	
Tandoi Filippo e Adalberto Fratelli S.p.A	
Valdigrano di Flavio Pagani S.r.L	
Russia Federation: Solid Urea, A–821–801	7/1/11–6/30/12
OJSC MCC EuroChem, and production affiliates, OJSC Nevinnomyssky Azot and OJSC Novomoskovskaya Azot	
Tawain: Polyethylene Terephthalate (PET) Film, A–583–837	7/1/11–6/30/12
Nan Ya Plastics Corporation	
Shinkong Materials Technology Corporation	
The Netherlands: Purified Carboxymethylcellulose, A–421–811	7/1/11–6/30/12
Akzo Nobel Functional Chemicals, B.V	
CP Kelco B.V	
The People's Republic Of China: Circular Welded Carbon Quality Steel Pipe,[3] A–570–910	7/1/11–6/30/12
[3] If the above-named company does not qualify for a separate rate, all other exporters of Circular Welded Carbon Quality Steel Pipe from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.	
Adler Steel Ltd	
Al Jazeera Steel Products Co. SAOG	
Baoshan Iron & Steel Co., Ltd	
Benxi Northern Steel Pipes, Co. Ltd	
CNOOC Kingland Pipeline Co., Ltd	
ETCO (China) International Trading Co., Ltd	
Guangzhou Juyi Steel Pipes Co., Ltd	
Hefei Zijin Steel Tube Manufacturing Co., Ltd	

[1] Such entities include entities that have not participated in the proceeding, entities that were preliminarily granted a separate rate in any currently incomplete segment of the proceeding (*e.g.,* an ongoing administrative review, new shipper review, *etc.*) and entities that lost their separate rate in the most recently complete segment of the proceeding in which they participated.

[2] Only changes to the official company name, rather than trade names, need to be addressed via a Separate Rate Application. Information regarding new trade names may be submitted via a Separate Rate Certification.

	Period to be Reviewed
Huludao City Steel Pipe Industrial	
Jiangsu Changbao Steel Tube Co., Ltd	
Jiangsu Yulong Steel Pipe Co., Ltd	
Liaoning Northern Steel Pipe Co., Ltd	
MCC Liaoning Dragon Pipe Industries	
Shanghai Zhongyou TIPO Steel Pipe Co., Ltd	
SPAT Steel International	
SteelFORCE Far East Ltd	
Tianjin Baolai International Trade Co., Ltd	
Tianjin Huilitong Steel Tube Co., Ltd	
Tianjin Longshenghua Import & Export	
Tianjin Shuangjie Steel Pipe Co., Ltd	
Tianjin Uniglory International Trade Co., Ltd.	
Weifang East Steel Pipe Co., Ltd	
WISCO & CRM Wuhan Material & Trade	
Wuxi Fastube Industry Co., Ltd	
Xuzhou Global Pipe & Fitting Manufacturing Co., Ltd	
Zhejiang Kingland Pipeline Industry Co., Ltd	
Zhongjian Jinpei Steel Pipe Co. Ltd	
Countervailing Duty Proceedings	
India: Polyethylene Terephthalate (PET) Film, C–533–825	1/1/11–12/31/11
Ester Industries Limited	
Garware Polyester Ltd	
Jindal Poly Films Limited	
Polyplex Corporation Ltd	
SRF Limited	
Italy: Certain Pasta, C–475–819	1/1/11–12/31/11
Delverde Industrie Alimentari S.p.A	
Molino e Pastificio Tomasello S.p.A	
Valdigrano di Flavio Pagani S.r.L	
The People Republic Of China: Circular Welded Carbon Quality Steel Pipe, C–570–911	1/1/11–12/31/11
Adler Steel Ltd	
Al Jazeera Steel Products Co. SAOG	
Baoshan Iron & Steel Co., Ltd	
Benxi Northern Steel Pipes, Co. Ltd	
CNOOC Kingland Pipeline Co., Ltd	
ETCO (China) International Trading Co., Ltd	
Guangzhou Juyi Steel Pipe Co., Ltd	
Hefei Zijin Steel Tube Manufacturing Co., Ltd	
Huludao City Steel Pipe Industrial	
Jiangsu Changbao Steel Tube Co., Ltd	
Jiangsu Yulong Steel Pipe Co., Ltd	
Liaoning Northern Steel Pipe Co., Ltd	
MCC Liaoning Dragon Pipe Industries	
Shanghai Zhongyou Tipo Steel	
SteelFORCE Far East Ltd	
Tianjin Huilitong Steel Tube Co., Ltd	
Tianjin Longshenghua Import & Export	
Tianjin Shuangjie Steel Pipe Co., Ltd	
Tianjin Uniglory International Trade Co., Ltd	
Weifang East Steel Pipe Co., Ltd	
Wuxi Fastube Industry Co., Ltd	
Xuzhou Global Pipe & Fitting Manufacturing Co., Ltd	
Zhejiang Kingland Pipeline Industry Co., Ltd	
Zhongjian Jinpei Steel Pipe Co. Ltd	
Turkey: Certain Pasta, C–489–806	1/1/11–12/31/11
Marsan Gida Sanayi ve Ticaret A.S	
Bellini Gida Sanaya A.S	
Eksper Gida Pazarlama San. ve Tic A.S	

Suspension Agreements

None.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under 19 CFR 351.211 or a determination under 19 CFR 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine, consistent with *FAG Italia* v. *United States,* 291 F.3d 806 (Fed Cir. 2002), as appropriate, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures ''gap'' period, of the order, if such a gap period is applicable to the period of review.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Those procedures apply to administrative reviews included in this notice of initiation. Parties wishing to participate in any of these administrative reviews should ensure that they meet the requirements of these procedures (*e.g.,* the filing of separate letters of appearance as discussed at 19 CFR 351.103(d)).

Any party submitting factual information in an antidumping duty or countervailing duty proceeding must certify to the accuracy and completeness of that information. *See* section 782(b) of the Act. Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives in all segments of any antidumping duty or countervailing duty proceedings initiated on or after March 14, 2011. *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings: Interim Final Rule,* 76 FR 7491 (February 10, 2011) (''*Interim Final Rule*''), amending 19 CFR 351.303(g)(1) and (2). The formats for the revised certifications are provided at the end of the *Interim Final Rule.* The Department intends to reject factual submissions in any proceeding segments initiated on or after March 14, 2011 if the submitting party does not comply with the revised certification requirements.

These initiations and this notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: August 20, 2012.

Gary Taverman,

Senior Advisor for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–21499 Filed 8–29–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 070321067–2100–03]

NIST Federal Information Processing Standard (FIPS) 140–3 (Second Draft), Security Requirements for Cryptographic Modules; Request for Additional Comments

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice and Request for Comments.

SUMMARY: The National Institute of Standards and Technology (NIST) seeks additional comments on specific sections of Federal Information Processing Standard 140–3 (Second Draft), *Security Requirements for Cryptographic Modules,* to clarify and resolve inconsistencies in the public comments received in response to the **Federal Register** (74 FR 91333) notice of December 11, 2009. The draft standard is proposed to supersede FIPS 140–2.

DATES: Comments must be received on or before October 1, 2012.

ADDRESSES: Written comments may be sent to: Chief, Computer Security Division, Information Technology Laboratory, Attention: Dr. Michaela Iorga, 100 Bureau Drive, Mail Stop 8930, National Institute of Standards and Technology, Gaithersburg, MD 20899–8930. Electronic comments may also be sent to: *FIPS140-3@nist.gov,* with a Subject: ''Additional *Comments-FIPS 140–3 (Second Draft*).''

The current FIPS 140–2 standard can be found at: *http://csrc.nist.gov/publications/PubsFIPS.html.*

FOR FURTHER INFORMATION CONTACT: Dr. Michaela Iorga, Computer Security Division, 100 Bureau Drive, Mail Stop 8930, National Institute of Standards and Technology, Gaithersburg, MD 20899–8930, Telephone (301) 975–8431.

SUPPLEMENTARY INFORMATION: FIPS 140–1, *Security Requirements for Cryptographic Modules,* was issued in 1994 and was superseded by FIPS 140–2 in 2001. FIPS 140–2 identifies requirements for four security levels for cryptographic modules to provide for a wide spectrum of data sensitivity (e.g., low value administrative data, million dollar funds transfers, and life protecting data), and a diversity of application environments.

In 2005, NIST announced that it planned to develop FIPS 140–3 and solicited public comments on new and revised requirements for cryptographic systems. On January 12, 2005, a notice was published in the **Federal Register** (70 FR 2122), soliciting public comments on a proposed revision of FIPS 140–2. The comments received by NIST supported reaffirmation of the standard, but suggested technical modifications to address advances in technology that had occurred after the standard had been approved. Using these comments, NIST prepared a Draft FIPS 140–3 (hereafter referred to as the ''2007 Draft''), which was announced in the **Federal Register** (72 FR 38566) for review and comment on July 13, 2007.

Using the comments received in response to the July 13, 2007, notice and the feedback on requirements for software cryptographic modules obtained during the March 18, 2008, ''FIPS 140–3 Software Security Workshop,'' NIST developed the ''Revised Draft FIPS 140–3'' (hereafter referred to as ''2009 Draft''), that was announced in the **Federal Register** (74 FR 65753) on December 11, 2009. The 2009 Draft and its Annexes and can be found at: *http://csrc.nist.gov/publications/PubsDrafts.html.*

The comments received in response to the December 11, 2009, request for comments suggested either modifying requirements or applying the requirements at a different security level. Some comments asked for clarification of the text of the standard, and some recommended editorial and formatting changes. None of the comments received opposed the approval of a revised standard.

During the process of addressing the public comments received in response to the Request for Comments published in the **Federal Register** on December 11, 2009 (74 FR 65753), NIST determined that additional feedback is required to resolve gaps and inconsistencies between the comments for particular sections of the ''Second Draft FIPS 140–3.'' As a result, NIST is requesting additional public comments on several sections, as indicated below in the Request for Comments section of this notice, to support comment resolution. Comments on any sections of the ''Second Draft FIPS 140–3'' not identified in the Request for Comments section will not be considered.

Request for Comments: Even though NIST has resolved a majority of the issues raised by the public comments on the ''2009 Draft,'' NIST is requesting additional comments only on the following sections and sub-sections to resolve gaps and inconsistencies between the comments.

4.2.2 Trusted Channel—the comments suggested that NIST should not mandate the implementation of a trusted channel at Security Level 3 and

4 for all modules. NIST is proposing deletion of the requirement, but to allow for adequate, comparable security, is proposing the addition of an optional ''Remote Control Capability.'' The proposed Remote Control Capability section would specify requirements addressing the module's ability to process logons, send service requests to, and receive service responses from a remote module without compromising security. If the Remote Control Capability is supported, this section would mandate the use of a Trusted Channel at Security Level 3 and 4. NIST would appreciate comments on the proposed approach.

4.3.1 Trusted Role—the comments raised a variety of different concerns, reflecting different interpretations of the purpose of the Trusted Role. To address these concerns NIST is proposing the deletion of the Trusted Role and replacement with a Self-initiated Cryptographic Capability, configured and activated by the Crypto Officer that would be preserved over rebooting or power cycling of the module. The capability would provide the module with the ability to perform cryptographic operations including Approved and Allowed security functions without external operator request. NIST would appreciate comments on the proposed approach.

4.7 Physical Security—Non-Invasive Attacks—the comments received suggest substantial changes that would either weaken or strengthen the impact of these requirements. Comments received included stronger security requirements for Security Level 3 and 4, making the section mandatory for all cryptographic modules, including the Security Level for this section as part of the overall Security Level, while other comments suggested not addressing non-invasive attacks within the standard. NIST would appreciate general and specific comments on the requirements to address non-invasive attacks.

4.8.4 Sensitive Security Parameter (SSP) Entry and Output—the comments received raised a variety of different concerns, reflecting different interpretations of the requirements on SSPs that are entered into or output from a module. SSP entry and output requirements depend on whether the SSP is entered or output manually or electronically, and whether the SSP is distributed manually or electronically. New technologies have called into question this taxonomy of SSP entry and output methods. NIST would appreciate comments on the most appropriate way to categorize these methods, and the appropriate requirements for each method.

Annex B, Section: Operator Authentication Mechanisms—the comments received indicated that the specification for the strength of the operator's authentication method was incomplete, particularly with respect to biometrics. For biometric authentication, NIST proposes the use of a Liveness Detection method associated with the Session False Match Rate for one attempt and the Generalized False Accept Rate for multiple attempts in one minute. NIST would appreciate comments on the proposed approach.

Comments on sections not specifically listed in this notice will not be considered.

Prior to the submission of the FIPS 140–3 to the Secretary of Commerce for review and approval, it is essential that consideration is given to the needs and views of the public, users, the information technology industry, and Federal, State and local government organizations. The purpose of this notice is to solicit such views on specific sections of the ''2009 Draft.''

Authority: Federal Information Processing Standards (FIPS) are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce pursuant to Section 5131 of the Information Technology Management Reform Act of 1996 and the Federal Information Security Management Act of 2002 (Pub. L. 107–347).

E.O. 12866: This notice has been determined not to be significant for the purpose of E.O. 12866.

Dated: August 24, 2012.

Willie E. May,

Associate Director for Laboratory Programs.

[FR Doc. 2012–21461 Filed 8–29–12; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 120817356–2356–01]

Request for Comments on U.S. Technical Participation in the 14th Conference of the International Organization of Legal Metrology (OIML)

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice; request for comments.

SUMMARY: The National Institute of Standards and Technology (NIST) seeks comments concerning U.S. technical participation in the 14th Conference of the International Organization of Legal Metrology (OIML). This conference is held once every four years and was last held in 2008.

Interested parties are requested to review and submit comments on the 24 OIML Recommendations and Documents on legal measuring instruments that will be presented for ratification by the Conference. Comments may also be submitted on other issues relevant to the Conference.

DATES: Written comments should be submitted to the NIST International Legal Metrology Program no later than Friday, September 21, 2012, at 5 p.m. Eastern Time. The 14th OIML International Conference of Legal Metrology will be held in Bucharest, Romania, Wednesday, October 3 through Thursday, October 4, 2012.

ADDRESSES: Written comments should be sent to the International Legal Metrology Program, Office of Weights and Measures, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 2600, Gaithersburg, MD 20899–2600. Comments may also be submitted via email to *ralph.richter@nist.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Ralph Richter, International Legal Metrology Program, Office of Weights and Measures, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 2600, Gaithersburg, MD 20899–2600; telephone: 301/975–3997; fax: 301/975–8091; email: *ralph.richter@nist.gov.*

SUPPLEMENTARY INFORMATION:

Background

The International Organization of Legal Metrology (OIML) is an intergovernmental treaty organization in which the United States and 56 other nations are members. Its principal purpose is to harmonize national laws and regulations pertaining to testing and verifying the performance of legal measuring instruments used for equity in commerce, for public and worker health and safety, and for monitoring and protecting the environment. The harmonized results promote the international trade of measuring instruments and products affected by measurement.

The U.S. Department of State has delegated technical participation in OIML to the National Institute of Standards and Technology. NIST coordinates participation of U.S. manufacturers, users of weighing and measuring instruments, legal metrology officials and other U.S. stakeholders in the technical work of OIML by circulating draft voluntary standards (called Recommendations) and other OIML publications for comment. NIST also leads U.S. delegations to OIML Technical Meetings.

Additional Information

All parties with an interest in the work of the OIML are requested to review and submit comments on any or all of the 24 Recommendations and Documents that will be presented for ratification by the Conference. All submitted comments will be reviewed and considered by NIST staff in the development of U.S. positions that will be put forward at the 14th Conference of OIML. Within two weeks of the comment submission deadline established in the **DATES** section above, all parties that submit comments will be provided with feedback from NIST staff concerning the disposition of their comments.

Each of the 24 Recommendations and Documents that will be presented for ratification by the Conference has already gone through a multi-year development and review-process involving technical experts and legal metrology experts from the United States and around the world. Ratification by the Conference is the final step in this process. The Recommendations and Documents have been divided into two categories—Category 1: those already approved by the International Committee of Legal Metrology (CIML) between 2009 and 2011, and Category 2: those that are expected to be submitted directly to the Conference for ratification. Because the Recommendations and Documents in Category 2 have not yet received CIML approval, comments received on these Recommendations and Documents are of additional importance to NIST staff. The 24 Recommendations and Documents and the OIML-member nations holding the secretariat responsible for their development are listed below:

Category 1

- R14, ''Polarimetric saccharimeters graduated in accordance with the ICUMSA International Sugar Scale'' (Russian Federation);
- R35, ''Material Measures of Length for General Use'' (United Kingdom);
- R48, ''Tungsten ribbon lamps for the calibration of radiation thermometers'' (Russian Federation);
- R75, ''Heat meters'' (Germany);
- R80, ''Road and rail tankers with level gauging'' (Germany);
- R84, ''Platinum, copper, and nickel resistance thermometers (for industrial and commercial use)'' (Russian Federation);
- R92, ''Wood moisture meters—Verification methods and equipment: general provisions'' (P.R. China and United States);
- R120, ''Standard capacity measures for testing measuring systems for liquids other than water'' (Switzerland);
- R124, ''Refractometers for the measurement of the sugar content of grape musts'' (Russian Federation);
- R127, ''Radiochromic film dosimetry system for ionizing radiation processing of materials and Products'' (United States);
- R131, ''Polymethylmethacrylate (PMMA) dosimetry systems for ionizing radiation processing of materials and products'' (United States);
- R132, ''Alanine EPR dosimetry systems for ionizing radiation processing of materials and products'' (United States);
- R133, ''Liquid-in-glass thermometers'' (United States);
- R134, ''Automatic instruments for weighing road vehicles in motion and measuring axle loads'' (United Kingdom);
- R137, ''Gas Meters'' (Netherlands);
- Amendment to R138, ''Vessels for commercial transactions'' (Japan);
- R143, ''Instruments for the continuous measurement of SO_2 in stationary source emissions'' (Netherlands);
- B3, ''OIML Basic Certificate System for OIML Type Evaluation of Measuring Instruments'' (United States);
- B10, ''Framework for a Mutual Acceptance Arrangement on OIML Type Evaluations'' (United States); and
- D16, ''Principles of assurance of metrological control'' (Czech Republic).

Category 2

- R46. ''Active electrical energy meters'' (Australia);
- R106, ''Automatic rail-weighbridges'' (United Kingdom);
- R126, ''Evidential Breath Analyzers'' (France); and
- D1, ''Considerations for a law on metrology'' (United States).

Parties with an expressed interest in particular topics may obtain copies of the OIML Conference technical agenda, including copies of the Recommendations to be ratified, from the OIML International Conference Web site at *http://bucharest.oiml.org,* at the OIML Web site at *www.oiml.org,* or from the NIST International Legal Metrology Program.

Dated: August 24, 2012.

Willie E. May,

Associate Director for Laboratory Programs.

[FR Doc. 2012–21460 Filed 8–29–12; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC137

Marine Mammals; File No. 17324

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that the Georgia Aquarium Inc., 225 Baker Street, Atlanta, GA 30313, has applied in due form for a permit to import eighteen (18) beluga whales (*Delphinapterus leucas*) for public display purposes.

DATES: Written, telefaxed, or electronic comments must be received on or before October 29, 2012.

ADDRESSES: The application and related documents are available for review online at *http://www.nmfs.noaa.gov/pr/permits/georgia_aquarium_belugas.htm* or upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)427–8401; fax (301)713–0376; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, FL 33701; phone (727)824–5312; fax (727)824–5309.

You may submit comments on this document, identified by NOAA–NMFS–2012–0158, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal *www.regulations.gov.* To submit comments via the e-Rulemaking Portal, enter NOAA–NMFS–2012–0158 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Comment Now'' icon on the right of that line.
- *Mail:* Submit written comments to Chief, Permits and Conservation Division, at the address listed above.
- *Fax:* (301)713–0376; Attn: Jennifer Skidmore.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

NMFS will hold a public meeting to inform interested parties of the permitting process and solicit comments on the application and accompanying draft environmental assessment. The meeting will be held on October 12, 2012, from 2 p.m. to 5 p.m. The meeting will be held at the NOAA Silver Spring Metro Center Complex, NOAA Science Center, 1301 East-West Highway, Silver Spring, MD 20910. This meeting is accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Jennifer Skidmore, (301)427–8401 (voice) or (301)713–0376 (fax), at least five days before the scheduled meeting date.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore or Kristy Beard, (301)427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*) and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

Georgia Aquarium requests authorization to import 18 wild caught beluga whales from the Utrish Marine Mammal Research Station in Russia to the United States for the purpose of public display. All 18 beluga whales were collected in Sakhalin Bay of the Sea of Okhotsk in 2006, 2010, and 2011. Approximately six (6) animals would be transported to the Georgia Aquarium facility in Atlanta, GA, and the remaining animals would be transported to four other U.S. partner facilities; Sea World of Florida, Sea World of Texas, Sea World of California, and Shedd Aquarium pursuant to breeding loans. Georgia Aquarium and its U.S. partners are: (1) Open to the public on regularly scheduled basis with access that is not limited or restricted other than by charging for an admission fee; (2) offer conservation and educational programs based on professionally accepted standards of the Alliance of Marine Mammal Parks and Aquariums and the Association of Zoos and Aquariums; and (3) hold Exhibitor's Licenses by the U.S. Department of Agriculture under the Animal Welfare Act (7 U.S.C. 2131–59).

In addition to determining whether the applicant meets the three public display criteria, NMFS must determine whether the applicant has demonstrated that the proposed activity is humane and does not represent any unnecessary risks to the health and welfare of marine mammals; that the proposed activity by itself, or in combination with other activities, will not likely have a significant adverse impact on the species or stock; and that the applicant's expertise, facilities and resources are adequate to accomplish successfully the objectives and activities stated in the application.

A draft environmental assessment (EA) has been prepared in compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), to examine whether significant environmental impacts could result from issuance of the proposed permit. The draft EA is available for review and comment simultaneous with the permit application.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: August 27, 2012.

P. Michael Payne,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–21481 Filed 8–29–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC189

Mid-Atlantic 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 Mid-Atlantic Fishery Management Council's (Council) Spiny Dogfish Advisory Panel (AP) will meet in Philadelphia, PA.

DATES: The meeting will be held on September 18, 2012 from 10 a.m. until 3 p.m.

ADDRESSES: The meeting will be at the Embassy Suites Philadelphia Airport, 9000 Bartram Avenue, Philadelphia, PA 19153; telephone: (215) 365–4500.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to review fishery performance and create an AP Fishery Performance Report for Spiny Dogfish.

Although non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during this meeting. Actions will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to M. Jan Saunders at the Mid-Atlantic Council Office, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: August 27, 2012.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2012–21427 Filed 8–29–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Sea Grant Advisory Board

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Sea Grant Advisory Board (Board). Board members will discuss and provide advice on the National Sea Grant College Program in the areas of program evaluation, strategic planning, education and extension, science and technology programs, and other matters as described in the agenda found on the National Sea Grant College Program Web site at *http://www.seagrant.noaa.gov/leadership/advisory_board.html*.

DATES: The announced meeting is scheduled 8 a.m.–5 p.m. AKDT Sunday, September 16 and 8:30 a.m.–12:30 p.m. AKDT Monday, September 17, 2012.

ADDRESSES: The meeting will be held at Hotel Alyeska, 1000 Arlberg Avenue, Girdwood, AK 99587.

Status: The meeting will be open to public participation with a 15-minute public comment period on Monday, September 17 at 11:30 a.m. AKDT (check agenda on Web site to confirm time.) The Board expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of three (3) minutes. Written comments should be received by the Designated Federal Officer by September 12, 2012 to provide sufficient time for Board review. Written comments received after September 12, 2012, will be distributed to the Board, but may not be reviewed prior to the meeting date. Seats will be available on a first-come, first-served basis.

Special Accomodations: These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Elizabeth Ban, Designated Federal Officer at 301–734–1082 by September 7, 2012.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Ban, Designated Federal Officer, National Sea Grant College Program, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Room 11843, Silver Spring, Maryland 20910, (301) 734–1082.

SUPPLEMENTARY INFORMATION: The Board, which consists of a balanced representation from academia, industry, state government and citizens groups, was established in 1976 by Section 209 of the Sea Grant Improvement Act (Pub. L. 94–461, 33 U.S.C. 1128). The Board advises the Secretary of Commerce and the Director of the National Sea Grant College Program with respect to operations under the Act, and such other matters as the Secretary refers to them for review and advice.

The agenda for this meeting will be available at *http://www.seagrant.noaa.gov/leadership/advisory_board.html*.

Dated: August 24, 2012.

Andrew Baldus,

Acting Chief Financial Officer/Acting Administrative Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2012–21378 Filed 8–29–12; 8:45 am]

BILLING CODE 3510–KA–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Docket 2012–0076; Sequence 48; OMB Control No. 9000–0101]

Federal Acquisition Regulation; Information Collection; Drug-Free Workplace (FAR 52.223–6)

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension of an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning drug-free workplace.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Federal Acquisition Regulations (FAR), and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before October 29, 2012.

ADDRESSES: Submit comments identified by Information Collection 9000–0101, Drug-Free Workplace, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 9000–0101, Drug-Free Workplace''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 9000–0101, Drug-Free Workplace'' on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417. ATTN: Hada Flowers/IC 9000–0101, Drug-Free Workplace.

Instructions: Please submit comments only and cite Information Collection 9000–0101, Drug-Free Workplace, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Marissa Petrusek, Procurement Analyst, Office of Acquisition Policy, GSA (202) 501–0136 or email *marissa.petrusek@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

FAR clause 52.223–6, Drug-Free Workplace, requires (1) Contractor employees to notify their employer of any criminal drug statute conviction for a violation occurring in the workplace; and (2) Government contractors, after receiving notice of such conviction, to notify the contracting officer. The clause is not applicable to commercial items, contracts at or below simplified acquisition threshold (unless awarded to an individual), and contracts performed outside the United States or by law enforcement agencies. The clause implements the Drug-Free Workplace Act of 1988 (Pub. L. 100–690).

The information provided to the Government is used to determine contractor compliance with the statutory requirements to maintain a drug-free workplace.

B. Annual Reporting Burden

Based on Fiscal Year 2011 (FY11) data from the Federal Procurement Data

System (FPDS), statistical information from other sources, and historical knowledge of the information collection, the estimated total burden is as follows:

Respondents: 598.
Responses per Respondent: 1.
Annual Responses: 598.
Hours per Response: .5.
Total Burden Hours: 299.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417, telephone (202) 501–4755. Please cite OMB Control No. 9000–0101, Drug-Free Workplace, in all correspondence.

Dated: August 17, 2012.

William Clark,

Acting Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2012–21366 Filed 8–29–12; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0043; Docket 2012–0076; Sequence 2]

Federal Acquisition Regulation; Submission for OMB Review; Delivery Schedules

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning delivery schedules. A notice was published in the **Federal Register** at 77 FR 10529, on February 22, 2012. One respondent submitted public comments.

Public comments are particularly invited on: whether this collection of information is necessary for the proper performance of functions of the Federal Acquisition Regulation (FAR), and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before October 1, 2012.

ADDRESSES: Submit comments identified by Information Collection 9000–0043, Delivery Schedules by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 9000–0043, Delivery Schedules''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 9000–0043, Delivery Schedules'' on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417. ATTN: Hada Flowers/IC 9000–0043, Delivery Schedules.

Instructions: Please submit comments only and cite Information Collection 9000–0043, Delivery Schedules, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Marissa Petrusek, Procurement Analyst, Federal Acquisition Policy Division, GSA (202) 501–0136 or via email at *marissa.petrusek@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

The time of delivery or performance is an essential contract element and must be clearly stated in solicitations and contracts. The contracting officer may set forth a required delivery schedule or may allow an offeror to propose an alternate delivery schedule, for other than those for construction and architect-engineering, by inserting in solicitations and contracts a clause substantially the same as either FAR 52.211–8, Time of Delivery, or FAR 52.211–9, Desired and Required Time of Delivery. These clauses allow the contractor to fill-in their proposed delivery schedule. The information is needed to assure supplies or services are obtained in a timely manner.

B. Discussion and Analysis

One respondent submitted public comments on the extension of the previously approved information collection. The analysis of the public comments is summarized as follows:

Comment: The respondent commented that the extension of the information collection would violate the fundamental purposes of the Paperwork Reduction Act because of the burden it puts on the entity submitting the information and the agency collecting the information.

Response: In accordance with the Paperwork Reduction Act (PRA), agencies can request OMB approval of an existing information collection. The PRA requires that agencies use the **Federal Register** notice and comment process, to extend OMB's approval, at least every three years. This extension, to a previously approved information collection, pertains to the delivery schedule clauses 52.211–8 and 52.211–9. The purpose of these clauses is to permit a contractor submitting a proposal to an agency to voluntarily submit an alternate delivery schedule. These clauses have existed substantially the same since the inception of the FAR. Further, these clauses are not required clauses but rather optional clauses that are used infrequently in contracts and collect a small amount of information. Therefore, these clauses impose a minimal reporting burden on the public. The delivery schedule clauses do not put an added cost on the Federal Government because this information is a fundamental requirement already being provided as a part of a solicitation by the contracting officer. Also, the information being collected pertaining to the delivery schedule is beneficial to the public because it allows a contractor to submit an alternate delivery schedule, including an earlier delivery schedule, that may make a proposal more competitive. Not granting this extension would consequently eliminate two fundamental FAR clauses that impose little burden on the public or the agency collecting the information in accordance with the PRA while providing a benefit to the public.

Comment: The respondent commented that the agency did not accurately estimate the public burden challenging that the agency's methodology for calculating it is insufficient and inadequate and does not reflect the total burden. For this reason, the respondent provided that the agency should reassess the estimated total burden hours and revise the estimate upwards to be more accurate, as was done in FAR Case 2007–006. The same respondent also provided that the burden of compliance with the information collection requirement greatly exceeds the agency's estimate and outweighs any potential utility of the extension.

Response: Serious consideration is given, during the open comment period, to all comments received and adjustments are made to the paperwork burden estimate based on reasonable considerations provided by the public. This is evidenced, as the respondent notes, in FAR Case 2007–006 where an adjustment was made from the total preparation hours from three to 60. This change was made considering particularly the hours that would be required for review within the company, prior to release to the Government.

The burden is prepared taking into consideration the necessary criteria in OMB guidance for estimating the paperwork burden put on the entity submitting the information. For example, consideration is given to an entity reviewing instructions; using technology to collect, process, and disclose information; adjusting existing practices to comply with requirements; searching data sources; completing and reviewing the response; and transmitting or disclosing information. The estimated burden hours for a collection are based on an average between the hours that a simple disclosure by a very small business might require and the much higher numbers that might be required for a very complex disclosure by a major corporation. Also, the estimated burden hours should only include projected hours for those actions which a company would not undertake in the normal course of business. Careful consideration went into assessing the estimated burden hours for this collection, and it is determined that an upward adjustment is not required at this time. However, at any point, members of the public may submit comments for further consideration, and are encouraged to provide data to support their request for an adjustment.

C. Annual Reporting Burden

Respondents: 3,440.

Responses per Respondent: 5.

Annual Responses: 17,200.

Hours per Response: .167.

Total Burden Hours: 2,872.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417, telephone (202) 501–4755. Please cite OMB Control No. 9000–0043, Delivery Schedules, in all correspondence.

Dated: August 17, 2012.

William Clark,

Acting Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2012–21359 Filed 8–29–12; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 12–44]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 12–44 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: August 27, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

AUG 21 2012

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 12-44, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to Indonesia for defense articles and services estimated to cost $25 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Richard A. Genaille, Jr.
Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 5001–06–C

Transmittal No. 12–44

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Indonesia

(ii) *Total Estimated Value:*

Major Defense Equipment*	$ 25 million.
Other	0 million.
TOTAL	25 million.

* as defined in Section 47(6) of the Arms Export Control Act.

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* 18 AGM–65K2 MAVERICK All-Up-Round Missiles, 36 TGM–65K2 Captive Air Training Missiles, 3 TGM–65D Maintenance Training Missiles, spare and repair parts, support equipment, tool and test equipment, personnel training and training equipment, publications and technical data, U.S. Government and contractor technical and logistics personnel services and other related elements of program and logistics support.

(iv) *Military Department:* Air Force (YBE, Amendment #1)

(v) *Prior Related Cases, if any:* FMS case YBE–$3M–21Oct09

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex

(viii) *Date Report Delivered to Congress:* 21 Aug 2012

POLICY JUSTIFICATION

Indonesia—AGM–65K2 MAVERICK Missiles

The Government of Indonesia has requested a possible sale of 18 AGM–

65K2 MAVERICK All-Up-Round Missiles, 36 TGM–65K2 Captive Air Training Missiles, 3 TGM–65D Maintenance Training Missiles, spare and repair parts, support equipment, tool and test equipment, personnel training and training equipment, publications and technical data, U.S. Government and contractor technical and logistics personnel services and other related elements of program and logistics support. The estimated cost is $25 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been, and continues to be, an important force for political stability and economic progress in Southeast Asia.

The Indonesian Air Force (IAF) needs these missiles to train its F–16 pilots in basic air-to-ground weapons employment. The quantities in the proposed sale will support the IAF's existing fleet of 10 F–16s, as well as the 24 F–16s being provided as Excess Defense Articles. The proposed sale will foster continued cooperation between the U.S. and Indonesia, making Indonesia a more valuable regional partner in an important area of the world.

The proposed sale of this equipment will not alter the basic military balance in the region.

The principal contractors will be Raytheon Missile Systems in Tucson, Arizona. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of additional U.S. Government or contractor representatives to Indonesia.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 12–44

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The AGM–65K MAVERICK is an air-to-ground tactical missile designed for close air support. The missile hardware is Unclassified, but has an overall classification of Secret. The Secret aspects of the MAVERICK system are tactics, information revealing its vulnerability to countermeasures, and counter-countermeasures. Manuals and technical documents that are necessary for operational use and organizational maintenance have portions that are classified Confidential. Performance and operating logic of the countermeasures circuits are Secret.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 2012–21436 Filed 8–29–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Acquisition University Board of Visitors; Notice of Meeting; Cancellation

AGENCY: Defense Acquisition University (DAU), DoD.

ACTION: Meeting notice; cancellation.

SUMMARY: On August 16, 2012 (77 FR 49439), the Defense Acquisition University Board of Visitors announced a meeting to be held Wednesday, September 12, 2012, from 8:30 a.m. to 1 p.m. at the Defense Acquisition University Headquarters, 9820 Belvoir Road in Fort Belvoir, Virginia.

Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces that this meeting is cancelled due to scheduling conflicts.

FOR FURTHER INFORMATION CONTACT: Christen Goulding, Protocol Director, DAU; Phone: 703–805–5134, Fax: 703–805–5940, Email: *christen.goulding@dau.mil.*

Dated: August 27, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–21416 Filed 8–29–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Reestablishment of Department of Defense Federal Advisory Committees

AGENCY: Department of Defense, DoD.

ACTION: Reestablishment of Federal Advisory Committee.

SUMMARY: Under the provisions of 10 U.S.C. 2166(e), the Federal Advisory Committee Act of 1972 (5 U.S.C. Appendix), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and 41 CFR 102–3.50(a), the Department of Defense gives notice that it is reestablishing the charter for the Board of Visitors, National Defense University (hereafter referred to as ''the Board'').

The Board shall provide independent advice and recommendations on the overall management and governance of the National Defense University in achieving its mission.

The Board shall report to the Deputy Secretary of Defense and Secretary of Defense through the Chairman of the Joint Chiefs of Staff and the President of the National Defense University. The Chairman of the Joint Chiefs of Staff may act upon the Board's advice and recommendations. The Board shall be comprised of no more than twelve members, who are appointed by the Secretary of Defense. The members are eminent authorities in the fields of defense, management, leadership, academia, national military strategy or joint planning at all levels of war, joint doctrine, joint command and control, or joint requirements and development. The Secretary of Defense may approve the appointment of Board members for one to four year terms of service, with annual renewals; however, no member, unless authorized by the Secretary of Defense, may serve more than two consecutive terms of service. This same term of service limitation also applies to any DoD authorized subcommittees. Board members appointed by the Secretary of Defense, who are not full-time or permanent part-time federal employees, shall be appointed to serve as experts and consultants under the authority of 5 U.S.C. 3109, and to serve as special government employees. In addition, all Board members, with the exception of travel and per diem for official travel, shall serve without compensation. Each Board member is appointed to provide advice on behalf of the government on the basis of his or her best judgment without representing any particular point of view and in a manner that is free from conflict of interest.

The Board Membership shall present recommendations for the Board's Chairperson and the Co-Chairperson from the total Board membership to the Chairman of the Joint Chiefs of Staff, and these individuals shall serve at the discretion of the Secretary of Defense. The Chairman of the Joint Chiefs of Staff may invite other distinguished Government officers to serve as non-voting observers of the Board. In addition, the Chairman of the Joint Chiefs of Staff may appoint consultants, with special expertise, to assist the Board on an ad hoc basis, who shall be, if approved by the Secretary of Defense, appointed under the authority of 5 U.S.C. 3109. Neither the non-voting observers nor the experts/consultants shall have voting rights on the Board or its subcommittees, shall count toward the Board's total membership, and shall engage in Board deliberations.

The Department, when necessary and consistent with the Board's mission and DoD policies and procedures, may establish subcommittees, task groups, or working groups to support the Board. Establishment of subcommittees will be based upon a written determination, to include terms of reference, by the Secretary of Defense, the Deputy Secretary of Defense, or the Board's sponsor.

These subcommittees shall not work independently of the chartered Board and shall report all of their recommendations and advice to the Board for full deliberation and discussion. Subcommittees have no authority to make decisions on behalf of the chartered Board nor can any subcommittee or any of its members update or report directly to the Department of Defense or to any Federal officers or employees.

All subcommittee members shall be appointed in the same manner as the Board members; that is, the Secretary of Defense shall appoint subcommittee members even if the member in question is already a Board member. Subcommittee members, with the approval of the Secretary of Defense, may serve a term of service on the subcommittee of one to four years; however, no member shall serve more than two consecutive terms of service on the subcommittee. Such individuals shall be appointed to serve as experts and consultants under the authority of 5 U.S.C. 3109, and serve as special government employees, whose appointments must be renewed by the Secretary of Defense on an annual basis. With the exception of travel and per diem for official travel, subcommittee members shall serve without compensation.

All subcommittees operate under the provisions of FACA, the Government in the Sunshine Act, governing Federal statutes and regulations, and governing DoD policies/procedures.

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Deputy Advisory Committee Management Officer for the Department of Defense, 703–692–5952.

SUPPLEMENTARY INFORMATION: The Board shall meet at the call of the Designated Federal Officer, in consultation with the Board's Chairperson. The estimated number of Board meetings is two per year.

In addition, the Designated Federal Officer is required to be in attendance at all Board and subcommittee meetings for the entire duration of each and every meeting; however, in the absence of the Designated Federal Officer, the Alternate Designated Federal Officer shall attend the entire duration of the Board or subcommittee meeting.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the Board membership about the Board's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the Board.

All written statements shall be submitted to the Designated Federal Officer, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Board's Designated Federal Officer can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

The Designated Federal Officer, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Board. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

Dated: August 27, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–21418 Filed 8–29–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Board on Coastal Engineering Research

AGENCY: Department of the Army, DoD.

ACTION: Notice of meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

Name of Committee: Board on Coastal Engineering Research.

Date of Meeting: September 18–20, 2012.

Place: Starboard/Windward Ballroom, Wyndham Jacksonville Riverwalk, 1515 Prudential Drive, Jacksonville, FL 32207.

Time: 8 a.m. to 5:20 p.m. (September 18, 2012).

8:30 a.m. to 12:50 p.m. (September 19, 2012).

8 a.m. to 12 p.m. (September 20, 2012).

FOR FURTHER INFORMATION CONTACT: Inquiries and notice of intent to attend the meeting may be addressed to COL Kevin J. Wilson, Executive Secretary, U.S. Army Engineer Research and Development Center, Waterways Experiment Station, 3909 Halls Ferry Road, Vicksburg, MS 39180–6199.

SUPPLEMENTARY INFORMATION: The Board provides broad policy guidance and review of plans and fund requirements for the conduct of research and development of research projects in consonance with the needs of the coastal engineering field and the objectives of the Chief of Engineers.

Proposed Agenda: The goal of the meeting is to review the coastal engineering challenges within the southeast Atlantic coastal system, focusing on how Regional Sediment Management can help to bridge multi-purpose and multi-agency missions and to identify the research and technology that is needed to help Districts and the Nation meet those challenges. Presentations and panel presentations on Tuesday, September 18, will include Overview of Florida Projects, Investigating the Effect of Oil Spills on the Environment and Human Health, and panel presentations dealing with Challenges to Ports and Navigation and Challenges to Beaches and Coastal Risk. Presentations dealing with Challenges to Ports and Navigation include Strategic Environmental Issues in Southeastern Dredging Operations; Mobile Bay Sediment Management Program; Charleston Harbor: Lessons Learned and Future Challenges dealing with Coastal and Navigation Structures and Asset Management; GenCade—North Carolina Regional Sediment Management and Ports; and a question and answer portion on the Southeast Ports and Navigation. Presentations dealing with Challenges to Beaches and Coastal Risk include the Wilmington Project; Brevard County, Working with the Federal Coastal Project Process; Florida Regional Sediment Management; Florida Regional Sediment Management: How is State Implementing RSM Now and SAND Report and How Fines (Sand Rule) are Managed; Florida Department of Environmental Protection—Where is State Headed; 2004 Florida Hurricane Season and Overview of the Shore Protection and Analysis Program; Herbert Hoover Dike—Coastal Risk; Existing Technology and the Condensed Planning Process; and Coastal Mapping and Change Analysis. A luncheon speaker from the American Shore and Beach Preservation Association is scheduled.

On Wednesday morning, September 19, 2012, panel presentations dealing with Challenges to the Ecosystem include St. Johns River Water Supply Impact Study, Jacksonville Mile Point—Beneficial Use of Dredged Material for Ecosystem Restoration/Mitigation, Martin County Turtle Friendly Beach Design, Wilmington Offshore Fisheries Enhancement Structure, and Engineering with Nature. There will be an optional field trip Wednesday afternoon evening.

The Board will meet in Executive Session to discuss ongoing initiatives and actions on Thursday morning, September 20, 2012.

These meetings are open to the public. Participation by the public is scheduled for 11 a.m. on Wednesday, September 19, 2012.

The entire meeting and field trip are open to the public, but since seating capacity is limited, advance notice of attendance is required. Oral participation by public attendees is encouraged during the time scheduled on the agenda; written statements may be submitted prior to the meeting or up to 30 days after the meeting.

William D. Martin,

Director, Coastal and Hydraulics Laboratory, U.S. Army Engineer Research and Development Center.

[FR Doc. 2012–21405 Filed 8–29–12; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Record of Decision for the Silver Strand Training Complex, California

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The United States Department of the Navy (DoN), after carefully weighing the operational and environmental consequences of the proposed action, announces its decision to improve the availability and quality of training opportunities at the DoN's Silver Strand Training Complex (SSTC), CA. The DoN has decided to implement the preferred alternative, Alternative 1, Increase Training and Access to SSTC Training Areas, as described in the SSTC Final Environmental Impact Statement (FEIS) dated January 2011. Alternative 1 is the environmentally preferred alternative because it implements the mitigation and management measures needed to protect the environment while allowing DoN and DoD to meet current and near-term training and test and evaluation requirements.

SUPPLEMENTARY INFORMATION: The complete text of the Record of Decision is available for public viewing on the project Web site at *http://www.silverstrandtrainingcomplexeis.com,* along with copies of the FEIS and supporting documents. Single copies of the Record of Decision are available by contacting: Ms. Amy P. Kelley, Naval Facilities Engineering Command Southwest, Code EV21.AK, 1220 Pacific Highway, San Diego, California 92132, email: *amy.p.kelly@navy.mil.* The project Web site is found at *http://www.silverstrandtrainingcomplexeis.com.*

Dated: August 24, 2012.

C. K. Chiappetta,

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Administrative Law Division, Federal Register Liaison Officer.

[FR Doc. 2012–21458 Filed 8–29–12; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review; Institute of Education Sciences; Early Childhood Longitudinal Study Kindergarten Class of 2010–11 (ECLS–K:2011) Spring Second-Grade Full Scale Collection and Third- and Fourth-Grade Tracking and Third-Grade Recruitment

SUMMARY: The Early Childhood Longitudinal Study, Kindergarten Class of 2010–11 (ECLS–K:2011), is a survey that focuses on children's early school experiences beginning with kindergarten and continuing through the fifth grade. It includes the collection of data from parents, teachers, school administrators, and non-parental care providers, as well as direct child assessments. Like the Early Childhood Longitudinal Study, Kindergarten Class of 1998–99 (ECLS–K),[1] the ECLS–K:2011 is exceptionally broad in its scope and coverage of child development, early learning, and school progress, drawing together information from multiple sources to provide rich data about the population of children who were kindergartners in the 2010–11 school year.

DATES: Interested persons are invited to submit comments on or before October 1, 2012.

ADDRESSES: Written comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue SW, LBJ, Washington, DC 20202–4537. Copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 04927. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue SW, LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use

[1] Throughout this package, reference is made to the Early Childhood Longitudinal Study, Kindergarten Class of 1998–99. For ease of presentation, it will be referred to as the ECLS–K. The new study for which this submission requests approval is referred to as the ECLS–K:2011.

of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Early Childhood Longitudinal Study Kindergarten Class of 2010–11 (ECLS–K:2011) Spring Second-Grade Full Scale Collection and Third- and Fourth-Grade Tracking and Third-Grade Recruitment.

OMB Control Number: 1850–0750.

Type of Review: Revision .

Total Estimated Number of Annual Responses: 133,462.

Total Estimated Number of Annual Burden Hours: 47,175 .

Abstract: The Early Childhood Longitudinal Study, Kindergarten Class of 2010–11 (ECLS–K:2011), sponsored by the National Center for Education Statistics (NCES) within the Institute of Education Sciences (IES) of the U.S. Department of Education (ED), is a survey that focuses on children's early school experiences beginning with kindergarten and continuing through the fifth grade. It includes the collection of data from parents, teachers, school administrators, and non-parental care providers, as well as direct child assessments. Like its sister study, the Early Childhood Longitudinal Study, Kindergarten Class of 1998–99 (ECLS–K), the ECLS–K:2011 is exceptionally broad in its scope and coverage of child development, early learning, and school progress, drawing together information from multiple sources to provide rich data about the population of children who were kindergartners in the 2010–11 school year. This submission requests OMB's clearance for (1) A spring 2013 second-grade national data collection; (2) recruitment for the spring 2014 third-grade data collection, and (3) tracking students for the spring 2014 third-grade and spring 2015 fourth-grade data collection.

Dated: August 24, 2012.

Darrin A. King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2012–21473 Filed 8–29–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review; Federal Student Aid; Electronic Debit Payment Option for Student Loans

SUMMARY: The Preauthorized Debit Account (PDA) Application is used to establish electronic debiting for individuals who have requested to have their defaulted federal education debt payments debited from their bank accounts.

DATES: Interested persons are invited to submit comments on or before October 1, 2012.

ADDRESSES: Written comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 04879. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Electronic Debit Payment Option for Student Loans.

OMB Control Number: 1845–0025.

Type of Review: Revision.

Total Estimated Number of Annual Responses: 1,600.

Total Estimated Number of Annual Burden Hours: 133.

Abstract: An Electronic Debit Account Program gives the borrower the option to repay federally funded student loans via automatic debit deductions from their checking or savings accounts. The PDA payment option allows individuals with defaulted federal education debts (student loans or grant overpayments) held by the U.S. Department of Education's (ED's) Federal Student Aid Default Resolution Group to have their payments automatically debited from their checking or savings accounts and sent to ED. Individuals who choose the use the PDA option to make their payments must authorize ED to debit their bank accounts. The PDA Brochure and Application (PDA Application) explains the PDA payment option and collects the applicant's authorization for electronic debiting of payments and the bank account information needed by ED to debit the applicant's account.

The authority for the PDA option is provided under the Deficit Reduction Act of 1984, Public Law 98–368, and 31 CFR part 202, Depositaries and Financial Agents of the Government. Operating rules and regulations approved and published by the National Automated Clearing House Association (NACHA) and 31 CFR part 210 also govern the use of the PDA Application. Finally, Regulation E, issued and maintained by the Board of Governors of the Federal Reserve System, implements Title IX of the Consumer Credit Protection Act, as amended in 15 U.S.C. 1601. This regulation is designed to implement the act, which primarily serves to protect the interests of the individual consumer participating in electronic transfers. ED has used the collection of information on the currently approved PDA Application to establish electronic debiting for individuals who have requested to have their defaulted federal education debt payments debited from their bank accounts.

Dated: August 24, 2012.

Darrin A. King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2012–21474 Filed 8–29–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review; Institute of Education Sciences; Early Childhood Longitudinal Study Kindergarten Class of 2010–11 (ECLS–K:2011) Spring Second-Grade Full Scale Collection and Third- and Fourth-Grade Tracking and Third-Grade Recruitment

SUMMARY: The Early Childhood Longitudinal Study, Kindergarten Class of 2010–11 (ECLS–K:2011), sponsored by the National Center for Education Statistics (NCES) within the Institute of Education Sciences (IES) of the U.S. Department of Education (ED), is a survey that focuses on children's early school experiences beginning with kindergarten and continuing through the fifth grade. It includes the collection of data from parents, teachers, school administrators, and non-parental care providers, as well as direct child assessments. Like its sister study, the Early Childhood Longitudinal Study, Kindergarten Class of 1998–99 (ECLS–K), the ECLS–K:2011 is exceptionally broad in its scope and coverage of child development, early learning, and school progress, drawing together information from multiple sources to provide rich data about the population of children who were kindergartners in the 2010–11 school year. This submission requests OMB's clearance for (1) A spring 2013 second-grade national data collection; (2) recruitment for the spring 2014 third-grade data collection, and (3) tracking students for the spring 2014 third-grade and spring 2015 fourth-grade data collection.

DATES: Interested persons are invited to submit comments on or before October 1, 2012.

ADDRESSES: Written comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 04927. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Early Childhood Longitudinal Study Kindergarten Class of 2010–11 (ECLS–K:2011) Spring Second-Grade Full Scale Collection and Third- and Fourth-Grade Tracking and Third-Grade Recruitment.

OMB Control Number: 1850–0750.

Type of Review: Revision.

Total Estimated Number of Annual Responses: 133,462.

Total Estimated Number of Annual Burden Hours: 47,175.

Abstract: The Early Childhood Longitudinal Study, Kindergarten Class of 2010–11 (ECLS–K:2011), sponsored by the National Center for Education Statistics (NCES) within the Institute of Education Sciences (IES) of the U.S. Department of Education (ED), is a survey that focuses on children's early school experiences beginning with kindergarten and continuing through the fifth grade. It includes the collection of data from parents, teachers, school administrators, and non-parental care providers, as well as direct child assessments. Like its sister study, the Early Childhood Longitudinal Study, Kindergarten Class of 1998–99 (ECLS–K), the ECLS–K:2011 is exceptionally broad in its scope and coverage of child development, early learning, and school progress, drawing together information from multiple sources to provide rich data about the population of children who were kindergartners in the 2010–11 school year. This submission requests OMB's clearance for (1) A spring 2013 second-grade national data collection; (2) recruitment for the spring 2014 third-grade data collection, and (3) tracking students for the spring 2014 third-grade and spring 2015 fourth-grade data collection.

Dated: August 24, 2012.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2012–21292 Filed 8–29–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review; Office of Planning, Evaluation and Policy Development; EDFacts Collection of ESEA Flexibility Data

SUMMARY: On September 23, 2011, the U.S. Department of Education (ED) invited State educational agencies (SEAs) to request flexibility pursuant to the authority in section 9401 of ESEA, which allows the Secretary of Education to waive, with certain exceptions, any statutory or regulatory requirement of the ESEA for an SEA that receives funds under a program authorized by the ESEA and requests a waiver. In order to ensure that SEAs receiving ESEA flexibility are continuing to meet the intent and purpose of Title I of ESEA, including meeting the educational needs of low-achieving students, closing achievement gaps, and holding schools, local educational agencies, and SEAs accountable for improving the academic achievement of all students, ED will continue to collect all data related to student proficiency rates as well as performance against the annual measurable objectives. This collection will be applicable to SEAs with approved flexibility requests.

DATES: Interested persons are invited to submit comments on or before October 1, 2012.

ADDRESSES: Written comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue SW, LBJ, Washington, DC 20202–4537. Copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 04860. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: EDFacts Collection of ESEA Flexibility Data.

OMB Control Number: 1875–NEW.

Type of Review: New.

Total Estimated Number of Annual Responses: 52.

Total Estimated Number of Annual Burden Hours: 1,248.

Abstract: On September 23, 2011, the U.S. Department of Education (ED) invited each State educational agency (SEA) to voluntarily request flexibility on behalf of itself, its local educational agencies, and schools, in order to better focus on improving student learning and increasing the quality of instruction. Since then, ED has approved 34 SEA requests for flexibility, and is currently reviewing several additional requests. ED expects to receive requests from additional SEAs by September 6, 2012. SEAs are invited to request flexibility pursuant to the authority in section 9401 of the Elementary and Secondary Education Act of 1965 (ESEA), which allows the Secretary of Education to waive, with certain exceptions, any statutory or regulatory requirement of the ESEA for an SEA that receives funds under a program authorized by the ESEA and requests a waiver. This clearance request is for the collection of data that may be needed to ensure that SEAs receiving ESEA flexibility are continuing to meet the intent and purpose of Title I of ESEA, including meeting the educational needs of low-achieving students, closing achievement gaps, and holding schools, local educational agencies, and SEAs accountable for improving the academic achievement of all students. This collection will be applicable to SEAs with approved flexibility plans. In order to reduce burden on SEAs and maximize the availability and utility of the data within ED, ED plans to require states to submit these data electronically through EDFacts, as allowable under 34 CFR part 76. ''Flexibility Clearance Attachment B'' outlines the 22 new data groups proposed for collection. ED is requesting SEAs to review the last page of Attachment B which provides two directed questions (see the link to EDICSweb to link number 04860 in the **ADDRESSES** section above.) ED is requesting the data providers of each SEA respond to two specific questions about the proposed data groups. Responses to these questions will help ED determine whether or not to adjust the proposed data groups, as well as to determine which of the data can currently be provided by SEAs.

Dated: August 24, 2012.

Darrin A. King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2012–21471 Filed 8–29–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review; Federal Student Aid; Federal Perkins Loan Program/NDSL Assignment Form

SUMMARY: The Federal Perkins Loan Program allows for assignment of certain defaulted loans from schools to continued collection efforts when the school has exhausted all of its efforts in recovering an outstanding loan. The Perkins Assignment Form serves as the transmittal document in the assignment of such loans to the Federal Government. Schools participating in the Federal Perkins Loan Program, formerly the National Direct/Defense Student Loan Program (NDSL), currently use this form to assign defaulted loans to the U.S. Department of Education (the Department) for collection. These defaulted loans may, as outlined in 20 U.S.C. 1087cc and under program regulations 34 CFR 674.50, be assigned to the Federal government (i.e., U.S. Department of Education) for collection when the school has exhausted all efforts in the recovery of the outstanding loan. In addition, schools use this form to assign loans for which a school has approved a total and permanent disability discharge request, in accordance with 34 CFR 674.61(b)(2)(v).

DATES: Interested persons are invited to submit comments on or before October 1, 2012.

ADDRESSES: Written comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 04886. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Federal Perkins Loan Program/NDSL Assignment Form.

OMB Control Number: 1845–0048.

Type of Review: Extension.

Total Estimated Number of Annual Responses: 14,055.

Total Estimated Number of Annual Burden Hours: 7,028.

Abstract: The Federal Perkins Loan Program allows for assignment of certain defaulted loans from schools to continued collection efforts when the school has exhausted all of its efforts in recovering an outstanding loan. The Perkins Assignment Form serves as the transmittal document in the assignment of such loans to the Federal Government. Schools participating in the Federal Perkins Loan Program, formerly the National Direct/Defense Student Loan Program (NDSL), currently use this form to assign defaulted loans to the U.S. Department of Education (the Department) for collection. These defaulted loans may, as outlined in 20 U.S.C. 1087cc and under program regulations 34 CFR 674.50, be assigned to the Federal government (i.e., U.S. Department of Education) for collection when the school has exhausted all efforts in the recovery of the outstanding loan. In addition, schools use this form to assign loans for which a school has approved a total and permanent disability discharge request, in accordance with 34 CFR 674.61(b)(2)(v).

Dated: August 24, 2012.

Darrin A. King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2012–21476 Filed 8–29–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests; Institute of Education Sciences; Needs Sensing Survey Under the REL Program: (Sample Survey Instrument for School Board Members and District Administrators

SUMMARY: The needs assessment consists of an online survey of a sample of school board members, district administrators, principals, and teachers in Illinois, Indiana, Iowa, Michigan, Minnesota, Ohio, and Wisconsin. The purpose of the sample survey is to assess: the importance these populations attach to the four issues identified in advance by REL Midwest as priorities for the region; for each issue, the types of data and analysis supports, and research and evaluation needs which respondents anticipate would be of particular value; and what factors would increase the likelihood respondents and the populations they represent would turn to the REL for data and analysis supports, or research and evaluation needs in the future. The results of the survey will be used to prioritize the assistance that REL Midwest provides to educators in the region for utilizing their longitudinal data systems, conducting high quality research and evaluation; learning about the best education research; and incorporating data into policy and practice.

DATES: Interested persons are invited to submit comments on or before October 29, 2012.

ADDRESSES: Written comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 04922. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Needs Sensing Survey under the REL program: (Sample survey Instrument for School Board Members and District Administrators.

OMB Control Number: 1850-New.

Type of Review: New.

Total Estimated Number of Annual Responses: 2,240.

Total Estimated Number of Annual Burden Hours: 983.

Abstract: The needs assessment consists of an online survey of a sample of school board members, district administrators, principals, and teachers in Illinois, Indiana, Iowa, Michigan, Minnesota, Ohio, and Wisconsin. The purpose of the sample survey is to assess: the importance these populations attach to the four issues identified in advance by REL Midwest as priorities for the region; for each issue, the types of data and analysis supports, and research and evaluation needs which respondents anticipate would be of particular value; and what factors would increase the likelihood respondents and the populations they represent would turn to the REL for data and analysis supports, or research and evaluation needs in the future. The results of the survey will be used to prioritize the assistance that REL Midwest provides to educators in the region for utilizing their longitudinal data systems, conducting high quality research and evaluation; learning about the best education research; and incorporating data into policy and practice.

Dated: August 24, 2012.

Darrin A. King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2012–21472 Filed 8–29–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review; Office of Planning, Evaluation and Policy Development; Study of Strategies for Improving the Quality of Local Grantee Program Evaluation

SUMMARY: This study is intended to assist the Department in making decisions about how to structure future grant competitions; how to support evaluation and performance reporting activities among funded grantees, including technical assistance to improve the quality of evaluations and performance reporting; and how to make the best possible use of grantee evaluation findings.

DATES: Interested persons are invited to submit comments on or before October 1, 2012.

ADDRESSES: Written comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue SW, LBJ, Washington, DC 20202–4537. Copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 04869. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Study of Strategies for Improving the Quality of Local Grantee Program Evaluation.

OMB Control Number: 1875–NEW.

Type of Review: New.

Total Estimated Number of Annual Responses: 20.

Total Estimated Number of Annual Burden Hours: 20.

Abstract: This study is intended to assist the Department in making decisions about how to structure future grant competitions; how to support evaluation and performance reporting activities among funded grantees, including technical assistance to improve the quality of evaluations and performance reporting; and how to make the best possible use of grantee evaluation findings.

Dated: August 24, 2012.

Darrin A. King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2012–21469 Filed 8–29–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Membership of the Performance Review Board

AGENCY: Office of Management, Department of Education.

ACTION: Notice.

SUMMARY: The Secretary announces the members of the Performance Review Board (PRB) for the Department of Education for the Senior Executive Service (SES). Under 5 U.S.C. 4314(c)(1) through (5), each agency is required to establish one or more PRBs.

Composition and Duties

The PRB of the Department of Education is composed of career and non-career senior executives.

The PRB reviews and evaluates the initial appraisal of each senior executive's performance, along with any comments by that senior executive and by any higher-level executive or executives. The PRB makes recommendations to the appointing authority relative to the performance of the senior executive, including recommendations on performance awards. The Department of Education's PRB also makes recommendations on SES pay adjustments for career senior executives.

Membership

The Secretary has selected the following executives of the Department of Education for the specified SES performance cycle: Chair: Winona H. Varnon, Thomas Skelly, Danny Harris, James Manning, Linda Stracke, Joe Conaty, Sue Betka, Russlyn Ali, and Martha Kanter.

FOR FURTHER INFORMATION CONTACT: Andrea Burckman, Director, Executive Resources Division, Human Capital and Client Services, Office of Management, U.S. Department of Education, 400 Maryland Avenue SW., room 2C150, Washington, DC 20202–4573. Telephone: (202) 401–0853.

If you use a telecommunications device for the deaf (TDD) or text telephone, you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities can obtain this document in an alternative format (e.g., braille, large print, audiotape, or compact disc) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT** in this section.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital Systems at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov*. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: August 27, 2012.

Arne Duncan,

Secretary of Education.

[FR Doc. 2012–21446 Filed 8–29–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Agency Information Collection Activities: Proposed Collection; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: 30-Day notice of submission of information collection approval from the Office of Management and Budget (OMB) and request for comments.

SUMMARY: As part of a Federal Government-wide effort to streamline the process to seek feedback from the public on service delivery, the Bonneville Power Administration has submitted a Generic Information Collection request (Generic ICR): ‘‘Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery’’ to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act (PRA) (44 U.S.C. *et seq.*).

DATES: Comments must be submitted by September 30, 2012.

ADDRESSES: Written comments may be submitted to: DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: To request additional information: Information Collection Clearance Officer, Christopher M. Frost, Governance and Internal Controls, DGC–7, Bonneville Power Administration, 905 NE. 11th Avenue, Portland, Oregon 97232.

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance for the Collection of Qualitative Feedback on agency Service Delivery.

Abstract: The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner in accordance with the Administration’s commitment to improving service delivery. Qualitative feedback means information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliable actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield qualitative results.

The 60-day notice was published in the **Federal Register** of December 22, 2010 (75 FR 80542).

Below we provide the BPA projected average estimates for the next three years: [1]

Current Actions: New collection of information.

Type of Review: New Collection.

Affected Public: Individuals and Households, Businesses and Organizations, State, Local, or Tribal Government.

Average Expected Annual Activities: 5.

Respondents: 500.

Annual Responses: 2,500.

Frequency of Responses: Once per request.

Average Minutes per Response: 30.

Burden Hours: 1,250.

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 Office of Management and Budget control number.

Issued in Portland, Oregon, on August 23, 2012.

John L. Hairston,

Chief Compliance Officer, Agency Governance and Compliance.

[FR Doc. 2012–21445 Filed 8–29–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF ENERGY

U.S. Energy Information Administration

Request to Revise a Currently-Approved Data Collection

AGENCY: U.S. Energy Information Administration (EIA), Department of Energy.

ACTION: Notice and request for OMB review and comment.

SUMMARY: EIA has submitted a request to revise a currently-approved data collection under the provisions of the Paperwork Reduction Act of 1995 to the Office of Management and Budget (OMB). EIA proposes changes to the data collection requirements for the Forms EIA–861, ‘‘Annual Electric Power Industry Report,’’ EIA–923, ‘‘Power Plant Operations Report,’’ and the proposed creation of the Form EIA–861S, ‘‘Annual Electric Power Industry Report (Short).’’ All collection instruments are under OMB Control Number 1905–0129. The Form EIA–861 proposal is to modify the survey frame from a census of approximately 3,300 entities to a sample of approximately 2,200 entities and to estimate the total sales, revenues, and customer counts by sector. The Form EIA–861S proposal will collect data from the approximately

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[1] The 60-day notice included the following estimate of the aggregate burden hours for this generic clearance Federal-wide:

Average Expected Annual Number of Activities: 25,000.

Average Number of Respondents per Activity: 200.

Average Responses: 5,000,000.

Frequency of Responses: Once per request.

Average Minutes per Response: 30.

Burden hours: 2,500,000.

1,100 respondents that will no longer report on the Form EIA–861. The Form EIA–861S will collect a limited amount of sales, revenue, and customer count data and, for certain respondents, data on time-based rate customers and advanced meter reading (Advanced Metering Infrastructure/Automatic Meter Reading). Once every 5 years, the Form EIA–861S respondents will be asked to complete the Form EIA–861 in lieu of Form EIA–861S for sampling methodology purposes.

The Form EIA–923 proposal involves modifying the reporting requirements for only Schedule 2, which collects cost and quality data of fossil fuel purchases at electricity generating plants. The proposal is to raise the reporting threshold to 200 megawatts (MW) of nameplate capacity for power plants primarily fueled by natural gas, petroleum coke, distillate fuel oil, and residual fuel oil. EIA will remove the reporting requirement for self-produced and minor fuels, i.e., blast furnace gas, other manufactured gases, kerosene, jet fuel, propoane, and waste oils. The reporting threshold for coal plants will remain at 50 MW of nameplate capacity.

DATES: Comments regarding this proposed information collection must be received on or before October 1, 2012. 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, please advise the DOE Desk Officer at OMB of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at 202–395–4718 or contacted by email at *Chad_S_Whiteman@omb.eop.gov.*

ADDRESSES: Written comments should be sent to:

DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 735 17th Street NW., Washington, DC 20503.

And to:

Rebecca A. Peterson, Office of Electricity, Renewables, and Uranium Statistics, Energy Information Administration, Email: *ERUS2013@eia.gov,* Fax: 202–287–1938.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Rebecca A. Peterson, *ERUS2013@eia.gov*. Further details are available on the ERUS 2013 Web page at *http://www.eia.gov/survey/changes/electricity/.*

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) *OMB No.:* 1905–0129; (2) *Information Collection Request Title:* Electricity Data Program; (3) *Type of Request:* Revision of a currently approved collection; (4) *Purpose:* The Forms EIA–861 and EIA–861S are mandatory surveys used to collect retail sales of electricity and associated revenue from all electric utilities, energy service providers, and distribution companies in the United States, its territories, and Puerto Rico on an annual basis. Form EIA–923 Schedule 2 collects information from regulated and unregulated electric power plants in the United States that burn certain fossil fuels and meet the reporting threshold. Data collected include fuel receipts, cost, quality, and coal mine information. Data from these three collection instruments are published for use by Congress and public and private analysts to monitor the status and trends of the electric power industry. The proposed changes to the Forms EIA–861 and EIA–923 data collections, and the proposed creation of the Form EIA–861S, are anticipated to reduce reporting burden for smaller respondents, in particular, and to reduce the level of effort EIA requires to collect and validate survey data; (5) *Annual Estimated Number of Respondents:* 4,376; (6) *Annual Estimated Number of Total Responses:* 15,354; (7) *Annual Estimated Number of Burden Hours:* 35,934; (8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* EIA estimates that there are no additional costs to respondents associated with the surveys other than the costs associated with the burden hours.

Statutory Authority: Section 13(b) of the Federal Energy Administration Act of 1974, 93, codified at 15 U.S.C. 772(b).

Issued in Washington, DC, on August 24, 2012.

Stephanie Brown,

Director, Office of Survey Development and Statistical Integration, U.S. Energy Information Administration.

[FR Doc. 2012–21403 Filed 8–29–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1256–031]

Loup River Public Power District; Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Preliminary Terms and Conditions, and Preliminary Fishway Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 1256–031.

c. *Date filed:* April 16, 2012.

d. *Applicant:* Loup River Public Power District (Loup Power District).

e. *Name of Project:* Loup River Hydroelectric Project.

f. *Location:* The existing project is located on the Loup River, Loup Canal (a diversion canal off the Loup River), and Platte River in Nance and Platte counties, Nebraska. The project does not occupy federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Neal Suess, President/CEO, Loup Power District, P.O. Box 988, 2404 15th Street, Columbus, Nebraska 68602, Telephone (866) 869–2087.

i. *FERC Contact:* Lee Emery, Telephone (202) 502–8379 or email *lee.emery@ferc.gov.*

j. *Deadline for filing motions to intervene and protests, comments, recommendations, preliminary terms and conditions, and preliminary prescriptions:* 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

Motions to intervene, protests, comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing and is now is ready for environmental analysis.

l. *The project consists of (upstream to downstream):* (1) A 1,320-foot-long, 6-foot-high diversion dam on the Loup River; (2) an intake structure composed of eleven 24-foot-long by 5-foot-high steel intake gates located on the north bank of the Loup River immediately upstream of the diversion dam; (3) three 20-foot-long by 6-foot-high steel sluice gates located between the diversion dam and the intake structure; (4) the 35-mile-long Loup Canal; (5) a 2-mile-long settling basin located in the upper portion of the Loup Canal and containing a floating hydraulic dredge and skimming weir; (6) the Monroe Powerhouse containing three Francis-type, turbine-generating units each with a rated capacity of 2.612 megawatts (MW); (7) a 760-acre regulating reservoir, Lake Babcock, with a storage capacity of 2,270 acre-feet at its full pool elevation of 1,531 feet mean sea level (msl); (8) a 200-acre regulating reservoir, Lake North, with a storage capacity of 2,080 acre-feet at an elevation of 1,531 feet msl; (9) a concrete control structure in the south dike linking the two reservoirs; (10) a 60-foot-long by 104-foot-wide by 40-foot-high inlet structure with trashracks; (11) three 20-foot-diameter by 385-foot-long steel penstocks connecting the inlet structure with a powerhouse (Columbus Powerhouse); (12) the Columbus Powerhouse containing three Francis-type, turbine-generating units each with a rated capacity of 15.2 MW; and (13) appurtenant facilities. The project has a combined installed capacity of 53.4 MW.

The Monroe Powerhouse operates in a run-of-river mode (i.e., outflow from the powerhouse equals inflow from the Loup Canal). The maximum hydraulic capacity of the canal at the Monroe Powerhouse is 3,500 cubic feet per second (cfs). The Monroe Powerhouse spans the canal and functions as an energy-producing canal drop structure.

The Columbus Powerhouse operates as a daily peaking facility. The water levels in Lake Babcock and Lake North are generally drawn down about 2 to 3 feet a day to produce power during times of peak electrical demand. In off-peak hours, when there is less demand for electricity, the turbines are turned down or shut off, which allows Lake Babcock and Lake North to refill. The hydraulic capacity of the canal at the Columbus Powerhouse is 4,800 cfs.

Loup Power District proposes to remove three parcels of land from the project boundary that it finds are not necessary for project operations or purposes. In addition, Loup Power District proposes to add three parcels of land to the project boundary that it finds are needed for project purposes.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) Bear in all capital letters the title ''PROTEST,'' ''MOTION TO INTERVENE,'' ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''PRELIMINARY TERMS AND CONDITIONS,'' or ''PRELIMINARY FISHWAY PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

o. *Procedural Schedule:*

The application will be processed according to the following revised Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target Date
Filing of recommendations, preliminary terms and conditions, and preliminary fishway prescriptions.	October 2012.
Commission issues Draft EA	April 2013.
Comments on Draft EA	May 2013.
Modified Terms and Conditions.	July 2013.
Commission Issues Final EA	October 2013.

p. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

q. *A license applicant must file no later than 60 days following the date of issuance of the notice of acceptance and ready for environmental analysis provided for in 5.22:* (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

Dated: August 23, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–21440 Filed 8–29–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 739–033]

Appalachian Power; Notice of Temporary Variance of License and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Temporary Variance of License.

b. *Project No:* 739–033.

c. *Date Filed:* August 7, 2012.

d. *Applicant:* Appalachian Power.

e. *Name of Project:* Claytor Hydroelectric Project.

f. *Location:* The project is located on the New River in the Pulaski County, Virginia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a—825r.

h. *Applicant Contact:* Teresa Rogers, Appalachian Power, PO Box 2021, Roanoke, VA 24022, (540)-985–2441, tprogers@aep.com.

i. *FERC Contact:* Christopher Chaney, (202) 502–6778, *christopher.chaney@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* September 24, 2012

All documents may be filed electronically via the Internet. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be mailed to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. Please include the project number (P–739–033) on any comments or motions filed.

k. *Description of Application:* The licensee requests a temporary variance to allow for a non-emergency impoundment drawdown that will begin at 8 a.m. on November 7, 2012. The drawdown will proceed at a rate of 1.0 foot per day for three days until the impoundment is at an elevation of 1843 feet, or three feet below its normal elevation of 1846 feet. The impoundment will then be held at an elevation of 1843 feet until the evening of November 18, 2012, when reservoir refilling will begin. The target date to complete reservoir refilling is November 21, 2012.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field (P–739) to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) Bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to project works which are the subject of the amendment application. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: August 23, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–21443 Filed 8–29–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2305–036]

Sabine River Authority of Texas and Sabine River Authority, State of Louisiana; Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, Soliciting Comments, Recommendations, Preliminary Terms and Conditions, and Preliminary Fishway Prescriptions and Notice of Offer of Settlement

Take notice that the following hydroelectric application and offer of settlement has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Major License and Offer of Settlement.

b. *Project No.:* 2305–036.

c. *Date filed:* September 30, 2011 (application); August 1, 2012 (offer of settlement).

d. *Applicant:* Sabine River Authority of Texas and Sabine River Authority, State of Louisiana (Sabine River Authorities).

e. *Name of Project:* Toledo Bend Hydroelectric Project.

f. *Location:* The existing project is located on the Sabine River between river mile (RM) 147 and RM 279, affecting lands and waters in Panola, Shelby, Sabine, and Newton Counties, Texas, and De Soto, Sabine, and Vernon Parishes, Louisiana. The project occupies lands within the Sabine National Forest in Texas and the Indian Mounds Wilderness Area, administered by the U.S. Department of Agriculture—Forest Service.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)–825(r) (application); Rule 602 of the Commission's Rules of Practice and Procedure, 18 CFR 385.602 (offer of settlement)

h. *Applicant Contact:*

Mr. Melvin T. Swoboda, Licensing Manager, Toledo Bend Project Joint Operation, P.O. Box 579, Orange, Texas 77631–0579, 409–746–2192; *mswoboda@sratx.org*.

Mr. Jerry L. Clark, General Manager, Sabine River Authority of Texas, P.O. Box 579, Orange, Texas 77631–0579, 409–746–2192; *jclark@sratx.org*.

Mr. James Pratt, Executive Director, Sabine River Authority, State of Louisiana, 15091 Texas Highway, Many, Louisiana 71449–5718, 318–256–4112; *jimpratt@dotd.louisiana.gov*.

Mr. Charles R. Sensiba, Van Ness Feldman, P.C., 1050 Thomas Jefferson Street NW., Washington, DC 20007, 202–298–1800.

i. *FERC Contact:* Alan Mitchnick, telephone (202) 502–60745, and email *alan.mitchnick@ferc.gov*.

j. *Deadline for filing motions to intervene and protests, comments on the application and offer of settlement, recommendations, preliminary terms and conditions, and preliminary prescriptions:* 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

Motions to intervene, protests, comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing and is now ready for environmental analysis.

l. *Project Description:* The existing Toledo Bend Hydroelectric Project consists of: (1) A rolled earth-fill embankment, approximately 11,250 feet long with a top width of 25 feet and maximum height of approximately 112 feet; (2) an 185,000-surface acre, 85-mile-long reservoir, with an active storage capacity of 4,477,000 acre-feet at full pool and 1,200 miles of shoreline; (3) a 838-foot-long spillway located along the north dam abutment in Louisiana, comprising a concrete, gravity-type, gated weir with a concrete chute and stilling basin and a discharge channel on the left abutment with eleven 40-foot by 28-foot tainter gates; (4) a 80-foot-wide, 55-foot-high powerhouse located in the right abutment, containing two vertical Kaplan turbines with an authorized installed capacity of 81 megawatts (MW); (5) a 220-foot-long, concrete tailrace segment leading into a 2-mile-long, excavated channel that eventually merges with the Sabine River; (6) a 138-kilovolt primary transmission line leading from the powerhouse to the project switchyard, located immediately adjacent to the tailrace; and (7) a station transformer located to the immediate south of and adjacent to the powerhouse. The Sabine River Authorities propose to construct a 1.3–MW minimum flow turbine-generator at the project spillway.

The offer of settlement involves use of Sabine National Forest lands and water quality and aquatic resources in the lower Sabine River.

m. A copy of the application and offer of settlement is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) Bear in all capital letters the title ''PROTEST,'' ''MOTION TO INTERVENE,'' ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''PRELIMINARY TERMS AND CONDITIONS,'' or ''PRELIMINARY FISHWAY PRESCRIPTIONS''; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

o. *Procedural Schedule:* The application will be processed according to the following revised Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Commission issues draft EIS	April 2013
Comments on draft EIS (45-day comment period)	June 2013
Commission issues final EIS (assumes modified terms and conditions would not be necessary)	September 2013

p. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

q. *Other Agency Authorizations:* A Texas Commission on Environmental Quality (Texas CEQ) section 401 Water Quality Certification is required. As part of its processing of the license application, the Texas CEQ is reviewing the application under Section 401 of the Clean Water Act (CWA), and in accordance with Title 30, Texas Administrative Code Section 279.1–13, to determine if the project would comply with State water quality standards. Based on an understanding between the Federal Energy Regulatory Commission (FERC) and the Texas CEQ, this public notice is also issued for the purpose of advising all known interested persons that there is, pending before the Texas CEQ, a decision on the request for section 401 water quality certification for this FERC license application. Any comments concerning this certification request may be submitted to the Texas Commission on Environmental Quality, 401 Coordinator, MSC–150, P.O. Box 13087, Austin, Texas 78711–3087. The public comment period extends 30 days from the date of publication of this notice. A copy of the public notice with a description of the project is made available for review in the Texas CEQ's Austin office. The complete application may be reviewed at the address listed in paragraph h. The Texas CEQ may conduct a public meeting to consider all comments concerning water quality if requested in writing. A request for a public meeting must contain the following information: the name, mailing address, application number, or other recognizable reference to the application, a brief description of the interest of the requester, or of persons represented by the requester; and a brief description of how the certification, if granted, would adversely affect such interest.

Dated: August 23, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–21439 Filed 8–29–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP12–952–000.
Applicants: Columbia Gas Transmission, LLC.
Description: Columbia Gas Transmission, LLC Request for Waiver of Capacity Release Regulations.
Filed Date: 8/17/12.
Accession Number: 20120817–5173.
Comments Due: 5 p.m. ET 8/29/12.
Docket Numbers: RP12–953–000.
Applicants: Colorado Interstate Gas Company LLC.
Description: Penalties Assessed Compliance Filing of Colorado Interstate Gas Company LLC.
Filed Date: 8/20/12.
Accession Number: 20120820–5050.
Comments Due: 5 p.m. ET 9/4/12.
Docket Numbers: RP12–955–000.
Applicants: CenterPoint Energy—Mississippi River T.
Description: MRT Rate Case 2012 to be effective 10/1/2012.
Filed Date: 8/22/12.
Accession Number: 20120822–5087.
Comments Due: 5 p.m. ET 9/4/12.
Docket Numbers: RP12–956–000.
Applicants: LA Storage, LLC.
Description: LA Storage Corrected Tariff Filing—ACA Surcharge to be effective 10/11/2011.
Filed Date: 8/23/12.
Accession Number: 20120823–5001.
Comments Due: 5 p.m. ET 9/4/12.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 23, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–21407 Filed 8–29–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12–502–000]

PetroLogistics Natural Gas Storage, LLC; Notice of Request Under Blanket Authorization

Take notice that on August 17, 2012, PetroLogistics Natural Gas Storage, LLC (PetroLogistics), 4470 Bluebonnet Blvd., Baton Rouge, LA 70809, filed in Docket No. CP12–502–000, an application pursuant to Sections 157.205 and 157.213 of the Commission's Regulations under the Natural Gas Act (NGA) as amended, to increase its maximum daily deliverability rate at the Choctaw Gas Storage Hub, located in Iberville Parish, Louisiana, under PetroLogistics' blanket certificate issued in Docket No. CP07–427–000, et al.[1] all as more fully set forth in the application which is on file with the Commission and open to the public for inspection.

PetroLogistics proposes to increase its maximum daily deliverability rate from 450 MMcf per day to 550 MMcf per day, at the Choctaw Gas Storage Hub, in order to allow full utilization of its existing facility. PetroLogistics states that the increase will not require any construction or modification of any existing facility, nor any revision of the system operating pressures.

Any questions concerning this application may be directed to Kevin M. Miller PetroLogistics Natural Gas Storage, LLC, 4470 Bluebonnet Blvd., Baton Rouge, LA 70809, or via telephone at (225) 706–7690, or at *kmiller@petrologistics.com.*

This filing is available for review at the Commission or may be viewed on

[1] *PetroLogistics Natural Gas Storage, LLC,* 122 FERC ¶ 61,193 (2008).

the Commission's Web site at *http://www.ferc.gov,* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or call toll-free at (866) 206–3676, or, for TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages intervenors to file electronically.

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Dated: August 23, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–21441 Filed 8–29–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commission Staff Attendance

The Federal Energy Regulatory Commission hereby gives notice that members of the Commission's staff may attend the following meeting related to the transmission planning activities of the PJM Interconnection, L.L.C. (PJM):

PJM Regional Transmission Planning Task Force Conference Call

August 27, 2012, 1 p.m.–4 p.m., Local Time.

The above-referenced meeting will be held over conference call.

The above-referenced meeting is open to stakeholders.

Further information may be found at *www.pjm.com.*

The discussions at the meeting described above may address matters at issue in the following proceedings:

Docket No. EL05–121, *PJM Interconnection, L.L.C.*
Docket No. ER10–253 and EL10–14, *Primary Power, L.L.C.*
Docket No. EL10–52, *Central Transmission, LLC v. PJM Interconnection, L.L.C.*
Docket No. ER11–4070*, RITELine Indiana et al.*
Docket No. ER11–2875 and EL11–20, *PJM Interconnection, L.L.C.*
Docket No. ER09–1256, *Potomac-Appalachian Transmission Highline, L.L.C.*
Docket No. ER09–1589, *FirstEnergy Service Company*
Docket No. ER10–549, *PJM Interconnection, L.L.C.*
Docket No. EL11–56, *FirstEnergy Service Company*
Docket No. EL12–38, *New York Independent System Operator, Inc.*
Docket No. ER11–1844, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER11–2140, *PJM Interconnection, L.L.C.*
Docket No. ER11–2622, *PJM Interconnection, L.L.C.*
Docket No. ER11–3106, *PJM Interconnection, L.L.C.*
Docket No. ER11–4379, *PJM Interconnection, L.L.C.*
Docket No. ER12–445, *PJM Interconnection, L.L.C.*
Docket No. ER12–773, *PJM Interconnection, L.L.C.*
Docket No. ER12–718, *New York Independent System Operator, Inc.*
Docket No. ER12–1177, *PJM Interconnection, L.L.C.*
Docket No. ER12–1178, *PJM Interconnection, L.L.C.*
Docket No. ER12–1693, *PJM Interconnection, L.L.C.*
Docket No. EL12–69, *Primary Power LLC v. PJM Interconnection, L.L.C.*
Docket No. ER12–1700, *PJM Interconnection, L.L.C.*
Docket No. ER12–1901, *GenOn Power Midwest, LP*
Docket No. ER12–2080, *GenOn Power Midwest, LP*
Docket No. ER12–2085, *PJM Interconnection, L.L.C.*
Docket No. ER12–2260, *New York Independent System Operator, Inc*
Docket No. ER12–2288, *PJM Interconnection, L.L.C.*
Docket No. ER12–2438, *PJM Interconnection, L.L.C.*
Docket No. ER12–2440, *PJM Interconnection, L.L.C.*

For more information, contact Jonathan Fernandez, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (202) 502–6604 or *jonathan.fernandez@ferc.gov.*

Dated: August 23, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–21442 Filed 8–29–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. QF87–560–011; EL12–99–000]

Applied Energy LLC; Notice of Waiver Request

Take notice that on August 17, 2012, pursuant to section 292.205(c) of the Commission's Rules of Practices and Procedures, 18 CFR 292.205(c) (2011) and the amended Public Utility Regulatory Policies Act of 1978, Applied Energy LLC (Applied Energy) requested a limited waiver of the efficiency standard set forth in section 292.205(a)(2)(B) of the Commission's regulations for the topping-cycle cogeneration facility owned and operated by Applied Energy located at the United States Naval Station in San Diego, California (''Facility''). Specifically, Applied Energy requests waiver of the efficiency standard for calendar year 2012.

Any person desiring to intervene or to protest in this proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on August 31, 2012.

Dated: August 23, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–21438 Filed 8–29–12; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2012–0632; FRL—9721–7]

Request for Comment on Letters Seeking a Waiver of the Renewable Fuel Standard

Correction

Editorial Note: Notice document 12–21066 was inadvertently omitted from the issue of Monday, August 27, 2012. It is being printed in its entirety in today's issue.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is seeking comment on letters requesting a waiver of the renewable fuel standard and matters relevant to EPA's consideration of those requests. Governors of the States of Arkansas and North Carolina submitted separate requests for a waiver. Section 211(o)(7)(A) of the Clean Air Act allows the Administrator of the EPA to waive the national volume requirements of the renewable fuel standard program in whole or in part if implementation of those requirements would severely harm the economy or environment of a State, a region, or the United States, or if the Administrator determines that there is inadequate domestic supply of renewable fuel.

DATES: *Comments.* Written comments must be received on or before September 26, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2012–0632, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov.*
- *Fax:* (202) 566–1741.
- *Mail:* Air and Radiation Docket, Docket ID No. EPA–HQ–OAR–2012–0632, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Avenue NW., Washington, DC 20460. Please include a total of two copies.
- *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2012–0632. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Dallas Burkholder, Office of Transportation and Air Quality, Environmental Protection Agency, National Vehicle and Fuel Emissions Laboratory, 2565 Plymouth Road, Ann Arbor, MI 48105; telephone number: (734) 214–4766; fax number: (734) 214–4050; email address: *burkholder.dallas@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. How can I access the docket and/or submit comments?

EPA has established a public docket for this Notice under Docket ID No. EPA–HQ–OAR–2012–0632 which is available for online viewing at *www.regulations.gov,* or in person viewing at the EPA/DC Docket Center Public Reading Room, 1301 Constitution Avenue NW., Room 3334, Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air and Radiation Docket is 202–566–1742.

Use *www.regulations.gov* to obtain a copy of the waiver requests, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

II. Background

The Renewable Fuel Standard (RFS) program began in 2006 pursuant to the Energy Policy Act of 2005 (EPAct), which added provisions in section 211(o) of the Clean Air Act (CAA, or ''Act''), for a renewable fuel program, commonly referred to as RFS1. The statutory provisions for the RFS program were subsequently modified through the Energy Independence and Security Act of 2007 (EISA), and EPA published revised regulatory requirements on March 26, 2010 (75 FR 14670) (referred to as RFS2). The transition from the RFS1 requirements of EPAct to the RFS2 requirements of EISA generally occurred on July 1, 2010. EISA establishes annual national renewable fuel volumes required through 2022 for four categories of renewable fuel: cellulosic biofuel, biomass based diesel, advanced biofuel, and total renewable fuel. Though EISA establishes a schedule of increasing national volume mandates over time, it also requires the Administrator to set the specific volume requirements for refiners and importers annually. The applicable volume standards under the RFS program for the 2012 compliance year were published in the **Federal**

Register on January 9, 2012 (77 FR 1320).

Under the RFS program, obligated parties, typically gasoline or diesel refiners or importers, are required to meet specific applicable percentage standards to be in compliance. Renewable identification numbers, or RINs, are assigned by the renewable fuel producer to each gallon of qualifying renewable fuel and serve as a means for demonstrating compliance by the obligated parties. Aside from using sufficient current-year RINs to demonstrate compliance in a given year, obligated parties may also choose (a) to use available RINs from the prior year towards the current year's requirement, up to a 20 percent cap, and/or (b) to carry forward a deficit into the next compliance year.

Section 211(o)(7) of the Act allows the Administrator, in consultation with the Secretary of Agriculture and the Secretary of Energy, to waive the national volume requirements of the RFS, in whole or in part, upon petition by one or more States, or by any party subject to the requirements of the RFS program. The Administrator may also waive the volume requirements on her own motion. A waiver may be issued if the Administrator determines, after public notice and opportunity for comment, that implementation of the RFS volume requirement would severely harm the economy or environment of a State, a region, or the United States, or that there is an inadequate domestic supply. If a waiver is granted, it can last no longer than one year but may be renewed by the Administrator after consultation with the Secretary of Agriculture and the Secretary of Energy.

III. What is today's action?

Governors of the States of Arkansas and North Carolina submitted separate letters requesting a waiver of required volumes of renewable fuel under the RFS program. EPA is seeking comment on the requests and matters relevant to EPA's consideration of the requests. Section 211(o) of the Act requires the Administrator, in consultation with the Secretary of Agriculture and the Secretary of Energy, to approve or disapprove a petition for a waiver of the RFS volume requirements within 90 days after the date on which the petition is received by the Administrator.

The Governor of Arkansas submitted a letter dated August 13, 2012 requesting EPA ''waive an appropriate volume of renewable fuel, pursuant to Section 211(o)(7)'' of the Act. The letter includes statements regarding this year's drought, crop price increases, and impacts in various economic sectors, including the poultry and cattle sectors. The letter submitted by the Governor of North Carolina, dated August 14, 2012, requests that ''the applicable volume of renewable fuel be waived'' under the Act and also includes statements regarding drought conditions in the United States and economic impacts in the State.

Other organizations and individuals—including among others the Governors of the States of Delaware and Maryland, the National Pork Producers Council, the Dairy Farmers of America, and various Members of Congress—have also submitted letters either requesting the Administrator utilize her authority to waive RFS volume requirements or expressing support for the granting of a volume waiver. All of these letters are available in the docket; any additional similar requests submitted to EPA will also be docketed and considered together with requests already received.

EPA is issuing this notice to solicit comments and information on the waiver requests, and the views of the public on whether the statutory basis for a waiver of the national RFS requirements has been met and, if so, whether EPA should exercise its discretion to grant a waiver.

IV. Has EPA received RFS waiver requests in the past?

In 2008, the Governor of the State of Texas requested a fifty percent waiver of the national volume requirements for the RFS. EPA denied Texas' waiver request because the evidence in that case did not support a determination that implementation of the RFS mandate during the time period at issue (September 1, 2008 through August 31, 2009) would have severely harmed the economy of a State, region, or the United States (73 FR 47168, August 13, 2008). EPA's 2008 denial of a waiver discusses the analytical approach used to make the determination, our legal interpretation of the relevant statutory language, and other information that may be useful to commenters. It also provides additional discussion of the types of information we would expect in a waiver request.

EPA's determination in response to Texas' waiver request was supported by technical analysis conducted using a model developed by researchers at Iowa State University (ISU). The 2008 analysis evaluated the impact of a waiver of the volume standard by comparing the circumstances with and without a waiver, to identify the impact associated with implementation of the RFS program in the relevant time period. The 2008 Texas waiver determination discusses the reasons EPA utilized the ISU model and provides a brief description of how it operates.

The 2008 Texas waiver determination was the first EPA action in response to a petition under 211(o)(7) of the Act, and as a result the 2008 decision addresses a number of questions regarding the scope of that authority. This includes a discussion of how EPA interpreted the provision's language regarding severe economic harm. We encourage interested parties to review that discussion and provide comment on our interpretation in the context of the 2012 waiver requests.

V. What specific information is EPA seeking?

EPA requests comment on any matter that might be relevant to EPA's review of and actions in response to the requests, specifically including (but not limited to) information on:

(a) Whether compliance with the RFS would severely harm the economy of Arkansas, North Carolina, other States, a region, or the United States;

(b) whether the relief requested will remedy the harm;

(c) to what extent, if any, a waiver would change demand for ethanol and affect prices of corn, other feedstocks, feed, and food;

(d) the amount of ethanol that is likely to be consumed in the U.S. during the relevant time period, based on its value to refiners for octane and other characteristics and other market conditions in the absence of the RFS volume requirements; and

(e) if a waiver were appropriate, the amount of required renewable fuel volume appropriate to waive, the date on which any waiver should commence and end, and to which compliance years it would apply.

Commenters should include data or specific examples in support of their comments in order to aid the Administrator in evaluating the requests for a waiver and determining what action if any is appropriate in light of all of the circumstances.

Dated: August 20, 2012.

Gina McCarthy,

Assistant Administrator, Office of Air and Radiation.

Editorial Note: Notice document 2012–21066 was inadvertently omitted from the issue of Monday, August 27, 2012. It is being printed in its entirety in today's issue.

[FR Doc. C1–2012–21066 Filed 8–29–12; 8:45 am]

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9724–1]

Underground Injection Control Program; Hazardous Waste Injection Restrictions; Petition for Exemption—Class I Hazardous Waste Injection; Cornerstone Chemical Company, Waggaman, LA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of a final decision on a no migration petition reissuance.

SUMMARY: Notice is hereby given that a reissuance of an exemption to the land disposal Restrictions, under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act, has been granted to Cornerstone for four Class I injection wells located at Waggaman, Louisiana. The company has adequately demonstrated to the satisfaction of the Environmental Protection Agency by the petition reissuance application and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the continued underground injection by Cornerstone, of the specific restricted hazardous wastes identified in this exemption, into Class I hazardous waste injection Wells 2, 3 4B and 5 at the Waggaman, Louisiana facility until June 30, 2016, unless EPA moves to terminate this exemption. Additional conditions included in this final decision may be reviewed by contacting the Region 6 Ground Water/UIC Section. A public notice was issued June 28, 2012. The public comment period closed on August 13, 2012, and no comments were received. This decision constitutes final Agency action and there is no Administrative appeal. This decision may be reviewed/appealed in compliance with the Administrative Procedure Act.

DATES: This action was effective as of August 20, 2012.

ADDRESSES: Copies of the petition and all pertinent information relating thereto are on file at the following location: Environmental Protection Agency, Region 6, Water Quality Protection Division, Source Water Protection Branch (6WQ–S), 1445 Ross Avenue, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Philip Dellinger, Chief Ground Water/UIC Section, EPA—Region 6, telephone (214) 665–8324.

Dated: August 23, 2012.

Wren Stenger,

Acting Deputy Director, Water Quality Protection Division.

[FR Doc. 2012–21475 Filed 8–29–12; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

[Public Notice 2012–0333]

Agency Information Collection Activities: Final Collection; Comment Request

AGENCY: Export-Import Bank of the U.S.

ACTION: Submission for OMB Review and Comments Request.

Form Title: EIB 09–01 Payment Default Report OMB 3048–0028.

SUMMARY: The Export-Import Bank of the United States (Ex-Im Bank), as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

This collection allows insured/guaranteed parties and insurance brokers to report overdue payments from the borrower and/or guarantor. Ex-Im Bank customers will submit this form electronically through Ex-Im Online, replacing paper reporting. Ex-Im Bank has simplified reporting of payment defaults in this form by including checkboxes and providing for many fields to be self-populated. Ex-Im Bank provides insurance, loans, and guarantees for the financing of exports of goods and services.

DATES: Comments should be received on or before October 1, 2012 to be assured of consideration.

ADRESSES: Comments may be submitted through *www.regulations.gov* or written comments and/or suggestions regarding this information collection, especially the estimated public burden and associated response time should be directed to Office of Information and Regulatory Affairs, 725 17th Street NW., Washington, DC 20038 Attn: 3048–0028.

FOR FURTHER INFORMATION CONTACT: Stacy Lee, Export Import Bank, 811 Vermont Avenue NW., Washington, DC 20571.

SUPPLEMENTARY INFORMATION:

Titles and Form Number: EIB 09–01 Payment Default Report.

OMB Number: 3048–0028.

Type of Review: Regular.

Need and Use: The information requested enables insured/guaranteed parties and insurance brokers to report overdue payments from the borrower and/or guarantor.

Affected Public: Insured/guaranteed parties and brokers.

Annual Number of Respondents: 200.

Estimated Time per Respondent: 15 minutes.

Government Review Time: 50 hours.

Cost to the Government: $2,000.

Sharon A. Whitt,

Agency Clearance Officer.

[FR Doc. 2012–21482 Filed 8–29–12; 8:45 am]

BILLING CODE 6690–01–P

EXPORT-IMPORT BANK OF THE UNITED STATES

[Public Notice 2012–0189]

Agency Information Collection Activities: Comment Request

AGENCY: Export-Import Bank of the United States.

ACTION: Submission for OMB Review and Comments Request.

Form Title: EIB 92–41 Application for Financial Institution Short-Term, Single-Buyer Insurance.

SUMMARY: The Export-Import Bank of the United States (Ex-Im Bank), as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

The ‘‘Application for Financial Institution Short Term Single Buyer Insurance’’ form will be used by entities involved in the export of US goods and services, to provide Ex-Im Bank with the information necessary to obtain legislatively required assurance of repayment and fulfills other statutory requirements.

The application can be reviewed at: *www.exim.gov/pub/pending/eib92–41.pdf.* Application for Financial Institution Short Term Single Buyer Insurance.

DATES: Comments should be received on or before October 1, 2012 to be assured of consideration.

ADRESSES: Comments may be submitted electronically on *www.regulations.gov* or by mail to Office of Information and Regulatory Affairs, 725 17th Street NW., Washington, DC 20038 Attn: OMB 3048–0019.

SUPPLEMENTARY INFORMATION:

Titles and Form Number: EIB 92–41 Application for Financial Institution Short-Term, Single-Buyer Insurance.

OMB Number: 3048–0019.

Type of Review: Regular.

Need and Use: The information requested enables the applicant to provide Ex-Im Bank with the information necessary to obtain legislatively required assurance of repayment and fulfills other statutory requirements.

Annual Number of Respondents: 300.

Estimated Time per Respondent: 1.5 hours.

Government Annual Burden Hours: 450.

Frequency of Reporting or Use: Annually.

Government Review Time: 6 hours.

Total Hours: 1,800.

Cost to the Government: $74,880.

Sharon A. Whitt,

Agency Clearance Officer.

[FR Doc. 2012–21484 Filed 8–29–12; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection(s) Being Submitted for Review and Approval to the Office of Management and Budget (OMB)

AGENCY: Federal Communications Commission.

ACTION: Notice; request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3502–3520), the Federal Communications Commission invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). 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 estimates; 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 OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before October 1, 2012. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Submit your PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at 202–395–5167 or via Internet at *Nicholas_A._Fraser@omb.eop.gov* and to Judith B. Herman, Federal Communications Commission, via the Internet at *Judith-b.herman@fcc.gov.* To submit your PRA comments by email send them to: *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of Managing Director, FCC, at 202–418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–00819.

Title: Lifeline and Link Up Reform and Modernization, Advancing Broadband Availability Through Digital literacy Training.

Form Numbers: FCC Forms 497, 550 and 555.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households and business or other for-profit.

Number of Respondents: 16,100,940 respondents; 41,828,019 responses.

Estimated Time per Response: .5782166 hours.

Frequency of Response: On occasion, quarterly, biennially, one time, monthly and annual reporting requirements, third party disclosure requirements and recordkeeping requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. sections 1, 4(i), 201–205, 214, 254 and 403 of the Communications Act of 1934, as amended.

Total Annual Burden: 24,185,658 hours.

Total Annual Cost: N/A.

Privacy Impact Assessment: Yes.

Nature and Extent of Confidentiality: The Commission is not requesting that respondents submit confidential information to the Commission. If the Commission requests information that the respondents believe is confidential, respondents may request confidential treatment of such information under 47 CFR 0.459 of the Commission's rules. We note that the Commission's sponsor, the Universal Service Administration Company (USAC) must preserve the confidentiality of all data obtain from respondents and contributors to the universal service support program mechanism, must not use the data except for the purposes of administering the universal service support program and must not disclose data in company-specific form unless directed to do so by the Commission.

Needs and Uses: The Commission will submit this collection to the OMB for approval of a revision of this information collection.

Eligible Telecommunications Carriers (ETCs) are permitted to receive universal service support reimbursement for offering certain services to qualifying low-income customers. On February 6, 2012, the Commission released a Report and Order and Further Notice of Proposed Rulemaking, Lifeline and Link Up Reform and Modernization, Federal-State Joint Board on Universal Service, FCC 12–11, intended to take immediate action to address potential waste, fraud and abuse in the universal service low income program. For specific details of the proposed information collection requirements and other requirements adopted see 77 FR 29241.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2012–21449 Filed 8–29–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

RIN 3064–AD91

Agency Information Collection Activities: Proposed Information Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on this proposed information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid

Office of Management and Budget (OMB) control number. Currently, the FDIC is soliciting comment concerning a proposed new regulatory reporting requirement for state nonmember banks and state savings associations titled, ''Annual Stress Test Reporting Template and Documentation for Covered Banks with Total Consolidated Assets of $50 Billion or More under the Dodd-Frank Wall Street Reform and Consumer Protection Act.'' The proposal describes the scope of reporting and the proposed reporting requirements.

DATES: Comments must be received by October 29, 2012

ADDRESSES: You may submit written comments by any of the following methods:

- *Agency Web Site: http://www.fdic.gov/regulations/laws/federal/propose.html.* Follow the instructions for submitting comments on the FDIC Web site.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: Comments@FDIC.gov.* Include RIN 3064–AD91 on the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, FDIC, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery/Courier:* Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Public Inspection: All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/propose.html* including any personal information provided. Comments may be inspected at the FDIC Public Information Center, 3501 North Fairfax Drive, Room E–1002, Arlington, VA 22226 between 9 a.m. and 4:30 p.m. on business days.

Additionally, please send a copy of your comments to: By mail to the U.S. Office of Management and Budget, 725 17th Street NW., #10235, Washington, DC 20503 or by facsimile to 202.395.6974, Attention: Federal Banking Agency Desk Officer.

FOR FURTHER INFORMATION CONTACT: You can request additional information from Gary Kuiper, 202.898.3877, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW., NYA–5046, Washington, DC 20429. In addition, copies of the templates referenced in this notice can be found on the FDIC's Web site (*http://www.fdic.gov/regulations/laws/federal/propose.html*).

SUPPLEMENTARY INFORMATION: The FDIC is requesting comment on the following new proposed information collection:

Title: Annual Stress Test Reporting Template and Documentation for Covered Banks with Total Consolidated Assets of $50 Billion or More under the Dodd-Frank Wall Street Reform and Consumer Protection Act.

OMB Control No.: 3064–NEW

Description: Section 165(i)(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act [1] (Dodd-Frank Act) requires certain financial companies, including state nonmember banks and state savings associations, to conduct annual stress tests [2] and requires the primary financial regulatory agency [3] of those financial companies to issue regulations implementing the stress test requirements.[4] A state nonmember bank or state savings association is a financial company and therefore subject to the stress test requirements if its total consolidated assets are more than $10 billion and it is regulated by the FDIC (''covered bank''). Under section 165(i)(2), a covered bank is required to submit to the Board of Governors of the Federal Reserve System (Board) and to its primary financial regulatory agency a report at such time, in such form, and containing such information as the primary financial regulatory agency may require.[5] On January 23, 2012, the FDIC published in the **Federal Register** a notice of proposed rulemaking (NPR) implementing the section 165(i)(2) annual stress test requirement.[6] This notice describes the reports and information required to meet the reporting requirements under section 165(i)(2). These information collections will be given confidential treatment (5 U.S.C. 552(b)(4)).

The FDIC intends to use the data collected through this proposal to assess the reasonableness of the company-run stress test results and to provide forward-looking information to the FDIC regarding a covered bank's capital adequacy. The FDIC also may use the results of the stress tests to determine whether additional analytical techniques and exercises could be appropriate to identify, measure, and monitor risks at the covered bank. The stress test results are expected to support ongoing improvement in a covered bank's stress testing practices with respect to its internal assessments of capital adequacy and overall capital planning.

The Dodd-Frank Act stress testing requirements apply to all covered banks, but the FDIC recognizes that many covered banks with consolidated total assets of $50 billion or more have been subject to stress testing requirements under the Board's Comprehensive Capital Analysis and Review (CCAR) or Capital Plan Review (CapPR). The FDIC also recognizes that these banks' stress tests will be applied to more complex portfolios and therefore warrant a broader set of reports to adequately capture the results of the company-run stress tests. These reports will necessarily require more detail than would be appropriate for smaller, less complex banks. Therefore, the FDIC will propose simplified and separate reporting templates for covered banks with total consolidated assets more than $10 billion and less than $50 billion and for covered banks with total consolidated assets of $50 billion or more. In cases where a covered bank with assets less than $50 billion is affiliated with an organization with assets of $50 billion or more, the FDIC reserves the authority to require that covered bank use the reporting template for larger banks. The FDIC may also, on a case-by-case basis, require a covered bank to report stress test results using a simpler format to be specified by the FDIC. The reporting templates for banks with assets of $50 billion or more are described below.

The FDIC has worked closely with the Board and the Office of the Comptroller of the Currency (OCC) to make the agencies' respective rules implementing annual stress testing under the Dodd-Frank Act consistent and comparable by requiring similar standards for scope of application, scenarios, data collection and reporting forms. The FDIC has worked to minimize any potential duplication of effort related to the annual stress test requirements. The FDIC also recognizes that many covered banks with total consolidated assets of $50 billion or more are required to submit reports using CCAR reporting form FR Y–14A.[7] Therefore, the FDIC is proposing to base reporting requirements closely on the Board's form FR Y–14A for covered banks with total consolidated assets of $50 billion or more. The FDIC recognizes the Board has a proposal to modify the FR Y–14A out for comment and, to the extent practical, the FDIC will keep its reporting requirements consistent with the Board's FR Y–14A in order to

[1] Public Law 111–203, 124 Stat. 1376, July 2010.

[2] 12 U.S.C. 5365(i)(2)(A).

[3] 12 U.S.C. 5301(12).

[4] 12 U.S.C. 5365(i)(2)(C).

[5] 12 U.S.C. 5365(i)(2)(B).

[6] 77 FR 3166, Jan. 23, 2012.

[7] *http://www.federalreserve.gov/reportforms.*

minimize burden on covered institutions.[8]

Description of Reporting Templates for Banks With $50 Billion or More in Assets

The FDIC DFAST–14A Summary Schedule includes data collection worksheets necessary for the FDIC to assess the company-run stress test results for baseline, adverse and severely adverse scenarios as well as any other scenario specified in accordance with regulations specified by the FDIC. The DFAST–14A Summary Schedule includes worksheets that collect information on the following areas:

1. Income Statement;
2. Balance Sheet;
3. Capital Statement;
4. Retail Risk;
5. Available-for-Sale/Held to Maturity Securities (AFS/HTM);
6. Trading;
7. Counterparty Credit Risk;
8. Operational Risk; and
9. Pre-Provision Net Revenue (PPNR).

Each covered bank reporting to the FDIC using this form would be required to submit to the FDIC a separate DFAST–14A Summary Schedule for each scenario provided to covered banks in accordance with regulations implementing Section 165(i)(2) as specified by the FDIC.

Worksheets: Income Statement

This income statement collects data for the quarter preceding the planning horizon and for each quarter of the planning horizon for the stress test on projected losses and revenues in the following categories.

1. Loan losses;
2. Losses due to contingent commitments and liabilities;
3. Other Than Temporary Impairments (OTTI) on assets held to maturity and available for sale;
4. Trading account losses;
5. Allowance for loan and lease losses;
6. Pre-provision net revenue; and
7. Repurchase reserve/liability for reps and warranties.

This schedule provides information used to assess losses that covered banks can sustain in adverse and severely adverse stress scenarios.

Worksheets: Balance Sheet

The balance sheet statement collects data for the quarter preceding the planning horizon and for each quarter of the planning horizon for the stress test on projected equity capital, as well as on assets and liabilities in the following categories.

1. HTM securities;
2. AFS securities;
3. Loans;
4. Trading Assets;
5. Intangibles;
6. Deposits; and
7. Trading Liabilities.

The FDIC intends to use this worksheet to assess the projected changes in assets and liabilities that a covered bank can sustain in an adverse and severely adverse stress scenario. This worksheet will also be used to assess the revenue and loss projections identified in the income statement worksheet.

Worksheets: Capital Worksheet

The capital statement collects data for the quarter preceding the planning horizon and for each quarter of the planning horizon for the stress test on the following areas:

1. Changes to Equity Capital;
2. Changes to Regulatory capital; and
3. Capital Actions.

The FDIC intends to use this worksheet to assess the impact on capital of the projected losses and projected changes in assets that the covered bank can sustain in a stressed scenario. In addition to reviewing the worksheet in the context of the balance sheet and income statement projections, the FDIC also intends to use this worksheet to assess the adequacy of the capital plans and capital planning processes for each covered bank with total consolidated assets of $50 billion or more.

Worksheets: Retail Projections

The Retail projections worksheets collects data for each quarter of the planning horizon for the stress test on projected balances and losses for major retail portfolios: Residential real estate, credit card, automobile, student loans, small business loans, and other consumer. For residential real estate, the worksheets collect data for first lien mortgages, home equity lines of credit, and home equity loans. For all major retail portfolios, the worksheets contain separate segments for domestic and international loans for various product types. Within each broad product-type segment, the reporting for the portfolio is divided into a number of sub-segments that embody unique risk characteristics. This modular product-type design of the Retail worksheet allows for a targeted data collection that encompasses only the material portfolios in a given product area for a particular covered bank. A covered bank with total consolidated assets of $50 billion or more would be required to complete only the segments and sub-segments material for that bank. This design is intended to limit burden while maximizing the supervisory information produced from the collection.

Worksheets: Trading and Counterparty Risk

The *Trading* and *Counterparty Risk worksheets* collect projected losses associated with a specified global market risk shock from covered banks with total consolidated assets of $50 billion or more with large trading operations. The FDIC provides a set of hypothetical shocks to the risk factors most relevant to the trading and counterparty positions of respondent covered banks.

Worksheets: Operational Risk

The Operational Risk worksheets collect data on covered banks' with total consolidated assets of $50 billion or more projections of operational losses for each quarter of planning horizon for the stress test. Operational losses are defined as losses arising from inadequate or failed internal processes, people, and systems or from external events including legal losses. Some examples of operational loss events are losses related to improper business practices (including class action lawsuits), execution errors, and fraud. Additional detail may be requested in order to translate the respondent covered banks' historical loss experience into operational loss projections. Additional detail also may be requested and on any budgeting processes used to project operational losses.

Completion of the Operational Risk schedule would be required only for those banks subject to advanced approaches risk-based capital rules.

Worksheets: PPNR

For the PPNR schedule, covered banks with total consolidated assets of $50 billion or more must provide projections for the three major components of PPNR (net interest income, non-interest income, and non-interest expense) for each quarter of the planning horizon. Collection of these data in this format is based on the assumption that the revenues generated by different business lines are affected differently by different stress scenarios, and such a view facilitates a more robust analysis of the resulting projections.

[8] 77 FR 40051, July 6, 2012.

Description of FDIC DFAST–14A Counterparty Credit Risk/CVA Template

The CCR schedule collects, on various worksheets, data to identify credit valuation adjustment (CVA), exposures, and CVA sensitivities for the respondent covered bank's top counterparties along a number of dimensions, including current CVA, stressed CVA, net current exposure, and gross current exposure. Covered banks with total consolidated assets of $50 billion or more also must submit aggregate CVA, exposures, and CVA sensitivities by ratings categories. The *Notes to the CCR Schedule worksheet* allows respondent covered banks to voluntarily submit additional information to provide clarity to the portfolio. Covered banks with total consolidated assets of $50 billion or more are required to report results under two scenarios (adverse, severely adverse) and two specifications (Covered Bank, FDIC) to capture Expected Exposure profiles.

Completion of the Counterparty Credit Risk/CVA schedule would be required only for those banks subject to the market shock provided by the FDIC.

Description of FDIC DFAST–14A Basel III Template

The Basel III & Dodd-Frank schedule collects projections of Tier 1 Common Equity, Tier 1 Capital, Risk-Weighted Assets (RWA), and Leverage Exposures (along with granular components of those elements) for each quarter of the planning horizon for the stress test under baseline, adverse and severely adverse scenarios, based on the Basel III framework promulgated by the Basel Committee on Bank Supervision. Covered banks with total consolidated assets of $50 billion or more also are required to include data on the projected impact of any significant actions planned in response to Basel III and the Dodd-Frank Act (for example, asset sales, asset winddowns, and data collection and modeling enhancements).

Description of FDIC DFAST–14A Company Variables Template

To conduct the stress test required under this rule, a respondent covered bank may need to project additional economic and financial variables to estimate losses or revenues for some or all of its portfolios. In such a case, the covered bank is required to complete the DFAST–14A Company Variables schedule for each scenario where such additional variables are used to conduct the stress test. Each scenario worksheet collects the variable name (matching that reported on the Scenario Variable Definitions worksheet), the actual value of the variable during the third quarter of the reporting year, and the projected value of the variable for nine future quarters.

Description of Supporting Documentation

Covered banks with total consolidated assets of $50 billion or more must submit clear documentation in support of the projections included in the worksheets to support efficient and timely review of annual stress test results by the FDIC. The supporting documentation should be submitted electronically and is not expected to be reported in the workbooks used for required data reporting. This supporting documentation must clearly describe the methodology used to produce the stress test projections, and must include how the macroeconomic factors were translated into a covered bank's projections, as well as technical details of any underlying statistical methods used. Where company-specific assumptions are made that differ from the broad macro-economic assumptions incorporated in stress scenarios provided by the FDIC, the documentation must also describe such assumptions and how those assumptions relate to reported projections. Where historical relationships are relied upon, the respondent covered banks must describe the historical data and provide the basis for the expectation that these relationships would be maintained in each scenario, particularly under adverse and severely adverse conditions.

Type of Review: New collection.

Affected Public: State nonmember banks and state savings associations supervised by the FDIC with total consolidated assets of $50 billion or more.

Estimated Number of Respondents: 4

Estimated Time per Response: 1,040 hours.

Estimated Total Annual Burden: 4,160 hours.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the FDIC, including whether the information has practical utility;

(b) The accuracy of the FDIC's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology;

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information; and

(f) The ability of FDIC-supervised banks and thrifts with assets greater than $50 billion to provide the requested information to the FDIC by January, 2013.

Dated at Washington, DC, this 23rd day of August 2012.

Federal Deposit Insurance Corporation

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 2012–21417 Filed 8–29–12; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS12–16]

Appraisal Subcommittee; Proposed Policy Statements

AGENCY: Appraisal Subcommittee of the Federal Financial Institutions Examination Council

ACTION: Proposed policy statements and request for comments.

SUMMARY: The Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council requests public comment on a proposal to revise ASC Policy Statements (proposed Policy Statements). The proposed Policy Statements provide guidance to ensure State appraiser regulatory programs (Program)[1] comply with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended. The proposed Policy Statements would supersede the current ASC Policy Statements.

DATES: Comments must be received on or before October 29, 2012.

ADDRESSES: You may submit comments, identified by any of the following methods:

[1] The 50 States, the District of Columbia, and four Territories, which are the Commonwealth of Puerto Rico, Commonwealth of the Northern Mariana Islands, Guam, and United States Virgin Islands, have State appraiser certifying and licensing agencies with Programs monitored by the ASC through the Compliance Review process.

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *E-Mail: webmaster@asc.gov.* Include the docket number in the subject line of the message.

• *Fax:* (202) 289–4101. Include docket number on fax cover sheet.

• *Mail:* Address to Appraisal Subcommittee, Attn Lori Schuster, 1401 H Street NW., Suite 760, Washington, DC 20005.

All public comments will be made available on the ASC's Web site at *http://www.asc.gov* (follow link in ''What's New'') as submitted, unless modified for technical reasons. Accordingly, comments will not be edited to remove any personal identifying or contact information.

FOR FURTHER INFORMATION CONTACT: James R. Park, Executive Director, at (202) 595–7575, or Alice M. Ritter, General Counsel, at (202) 595–7577, via Internet email at *jim@asc.gov* and *alice@asc.gov*, respectively, or by U.S. Mail at Appraisal Subcommittee, 1401 H Street NW., Suite 760, Washington, DC 20005.

SUPPLEMENTARY INFORMATION:

I. Background

Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended (Title XI), established the ASC.[2] The purpose of Title XI is to provide protection of Federal financial and public policy interests by upholding Title XI requirements for appraisals performed for federally related transactions.[3] Pursuant to Title XI, the ASC performs periodic Compliance Reviews of each State's Program to:

• Determine its compliance, or lack thereof, with Title XI, and

• Assess its implementation of the *Real Property Appraiser Qualification Criteria* (AQB Criteria), as adopted by the Appraiser Qualifications Board (AQB).

The ASC originally adopted the Policy Statements in 1993. In 1997, the ASC added Policy Statements governing temporary practice and reciprocity. Since 1997, the Policy Statements have remained largely unchanged with the exception of amendments made by the ASC in 2008 to Policy Statement 10, *Enforcement.* Two recent occurrences necessitated revision of the Policy Statements:

1. Passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act); and

2. ASC implementation of its revised Compliance Review process in 2009.

States have already begun the process of implementing numerous statutory changes brought about by the Dodd-Frank Act.[4] The proposed Policy Statements reflect both Dodd-Frank Act provisions that have been implemented by the States as well as provisions that are in process. As part of the revised Compliance Review process in 2009, the ASC changed the format of the Compliance Review Report issued to the States after the ASC completes its on-site review of a State's Program. The Compliance Review Report presents the findings of the ASC's on-site review of a State's Program, including areas of non-compliance with Title XI and recommendations for improvement.

The proposed Policy Statements are intended to provide States with the necessary information to maintain their Programs in compliance with Title XI. Further, the proposed Policy Statements address the ASC's authority to evaluate a State Program for compliance with Title XI and to take sanctions against a State when its Program does not comply with Title XI. The proposal also excludes provisions from the current Policy Statements that have become outdated or lack enforceability. Additionally, the proposal reflects consideration of recent amendments to the Uniform Standards of Professional Appraisal Practice (USPAP) and the AQB Criteria.

II. Summary of the Proposed Policy Statements

Proposed Policy Statements 1 thru 7 correspond with the seven categories evaluated during the ASC's Compliance Review process and included in the ASC Compliance Review Report to a State. Proposed Policy Statement 8 sets forth procedures in the event the ASC imposes interim sanctions against a State. The proposal also includes four appendices:

1. Appendix A provides an overview of the Compliance Review process and a revised rating system;

2. Appendix B provides a summary of requirements and related implementation standards for each Policy Statement;

3. Appendix C provides a glossary of terms; and

4. Appendix D contains previously issued ASC Bulletins and Supplements that provided States with guidance on compliance with the self-enabling provisions of the Dodd-Frank Act, including the effective date by which a State needed to take action.

III. Statement-by-Statement Analysis

The following provides a statement-by-statement analysis highlighting the changes to the current Policy Statements reflected in the proposal.

Introduction and Purpose

The proposal's introduction and purpose statement provides a brief overview of the ASC's authority and its monitoring function of State Programs to determine compliance, or lack thereof, with Title XI. Much of the explanatory language in the current Policy Statements, regarding functions of the ASC and the establishment of State Programs, is well known and presented in the ASC Annual Report to Congress and, therefore, is being omitted from the proposal. The proposal focuses rather on the Policy Statements' goal to provide States with necessary information to maintain their Programs in compliance with Title XI.

Policy Statement 1: Statutes, Regulations, Policies and Procedures Governing State Programs

Proposed Policy Statement 1 will consolidate and replace the first four current Policy Statements (*State Regulatory Structure and Independence of Functions; Appraiser Classifications; Appraisal Standards; Written Appraisal Reports*) and replaces Policy Statement 7 (*Prohibition Against Discrimination).* Policy Statement 1 will address the first area of review in the ASC Compliance Review process of a State Program's statutes, regulations, policies and procedures for compliance with Title XI.

Since State Programs are now established, much of the language in the

[2] The ASC Board is comprised of seven members. Five members are designated by the heads of the FFIEC agencies (Board of Governors of the Federal Reserve System, Consumer Financial Protection Bureau, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, and National Credit Union Administration). The other two members are designated by the heads of the Department of Housing and Urban Development and the Federal Housing Finance Agency.

[3] Refers to any real estate related financial transaction which: (a) a federal financial institutions regulatory agency engages in, contracts for, or regulates; and (b) requires the services of an appraiser. (See Title XI § 1121 (4), 12 U.S.C. 3350.)

[4] The ASC has issued two Bulletins notifying State Programs of statutory requirements brought about by the Title XI amendments resulting from the Dodd-Frank Act:

1. *Bulletin 10–1,* issued October 14, 2010, notified States that the ASC approved a modification of the annual National Registry fee to $40 from $25. To provide a reasonable transition period for implementation by the States, the fee increase became effective on January 1, 2012.

2. *Bulletin No. 2011–01,* issued March 18, 2011, addressed new requirements concerning reciprocity, qualification requirements for State licensed appraisers, minimum requirements for trainee appraisers and supervisory appraisers, course approval program of the Appraisal Foundation's AQB, and funding and staffing of State Programs.

current Policy Statements with instructions on the initial establishment of an appraiser licensing and certification program has been eliminated. The proposal does preserve essential language concerning independence and ethical standards with deference given to State standards. The proposal reflects the authority the Dodd-Frank Act granted the ASC to review State Programs for adequate funding and staffing. The proposal also addresses the discussion on appraiser classifications, addressing the Dodd-Frank Act provisions concerning licensed level appraisers, as well as trainees and supervisors, and outdated language has been removed. The proposal also addresses the other credential designations used by States that should be distinguished from the federally recognized credentials. The discussion on the guidance issued by Federal financial institutions regulatory agencies and the statutory requirements outside of Title XI in the current Policy statements has been eliminated in deference to those provisions standing on their own. The proposal reflects an amendment to the current Policy Statements discussion on prohibiting discrimination to reflect the Dodd-Frank Act provision that allows criteria established by the Federal financial institutions regulatory agencies for appraiser qualifications to include membership in a nationally recognized professional appraisal organization.

The proposal addresses attendance by ASC Policy Managers at States' closed/executive sessions. The proposal explains how attendance at such meetings, except in the case of ''quasi-judicial'' proceedings specifically authorized by State statute, is an essential part of the ASC's monitoring function.

Policy Statement 2: Temporary Practice

Proposed Policy Statement 2 will replace the current Policy Statement 5 (*Temporary Practice*) and will address the second area of review in the ASC Compliance Review process pertaining to temporary practice for compliance with Title XI.

Proposed Policy Statement 2 provides a clear explanation of what the ASC will consider to determine whether a State's fees or requirements are excessive or burdensome to an appraiser's ability to work in a State on a temporary basis relative to the State's cost of processing and issuing a temporary practice credential. Burdensome requirements are specified separately for the ''Home State agency'' and the ''Host State.'' The proposal reflects that a fee for an initial permit and one extension in excess of $250 is an excessive fee. The ASC acknowledges that the current Policy Statement set the maximum fee of $150 in 1997 and recognizes that States' costs have increased over time. Using the Consumer Price Index Inflation Calculator from the U.S. Department of Labor, Bureau of Labor Statistics, the change in prices of all goods and services at a $150 fee in 1997 equaled about a $215 fee as of July 2012. The ASC considered this information and based the proposed maximum fee of $250 on revised Policy Statement 2 becoming final in 2012, and remaining in effect for several years.

The language in current Policy Statement 5 concerning the requirements of an appraiser to register for temporary practice in a State to perform a ''technical review'' is not included in the proposal. The ASC believes that text is outdated and unnecessary.

Policy Statement 3: National Registry

Proposed Policy Statement 3 will replace the current Policy Statement 8 (*National Registry of State Certified and Licensed Appraisers*) and Policy Statement 9 (*Information Sharing*), and will address the third area of review in the ASC Compliance Review process of a State Program's policies and practices pertaining to the ASC's National Registry for compliance with Title XI.

Proposed Policy Statement 3 addresses several Dodd-Frank Act amendments to Title XI concerning appraiser classifications and States' ASC National Registry reporting requirements. Several provisions in the current Policy Statements concerning the ASC National Registry are being updated or removed to reflect current ASC procedures. The proposal includes a discussion on the ASC National Registry's extranet application and security requirements for States (including designation of an Authorized Registry Official and adoption of a written policy to adequately protect the right of access, as well as the ASC issued UserName and Password). The proposal preserves the critical nature of information sharing among the States with regard to disciplinary actions taken against appraisers. The proposal requires States to notify the ASC as soon as practicable if it is determined that a credential holder listed on the National Registry does not, or did not, qualify for the credential held. The proposal also requires States to notify the ASC as soon as practicable in the event of voluntary surrenders, suspensions and revocations, or any action that interrupts a credential holder's ability to practice. Further, the proposal requires States to submit all ''disciplinary actions'' (as defined in the proposed Policy Statement) to the ASC via the extranet application for inclusion on the National Registry as of July 1, 2013.

Policy Statement 4: Application Process

Proposed Policy Statement 4 will replace numerous provisions in the current Policy Statement 10 (*Enforcement)* and will address the fourth area of review in the ASC Compliance Review process pertaining to a State Program's application process for compliance with Title XI.

Proposed Policy Statement 4 addresses requirements for:

(1) State's general processing of applications for an appraiser credential;

(2) An appraiser's qualifying education, including a State's verification that an applicant's education complies with AQB Criteria, and for verification and audit of an appraiser's continuing education credits for license and certification renewals;

(3) An applicant's compliance with AQB Criteria experience requirements, including the State's review and validation of an applicant's experience claims on initial credential or upgrade applications; and

(4) State's use and administration of an appropriate AQB-approved qualifying examination.

The proposed Policy Statement 4 is structured according to the type of application being processed (that is, an initial, upgrade, reinstatement, or renewal application). The proposal also includes a discussion on the procedures that a State should have concerning the verification, validation and audit of information in applications.

Policy Statement 5: Reciprocity

Proposed Policy Statement 5 will replace current Policy Statement 6 (*Reciprocity)* and will address the fifth area of review in the ASC Compliance Review process of a State Program's reciprocity policy for compliance with Title XI.

Proposed Policy Statement 5 sets forth the new reciprocity requirements mandated by the Dodd-Frank Act, and consequences to a State that fails to comply. Policy Statement 5 also provides examples of a State's implementation of a reciprocity process.

Title XI now requires that in order for a State's appraisers to be eligible to perform appraisals for federally related transactions, the State must have a reciprocity policy in place that will require issuance of a reciprocal credential IF:

1. the appraiser is coming from a State that is ''in compliance'';

2. the appraiser holds a valid credential from that State; and

3. the credentialing requirements of that State (as they currently exist) meet or exceed those of the reciprocal credentialing State (as they currently exist).

Therefore, the proposal explains that appraisers relying on a credential from a State that does not have a compliant reciprocity policy in place are not eligible to perform appraisals for federally related transactions. A State may have a more lenient or more open door policy; however, States cannot impose additional impediments to issuance of reciprocal credentials. For purposes of implementing the Dodd-Frank Act's reciprocity requirements and considering the proposed rating criteria in Appendix A, States with an ASC Finding [5] of ''Poor'' would not satisfy the ''in compliance'' provision for reciprocity. Further, as explained in the proposal, States would not be required to grant a reciprocal credential to an appraiser credentialed in another State with a current ASC Finding of ''Poor.'' On March 18, 2011, the ASC issued Bulletin No. 2011–01 to States that as of July 1, 2013, a State will be evaluated by the ASC for compliance with the new reciprocity requirements.

Policy Statement 6: Education

Proposed Policy Statement 6 adds new discussion that is not in the current Policy Statements and will address the sixth area of review in the ASC Compliance Review process of a State Program's administration of education requirements for compliance with AQB Criteria and Title XI.

Proposed Policy Statement 6 provides States with specific requirements regarding course approval, including the approval of distance education courses (e.g., on-line courses), and refers to discussion in proposed Policy Statement 4 concerning qualifying and continuing education in the application process. As required by the Dodd-Frank Act, the proposal encourages States to accept courses approved by the AQB's Course Approval Program.

Policy Statement 7: State Agency Enforcement

Proposed Policy Statement 7 will replace several provisions in current Policy Statement 10 (*Enforcement)* and will address the seventh area of review in the ASC Compliance Review process of a State Program's administration of its enforcement program for compliance with Title XI.

Proposed Policy Statement 7 provides States with specific requirements to demonstrate that they are operating an effective and compliant enforcement program in addressing complaints against an appraiser. The proposed Policy Statement 7 addresses expectations for enforcement regarding: (1) Timeliness of complaint investigations and initiating enforcement action; (2) effectiveness of a State's enforcement process; (3) consistent and equitable treatment of an appraiser in the State's enforcement process; and (4) appropriate complaint documentation in a State's enforcement records, including specific requirements for tracking complaints of alleged appraiser misconduct or wrongdoing using an electronic complaint log.

Policy Statement 8: Interim Sanctions

Proposed Policy Statement 8 establishes a new ASC policy that addresses interim sanction authority the Dodd-Frank Act granted the ASC, and outlines due process considerations in the event the ASC exercises such authority.

Pursuant to the Dodd-Frank Act, the ASC has the authority to impose interim actions and suspensions against a State agency as an alternative to or in advance of a non-recognition proceeding against a State agency that fails to have an effective Program.[6] The ASC is proposing that an ''ASC Finding'' of ''Poor'' on a State's Compliance Review Report would indicate that the State's Program is failing and, in turn, would trigger an analysis by the ASC for potential interim sanction. The Dodd-Frank Act's interim sanction authority specifically authorizes the ASC to remove a State licensed or certified appraiser from the National Registry on an interim basis, not to exceed 90 days, pending State agency action on licensing, certification, registration, or disciplinary proceedings. The proposed Policy Statement 8 addresses due process procedures that would provide a State with an opportunity to be heard or to correct conditions before the ASC imposes an interim sanction.

Appendices

The proposal includes four appendices. Proposed Appendix A provides an overview of the Compliance Review process, including revised ASC Compliance Review Findings (referred to as ASC Findings in this appendix) for rating a State's compliance, or lack thereof, with Title XI. The proposed ASC Findings rating criteria places particular emphasis on whether the State is maintaining an effective regulatory Program in compliance with Title XI. At the conclusion of the Compliance Review process, the ASC would assign the State's Program one of the five proposed ASC Findings (that is, a State's Program would be either ''Excellent,'' ''Good,'' ''Needs Improvement,'' ''Not Satisfactory,'' or ''Poor''). As proposed, the ASC also would use the ASC Finding to establish the Review Cycle for that State. Proposed Appendix B provides a summary of requirements and related implementation standards for each of the proposed Policy Statements. Proposed Appendix C provides a glossary of terms to aid in the reading of the proposed Policy Statements. Proposed Appendix D will contain the ASC Bulletins and Supplements that have already been issued to assist States in understanding and complying with the self-enabling provisions of the Dodd-Frank Act.

IV. Request for Comment

The ASC seeks comment on all aspects of the revised Policy Statements, including any potential burden or cost to the States to comply with these Policy Statements. In addition, the ASC requests comments on the following specific questions:

1. Do the proposed rating criteria in Appendix A provide sufficient clarity to understand the differences among the ASC Finding categories?

2. Do the ASC Finding categories appropriately identify the degree of perceived risk of a Program's potential failure?

3. Do the ASC Finding rating criteria provide enough information to explain the judgment factors that the ASC will use to assess whether a State is in compliance with Title XI?

4. Do the revised Policy Statements achieve the ASC's goal in improving the understandability and enforceability of Title XI and the AQB Criteria?

5. Do the revised Policy Statements provide State Programs with the necessary information to understand the ASC's expectations of the Program during a Compliance Review?

The text of the proposed Policy Statements is as follows:

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[5] *See below,* Appendix A of the proposed Policy Statements, *Compliance Review Process,* for an explanation of ASC Findings.

[6] Title XI § 1118(a), 12 U.S.C. 3347.

Introduction and Purpose

Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), as amended (Title XI), established the Appraisal Subcommittee of the Federal Financial Institutions Examination Council (ASC).[7] The purpose of Title XI is to provide protection of Federal financial and public policy interests by upholding Title XI requirements for appraisals performed for federally related transactions. Specifically those appraisals shall be performed in writing, in accordance with uniform standards, by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision.

Pursuant to Title XI, one of the ASC's core functions is to monitor the requirements established by the States[8] for certification and licensing of appraisers qualified to perform appraisals in connection with federally related transactions.[9] The ASC performs periodic Compliance Reviews[10] of each State appraiser regulatory program (Program) to determine compliance, or lack thereof, with Title XI, and to assess the Program's implementation of the *Real Property Appraiser Qualification Criteria* (AQB Criteria) as adopted by the Appraiser Qualifications Board (AQB). The 50 States, District of Columbia, and four Territories[11] have State appraiser certifying and licensing agencies (State agency or State) monitored by the ASC through the Compliance Review process.

Pursuant to authority granted to the ASC under Title XI, the ASC is issuing these Policy Statements[12] to provide States with the necessary information to maintain their Programs in compliance with Title XI. Policy Statements 1 through 7 correspond with the categories that are evaluated during the Compliance Review process and included in the ASC Compliance Review Report (Report). Policy Statement 8 entitled *Interim Sanctions* sets forth required procedures in the event that interim sanctions are imposed against a State by the ASC.

[7] The ASC board is made up of seven members. Five members are designated by the heads of the FFIEC agencies (Board of Governors of the Federal Reserve System, Consumer Financial Protection Bureau, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, and National Credit Union Administration). The other two members are designated by the heads of the Department of Housing and Urban Development and the Federal Housing Finance Agency.

[8] *See* Appendix C, *Glossary of Terms,* for the definition of ''State.''

[9] *See* Appendix C, *Glossary of Terms,* for the definition of ''federally related transaction.''

[10] *See* Appendix A, *Compliance Review Process.*

[11] The four Territories are the Commonwealth of Puerto Rico, Commonwealth of the Northern Mariana Islands, Guam, and United States Virgin Islands.

[12] These Policy Statements, adopted ___________, 2012, supersede all previous Policy Statements adopted by the ASC, the most recent version of which was issued in October 2008.

Policy Statement 1

Statutes, Regulations, Policies and Procedures Governing State Programs

A. State Regulatory Structure

Title XI requires the ASC to monitor State agencies for the purpose of determining whether they have policies, practices and procedures consistent with Title XI.[13] The ASC recognizes that each State may have legal, fiscal, regulatory or other factors that may influence the structure and organization of its Program. Therefore, a State has flexibility to structure its Program so long as it meets Title XI-related responsibilities.

States should maintain an organizational structure for appraiser certification, licensing and supervision that avoids conflicts of interest with other real estate-related professions. A State agency may be headed by a board, commission or an individual. State board[14] or commission members, or employees in policy or decision-making positions, should understand and adhere to State statutes and regulations governing performance of responsibilities consistent with the highest ethical standards for public service. In addition, Programs using private entities or contractors should establish appropriate internal policies, procedures, and safeguards to promote compliance with the State agency's responsibilities under Title XI and these Policy Statements.

B. Funding and Staffing

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amended Title XI to require the ASC to determine whether States have sufficient funding and staffing to meet their Title XI requirements.[15] On July 1, 2011, as part of its Compliance Review process, the ASC formally began requesting information and supporting documentation regarding funding and staffing of Programs. Compliance with this provision requires that a State must provide its Program with funding and staffing sufficient to carry out its Title XI-related duties. The ASC evaluates the sufficiency of funding and staffing as part of its review of all aspects of a Program's effectiveness, including the adequacy of State boards, committees, or commissions responsible for carrying out Title XI-related duties.

[13] Title XI § 1118(a), 12 U.S.C. 3347.

[14] *See* Appendix C, *Glossary of Terms,* for the definition of ''State board.''

[15] *See* Appendix D, *Bulletin 2011–01.*

C. Minimum Criteria

Title XI requires States to adopt and/or implement all relevant AQB Criteria. Historically, requirements established by a State for certified residential or certified general classifications have been required to meet or exceed AQB Criteria. Effective July 1, 2013, requirements established by a State for licensed appraisers, as well as for trainee and supervisory appraisers, must also meet or exceed the AQB Criteria, as required by the Dodd-Frank Act.[16]

D. Federally Recognized Appraiser Classifications

1. State Certified Appraisers

''State certified appraisers'' means those individuals who have satisfied the requirements for residential or general certification in a State whose criteria for certification meet or exceed the minimum AQB Criteria. Permitted scope of practice and designation for State certified residential or certified general appraisers must be consistent with State and Federal laws, including regulations and supplementary guidance.

2. State Licensed Appraisers

As of July 1, 2013, ''State licensed appraisers'' means those individuals who have satisfied the requirements for licensing in a State whose criteria for licensing meet or exceed the minimum AQB Criteria.[17] Effective July 1, 2013, the permitted scope of practice and designation for State licensed appraisers must be consistent with State and Federal laws, including regulations and supplementary guidance.

3. Trainee Appraiser and Supervisory Appraiser

As of July 1, 2013, any minimum qualification requirements established by a State for individuals in the position of ''trainee appraiser'' and ''supervisory appraiser'' must meet or exceed the minimum AQB Criteria.[18] ASC staff will evaluate State designations such as ''registered appraiser,'' ''apprentice appraiser,'' ''provisional appraiser,'' or any other similar designation to determine if, in substance, such designation is consistent with a ''trainee appraiser'' designation and, therefore, administered to comply with Title XI. Effective July 1, 2013, the permitted scope of practice and designation for trainee appraisers and supervisory appraisers must be consistent with State and Federal laws, including regulations and supplementary guidance.

Any State or Federal agency may impose additional appraiser qualification requirements for State licensed, certified residential or certified general classifications, or for trainee and supervisor classifications, if they consider such requirements necessary to carry out their responsibilities under Federal and/or State statutes and regulations, so long as the additional qualification requirements do not conflict with AQB Criteria.

E. Non-Federally Recognized Credentials

States using non-federally recognized credentials or designations [19] should ensure that they can be easily distinguished from the federally recognized credentials.

F. Appraisal Standards

Title XI and the Federal financial institutions regulatory agencies' regulations mandate that all appraisals performed in connection with federally related transactions be in written form, prepared in accordance with generally accepted appraisal standards as promulgated by the Appraisal Standards Board (ASB) in the Uniform Standards of Professional Appraisal Practice (USPAP), and subject to review for compliance with USPAP.[20] States that have incorporated USPAP into State law should ensure that statutes or regulations are updated timely to adopt the latest version of USPAP, or if State law allows, automatically incorporate the latest version of USPAP. States should consider ASB Advisory Opinions, Frequently Asked Questions, and other written guidance issued by the ASB regarding interpretation and application of USPAP.

Any State or Federal agency may impose additional appraisal standards if they consider such standards necessary to carry out their responsibilities, so long as additional appraisal standards do not conflict with USPAP for work performed for federally related transactions.

G. Prohibition Against Discrimination

Title XI prohibits excluding appraisers from consideration for an assignment solely by virtue of their lack of membership in a nationally recognized professional appraisal organization.[21] Moreover, the appraisal regulations of the Federal financial institutions regulatory agencies address the selection of an appraiser, considering appraiser independence, professional association membership, and competency. With regard to membership in a nationally recognized professional appraisal organization, the agencies' regulations prohibit a federally regulated financial institution from excluding an appraiser from consideration for an assignment solely by virtue of a membership or lack of membership in a particular organization. Such discrimination is also inappropriate by States in the administration of their Programs.

H. Exemptions

Title XI and the Federal financial institutions regulatory agencies' regulations specifically require the use of only State certified or licensed appraisers in connection with the appraisal of certain real estate-related financial transactions.[22] A State may not exempt any individual or group of individuals from meeting the State's certification or licensing requirements if the individual or group member performs an appraisal when Federal statutes and regulations require the use of a certified or licensed appraiser. For example, an individual who has been exempted by the State from its appraiser certification or licensing requirements because he or she is an officer, director, employee or agent of a federally regulated financial institution would not be permitted to perform an appraisal in connection with a federally related transaction. States with exemption provisions must take steps to ensure that the provisions are not being used or interpreted in this manner.

I. ASC Staff Attendance at State Board Meetings

As part of the on-site Compliance Review process, ASC staff regularly attends State board meetings, including executive and/or closed sessions. States are expected to permit ASC staff to attend State board meetings except in the case of closed sessions for ''quasi-judicial'' proceedings specifically authorized and defined by State statute or regulation. The efficacy of the ASC's Compliance Review process rests on the ASC's ability to obtain reliable information about all areas of a State's Program. ASC staff is obligated to protect information obtained during the Compliance Review process concerning

[16] *See* Appendix D, *Bulletin 2011–01.*

[17] *See* Appendix D, *Supplement to Bulletin 2011–01.*

[18] *See* Appendix D, *Bulletin 2011–01.*

[19] *See* Appendix C, *Glossary of Terms,* for the definition of ''non-federally recognized credentials or designations.''

[20] *See* Appendix C, *Glossary of Terms* for the definition of ''Uniform Standards of Professional Appraisal Practice''.

[21] Title XI § 1122(d), 12 U.S.C. 3351.

[22] Title XI § 1112, 12 U.S.C. 3341; Title XI § 1113, 12 U.S.C. 3342; Title XI § 1114, 12 U.S.C. 3343.

the privacy of individuals and any confidential matters.

J. Summary of Requirements

Appendix B provides a summary of requirements and related implementation standards for each Policy Statement. The summary of requirements and implementation standards sets forth expectations for a State to demonstrate that its Program meets Title XI mandates.

Policy Statement 2

Temporary Practice

A. Requirement for Temporary Practice

Title XI requires State agencies to recognize, on a temporary basis, the certification or license of an out-of-State appraiser entering the State for the purpose of completing an appraisal assignment [23] for a federally related transaction. The out-of-State appraiser must register with the State agency in the State of temporary practice (host State). Thus, a credentialed appraiser [24] from State A has a statutory right to enter State B to perform an assignment concerning a federally related transaction, so long as the appraiser registers with the State agency in State B prior to performing the assignment. Though Title XI contemplates reasonably free movement of credentialed appraisers across State lines, an out-of-State appraiser must comply with the host State's real estate appraisal statutes and regulations and is subject to the host State's full regulatory jurisdiction. States should rely on the National Registry to verify credential history on applicants for temporary practice.

State agencies may establish by statute or regulation a policy that places reasonable limits on the number of times an out-of-State certified or licensed appraiser may exercise his or her temporary practice rights in a given year. If a State does not have an established policy, a State agency may choose to refuse to honor an out-of-State certified or licensed appraiser's temporary practice rights when a State has determined that the appraiser is abusing his or her temporary practice rights and is regularly engaging in real estate appraisal within the State.

B. Excessive Fees or Burdensome Requirements

Title XI prohibits States from imposing excessive fees or burdensome requirements, as determined by the ASC, for temporary practice.[25] Adherence by State agencies to the following mandates and prohibitions will deter the imposition of excessive fees or burdensome requirements.

1. Host State agencies must:

a. Issue temporary practice permits on an assignment basis;

b. Issue temporary practice permits within five business days of receipt of a completed application, or notify the applicant and document the file as to the circumstances justifying delay or other action;

c. Issue temporary practice permits designating the actual date of issuance;

d. Take regulatory responsibility for a temporary practitioner's unethical, incompetent and/or fraudulent practices performed while in the State;

e. Notify the appraiser's home State agency[26] in the case of disciplinary action concerning a temporary practitioner; and

f. Allow at least one temporary practice permit extension through a streamlined process.

2. Host State agencies may not:

a. Limit the valid time period of a temporary practice permit to less than 6 months, except in the case of an appraiser not holding a credential in active status for at least that period of time;

b. Limit an appraiser to one temporary practice permit per calendar year; [27]

c. Charge a temporary practice permit fee exceeding $250, including one extension fee;

d. Impose State appraiser qualification requirements upon temporary practitioners that exceed AQB Criteria for the credential held;

e. Require temporary practitioners to obtain a certification or license in the State of temporary practice;

f. Require temporary practitioners to affiliate with an in-State licensed or certified appraiser;

g. Refuse to register licensed or certified appraisers seeking temporary practice in a State that does not have a licensed or certified level credential; or

h. Prohibit temporary practice.

3. Home State agencies may not:

a. Delay the issuance of a written ''letter of good standing'' or similar document for more than five business days after receipt of a request; or

b. Fail to take disciplinary action, if appropriate, when one of its certified or licensed appraisers is disciplined by another State agency for unethical, incompetent or fraudulent practices under a temporary practice permit.

C. Summary of Requirements

Appendix B provides a summary of requirements and related implementation standards for each Policy Statement. The summary of requirements and implementation standards sets forth expectations for a State to demonstrate that its Program meets Title XI mandates.

Policy Statement 3

National Registry

A. Requirements for the National Registry

Title XI requires the ASC to maintain a National Registry of State certified and licensed appraisers who are eligible to perform appraisals in federally related transactions.[28] Title XI further requires the States to transmit to the ASC: (1) A roster listing individuals who have received a State certification or license in accordance with Title XI; (2) reports on the issuance and renewal of licenses and certifications, sanctions, disciplinary actions, revocations and suspensions; and (3) the Registry fee as set by the ASC [29] from individuals who have received certification or licensing. States must notify the ASC upon determination if a credential holder listed on the National Registry does not, or did not, qualify for the credential held.

Roster and Registry fee requirements apply to all individuals who receive State certifications or licenses, originally or by reciprocity, whether or not the individuals are, in fact, performing or planning to perform appraisals in federally related transactions. If an appraiser is certified or licensed in more than one State, the appraiser is required to be on each State's roster of certified or licensed appraisers, and a Registry fee is due from each State in which the appraiser is certified or licensed.

Only AQB-compliant certified appraisers in active status on the

[23] *See* Appendix C, *Glossary of Terms,* for the definition of ''assignment.''

[24] *See* Appendix C, *Glossary of Terms,* for the definition of ''credentialed appraisers.''

[25] Title XI § 1122(a) (2), 12 U.S.C. 3351.

[26] See Appendix C, Glossary of Terms, for the definition of ''home State agency.''

[27] State agencies may establish by statute or regulation a policy that places reasonable limits on the number of times an out-of-State certified or licensed appraiser may exercise his or her temporary practice rights in a given year. If such a policy is not established, a State agency may choose not to honor an out-of-State certified or licensed appraiser's temporary practice rights if it has made a determination that the appraiser is abusing his or her temporary practice rights and is regularly engaging in real estate appraisal services within the State.

[28] Title XI § 1103(a)(3), 12 U.S.C. 3332.

[29] Title XI § 1109, *Roster of State certified or licensed appraisers; authority to collect and transmit fees,* requires the ASC to consider at least once every 5 years whether to adjust the dollar amount of the registry fees to account for inflation. (Title XI § 1109(a), 12 U.S.C. 3338.)

National Registry are eligible to perform appraisals in connection with federally related transactions. In order for a licensed appraiser to be listed on the National Registry as AQB-compliant, that individual must satisfy requirements for licensing in a State whose criteria meet or exceed AQB Criteria. Beginning July 1, 2013, only AQB-compliant licensed appraisers in active status on the National Registry are eligible to perform appraisals in connection with federally related transactions.[30]

Some States may give State certified or licensed appraisers an option to not pay the Registry fee. If a State certified or licensed appraiser chooses not to pay the Registry fee, then the Program must ensure that any potential user of that appraiser's services is aware that the appraiser's certificate or license is limited to performing appraisals in connection with non-federally related transactions.[31] The Program must place a conspicuous notice directly on the face of any evidence of the appraiser's authority to appraise stating, ''Not Eligible To Appraise Federally Related Transactions,'' and the appraiser must not be listed in active status on the National Registry.

The ASC extranet application allows States to update their appraiser credential information directly to the National Registry. Only Authorized Registry Officials are allowed to request access for their State personnel (see section C below). The ASC will issue a UserName and Password to the designated State personnel responsible for that State's National Registry entries. Designated State personnel are required to protect the right of access, and not share their UserName or Password with anyone. State agencies must adopt and implement a written policy to adequately protect the right of access, as well as the ASC issued UserName and Password.

For those States not using the ASC extranet application, the ASC has provided detailed specifications regarding the data elements on the National Registry and reporting procedures.[32]

The ASC creates a National Registry number for each appraiser and protects each appraiser's privacy rights. The unique identification number is provided to appropriate State and Federal regulatory agencies to simplify multi-State queries regarding specific appraisers.

B. Registry Fee and Invoicing Policies

Each State must remit to the ASC the annual Registry fee, as set by the ASC, for State certified or licensed appraisers within the State to be listed on the National Registry.[33] Requests to prorate refunds or partial-year registrations will not be granted. If a State collects multiple-year fees for multiple-year certifications or licenses, the State may choose to remit to the ASC the total amount of the multiple-year Registry fees, or to remit annually. The ASC will record appraisers on the National Registry only for the number of years paid. When a State's failure to pay a past due invoice results in appraisers being listed as inactive, the ASC will not change those appraisers back to active status until payment is received. An inactive status on the National Registry, for whatever the reason, renders an appraiser ineligible to perform appraisals in connection with federally related transactions.

C. Access to National Registry Data

The ASC Web site provides free access to the public portion of the National Registry at *www.asc.gov.* The public portion of the National Registry data may be downloaded using predefined queries or user-customized applications.

Access to the full database, which includes some non-public data (e.g., certain disciplinary action information), is restricted to authorized State and Federal regulatory agencies. States must designate a high ranking officer, such as an executive director, to serve as the State's Authorized Registry Official, and provide to the ASC, in writing, information regarding the designated Authorized Registry Official. States should ensure that the authorization information provided to the ASC is updated and accurate.

D. Information Sharing

Information sharing (routine exchange of certain information among lenders, governmental entities, State agencies and the ASC) is essential for carrying out Title XI. Title XI requires the ASC, any other Federal agency or instrumentality, or any federally recognized entity to report any action of a State certified or licensed appraiser that is contrary to the purposes of Title XI to the appropriate State agency for disposition. The ASC believes that full implementation of this Title XI requirement is vital to the integrity of the system of State appraiser regulation.

The National Registry's value and usefulness are largely dependent on the quality and frequency of State's data submissions. Accurate and frequent data submissions from all States are necessary to maintain an up-to-date National Registry. States must submit appraiser data to the ASC at least monthly. If there are no changes to the data, the State agency must notify the ASC of that fact in writing. States are encouraged to submit data as frequently as possible.

State agencies must report expeditiously any disciplinary action[34] taken against an appraiser to the ASC. As of July 1, 2013, all States will be required to report disciplinary action via the extranet application as soon as practicable for the State to do so. States not reporting via the extranet application will be required to provide, in writing to the ASC, circumstances preventing compliance with this requirement. Prior to July 1, 2013, at a minimum, this information must be submitted with the State's monthly, or more frequent, Registry data submission. For the most serious disciplinary actions (i.e., voluntary surrenders, suspensions and revocations, or any action that interrupts a credential holder's ability to practice), the State agency must notify the ASC as soon as practicable in order for the ASC to inactivate the appraiser's status on the National Registry, thereby making the appraiser ineligible to perform appraisals in connection with federally related transactions, or other transactions requiring the use of State certified or licensed appraisers.

Title XI contemplates the reasonably free movement of certified and licensed appraisers across State lines. This freedom of movement assumes, however, that certified and licensed appraisers are, in all cases, held accountable and responsible for their actions while performing appraisal activities. To ensure this accountability, States should establish routine ways to communicate with each other regarding matters of mutual interest, including the activities and status of persons who are certified or licensed in multiple States.

[30] *See* Appendix D, *Supplement to Bulletin 2011–01.*

[31] *See* Appendix C, *Glossary of Terms,* for the definition of ''non-federally related transactions.''

[32] *See* section D, *Information Sharing,* below requiring all States to report disciplinary action via the extranet application by July 1, 2013.

[33] *See* Appendix D, *Bulletin 10–1, October 14, 2010.* Under authority in the Dodd-Frank Act, the ASC approved a modification of the annual Registry fee to $40 (from $25) at its meeting of October 13, 2010. The ASC raised the Registry fee to support its supervisory activities, including additional authority and responsibility under the Dodd-Frank Act.

[34] *See* Appendix C, *Glossary of Terms,* for the definition of ''disciplinary action.''

E. Summary of Requirements

Appendix B provides a summary of requirements and related implementation standards for each Policy Statement. The summary of requirements and implementation standards sets forth expectations for a State to demonstrate that its Program meets Title XI mandates.

Policy Statement 4

Application Process

AQB Criteria sets forth the minimum education, experience and examination requirements for credentialing of real property appraisers. In the application process, States must, at a minimum, employ a reliable means of validating both education and experience credit claimed by applicants for credentialing.[35]

A. Processing of Applications

States must process applications in a consistent, equitable and well-documented manner.

States must ensure appraiser credential applications submitted for processing do not contain expired examinations as established by AQB Criteria (24-month examination validity period).

Applications for credentialing should be timely processed by State agencies (within 90 days). Any delay in the processing of applications should be sufficiently documented in the file to justify the delay.

B. Qualifying Education for Initial or Upgrade Applications

States must verify that:

(1) The applicant's claimed education courses are acceptable under AQB Criteria; and

(2) The applicant has successfully completed courses consistent with AQB Criteria for the appraiser credential sought.

Documentation must be provided by applicants to support education claimed by applicants for initial credentialing or upgrade.

States may not accept an affidavit for education claimed from applicants for certification.

Effective July 1, 2013, States may not accept an affidavit for education claimed from applicants for any federally recognized credential.[36]

States must maintain adequate documentation to support verification of claimed education by applicants.

C. Continuing Education for Reinstatement and Renewal Applications

1. Reinstatement Applications

States must verify that:

(1) The applicant's claimed continuing education courses are acceptable under AQB Criteria; and

(2) The applicant has successfully completed all continuing education consistent with AQB Criteria for reinstatement of the appraiser credential sought.

Documentation must be provided by applicants to support continuing education claimed by applicants for reinstatement.

States may not accept an affidavit for continuing education claimed from applicants for reinstatement.

States must maintain adequate documentation to support verification of claimed education.

2. Renewal Applications

States must ensure that continuing education courses for renewal of an appraiser credential are consistent with AQB Criteria.

States must ensure that continuing education hours required for renewal of an appraiser credential were completed consistent with AQB Criteria.

States may accept affidavits for continuing education credit claimed for credential renewal so long as the State implements a reliable validation procedure that adheres to the following objectives and requirements:

a. Validation objectives—The State's validation procedures must be structured to permit acceptable projections of the sample results to the entire population of subject appraisers. Therefore, the sample must include an adequate number of affidavits to have an acceptable chance of identifying appraisers who fail to comply with AQB Criteria, and the sample must include a reasonable representation of the appraiser population being sampled.

b. Minimum Standards—The following minimum standards apply to these audits:

(1) Validation must include a prompt post-approval audit. Each audit of an affidavit for continuing education credit claimed must be completed within 60 days from the date the renewed credential is issued;

(2) States must audit the continuing education-related affidavit for each credentialed appraiser selected in the sampling procedure;

(3) The State must determine that the education courses claimed conform to AQB Criteria and that the appraiser successfully completed each course;

(4) When a State determines that an appraiser's continuing education does not meet AQB Criteria, the State must take appropriate action to suspend the appraiser's eligibility to perform appraisals in federally related transactions until such time that the requisite continuing education has been completed. Also, upon such a determination, the State must notify the ASC as soon as practicable in order for the appraiser's record on the National Registry to be updated appropriately; and

(5) If more than ten percent of the audited appraisers fail to meet the AQB Criteria, the State must take remedial action[37] to address the apparent weakness of its affidavit process. The ASC will determine on a case-by-case basis whether remedial actions are effective and acceptable.

c. Documentation—States must maintain adequate documentation to support its affidavit renewal and audit procedures and actions.

d. List of Education Courses—To promote accountability, the ASC encourages States accepting affidavits for continuing education credit claimed for credential renewal to require that the appraiser provide a list of courses to support the affidavit.

D. Experience for Initial or Upgrade Applications

States must ensure that appraiser experience logs conform to AQB Criteria.

States may not accept an affidavit for experience credit claimed from applicants for certification.

Effective July 1, 2013, States may not accept an affidavit for experience credit claimed from applicants for any federally recognized credential.[38]

[35] Includes applications for credentialing of State licensed, certified residential or certified general classifications, and trainee and supervisor classifications.

[36] If a State accepts education-related affidavits from applicants for initial licensure in any non-certified classification, upon the appraiser's application to upgrade to a certified classification, the State must require documentation to support the appraiser's educational qualification for the certified classification, not just the incremental amount of education required to move from the non-certified to the certified classification.

[37] For example:

(1) A State may conduct an additional audit using a higher percentage of audited appraisers; or

(2) a State may publically post action taken to sanction non-compliant appraisers to increase awareness in the appraiser community of the importance of compliance with continuing education requirements.

[38] *See* Appendix C, *Glossary of Terms,* for the definition of ''federally recognized credential.'' If prior to July 1, 2013, a State accepted experience-related affidavits from applicants for initial licensure in any non-certified classification, upon the appraiser's application to upgrade to a certified classification, the State must require experience documentation to support the appraiser's

Continued

1. Validation Required

States must implement a reliable validation procedure to verify that each applicant's:

(1) Experience meets AQB Criteria;
(2) Experience is USPAP compliant; and
(3) Experience hours have been successfully completed consistent with AQB Criteria.

2. Validation Procedures, Objectives and Requirements

a. Selection of Work Product

Program staff or State board members must select the work product to be analyzed for USPAP compliance; applicants may not have any role in selection of work product. States must analyze a representative sample of the applicant's work product.

b. USPAP Compliance

For appraisal experience to be acceptable under AQB Criteria, it must be USPAP compliant. States must exercise due diligence in determining whether submitted documentation of experience or work product demonstrates compliance with USPAP.

Persons analyzing work product for USPAP compliance must have sufficient knowledge to make that determination.

c. Determination of Experience Time Periods

When measuring the experience time period required by AQB Criteria, States must review each appraiser's experience log and note the dates of the first and last acceptable appraisal activity performed by the applicant. At a minimum, the time period spanned between those appraisal activities must comply with the AQB Criteria.

d. Supporting Documentation

States must maintain adequate documentation to support validation methods. The applicant's file, either electronic or paper, must include the information necessary to identify each appraisal assignment selected and analyzed by the State, notes, letters and/or reports prepared by the official(s) evaluating the report for USPAP compliance, and any correspondence exchanged with the applicant regarding the appraisals submitted. This supporting documentation may be discarded upon the completion of the first ASC Compliance Review performed after the credential issuance or denial for that applicant.

E. Examination

States must ensure that an appropriate AQB-approved qualifying examination is administered for each of the federally recognized appraiser classifications requiring an examination.

F. Summary of Requirements

Appendix B provides a summary of requirements and related implementation standards for each Policy Statement. The summary of requirements and implementation standards sets forth expectations for a State to demonstrate that its Program meets Title XI mandates.

Policy Statement 5

Reciprocity

A. Reciprocity Policy

Title XI contemplates the reasonably free movement of certified and licensed appraisers across State lines. Beginning July 1, 2013, the ASC will monitor Programs for compliance with the reciprocity provision of Title XI as amended by the Dodd-Frank Act.[39] Title XI requires that in order for a State's appraisers to be eligible to perform appraisals for federally related transactions, the State must have a reciprocity policy in place for issuing a reciprocal credential if:

a. The appraiser is coming from a State that is ''in compliance''; and
b. (i) The appraiser holds a valid credential from that State; and
(ii) The credentialing requirements of that State (as they currently exist) meet or exceed those of the reciprocal credentialing State (as they currently exist).

An appraiser relying on a credential from a State that does not have such a policy in place may not perform appraisals for federally related transactions. A State may be more lenient in the issuance of reciprocal credentials by implementing a more open door policy. However, States cannot impose additional impediments to issuance of reciprocal credentials.[40]

For purposes of implementing the reciprocity policy, States with an ASC Finding[41] of ''Poor'' do not satisfy the ''in compliance'' provision for reciprocity. Therefore, States are not required to recognize, for purposes of granting a reciprocal credential, the license or certification of an appraiser credentialed in a State with an ASC Finding of ''Poor.''

B. Application of Reciprocity Policy

In order to assist States in implementing reciprocity in a manner that complies with Title XI, the following provides further illustration of the reciprocity policy through examples of application.

The examples refer to the reciprocity policy requiring issuance of a reciprocal credential IF:

a. The appraiser is coming from a State that is ''in compliance''; AND
b. (i) The appraiser holds a valid credential from that State; AND
(ii) The credentialing requirements of that State (as they currently exist) meet or exceed those of the reciprocal credentialing State (as they currently exist).

1. Additional Requirements Imposed on Applicants

STATE A requires that prior to issuing a reciprocal credential, the applicant must certify that disciplinary proceedings are not pending against that applicant in any jurisdiction. Under b(ii) above, if this requirement is not imposed by STATE A on its own applicants for credentialing, STATE A cannot impose this requirement on applicants for reciprocal credentialing.

2. Credentialing Requirements

An appraiser is seeking a reciprocal credential in STATE A. The appraiser holds a valid credential in STATE Z, even though it was issued in 2007. This satisfies b(i) above. However in order to satisfy b(ii), STATE A would evaluate STATE Z's credentialing requirements as they currently exist to determine whether they meet or exceed STATE A's current requirements for credentialing.

C. Appraiser Compliance Requirements

Appraisers granted reciprocity must comply with the home State agencies' and reciprocating States' policies, rules and statutes governing appraisers, including requirements for payment of certification and licensing fees, as well as continuing education. An appraiser must pay a National Registry fee for each State in which a credential is held.

D. Summary of Requirements

Appendix B provides a summary of requirements and related implementation standards for each Policy Statement. The summary of

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qualification for the certified classification, not just the incremental amount of experience required to move from the non-certified to the certified classification. For example, if a State accepted an experience affidavit from an appraiser to support the appraiser's initial hours to qualify for the licensed classification, and subsequently that appraiser applies to upgrade to the certified residential classification, the State must require documentation to support the full experience hours required for the certified residential classification, not just the difference in hours between the two classifications.

[39] Title XI § 1122(b), 12 U.S.C. 3351.

[40] Effective July 1, 2013, States will be evaluated for compliance with this Title XI requirement.

[41] *See* Appendix A, *Compliance Review Process,* for an explanation of ASC Findings.

requirements and implementation standards sets forth expectations for a State to demonstrate that its Program meets Title XI mandates.

Policy Statement 6

Education

AQB Criteria sets forth minimum requirements for appraiser education courses. This Policy Statement addresses proper administration of education requirements for compliance with AQB Criteria. (For requirements concerning qualifying and continuing education in the application process, see Policy Statement 4, *Application Process.*)

A. Course Approval

States must ensure that approved appraiser education courses are consistent with AQB Criteria.

States must maintain sufficient documentation to support that approved appraiser education courses conform to AQB Criteria.

States should ensure that course approval expiration dates assigned by the State coincide with the endorsement period assigned by the AQB's Course Approval Program and/or International Distance Education Certification Center (IDECC), or any other AQB-approved organization providing approval of course design and delivery.

States should ensure that educational providers are afforded equal treatment in all respects.[42] The ASC encourages States to accept courses approved by the AQB's Course Approval Program.

B. Distance Education

States must ensure that distance education courses meet AQB Criteria.

States must ensure the delivery mechanism for distance education courses offered by a non-academic provider has been approved by an AQB-approved organization (e.g. IDECC) providing approval of course design and delivery.

C. Summary of Requirements

Appendix B provides a summary of requirements and related implementation standards for each Policy Statement. The summary of requirements and implementation standards sets forth expectations for a State to demonstrate that its Program meets Title XI mandates.

Policy Statement 7

State Agency Enforcement

A. State Agency Regulatory Program

Title XI requires the ASC to monitor the States for the purpose of determining whether the State processes complaints and completes investigations in a reasonable time period, appropriately disciplines sanctioned appraisers and maintains an effective regulatory program.[43]

B. Enforcement Process

States must ensure that the system for processing and investigating complaints[44] and sanctioning appraisers is administered in a timely, effective, consistent, equitable, and well-documented manner.

1. Timely Enforcement

States must process complaints of appraiser misconduct or wrongdoing in a timely manner to ensure effective supervision of appraisers, and when appropriate, that incompetent or unethical appraisers are not allowed to continue their appraisal practice. Absent special documented circumstances,[45] final administrative decisions regarding complaints must occur within one year (12 months) of the complaint filing date.

2. Effective Enforcement

Effective enforcement requires that States investigate allegations of appraiser misconduct or wrongdoing, and if allegations are proven, take appropriate disciplinary or remedial action. Dismissal of an alleged violation solely due to an ''absence of harm to the public'' is inconsistent with Title XI. Financial loss or the lack thereof is not an element in determining whether there is a violation. The extent of such loss, however, may be a factor in determining the appropriate level of discipline.

Persons analyzing complaints for USPAP compliance must be knowledgeable about appraisal practice and USPAP.

States must analyze each complaint to determine whether additional violations, especially those relating to USPAP, should be added to the complaint.

Closure of a complaint based on a State's statute of limitations results in dismissal of a complaint without the investigation of the merits of the complaint, and is inconsistent with the Title XI requirement that States assure effective supervision of the activities of credentialed appraisers.[46]

3. Consistent and Equitable Enforcement

Absent specific documented facts or considerations, substantially similar cases within a State should result in similar dispositions.

4. Well-Documented Enforcement

''Well-documented'' means that States obtain and maintain sufficient relevant documentation pertaining to a matter so as to enable understanding of the facts and determinations in the matter and the reasons for those determinations.

a. Complaint Files

Complaint files must:

- Include documentation outlining the progress of the investigation;
- Demonstrate that appraisal reports are analyzed and all USPAP violations are identified;
- Include rationale for the final outcome of the case (i.e. dismissal or imposition of discipline);
- Include documentation explaining any delay in processing, investigation or adjudication;
- Contain documentation that all ordered or agreed upon discipline, such as probation, fine, or completion of education is tracked and that completion of all terms is confirmed; and
- Be organized in a manner that allows understanding of the steps taken throughout the complaint, investigation, and adjudicatory process.

b. Complaint Logs

States must track all complaints using a complaint log. The complaint log must record all complaints, regardless of their procedural status in the investigation and/or resolution process, including complaints pending before the State board, Office of the Attorney General, other law enforcement agencies, and/or Offices of Administrative Hearings. The complaint log must include the following information in an electronic, sortable spreadsheet format:

1. Case number
2. Name of respondent
3. Actual date the complaint was received by the State
4. Source of complaint (e.g. consumer, lender, bank regulator, appraiser, hotline)
5. Last action taken and date taken (e.g. 1/1/10 spoke to Attorney General

[42] For example:

(1) Consent agreements requiring additional education may not specify a particular course provider, thereby discriminating against other providers on the State's approved course listing offering the same course; or

(2) courses from professional organizations may not be automatically approved and/or approved in a manner that is less burdensome than the State's normal approval process.

[43] Title XI § 1118(a), 12 U.S.C. 3347.

[44] *See* Appendix C, *Glossary of Terms,* for the definition of ''complaint.''

[45] *See* Appendix C, *Glossary of Terms,* for the definition of ''special documented circumstances.''

[46] Title XI § 1117, 12 U.S.C. 3346.

and scheduled an informal conference with the Respondent to discuss settlement, 1/12/10 spoke to the Administrative Hearing Commission and scheduled a hearing date, 2/27/10 filed objection to continuance)
6. Current status of the complaint
7. Spreadsheet showing chronological record of each action taken
8. Date the complaint was closed (e.g. final disposition by the Administrative Hearing Agency, Office of the Attorney General, State Appraiser Regulatory Agency or Court of Appeals)
9. Method of disposition (e.g. dismissal, letter of warning, consent order, final order)

C. Summary of Requirements

Appendix B provides a summary of requirements and related implementation standards for each Policy Statement. The summary of requirements and implementation standards sets forth expectations for a State to demonstrate that its Program meets Title XI mandates.

Policy Statement 8

Interim Sanctions

A. Authority

Title XI as amended by the Dodd-Frank Act states that the ASC shall have the authority to impose interim actions and suspensions, as an alternative to or in advance of a non-recognition proceeding,[47] against a State agency that fails to have an effective Program.[48] In determining whether such a Program is effective, the ASC shall conduct an analysis as required by Title XI.[49] An ASC Finding of ''Poor'' on the Report issued to a State at the conclusion of an ASC Compliance Review will trigger an analysis by the ASC for potential interim sanction(s).

B. Interim Sanctions

Title XI as amended by the Dodd-Frank Act grants the ASC authority to remove a State licensed or certified appraiser from the National Registry on an interim basis, not to exceed 90 days, pending State agency action on licensing, certification, registration, or disciplinary proceedings.[50]

C. Opportunity To Be Heard or Correct Conditions

The ASC shall provide the State agency with:

1. Written notice of intention to impose an interim sanction; and

2. Opportunity to respond or to correct the conditions causing such notice to the State. Notice and opportunity to respond or correct the conditions shall be in accordance with section D, *Procedures.*

D. Procedures

This section prescribes the ASC's procedures which will be followed in arriving at a decision by the ASC to impose an interim sanction against a State agency.

1. Notice

The ASC shall provide a written Notice of intention to impose an interim sanction (Notice) to the State agency. The Notice shall contain the ASC's analysis as required by Title XI of the State's licensing and certification of appraisers, the issuance of temporary licenses and certifications for appraisers, the receiving and tracking of submitted complaints against appraisers, the investigation of complaints, and enforcement actions against appraisers.[51] The ASC shall verify the State's date of receipt, and publish both the Notice and the State's date of receipt in the **Federal Register**.

2. State Agency Response

Within 15 days of receipt of the Notice, the State may submit a response to the ASC's Executive Director. Alternatively, a State may submit a Notice Not to Contest with the ASC's Executive Director. The filing of a Notice Not to Contest shall not constitute a waiver of the right to a judicial review of the ASC's decision, findings and conclusions. Failure to file a Response within 15 days shall constitute authorization for the ASC to find the facts to be as presented in the Notice and analysis. The ASC, for good cause shown, may permit the filing of a Response after the prescribed time.

3. Briefs, Memoranda and Statements

Within 45 days after the date of receipt by the State agency of the Notice as published in the **Federal Register**, the State agency may file with the ASC's Executive Director a written brief, memorandum or other statement providing factual data and policy and legal arguments regarding the matters set out in the Notice and analysis.

4. Oral Presentations to the ASC

Within 45 days after the date of receipt by the State agency of the Notice as published in the **Federal Register**, the State may file a request with the ASC's Executive Director to make oral presentation to the ASC. If the State has filed a request for oral presentation, the matter shall be heard within 45 days. An oral presentation shall be considered as an opportunity to offer, emphasize and clarify the facts, policies and laws concerning the proceeding, and is not a Meeting[52] of the ASC. On the appropriate date and time, the State agency will make the oral presentation before the ASC. Any ASC member may ask pertinent questions relating to the content of the oral presentation. Oral presentations will not be recorded or otherwise transcribed. Summary notes will be taken by ASC staff and made part of the record on which the ASC shall decide the matter.

5. Conduct of Interim Sanction Proceedings

(a) *Written Submissions.* All aspects of the proceeding shall be conducted by written submissions, with the exception of oral presentations allowed under subsection 4 above.

(b) *Disqualification.* An ASC member who deems himself or herself disqualified may at any time withdraw. Upon receipt of a timely and sufficient affidavit of personal bias or disqualification of such member, the ASC will rule on the matter as a part of the record.

(c) *Authority of ASC Chairperson.* The Chairperson of the ASC, in consultation with other members of the ASC whenever appropriate, shall have complete charge of the proceeding and shall have the duty to conduct it in a fair and impartial manner and to take all necessary action to avoid delay in the disposition of proceedings.

(d) *Rules of Evidence.* Except as is otherwise set forth in this section, relevant, material and reliable evidence that is not unduly repetitive is admissible to the fullest extent authorized by the Administrative Procedure Act (5 U.S.C. 551, *et seq.*) and other applicable law.

6. Decision of the ASC and Judicial Review

Within 90 days after the date of receipt by the State agency of the Notice as published in the **Federal Register**, or in the case of oral presentation having been granted, within 30 days after

[47] Title XI § 1118(c), 12 U.S.C. 3347; 12 CFR, part 1102, subpart B.

[48] Title XI § 1118(a), 12 U.S.C. 3347.

[49] *Id.*

[50] *Id.*

[51] *Id.*

[52] The proceeding is more in the nature of a Briefing not subject to open meeting requirements. The presentation is an opportunity for the State to brief the ASC—to offer, emphasize and clarify the facts, policies and laws concerning the proceeding, and for the ASC members to ask questions. Additional consideration is given to the fact that this stage of the proceeding is pre-decisional.

presentation, the ASC shall issue a final decision, findings and conclusions and shall publish the decision promptly in the **Federal Register**. The final decision shall be effective on issuance. The ASC's Executive Director shall ensure prompt circulation of the decision to the State agency. A final decision of the ASC is a prerequisite to seeking judicial review.

7. Computing Time

Time computation is based on business days. The date of the act, event or default from which the designated period of time begins to run is not included. The last day is included unless it is a Saturday, Sunday, or Federal holiday, in which case the period runs until the end of the next day which is not a Saturday, Sunday or Federal holiday.

8. Documents and Exhibits

Unless otherwise provided by statute, all documents, papers and exhibits filed in connection with any proceeding, other than those that may be withheld from disclosure under applicable law, shall be placed by the ASC's Executive Director in the proceeding's file and will be available for public inspection and copying.

9. Judicial Review

A decision of the ASC under this section shall be subject to judicial review. The form of proceeding for judicial review may include any applicable form of legal action, including actions for declaratory judgments, writs of prohibitory or mandatory injunction in a court of competent jurisdiction.[53]

Appendix A—Compliance Review Process

The ASC monitors State Programs for compliance with Title XI. The monitoring of a State Program is largely accomplished through on-site visits known as a Compliance Review (Review). A Review is conducted over a two- to four-day period, and is scheduled to coincide with a meeting of the Program's decision-making body whenever possible. ASC staff reviews the seven compliance areas addressed in Policy Statements 1 through 7. Sufficient documentation demonstrating compliance must be maintained by a State and made available for inspection during the Review. ASC staff reviews a sampling of documentation in each of the seven compliance areas. The sampling is intended to be representative of the State Program in its entirety.

Based on the Review, ASC staff provides the State with an ASC staff report detailing preliminary findings. The State is given 60 days to respond to the ASC staff report. At the conclusion of the Review, a Compliance Review Report (Report) is issued to the State with the ASC Finding on the Program's overall compliance, or lack thereof, with Title XI. Deficiencies resulting in non-compliance in any of the seven compliance areas are cited in the Report. ''Areas of Concern''[54] which potentially expose a Program to compliance issues in the future are also addressed in the Report. The ASC's final disposition is based upon the ASC staff report, the State's response and staff's recommendation.

The following chart provides an explanation of the ASC Findings and rating criteria for each ASC Finding category. The ASC Finding places particular emphasis on whether the State is maintaining an effective regulatory Program in compliance with Title XI.

ASC finding	Rating criteria	Review cycle*
Excellent	• State meets all Title XI mandates and complies with requirements of ASC Policy Statements. • State maintains a strong regulatory Program. • Very low risk of Program failure.	2-year.
Good	• State meets the majority of Title XI mandates and complies with the majority of ASC Policy Statement requirements. • Deficiencies are minor in nature. • State is adequately addressing deficiencies identified and correcting them in the normal course of business. • State maintains an effective regulatory Program. • Low risk of Program failure.	2-year.
Needs Improvement	• State does not meet all Title XI mandates and does not comply with all requirements of ASC Policy Statements. • Deficiencies are material but manageable and if not corrected in a timely manner pose a potential risk to the Program. • State may have a history of repeated deficiencies but is showing progress toward correcting deficiencies. • State regulatory Program needs improvement. • Moderate risk of Program failure.	2-year with Follow-up Review.
Not Satisfactory	• State does not meet all Title XI mandates and does not comply with all requirements of ASC Policy Statements. • Deficiencies present a significant risk and if not corrected in a timely manner pose a well-defined risk to the Program. • State may have a history of repeated deficiencies and requires more supervision to ensure corrective actions are progressing. • State regulatory Program has substantial deficiencies. • Substantial risk of Program failure.	1-year.
Poor[55]	• State does not meet all Title XI mandates and does not comply with all requirements of ASC Policy Statements. • Deficiencies are significant and severe, require immediate attention and if not corrected represent critical flaws in the Program. • State may have a history of repeated deficiencies and may show a lack of willingness or ability to correct deficiencies. • High risk of Program failure.	Continuous monitoring.

* Program history or nature of deficiency may warrant a more accelerated Review Cycle.

[53] 5 U.S.C. 703—*Form and venue of proceeding.*

[54] *See* Appendix C, *Glossary of Terms,* for the definition of ''Areas of Concern.''

[55] An ASC Finding of ''Poor'' may result in significant consequences to the State. *See* Policy Statement 5, *Reciprocity; see also* Policy Statement 8, *Interim Sanctions.*

The ASC has two primary Review Cycles: Two-year and one-year. Most States are scheduled on a two-year Review Cycle. States may be moved to a one-year Review Cycle if the ASC determines more frequent on-site Reviews are needed to ensure that the State maintains an effective Program. Generally, States are placed on a one-year Review Cycle because of non-compliance issues or serious areas of concerns that warrant more frequent on-site visits. Both two-year and one-year Review Cycles include a review of all aspects of the State's Program.

The ASC may conduct Follow-up Reviews. A Follow-up Review focuses only on specific areas identified during the previous on-site Review. Follow-up Reviews usually occur within 6–12 months of the previous Review. In addition, as a risk management tool, ASC staff identifies State Programs that may have a significant impact on the nation's appraiser regulatory system in the event of Title XI compliance issues. For States that represent a significant percentage of the credentials on the National Registry, ASC staff performs annual on-site Priority Contact visits. The primary purpose of the Priority Contact visit is to review topical issues, evaluate regulatory compliance issues, and maintain a close working relationship with the State. This is not a complete Review of the Program. The ASC will also schedule a Priority Contact visit for a State when a specific concern is identified that requires special attention.

Appendix B—Summary of Requirements

This Appendix B provides a summary of requirements and related implementation standards for Policy Statements 1 through 7. The summary of requirements and implementation standards sets forth expectations for a State to demonstrate that its Program meets Title XI mandates.

Policy Statement 1

Statutes, Regulations, Policies and Procedures Governing State Programs

1. States must require that appraisals be performed in accordance with the latest version of USPAP.[56]
2. States must adopt and/or implement all relevant AQB Criteria.[57]
3. States must have policies, practices and procedures consistent with Title XI.[58]
4. States must have funding and staffing sufficient to carry out their Title XI-related duties.[59]
5. States must use proper designations and permitted scope of practice for certified residential or certified general classifications, and as of July 1, 2013, a State must use the proper designations and permitted scope of practice for the licensed classification, and trainee and supervisor classifications.[60]
6. State board members, and any persons in policy or decision-making positions, must perform their responsibilities consistent with Title XI.[61]
7. States' certification and licensing requirements must meet the minimum requirements set forth in Title XI.[62]
8. State agencies must be granted adequate authority by the State to maintain an effective regulatory Program in compliance with Title XI.[63]

Policy Statement 2

Temporary Practice

1. States must recognize, on a temporary basis, appraiser credentials issued by another State if the property to be appraised is part of a federally related transaction.[64]
2. State agencies must adhere to mandates and prohibitions as determined by the ASC that deter the imposition of excessive fees or burdensome requirements for temporary practice.[65]

Policy Statement 3

National Registry

1. States must reconcile and pay National Registry invoices in a timely manner.[66]
2. States must submit all disciplinary actions [67] to the ASC for inclusion on the National Registry.[68]
3. As of July 1, 2013, all States will be required to report disciplinary action via the extranet application as soon as practicable.[69]
4. States must designate a high ranking officer, such as an executive director, who will serve as the State's Authorized Registry Official, and must ensure that non-public data is appropriately protected.[70]
5. The State must provide to the ASC, in writing, information regarding the selected Authorized Registry Official, and any individual(s) authorized to act on their behalf, and should ensure that the authorization information provided to the ASC is kept current.[71]
6. States using the ASC extranet application must ensure that designated personnel with UserName and Password access protect the right of access, and not share the UserName or Password with anyone.[72]
7. States must adopt and implement a written policy to adequately protect the right of access, as well as the ASC issued UserName and Password.[73]
8. States must proactively minimize risk of clerical error that may result in inaccurate entries to the National Registry.[74]
9. States must submit appraiser data to the ASC at least monthly. If a State's data does not change during the month, the State agency must notify the ASC of that fact in writing.[75]
10. States must notify the ASC as soon as practicable if it is determined that a credential holder listed on the National Registry does not, or did not, qualify for the credential held.[76]
11. States must notify the ASC as soon as practicable in the event of voluntary surrenders, suspensions and revocations, or any action that interrupts a credential holder's ability to practice in order for the ASC to inactivate the appraiser's status on the National Registry.[77]
12. If a State certified or licensed appraiser chooses not to pay the Registry fee, then the Program must ensure that any potential user of that appraiser's services is aware that the appraiser's certificate or license is limited to performing appraisals in connection with non-federally related transactions.[78]

Policy Statement 4

Application Process

Processing of Applications

1. States must process applications in a consistent, equitable and well-documented manner.[79]
2. States must ensure appraiser credential applications submitted for processing do not contain expired examinations as established by AQB Criteria (24-month examination validity period).[80]

Education

1. States must verify that the applicant's claimed education courses are acceptable under AQB Criteria, whether for initial credentialing, renewal, upgrade or reinstatement.[81]
2. States must verify that the applicant has successfully completed courses consistent with AQB Criteria for the appraiser credential sought, whether for initial credentialing, renewal, upgrade or reinstatement.[82]
3. States must maintain adequate documentation to support verification.[83]
4. States may not accept an affidavit for education claimed from applicants for certification.[84]
5. Effective July 1, 2013, States may not accept an affidavit for education claimed from applicants for any federally recognized credential.[85]

[56] Title XI § 1101, 12 U.S.C. 3331; Title XI § 1118(a), 12 U.S.C. 3347; AQB *Real Property Appraiser Qualification Criteria.*

[57] Title XI §§ 1116(a), (c) and (e), 12 U.S.C. 3345; Title XI § 1118(a), 12 U.S.C. 3347.

[58] Title XI § 1118(a), 12 U.S.C. 3347.

[59] *Id;* Title XI § 1118(b), 12 U.S.C. 3347.

[60] Title XI §§ 1116 (a), (c) and (e), 12 U.S.C. 3345; Title XI § 1118(a), 12 U.S.C. 3347; Title XI § 1113, 12 U.S.C. 3342; AQB *Real Property Appraiser Qualification Criteria.*

[61] Title XI § 1118(a), 12 U.S.C. 3347.

[62] Title XI §§ 1116(a), (c) and (e), 12 U.S.C. 3345.

[63] Title XI § 1118(b), 12 U.S.C. 3347.

[64] Title XI § 1122(a)(1), 12 U.S.C. 3351.

[65] Title XI § 1122(a)(2), 12 U.S.C. 3351.

[66] Title XI § 1118(a), 12 U.S.C. 3347; Title XI § 1109(a), 12 U.S.C. 3338.

[67] *See* Appendix C, *Glossary of Terms,* for the definition of ''disciplinary action.''

[68] Title XI § 1118(a), 12 U.S.C. 3347; Title XI § 1109(a), 12 U.S.C. 3338.

[69] *Id.*

[70] Title XI § 1118(a), 12 U.S.C. 3347.

[71] *Id.*

[72] *Id.*

[73] *Id.*

[74] *Id.*

[75] *Id.*

[76] *Id.*

[77] *Id.*

[78] *Id.*

[79] Title XI § 1118(a), 12 U.S.C. 3347.

[80] Title XI § 1118(a), 12 U.S.C. 3347; AQB *Real Property Appraiser Qualification Criteria.*

[81] *Id.*

[82] *Id.*

[83] Title XI § 1118(a), 12 U.S.C. 3347.

[84] *Id.*

[85] *Id.*

6. States may not accept an affidavit for continuing education claimed from applicants for reinstatement.[86]

7. States may accept affidavits for continuing education credit claimed for credential renewal so long as the State implements a reliable validation procedure.[87]

8. Audits of affidavits for continuing education credit claimed must be completed within 60 days from the date the renewed credential is issued.[88]

9. States are required to take remedial action when it is determined that more than ten percent of audited appraiser's affidavits for continuing education credit claimed fail to meet the minimum AQB Criteria.[89]

10. States must require the 7-hour National USPAP Update Course for renewals consistent with AQB Criteria.[90]

Experience

1. States may not accept an affidavit for experience credit claimed from applicants for certification.[91]

2. Effective July 1, 2013, States may not accept an affidavit for experience credit claimed from applicants for any federally recognized credential.[92]

3. States must ensure that appraiser experience logs conform to AQB Criteria.[93]

4. States must use a reliable means of validating appraiser experience claims on all initial or upgrade applications for appraiser credentialing.[94]

5. States must select the work product to be analyzed for USPAP compliance on all initial or upgrade applications for appraiser credentialing.[95]

6. States must analyze a representative sample of the applicant's work product on all initial or upgrade applications for appraiser credentialing.[96]

7. States must exercise due diligence in determining whether submitted documentation of experience or work product demonstrates compliance with USPAP on all initial applications for appraiser credentialing.[97]

8. Persons analyzing work product for USPAP compliance must have sufficient knowledge to make that determination.[98]

Examination

1. States must ensure that an appropriate AQB-approved qualifying examination is administered for each of the federally recognized credentials requiring an examination.[99]

[86] *Id.*

[87] Title XI § 1118(a), 12 U.S.C. 3347; AQB *Real Property Appraiser Qualification Criteria.*

[88] Title XI § 1118(a), 12 U.S.C. 3347.

[89] *Id.*

[90] Title XI § 1118(a), 12 U.S.C. 3347; AQB *Real Property Appraiser Qualification Criteria.*

[91] Title XI § 1118(a), 12 U.S.C. 3347.

[92] *Id.*

[93] Title XI § 1118(a), 12 U.S.C. 3347; AQB *Real Property Appraiser Qualification Criteria.*

[94] Title XI § 1118(a), 12 U.S.C. 3347.

[95] *Id.*

[96] *Id.*

[97] *Id.*

[98] *Id.*

[99] Title XI § 1118(a), 12 U.S.C. 3347; AQB *Real Property Appraiser Qualification Criteria.*

Policy Statement 5

Reciprocity

1. Effective July 1, 2013, in order for a State's appraisers to be eligible to perform appraisals for federally related transactions, the State must have a reciprocity policy in place for issuing a reciprocal credential to an appraiser from another State under the conditions specified in Title XI.[100]

2. States may be more lenient in the issuance of reciprocal credentials by implementing a more open door policy; however, States may not impose additional impediments to issuance of reciprocal credentials.[101]

Policy Statement 6

Education

1. States must ensure that appraiser education courses are consistent with AQB Criteria.[102]

2. States must maintain sufficient documentation to support that approved appraiser courses conform to AQB Criteria.[103]

3. States must ensure the delivery mechanism for distance education courses offered by a non-academic provider has been approved by an AQB-approved organization providing approval of course design and delivery (e.g. IDECC).[104]

Policy Statement 7

State Agency Enforcement

1. States must maintain relevant documentation to enable understanding of the facts and determinations in the matter and the reasons for those determinations.[105]

2. States must resolve all complaints filed against appraisers within one year (12 months) of the complaint filing date, except for special documented circumstances.[106]

3. States must ensure that the system for processing and investigating complaints and sanctioning appraisers is administered in an effective, consistent, equitable, and well-documented manner.[107]

4. States must track complaints of alleged appraiser misconduct or wrongdoing using an electronic complaint log.[108]

5. States must appropriately document enforcement files and include rationale.[109]

6. States must regulate, supervise and discipline their credentialed appraisers.[110]

7. Persons analyzing complaints for USPAP compliance must be knowledgeable about appraisal practice and USPAP.[111]

[100] Title XI § 1122(b), 12 U.S.C. 3351.

[101] *Id.*

[102] Title XI § 1118(a), 12 U.S.C. 3347; AQB *Real Property Appraiser Qualification Criteria.*

[103] Title XI § 1118(a), 12 U.S.C. 3347.

[104] Title XI § 1118(a), 12 U.S.C. 3347; AQB *Real Property Appraiser Qualification Criteria.*

[105] Title XI § 1118(a), 12 U.S.C. 3347.

[106] *Id.*

[107] *Id.*

[108] *Id.*

[109] *Id.*

[110] *Id.*

[111] *Id.*

Appendix C—Glossary of Terms

AQB Criteria: Refers to the *Real Property Appraiser Qualification Criteria* as established by the Appraiser Qualifications Board of the Appraisal Foundation setting forth minimum education, experience and examination requirements for the licensure and certification of real property appraisers, and minimum requirements for ''Trainee'' and ''Supervisory'' appraisers.

Assignment: As referenced herein, for purposes of temporary practice, ''assignment'' means one or more real estate appraisals and written appraisal report(s) covered by a single contractual agreement.

Complaint: As referenced herein, any document filed with, received by, or serving as the basis for possible inquiry by the State agency regarding alleged violation of Title XI, Federal or State law or regulation, or USPAP by a credentialed appraiser, appraiser applicant, or for allegations of unlicensed appraisal activity. A complaint may be in the form of a referral, letter of inquiry, or other document alleging appraiser misconduct or wrongdoing.

Credentialed appraisers: Refers to State licensed, certified residential or certified general appraiser classifications.

Disciplinary action: As referenced herein, corrective or punitive action taken by or on behalf of a State agency which may be formal or informal, or may be consensual or involuntary, resulting in any of the following:

a. Revocation of credential
b. Suspension of credential
c. Written consent agreements, orders or reprimands
d. Probation or any other restriction on the use of a credential
e. Fine
f. Voluntary surrender in lieu of disciplinary action
g. Other acts as defined by State statute or regulation as disciplinary

With the exception of voluntary surrender, suspension or revocation, such action may be exempt from reporting to the National Registry if defined by State statute, regulation or written policy as ''non-disciplinary.''

Federally related transaction: Refers to any real estate related financial transaction which:

(a) A federal financial institutions regulatory agency engages in, contracts for, or regulates; and

(b) Requires the services of an appraiser. (See Title XI § 1121(4), 12 U.S.C. 3350.)

Federal financial institutions regulatory agencies: Refers to the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the National Credit Union Administration. (See Title XI § 1121(6), 12 U.S.C. 3350.)

Home State agency: As referenced herein, State agency or agencies that grant an appraiser a licensed or certified credential. Residency in the home State is not required. Appraisers may have more than one home State agency.

Non-federally recognized credentials or designations: Refers to any State appraiser credential or designation other than State licensed, certified residential or certified general classifications, and trainee and supervisor classifications as defined in Policy Statement 1, and is not recognized by the federal regulators for purposes of their appraisal regulations.

Real estate related financial transaction: Any transaction involving:

(a) The sale, lease, purchase, investment in or exchange of real property, including interests in property, or the financing thereof;

(b) The refinancing of real property or interests in real property; and

(c) The use of real property or interests in property as security for a loan or investment, including mortgage-backed securities. (See Title XI § 1121(5), 12 U.S.C. 3350.)

Special documented circumstances: As referenced herein, extenuating circumstances (fully documented) beyond the control of the State agency that delays normal processing of a complaint such as: complaints involving investigation by a law enforcement agency such as a criminal investigation when the investigative agency requests that the State refrain from proceeding; final disposition that has been appealed to a higher court; documented medical condition of the respondent; ancillary civil litigation; and complex fraud cases that involve multiple individuals and reports.

State: Any State, Commonwealth, Territory, or Possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or the United States Virgin Islands. (American Samoa does not have a Program.)

State board: As referenced herein, ''State board'' means a group of individuals (usually appraisers, bankers, consumers, and/or real estate professionals) appointed by the Governor or a similarly positioned State official to assist State Programs. A State agency may be headed by a board, commission or an individual. Most States have a board (or commission) with responsibilities and authorities varying from State to State.

Uniform Standards of Professional Appraisal Practice (USPAP): Refers to appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation establishing minimum requirements for development and reporting of appraisals, including real property appraisal. Title XI requires appraisals prepared by State certified and licensed appraisers to be performed in conformance with USPAP.

Appendix D—ASC Bulletins and Supplements

[Appendix D will contain the following ASC Bulletins and Supplements that were issued to assist States in understanding and complying with the self-enabling provisions of the Dodd-Frank Act.]

- Bulletin No. 10–1 issued October 14, 2010 on Modification of Annual National Registry Fee
- Supplement to ASC Bulletin 10–1 dated Oct. 22, 2010
- Bulletin No. 2011–01 issued March 18, 2011 on Statutory Provisions Affecting State Appraiser Regulatory Programs
- Supplement to Bulletin No. 2011–01 issued August 11, 2011 on Mandatory AQB Criteria for State Licensed Appraisers

* * * * *

By the Appraisal Subcommittee,

Dated: August 27, 2012.

Peter Gillispie,

Chairman.

[FR Doc. 2012–21452 Filed 8–29–12; 8:45 am]

BILLING CODE 6700–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

The Commission gives notice that the following applicants have filed an application for an Ocean Transportation Intermediary (OTI) license as a Non-Vessel-Operating Common Carrier (NVO) and/or Ocean Freight Forwarder (OFF) pursuant to section 40901 of the Shipping Act of 1984 (46 U.S.C. 40101). Notice is also given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a licensee.

Interested persons may contact the Office of Ocean Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573, by telephone at (202) 523–5843 or by email at *OTI@fmc.gov.*

AAW Global Logistics PTY Ltd. (NVO), Level 3, 55 Wellington Street, Victoria, Saint Kilda 3182 Australia, Officers: Joseph J. Pace, Director, (Qualifying Individual), Barry J. Misiurak, Director, Application Type: New NVO License.

AOG International, Inc. (NVO & OFF), 4801 Woodway Drive, #371 East, Houston, TX 77056, Officers: J. Shelli Ali, Vice President, (Qualifying Individual), Christina L. Forth-Matthews, President, Application Type: Add NVO Service.

Boacon Synergy Inc (NVO & OFF), 7933 Mill Creek Circle, West Chester, OH 45069, Officers: Benjamin O. Afolabi, President, (Qualifying Individual), Beatrice O. Afolabi, Secretary, Application Type: Add NVO Service.

Canei Group Corporation (NVO & OFF), 7241 NW 54th Street, Miami, FL 33166, Officers: Graziella M. Lobato, Director, (Qualifying Individual), Daniel D. Ferraz, Director, Application Type: Add Trade Names Kaizen World Freight and KWF Logistics.

Cars USA, Inc. dba Cars USA Logistics Inc. (OFF), 425 Bush Street, #425, San Francisco, CA 94108–3713, Officers: Fiona Spence, President, (Qualifying Individual), Richard Clark, Director, Application Type: New OFF License.

Ceva Freight, LLC dba EGL Ocean Line dba Ceva Ocean Line (NVO & OFF), 15350 Vickery Drive, Houston, TX 77032, Officers: Johnathon C. Grossgart, Vice President, (Qualifying Individual), Matthew Ryan, President, Application Type: QI Change.

Ellen Newman Logistics, L.L.C. (OFF), 920 Richmond Drive, Metairie, LA 70003, Officer: Ellen A. Newmn, Member, (Qualifying Individual), Application Type: New OFF License.

Equipsa Inc. (OFF), 2105 NW 102 Avenue, Miami, FL 33172, Officers: Isabel Montejo, Vice President, (Qualifying Individual), Arthur S. Gelfand, President, Application Type: QI Change.

Howard Thomas Exports, Inc. dba HTX International (NVO & OFF), 15535 Texaco Avenue, Paramount, CA 90723, Officers: Maximiliaan Hoes, Secretary, (Qualifying Individual), Howard T. Smith, President, Application Type: New NVO & OFF License.

Merengue Cargo Shipping Inc. (NVO), 11 Sunny Slope Terrace, Yonkers, NY 10703, Officers: Amarelis Robles, President, (Qualifying Individual), Jose O. Perdomo, Vice President, Application Type: New NVO License.

National Air Cargo, Inc. (NVO & OFF), 350 Windward Drive, Orchard Park, NY 14127, Officers: Richard T. Burke, Jr., Assistant Secretary, (Qualifying Individual), Christopher J. Alf, President, Application Type: New NVO & OFF License.

New Hope Vehicle Exports LLC (NVO & OFF), 1000 S. Market Street, Wilmington, DE 19801, Officer: Javier Marmol, Member, (Qualifying Individual), Application Type: New NVO & OFF License.

New Star Freight, Inc. dba American Freight Solutions (NVO & OFF), 14144 Central Avenue, #H, Chino, CA 91710, Officers: Xiaosong Liu, Secretary, (Qualifying Individual), Fei Yu, Director, Application Type: Transfer License to Freight Express Shipping Corporation (FESCO).

PMJ International Inc (NVO), 519 Mountainview Drive, North Plainfield, NJ 07063, Officer: Pelham Hicks, CEO, (Qualifying Individual), Application Type: New NVO License.

Seair Cargo Logistics, Inc. (NVO & OFF), 8008 NW 90th Street, Medley, FL 33166, Officer: Joaquin G. Ferrer, President, (Qualifying Individual), Application Type: New NVO & OFF License.

Tropic Import & Export, Inc. (NVO & OFF), 8338 NW 68th Street, Miami, FL 33166, Officer: Clayde M. Couto,

President, (Qualifying Individual), Application Type: New NVO & OFF License.
Venezolana De Fletamentos Cavefle, LLC (NVO & OFF), 12190 NW 98 Avenue, Bay 7, Hialeah, FL 33018, Officers: Genesis Diaz, Manager, (Qualifying Individual), Veronica Alcestte, Manager Member, Application Type: New NVO & OFF License.
Worldwide Cargo Express, Inc. (OFF), 76 West 13775 South, #8, Draper, UT 84020, Officers: Dana M. Ferguson, President, (Qualifying Individual), Necia G. Clark-Mantle, CEO, Application Type: New OFF License.

By the Commission.

Dated: August 27, 2012.

Karen V. Gregory,

Secretary.

[FR Doc. 2012–21412 Filed 8–29–12; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Commission gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 40901 of the Shipping Act of 1984 (46 U.S.C. 40101) effective on the date shown.

License No.: 017028NF.
Name: Protrans International, Inc.
Address: 8311 North Perimeter Road, Indianapolis, IN 46241.
Date Revoked: August 2, 2012.
Reason: Failed to maintain valid bonds.

License No.: 17921N.
Name: Global Brilliant Logistics Corp.
Address: 635–671 Executive Drive, Suite 659, Willowbrook, IL 60527.
Date Revoked: August 1, 2012.
Reason: Failed to maintain a valid bond.

License No.: 019522N.
Name: Echo Trans World, Inc.
Address: 462 7th Avenue, 14th Floor, New York, NY 10018.
Date Revoked: July 21, 2012.
Reason: Failed to maintain a valid bond.

License No.: 020268F.
Name: Express Northwest International Freight Services Inc.
Address: 18335 8th Avenue South, Seattle, WA 98148.
Date Revoked: May 6, 2012.
Reason: Voluntary surrender of license.

License No.: 022181NF.
Name: Savannah Marine Terminal, Inc. dba SMT Logistics.
Address: 380 Magazine Avenue, Savannah, GA 31415.
Date Revoked: August 9, 2012.
Reason: Failed to maintain valid bonds.

License No.: 022710N.
Name: Route 809 Freight Forward LLC.
Address: 7801 NW 66th Street, Suite C, Miami, FL 33166.
Date Revoked: August 10, 2012.
Reason: Failed to maintain a valid bond.

License No.: 023345NF.
Name: Mike Mohsen Darabi dba Donya Trading Group.
Address: 2457 Hart Avenue, Santa Clara, CA 95050.
Date Revoked: August 1, 2012.
Reason: Failed to maintain valid bonds.

Vern W. Hill,

Director, Bureau of Certification and Licensing.

[FR Doc. 2012–21413 Filed 8–29–12; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 17, 2012.

A. Federal Reserve Bank of Cleveland (Nadine Wallman, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. *Richard M. Wehrle, Nicholasville Kentucky,* acting in his representative capacity as conservator for James A. Brown, to acquire in his representative capacity additional voting shares of Farmers National Bancorp of Cynthiana, Inc., Cynthiana, Kentucky and thereby indirectly acquire shares of Farmers National Bank of Cynthiana, Cynthiana, Kentucky and Deposit Bank of Carlisle, Carlisle, Kentucky.

Board of Governors of the Federal Reserve System.

Dated: August 27, 2012.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2012–21419 Filed 8–29–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 25, 2012.

A. Federal Reserve Bank of Richmond (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. *CapGen Capital Group IV LLC and CapGen Capital Group IV LP, both of New York, New York,* to increase their investment up to 49.9% of the voting securities of Jacksonville Bancorp, Inc., Jacksonville, Florida, and indirectly acquire The Jacksonville Bank, Jacksonville, Florida.

Board of Governors of the Federal Reserve System, August 27, 2012.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2012–21431 Filed 8–29–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than

A. Federal Reserve Bank of Richmond (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. *CapGen Capital Group IV LLC and CapGen Capital Group IV LP, both of New York, New York,* to increase their investment up to 49.9% of the voting securities of Jacksonville Bancorp, Inc., Jacksonville, Florida, and indirectly acquire The Jacksonville Bank, Jacksonville, Florida.

Board of Governors of the Federal Reserve System, August 27, 2012.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2012–21420 Filed 8–29–12; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0035; Docket 2012–0076; Sequence 1]

Federal Acquisition Regulation; Submission for OMB Review; Claims and Appeals

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning claims and appeals. A notice was published in the **Federal Register** at 77 FR 18819, on March 28, 2012. One respondent submitted comments.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before October 1, 2012.

ADDRESSES: Submit comments identified by Information Collection 9000–0035, Claims and Appeals by any of the following methods:

- *Regulations.gov: http://www.regulations.gov*. Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 9000–0035, Claims and Appeals''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 9000–0035, Claims and Appeals'' on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417. Attn: Hada Flowers/IC 9000–0035, Claims and Appeals.

Instructions: Please submit comments only and cite Information Collection 9000–0035, Claims and Appeals, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Marissa Petrusek, Procurement Analyst, Federal Acquisition Policy Division, GSA, (202) 502–0136 or via email at *marissa.petrusek@gsa.gov*.

SUPPLEMENTARY INFORMATION:

A. Purpose

It is the Government's policy to try to resolve all contractual issues by mutual agreement at the contracting officer's level without litigation. Reasonable efforts should be made to resolve controversies prior to submission of a contractor's claim. The Contract Disputes Act of 1978 (41 U.S.C. 7103) requires that claims exceeding $100,000 must be accompanied by a certification that (1) The claim is made in good faith; (2) supporting data are accurate and complete; and (3) the amount requested accurately reflects the contract adjustment for which the contractor believes the Government is liable. The information, as required by FAR clause 52.233–1, Disputes, is used by a contracting officer to decide or resolve the claim. Contractors may appeal the contracting officer's decision by submitting written appeals to the appropriate officials.

B. Analysis of Public Comments

One respondent submitted public comments on the extension of the previously approved information collection. The analysis of the public comments is summarized as follows:

Comment: The respondent commented that the extension of the information collection would violate the fundamental purposes of the Paperwork Reduction Act because of the burden it puts on the entity submitting the information and the agency collecting the information.

Response: In accordance with the Paperwork Required Act (PRA), agencies can request an OMB approval of an existing information collection.

The PRA requires that agencies use the **Federal Register** notice and comment process, to extend the OMB's approval, at least every three years. This extension, to a previously approved information collection, pertains to FAR 33.215, Contract Clauses and clause 52.233–1, Disputes. The purpose of this clause is to allow contractors to submit claims against the government when there is a disagreement of rights between the contractor and the contracting officer, during or after performance of a contract. The authority for this clause is provided in the Contract Disputes Act (CDA) of 1978, as amended, 41 U.S.C. 7101. While this is a mandatory contract clause, it provides the contractor a process and a forum to bring claims. Not granting this extension would consequently eliminate a fundamental FAR clause that is required in accordance with the CDA and impair a contractor's rights.

Comment: The respondent commented that the agency did not accurately estimate the public burden challenging that the agency's methodology for calculating it is insufficient and inadequate and does not reflect the total burden. For this reason, the respondent provided that the agency should reassess the estimated total burden hours and revise the estimate upwards to be more accurate, as was done in FAR Case 2007–006. The same respondent also provided that the burden of compliance with the information collection requirement greatly exceeds the agency's estimate and outweighs any potential utility of the extension.

Response: Serious consideration is given, during the open comment period, to all comments received and adjustments are made to the paperwork burden estimate based on reasonable considerations provided by the public. This is evidenced, as the respondent notes, in FAR Case 2007–006 where an adjustment was made from the total preparation hours from three to 60. This change was made considering particularly the hours that would be required for review within the company, prior to release to the Government.

The burden is prepared taking into consideration the necessary criteria in OMB guidance for estimating the paperwork burden put on the entity submitting the information. For example, consideration is given to an entity reviewing instructions; using technology to collect, process, and disclose information; adjusting existing practices to comply with requirements; searching data sources; completing and reviewing the response; and transmitting or disclosing information. The estimated burden hours for a collection are based on an average between the hours that a simple disclosure by a very small business might require and the much higher numbers that might be required for a very complex disclosure by a major corporation. Also, the estimated burden hours should only include projected hours for those actions which a company would not undertake in the normal course of business. Careful consideration went into assessing the estimated burden hours for this collection, and it is determined that an upward adjustment is not required at this time. However, at any point, members of the public may submit comments for further consideration, and are encouraged to provide data to support their request for an adjustment.

C. Annual Reporting Burden

Respondents: 4,500.
Responses per Respondent: 3.
Annual Responses: 13,500.
Hours per Response: 1.
Total Burden Hours: 13,500.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417, telephone (202) 501–4755. Please cite OMB Control No. 9000–0035, Claims and Appeals, in all correspondence.

William Clark,

Acting Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2012–21362 Filed 8–29–12; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Docket 2012–0076; Sequence 33: OMB Control No. 9000–0080]

Federal Acquisition Regulation; Information Collection; Integrity of Unit Prices

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning Integrity of Unit Prices.

Public comments are particularly invited on: Whether this collection of information is necessary; whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before October 29, 2012.

ADDRESSES: Submit comments identified by Information Collection 9000–0080, Integrity of Unit Prices by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link "Submit a Comment" that corresponds with "Information Collection 9000–0080, Integrity of Unit Prices". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 9000–0080, Integrity of Unit Prices" on your attached document.

- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417. ATTN: Hada Flowers/IC 9000–0080, Integrity of Unit Prices.

Instructions: Please submit comments only and cite Information Collection 9000–0080, Integrity of Unit Prices, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb, Procurement Analyst, Office of Acquisition Policy, GSA, (202) 501–0650 or email *edward.loeb@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

The clause at FAR 52.215–14, Integrity of Unit Prices, requires offerors and contractors under Federal contracts that are to be awarded without adequate price competition to identify in their proposals those supplies which they will not manufacture or to which they will not contribute significant value. The policies included in the FAR are required by 41 U.S.C. 3503 (a)(1)(A)(for the civilian agencies) and 10.U.S.C 2306a(b)(1)(A)(i)(for DOD and NASA). The rule contains no reporting requirements on contracts below the simplified acquisition threshold, construction and architect-engineering services, utility services, service contracts where supplies are not required, commercial items, and contracts for petroleum products.

B. Annual Reporting Burden

Respondents: 950.

Responses per Respondent: 10.

Annual Responses: 9500.

Hours per Response: 1 hour.

Total Burden Hours: 9,500.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417, telephone (202) 501–4755. Please cite OMB Control No. 9000–0080, Integrity of Unit Prices.

Dated: August 22, 2012.

Laura Auletta,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2012–21358 Filed 8–29–12; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–12–12PK]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call (404) 639–7570 or send an email to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Standardized National Hypothesis Generating Questionnaire—New—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

It is estimated that each year roughly 1 in 6 Americans gets sick, 128,000 are hospitalized, and 3,000 die of foodborne diseases. CDC and partners ensure rapid and coordinated surveillance, detection, and response to multistate outbreaks, to limit the number of illnesses, and to learn how to prevent similar outbreaks from happening in the future.

Conducting interviews during the initial hypothesis-generating phase of multistate foodborne disease outbreaks presents numerous challenges. In the U.S. there is not a standard, national form or data collection system for illnesses caused by many enteric pathogens. Data elements for hypothesis generation must be developed and agreed upon for each investigation. This process can take several days to weeks and may cause interviews to occur long after a person becomes ill.

CDC requests OMB approval to collect standardized information, called the Standardized National Hypothesis-Generating Questionnaire, from individuals who have become ill during a multistate foodborne disease event. Since the questionnaire is designed to be administered by public health officials as part of multistate hypothesis-generating interview activities, this questionnaire is not expected to entail significant burden to respondents.

The Standardized National Hypothesis-Generating Core Elements Project was established with the goal to define a core set of data elements to be used for hypothesis generation during multistate foodborne investigations. These elements represent the minimum set of information that should be available for all outbreak-associated cases identified during hypothesis generation. The core elements would ensure that similar exposures would be ascertained across many jurisdictions, allowing for rapid pooling of data to improve the timeliness of hypothesis-generating analyses and shorten the time to pinpoint how and where contamination events occur.

The Standardized National Hypothesis Generating Questionnaire was designed as a data collection tool for the core elements, to be used when a multistate cluster of enteric disease infections is identified. The questionnaire is designed to be administered over the phone by public health officials to collect core elements data from case-patients or their proxies. Both the content of the questionnaire (the core elements) and the format were developed through a series of working groups comprised of local, state, and federal public health partners.

Burden hours are calculated by approximately 4,000 individuals identified during the hypothesis-generating phase of outbreak investigations x 45 minutes/response. There are no costs to respondents other than their time. The total estimated annualized burden is 3,000 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	No. of responses per respondent	Avg. burden per response (in hrs)
Ill individuals identified as part of an outbreak investigation.	Standardized National Hypothesis Generating Questionnaire (Core Elements).	4,000	1	45/60

Dated: August 23, 2012.

Ron A. Otten,

Director, Office of Scientific Integrity (OSI), Office of the Associate Director for Science, Office of the Directors, Centers for Disease Control and Prevention.

[FR Doc. 2012–21312 Filed 8–29–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0135]

Compliance Policy Guide Sec. 420.300 Changes in Compendial Specifications and New Drug Application Supplements; Withdrawal of Guidance

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; withdrawal.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal of Compliance Policy Guide (CPG) Sec. 420.300 Changes in Compendial Specifications and New Drug Application (NDA) Supplements. CPG Sec. 420.300 is included in FDA's Compliance Policy Guides Manual available on the Agency's Web site at *http://www.fda.gov/ICECI/ComplianceManuals/CompliancePolicyGuidanceManual/default.htm.*

DATES: The withdrawal is effective August 30, 2012.

FOR FURTHER INFORMATION CONTACT: Larry A. Ouderkirk, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, 301–796–1585.

SUPPLEMENTARY INFORMATION: This CPG was originally issued on October 1, 1980, in the Agency's Manual of Compliance Policy Guides. FDA is withdrawing CPG Sec. 420.300 because it is obsolete. Current guidance to FDA staff and industry regarding application requirement for changes in compendial specifications is provided in 21 CFR 314.70 and the Agency's Guidance for Industry: Changes to an Approved NDA or Abbreviated New Drug Application, which is available on the Internet at *http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM077097.pdf*.

Dated: August 16, 2012.

Dara A. Corrigan,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 2012–21415 Filed 8–29–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0360]

MDEpiNet 2012 Annual Meeting: The Medical Device Epidemiology Network as a Partnership for Building Global Medical Device Epidemiology and Surveillance Capabilities

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following public workshop entitled ''MDEpiNet 2012 Annual Meeting: The Medical Device Epidemiology Network as a Partnership for Building Global Medical Device Epidemiology and Surveillance Capabilities.'' The topic to be discussed is setting strategic priorities and implementing an action plan for sustainable partnership toward improving regulatory science and the public health.

DATES: The public workshop will be held on September 11, 2012, from 8 a.m. to 5 p.m.

ADDRESSES: The public workshop will be held at the Greenbelt Marriott Hotel, 6400 Ivy Lane, Greenbelt, MD 20770, 301–441–3700.

FOR FURTHER INFORMATION CONTACT: Danica Marinac-Dabic, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4110, Silver Spring, MD 20993, 301–796–6689, email: *Danica.Marinac-Dabic@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Registration: Registration is free and available on a first-come, first-served basis. Persons interested in attending this public workshop must register online by 5 p.m., September 10, 2012. Early registration is recommended because facilities are limited and, therefore, FDA may limit the number of participants from each organization. Onsite registration will not be available on the day of the workshop.

If you need special accommodations due to a disability, please contact Joyce Raines, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 4319, Silver Spring, MD 20993, 301–796–5709, email: *joyce.raines@fda/hhs.gov;* no later than September 5, 2012.

To register for the public workshop, please visit FDA's Medical Devices News & Events—Workshops & Conferences calendar at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm.* (Select this public workshop from the posted events list.) Please provide complete contact information for each attendee, including name, title, affiliation, address, email, and telephone number. Those without Internet access should contact Danica Marinac-Dabic (see *Contact Person*) to register. Registrants will receive confirmation after they have been accepted. You will be notified if you are on a waiting list.

Streaming Webcast of the Public Workshop: This public workshop will also be Webcast. Persons interested in viewing the Webcast must register online by 5 p.m., September 5, 2012. Early registration is recommended because Webcast connections are limited. Organizations are requested to register all participants, but to view using one connection per location. Webcast participants will be sent technical system requirements after registration and will be sent connection access information after September 7, 2012.

Comments: FDA is holding this public workshop to provide updates and obtain stakeholders' input on the Medical Device Epidemiology Network (MDEpiNet) as a partnership for building global medical device epidemiology and surveillance capabilities. In order to permit the widest possible opportunity to obtain public comment, FDA is soliciting either electronic or written comments on all aspects of the workshop topics. The deadline for submitting comments related to this public workshop is October 9, 2012.

Regardless of attendance at the meeting, interested persons may submit either written comments regarding this document to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852 or electronic comments to *http://www.regulations.gov.* It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. In addition, when responding to specific questions as outlined in section II of this document, please identify the question you are addressing. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

Transcripts: Please be advised that as soon as a transcript is available, it will be accessible at *http://www.regulations.gov.* It may be viewed at the Division of Dockets Management (see *Comments*). A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to the Division of Freedom of Information (ELEM–1029), Food and Drug Administration, 12420 Parklawn Dr., Element Bldg., Rockville, MD 20857. A link to the transcripts will also be available approximately 45 days after the public workshop on the Internet at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm.* (Select this public workshop from the posted events list.)

I. Background

MDEpiNet is a collaborative program through which the Center for Devices and Radiological Health and external partners share information and resources to enhance our understanding of how well medical devices work (*http://www.fda.gov/mdepinet*). By bridging evidentiary gaps, developing datasets, and innovating methodological approaches for conducting robust analytic studies, MDEpiNet aims to develop new ways to study medical devices that improve the understanding of safety and effectiveness performance throughout a device's life cycle.

Accomplishing MDEpiNet's mission will require leveraging of resources, skills, and expertise from a variety of partners, and we encourage participation from all stakeholders, including other Government Agencies, academia, health care industry organizations, and patient and consumer groups. The purpose of the public workshop is to facilitate discussion among these key stakeholders in the scientific community on issues related to medical device epidemiology methodology and infrastructure as it relates to evidence generation and synthesis across the Total Product Life Cycle. This public workshop is open to all interested parties. The target audience is professionals from other Government Agencies, academia, professional societies, health care industry organizations, patient and consumer groups, and other professionals in the scientific community interested in advancing the infrastructure and methodology for epidemiologic understanding of medical devices and procedures.

II. Topics for Discussion at the Public Workshop

We intend to discuss a large number of issues at the public workshop, including but not limited to the following: (1) Status and updates from MDEpiNet Methodology and Infrastructure Centers; (2) proposed partnership structure and governance; (3) MDEpiNet as a framework for medical device postmarket surveillance and its relation to the Sentinel provision in the FDA Safety and Innovation Act (calling for the expansion of the postmarket risk identification and analysis system to include devices); and (4) action plan and prioritization of MDEpiNet partnership efforts for the upcoming year.

Dated: August 27, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–21435 Filed 8–27–12; 4:15 pm]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0359]

Public Meeting—Strengthening the National Medical Device Postmarket Surveillance System; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following public meeting entitled ''Public Meeting—Strengthening the National Medical Device Postmarket Surveillance System.'' The purpose of the meeting is to solicit public feedback regarding the medical device postmarket surveillance system in the United States.

DATES: The public meeting will be held on September 10, 2012, from 9 a.m. to 4 p.m.

ADDRESSES: The public meeting will be held at the Greenbelt Marriott Hotel, 6400 Ivy Lane, Greenbelt, MD 20770, 301–441–3700.

FOR FURTHER INFORMATION CONTACT: Anita Rayner, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 3316, Silver Spring, MD 20993, 301–796–6002, email: *Anita.Rayner@fda.hhs.gov;* or Danica Marinac-Dabic, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4110, Silver Spring, MD 20993, 301–796–6689, email: *Danica.Marinac-Dabic@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Registration: Registration is free and available on a first-come, first-served basis. Persons interested in attending this public meeting must register online by 5 p.m., September 10, 2012. Early registration is recommended because facilities are limited and, therefore, FDA may limit the number of participants from each organization. If time and space permits, onsite registration on the day of the meeting will be provided beginning at 8 a.m.

If you need special accommodations due to a disability, please contact Joyce Raines Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4319, Silver Spring, MD 20993, 301–796–5709, email: *joyce.raines@fda.hhs.gov* no later than September 5, 2012.

To register for the public meeting, please visit FDA's Medical Devices News & Events—Workshops & Conferences calendar at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm.* (Select this public meeting from the posted events list.) Please provide complete contact information for each attendee, including name, title, affiliation, address, email, and telephone number. Those without Internet access should contact Danica Marinac-Dabic (see *Contact Person*) to register. Registrants will receive confirmation after they have been accepted. You will be notified if you are on a waiting list.

Streaming Webcast of the Public Meeting: This meeting will also be Webcast. Persons interested in viewing the Webcast must register online by 5 p.m., September 5, 2012. Early registration is recommended because Webcast connections are limited. Organizations are requested to register all participants but to view using one connection per location. Webcast participants will be sent technical system requirements after registration and will be sent connection access information after September 7, 2012.

Requests for Oral Presentations: This public meeting includes a public comment session and a moderated discussion session. During online registration, you may indicate if you wish to present during a public comment session or participate in a specific session, and which topics you wish to address. FDA has included general topics in this document. FDA will do its best to accommodate requests to make public comment. Individuals and organizations with common interests are urged to consolidate or coordinate their presentations and request time for a joint presentation, or submit requests for designated representatives to participate in the focused sessions. Following the close of registration, FDA will determine the amount of time allotted to each presenter and the approximate time each oral presentation is to begin and will notify participants by September 4, 2012. All requests to make oral presentations must be received by August 31, 2012. Any presentation materials must be emailed (see *Contact Person*) no later than September 5, 2012. No commercial or promotional material will be permitted to be presented or distributed at the meeting.

Comments: FDA is holding this public meeting to solicit public feedback regarding the medical device postmarket surveillance system in the United States. In order to permit the widest possible opportunity to obtain public comment, FDA is soliciting either electronic or written comments on all aspects of the meeting topics. The deadline for submitting comments related to this meeting is October 9, 2012.

Regardless of attendance at the meeting, interested persons may submit either written comments regarding this document to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852 or electronic comments to *http://www.regulations.gov.* It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. In addition, when responding to specific questions as outlined in section II of this document, please identify the question you are addressing. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

Transcripts: Please be advised that as soon as a transcript is available, it will be accessible at *http://www.regulations.gov.* It may be viewed at the Division of Dockets Management (see *Comments*). A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to the Division of Freedom of Information (ELEM–1029), Food and Drug Administration, 12420 Parklawn Dr., Element Bldg., Rockville, MD 20857. A link to the transcripts will also be available approximately 45 days after the meeting on the Internet at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm.* (Select this meeting from the posted events list.)

I. Background

FDA's Center for Devices and Radiological Health (CDRH) is responsible for protecting the public health by assuring the safety and effectiveness of medical devices and safe radiation-emitting products. A key part of this mission is to monitor medical devices and radiological products for continued safety and effectiveness after they are in use and to help the public get the accurate, science-based information they need to improve their health.

Several high-profile device performance concerns have led some to question whether CDRH's current postmarket surveillance system is optimally structured to meet the challenges of rapidly evolving medical devices and the changing nature of health care delivery and information technology. In their report entitled ''Medical Devices and the Public's Health: The FDA 510(k) Clearance Process at 35 Years'' published in July 2011, the Institute of Medicine recommended that FDA develop and implement a comprehensive medical device postmarket surveillance strategy to collect, analyze, and act on medical device postmarket performance information. As part of the process of developing and implementing this strategy, FDA is holding a public meeting to discuss the current and future state of medical device postmarket surveillance. Prior to this public meeting, FDA intends to issue a preliminary report on CDRH's plan to strengthen the medical device postmarket surveillance system in the United States. FDA intends to solicit public feedback regarding the report contents.

II. Topics for Discussion at the Public Meeting

We intend to solicit public feedback regarding the medical device postmarket surveillance system in the United States. Specific topics of interest include, but are not limited to, the following: (1) The unique device identifier system and its incorporation into health-related electronic records; (2) national and international device registries for selected products; (3) adverse event reporting and analysis; and (4) developing and using new methods for evidence generation synthesis and appraisal. These topics will also be discussed in relation to the Sentinel provision in the FDA Safety and Innovation Act calling for the expansion of the postmarket risk identification and analysis system to include devices. Key questions for feedback include:

- Are these the right efforts?
- What principles should drive these efforts?
- What are the attributes of an effective ''active surveillance'' system for devices?
- How can the device active surveillance system leverage existing systems (e.g., Sentinel)?

Following public comment, FDA intends to have a moderated discussion session regarding strengthening the national medical device postmarket surveillance system.

Dated: August 27, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–21434 Filed 8–27–12; 4:15 pm]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0001]

Nonprescription Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Nonprescription Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on November 9, 2012, from 8 a.m. to 5 p.m.

Location: DoubleTree by Hilton Hotel Washington DC/Silver Spring, The Ballrooms, 8727 Colesville Rd., Silver Spring, MD 20910. The hotel's telephone number is 301–589–5200.

Contact Person: Glendolynn S. Johnson, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, Fax: 301–847–8533, email: *NDAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), to find out further information regarding FDA advisory committee information. 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 Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

Agenda: The committee will discuss data submitted by MSD Consumer Care, Inc. to support new drug application (NDA) 202211, for the partial switch from prescription to over-the-counter (OTC) of the oxybutynin transdermal system (proposed trade name OXYTROL FOR WOMEN). The proposed OTC use is ''treats overactive bladder in women.'' The data to be discussed will include a summary of the postmarketing experience with the oxybutynin transdermal system, and the results of consumer studies, including label comprehension studies, self-selection studies, and an actual use study. The committee will be asked to consider whether the data support the appropriate and safe use of oxybutynin transdermal system by OTC consumers.

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 Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before October 26, 2012. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. 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 October 18, 2012. 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 October 19, 2012.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Glendolynn S. Johnson at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* 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: August 24, 2012.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2012–21425 Filed 8–29–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0001]

Food and Drug Administration/European Medicines Agency Orphan Product Designation and Grant Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of meeting.

The Food and Drug Administration's (FDA) Office of Orphan Products Development is announcing the following meeting: Food and Drug Administration/European Medicines Agency Orphan Product Designation and Grant Workshop. This 1-day workshop is intended to provide valuable information about the FDA and European Medicines Agency (EMA) Orphan Drug Designation programs, the FDA Humanitarian Use Device (HUD) Designation program, the FDA Orphan Products Grant program, and the European Union (EU) rare disease research programs to participants representing pharmaceutical, biotechnology, and device companies, as well as academics.

Date and Time: The meeting will be held on October 12, 2012, 8:30 a.m. to 5:30 p.m.

Attendance: Online registration for the workshop will be limited to 240 participants for the morning session, of which approximately 30 teams (up to 90 participants) may register for the one-on-one sessions. There will be no registration fee for the workshop.

Location: The meeting will be held at FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31, Rm. 1503, Silver Spring, MD 20993–0002. Entrance for the public meeting participants (non-FDA employees) is through Building 1 where routine security check procedures will be performed. For parking and security information, please refer to *http://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm.* For participants who cannot attend the morning meetings, simultaneous live interactive Webcasts will be made available. Participants may access the drug and biologics webcast by visiting the following site: *https://collaboration.fda.gov/orphan2012/.* The medical devices webcast can be accessed by visiting: *https://collaboration.fda.gov/devices2012/.*

Contact: Erica K. McNeilly at *Erica.McNeilly@fda.hhs.gov* or J. Lloyd Johnson at *Lloyd.Johnson@fda.hhs.gov*, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5279, Silver Spring MD 20993–0002, (301) 796–8660, FAX: (301) 847–8621.

Registration: Interested participants may register for this meeting at the following Web site: *https://events-support.com/events/FDA-EMA_Workshop.* If you need sign language interpretation during this meeting, please contact Erica K. McNeilly at *Erica.McNeilly@fda.hhs.gov* by September 28, 2012.

The workshop will consist of two simultaneous morning sessions. The first will provide an overview of the EMA and FDA Orphan Drug

Designation programs, while the second will provide an overview of the FDA HUD Designation Program. Both morning sessions will also cover the Orphan Products Grant Program and the EU rare disease research programs as it relates to drugs and biologics, and devices, respectively. Both of these morning sessions will also be available by webcast.

The afternoon session will provide an opportunity for appropriately registered on-site participants to have one-on-one meetings with FDA or EMA staff members to discuss the specifics on how to apply for an orphan product grant, EU rare disease research assistance program, a HUD designation, or orphan drug designation. Participants requesting one-on-one meetings will need to undergo a second registration process with FDA, and are expected to bring information for at least one candidate orphan drug or device that holds promise for the treatment of a rare disease or condition in order to discuss the processes for putting together an application. In addition, participants of the HUD or orphan drug designation one-one-one sessions are highly encouraged to come prepared with a working draft submission of their particular promising therapy in order to maximize the utility of the one-on-one meetings. The FDA/EMA Orphan Product Designation and Grant Workshop is supported by the FDA and the EMA, and is being conducted in partnership with the European Organisation for Rare Disease (EURODIS), Genetic Alliance, and the National Organization for Rare Diseases (NORD).

Dated: August 24, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–21398 Filed 8–29–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0361]

Leveraging Registries With Medical Device Data for Postmarket Surveillance and Evidence Appraisal Throughout the Total Product Life Cycle

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following public workshop entitled ''Leveraging Registries With Medical Device Data for Postmarket Surveillance and Evidence Appraisal Throughout the Total Product Life Cycle.'' The topic to be discussed is best practices for use of registries with medical device data for postmarket surveillance, clinical studies, and evidence appraisal.

DATES: The public workshop will be held on September 12, 2012, from 8 a.m. to 5 p.m. and September 13, 2012, from 8 a.m. to 5 p.m.

ADDRESSES: The public workshop will be held at the Greenbelt Marriott Hotel, 6400 Ivy Lane, Greenbelt, MD 20770, 301–441–3700.

FOR FURTHER INFORMATION CONTACT: Danica Marinac-Dabic, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4110, Silver Spring, MD 20993, 301–796–6689, email: *Danica.Marinac-Dabic@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Registration: Registration is free and on a first-come, first-served basis. Persons interested in attending this public workshop must register online by 5 p.m., September 10, 2012. Early registration is recommended because facilities are limited and, therefore, FDA may limit the number of participants from each organization. Onsite registration will not be available on the day of the workshop.

If you need special accommodations due to disability, please contact Cynthia Garris, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4321, Silver Spring, MD 20993, 301–796–5861, email: *cynthia.garris@fda.hhs.gov;* no later than September 5, 2012.

To register for the public workshop, please visit FDA's Medical Devices News & Events—Workshops & Conferences calendar at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm.* (Select this public workshop from the posted events list.) Please provide complete contact information for each attendee, including name, title, affiliation, address, email, and telephone number. Those without Internet access should contact Danica Marinac-Dabic (see *Contact Person*). Registrants will receive confirmation after they have been accepted. You will be notified if you are on a waiting list.

Streaming Webcast of the Public Workshop: This public workshop will also be Webcast. Persons interested in viewing the Webcast must register online by 5 p.m., September 5, 2012. Early registration is recommended because Webcast connections are limited. Organizations are requested to register all participants but to view using one connection per location. Webcast participants will be sent technical system requirements after registration and will be sent connection access information after September 7, 2012.

Comments: FDA is holding this public workshop to obtain information on best practices for use of registries with medical device data for postmarket surveillance, clinical studies, and evidence appraisal. In order to permit the widest possible opportunity to obtain public comment, FDA is soliciting either electronic or written comments on all aspects of the workshop topics. The deadline for submitting comments related to this public workshop is October 10, 2012.

Regardless of attendance at the meeting, interested persons may submit either written comments regarding this document to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852 or electronic comments to *http://www.regulations.gov.* It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. In addition, when responding to specific questions as outlined in section II of this document, please identify the question you are addressing. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday and will be posted to the docket at *http://www.regulations.gov.*

Transcripts: Please be advised that as soon as a transcript is available, it will be accessible at *http://www.regulations.gov.* It may be viewed at the Division of Dockets Management (see *Comments*). A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to the Division of Freedom of Information (ELEM–1029), Food and Drug Administration, 12420 Parklawn Dr., Element Bldg., Rockville, MD 20857. A link to the transcripts will also be available approximately 45 days after the public workshop on the Internet at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm.* (Select this public workshop from the posted events list.)

I. Background

Registries with medical device data collect data on patients who have been exposed to a medical device. Medical device postmarket surveillance presents unique challenges, related to the diversity and complexity of these products, the iterative nature of product development, the learning curve associated with technology adoption, and the relatively short, product life-cycle. For these reasons, FDA's Center for Devices and Radiological Health (CDRH) uses registries to assess the real-world performance of medical products and procedures; to determine the clinical effectiveness and safety of a test, medical device, procedure, or treatment; to describe the natural history of a problem or disease; and to examine trends of disease, treatment, or product use over time.

To be useful for postmarket device surveillance and assessment of benefits and risks, registries must contain sufficiently detailed patient, device, and procedural data and be linked to meaningful clinical outcomes. CDRH currently engages with more than a dozen registry efforts across a number of device areas, including cardiovascular, orthopedic, ophthalmic, and general surgery products. However, it is not practical or feasible to establish registries for each individual medical device. Development and maintenance of registries with medical device data and consortia of registries needs to be strategic, focused on product areas of high importance, utilize methodologies that integrate data collection into clinical practice, and maximize robust data collection while minimizing resource intensity.

CDRH believes that registry development in targeted product areas will both provide needed postmarket data to enhance public health and be cost-effective for industry, health care providers, and payers. In order to best leverage use of registries with medical device data, participation from all stakeholders, including other government Agencies, academia, professional societies, health care industry organizations, and patient and consumer groups, is needed. The purpose of the public workshop is to facilitate discussion among these key stakeholders in the scientific community on issues related to best practices for medical device registries for use across the Total Product Life Cycle. This public workshop is open to all interested parties. The target audience is professionals in general (academic, healthcare, payers, industry) interested in leveraging registries with medical device data as data and infrastructure for surveillance and studies.

II. Topics for Discussion at the Public Workshop

We intend to discuss a large number of issues at the public workshop, including but not limited to the following: (1) Current utilization of registries with medical device data; (2) use of registries with medical device data for postmarket surveillance; (3) registries in relation to the Sentinel provision in the FDA Safety and Innovation Act calling for the expansion of the postmarket risk identification and analysis system to include devices; (4) challenges and opportunities for using registries with medical device data for regulated studies; (5) best practices for governance and structure of registries; (6) business models for sustainable efforts; and (7) strategies and priorities for future use of registries with medical device data.

Dated: August 27, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–21437 Filed 8–27–12; 4:15 pm]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0913]

Medical Countermeasures for a Burn Mass Casualty Incident

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop; request for abstracts for poster presentation.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following public workshop entitled ''Medical Countermeasures (MCM) for a Burn Mass Casualty Incident.'' The purpose of this public workshop is to describe medical countermeasure requirements for burn injuries of radiological, nuclear, or chemical origin in a scarce resources environment; identify gaps in the product landscape so as to articulate a consensus-based needs assessment; discuss testing approaches and regulatory pathways; and to educate workshop attendees on the concept of medical utilization and response integration. The overall goal is to engage stakeholders across the public and private sector in strategic dialogue related to development, evaluation, deployment, and monitoring of medical countermeasures to mitigate the adverse health consequences arising from public health emergencies, specifically those involving radiological, nuclear, or chemical threats.

Date and Time: The public workshop will be held on September 27, 2012, from 8:30 a.m. to 5 p.m. and September 28, 2012, from 8:30 a.m. to 12 p.m.

Location: The public workshop will be held at the FDA White Oak Campus, 10903 New Hampshire Ave., Building 31 Conference Center, the Great Room (rm. 1503A), Silver Spring, MD 20993. Entrance for the public meeting participants (non-FDA-employees) is through Building 1 where routine security check procedures will be performed. For parking and security information, please refer to *http://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm.*

Contact: Suzanne Schwartz, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. G439, 301–796–6970, Fax: 301–847–8507, email: *Suzanne.Schwartz@fda.hhs.gov.*

Registration: Registration is free and available on a first-come, first-served basis. Persons interested in attending this public workshop must register online by 5 p.m. on September 21, 2012. Early registration is recommended because facilities are limited and, therefore, FDA may limit the number of participants from each organization. If time and space permit, onsite registration on the day of the public workshop will be provided beginning at 7 a.m.

If you need special accommodations due to a disability, please contact Cindy Garris, email: *Cynthia.garris@fda.hhs.gov* or phone: 301 796–5861 no later than September 21, 2012.

To register for the public workshop, please visit FDA's Medical Devices News & Events—Workshops & Conferences calendar at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm.* (Select this public workshop from the posted events list.) Please provide complete contact information for each attendee, including name, title, affiliation, address, email, and telephone number. Those without Internet access should contact Suzanne Schwartz to register (see *Contact*). Registrants will receive confirmation after they have been accepted. You will be notified if you are on a waiting list.

Streaming Webcast of the Public Workshop: This public workshop will also be webcast. Persons interested in viewing the webcast must register online by 5 p.m. September 13, 2012. Early registration is recommended because webcast connections are limited. Organizations are requested to register all participants, but to view using one connection per location. Webcast participants will be sent technical system requirements after registration and will be sent connection access information after September 21, 2012. If you have never attended a Connect Pro event before, test your connection at *https://collaboration.fda.gov/common/help/en/support/meeting_test.htm.* To get a quick overview of the Connect Pro program, visit *http://www.adobe.com/go/connectpro_overview.* (FDA has verified the Web site addresses in this document, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

Requests for Poster Presentations: This public workshop will include a poster session. During online registration you may indicate if you wish to present an abstract during the poster session. FDA has identified general topics in this document. FDA will do its best to accommodate requests for poster presentation and will select and notify participants by September 7, 2012. All abstract submissions for poster presentations must be emailed to Suzanne Schwartz (see *Contact*) no later than 5 p.m. on August 31, 2012. No commercial promotional material will be permitted to be presented or distributed at the public workshop.

Comments: FDA is holding this public workshop to obtain information on medical countermeasures for a burn mass casualty incident. In order to permit the widest possible opportunity to obtain public comment, FDA is soliciting either electronic or written comments on all aspects of the public workshop topics. The deadline for submitting comments related to this public workshop is October 31, 2012. However, only comments received prior to August 31, 2012 will be incorporated into the workshop while comments received after that date will be reviewed by FDA after the conclusion of the workshop.

Regardless of attendance at the public workshop, interested persons may submit either electronic or written comments. Submit electronic comments to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. It is only necessary to send one set of comments. Please identify comments with the docket number found in brackets in the heading of this document. In addition, when responding to specific topics as outlined in section II of this document, please identify the topic you are addressing. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday and will be posted to the docket at *http://www.regulations.gov.*

Transcripts: Please be advised that as soon as a transcript is available, it will be accessible at *http://www.regulations.gov.* It may be viewed at the Division of Dockets Management (see *Comments*). A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to the Division of Freedom of Information (ELEM–1029), Food and Drug Administration, 12420 Parklawn Dr., Element Bldg., Rockville, MD 20857. A link to the transcripts will also be available approximately 45 days after the public workshop on the Internet at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm.* (Select this public workshop from the posted events list.)

SUPPLEMENTARY INFORMATION:

I. Background

The Public Health Emergency Medical Countermeasures Enterprise (PHEMCE) was established by the Department of Health and Human Services (HHS) in 2006 as a Federal inter-Agency coordinating body responsible for providing recommendations to the Secretary of HHS on medical countermeasure priorities, development and acquisition activities, and strategies for distributing and using medical countermeasures held in the Strategic National Stockpile (SNS) to prevent or mitigate potential health effects from exposure to chemical, biological, radiological, and nuclear agents and other terrorist threats. The PHEMCE mission is therefore to advance national preparedness for natural, accidental, and intentional threats by coordinating medical countermeasure-related efforts within HHS and in cooperation with PHEMCE inter-Agency partners.

The 2012 PHEMCE Strategy has established the following 4 goals over the next 5 years: (1) Identify, create, develop, manufacture, and procure critical medical countermeasures; (2) establish and communicate clear regulatory pathways to facilitate medical countermeasures development and use; (3) develop logistics and operational plans for optimized use of medical countermeasures at all levels of response; and (4) address medical countermeasure gaps for all sectors of the American population. This is a complex mission space and many Federal Agencies, including FDA, have responsibilities that are critical to its success.

FDA is hosting this public workshop to address topics specific to national preparedness for a burn mass casualty incident of radiological, nuclear, or chemical origin. The blast and subsequent fires from such weapons could inflict serious thermal burns. With respect to a nuclear detonation, these injuries could affect hundreds to thousands of people. In such an attack, stabilizing individuals with burns and concomitant injuries becomes an immediate priority. Medical care for burns in a mass casualty incident would require the ready availability of large quantities of medical countermeasures for resuscitation, wound management, pain relief, and nutritional- and airway/breathing support in the initial post-injury period. The overall response is further complicated by the complex, expensive, and resource-intensive needs that extend over the longer-term treatment period for serious burns compounded by burn care expertise being in short supply.

There are approximately 1,850 burn beds in 126 burn units across the United States. The American Burn Association estimates that 700–800 of these beds may be occupied at any given time. To respond to a mass casualty incident such as a nuclear detonation—whereupon an estimated 10,000 or more individuals could require specialized burn care—patients may need to be transferred to specialized burn centers throughout the country because there may be relatively few dedicated burn beds available in the region. Also, patients may need to be treated in other care sites, such as local or regional trauma centers, if specialized burn centers are filled to capacity. The short supply of specialized burn experts and facilities may need to be considered one driver in regard to burn care product(s) design and development, enabling versatile use in the hands of nonspecialists as well.

II. Topics for Discussion at the Public Workshop

The workshop sessions will focus on the following general topics: Product (drug, device, biologic, and combination products) development challenges; clinical study design considerations for new products; regulatory pathways to market; challenges related to the organization and delivery of burn care in disaster management (including medical utilization and response integration); FDA's role in coordination with the Centers for Disease Control and Prevention for deployment of assets in SNS; protecting the public from counterfeit as well as nonregulated ineffective products; FDA's responsibility for developing and implementing strategies to assess, evaluate and monitor medical countermeasure safety, performance, and patient compliance during and after a burn mass casualty incident; and a discussion of specific medical countermeasure needs for at-risk individuals.

Dated: August 24, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–21400 Filed 8–29–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

60-Day Proposed Information Collection: Indian Health Service (IHS) Sharing What Works—Best Practice, Promising Practice, and Local Effort (BPPPLE) Form; Request For Public Comment

AGENCY: Indian Health Service, HHS.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which requires 60 days for public comment on proposed information collection projects, the Indian Health Service (IHS) is publishing for comment a summary of a proposed information collection to be submitted to the Office of Management and Budget (OMB) for review.

Proposed Collection: Title: 0917–0034, ''Indian Health Service (IHS) Sharing What Works—Best Practice, Promising Practice, and Local Effort (BPPPLE) Form.'' *Type of Information Collection Request:* Extension without revision of the currently approved information collection, 0917–0034, ''IHS Sharing What Works—BPPPLE Form,'' which was previously approved under the title ''Director's 3 Initiative Best Practice, Promising Practice, and Local Efforts Form.'' Although the name of the form has changed, the contents of the form remain the same. *Forms:* IHS Sharing What Works—BPPPLE Form (OMB Form No. 0917–0034). *Need and Use of Information Collection:* The IHS goal is to raise the health status of the American Indian and Alaska Native (AI/AN) people to the highest possible level by providing comprehensive health care and preventive health services. To support the IHS mission and to provide the product/service to IHS, Tribal, and Urban (I/T/U) programs, the Office of Preventive and Clinical Services' (OCPS) program divisions (i.e., Behavioral Health (BH), Health Promotion/Disease Prevention (HP/DP), Nursing, and Dental) have developed a centralized program database of Best/Promising Practices and Local Efforts (BPPPLE) and resources. The purpose of this collection is to develop a database of BPPPLE and resources to be published on the IHS.gov Web site which will be a resource for program evaluation and for modeling examples of various health care projects occurring in AI/AN communities.

All information submitted is on a voluntary basis; no legal requirement exists for collection of this information. The information collected will enable the Director's Three Initiative program to: (a) Identify evidence based approaches to prevention programs among the I/T/Us when no system is currently in place, and (b) Allow the program managers to review BPPPLE occurring among the I/T/Us when considering program planning for their communities.

Affected Public: Individuals. *Type of Respondents:* I/T/U programs' staff. The table below provides: Types of data collection instruments, Number of respondents, Responses per respondent, Average burden hour per response, and Total annual burden hour(s).

ESTIMATED BURDEN HOURS

Data collection instrument(s)	Number of respondents	Responses per respondent	Average burden hour per response	Total annual burden hours
IHS Sharing What Works—BPPPLE Form (OMB Form No. 0917–0034)	100	1	20/60	33.3
Total	100	......	......	33.3

There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

Request for Comments: Your written comments and/or suggestions are invited on one or more of the following points: (a) Whether the information collection activity is necessary to carry out an agency function; (b) whether the agency processes the information collected in a useful and timely fashion; (c) the accuracy of the public burden estimate (the estimated amount of time needed for individual respondents to provide the requested information); (d) whether the methodology and assumptions used to determine the estimates are logical; (e) ways to enhance the quality, utility, and clarity of the information being collected; and (f) ways to minimize the public burden through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Send Comments and Requests for Further Information: Send your written comments, requests for more information on the proposed collection, or requests to obtain a copy of the data collection instrument(s) and instructions to: Tamara Clay, IHS Reports Clearance Officer, 801 Thompson Avenue, TMP, Suite 450, Rockville, MD 20852–1627; call non-toll free (301) 443–4750; send via facsimile to (301) 443–9879; or send your email requests, comments, and return address to: *tamara.clay@ihs.gov.*

Comment Due Date: Your comments regarding this information collection are best assured of having full effect if received within 60 days of the date of this publication.

Dated: August 24, 2012.

Yvette Roubideaux,

Director, Indian Health Service.

[FR Doc. 2012–21380 Filed 8–29–12; 8:45 a.m.]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

30-Day Proposed Information Collection: Addendum to Declaration for Federal Employment, Child Care and Indian Child Care Worker Positions; Request for Public Comment

AGENCY: Indian Health Service, HHS.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, which requires 30 days for public comment on proposed information collection projects, the Indian Health Service (IHS) is publishing for comment a summary of a proposed information collection to be submitted to the Office of Management and Budget (OMB) for review. This proposed information collection project was previously published in the **Federal Register** (77 FR 115) on June 14, 2012 and allowed 60 days for public comment. No public comment was received in response to the notice. The purpose of this notice is to allow 30 days for public comment to be submitted directly to OMB.

Proposed Collection: Title: Addendum to Declaration for Federal Employment, Child Care and Indian Child Care Worker Positions (OMB No. 0917–0028). *Type of Information Collection Request:* Extension, without revision, of currently approved information collection, 0917–0028, ''Addendum to Declaration for Federal Employment, Child Care and Indian Child Care Worker Positions.'' Although there was a change on the form ''Addendum to Declaration for Federal Employment, Child care and Indian Child care Worker Positions'' (OMB No. 0917–0028), where the item number 15a was changed to 16 to reflect a change in the same item number on the ''Declaration for Federal Employment'' form (OPM OF 306; OMB No. 3206–0182), there are no program changes or adjustments in burden hours. *Form Number:* OMB No. 0917–0028. *Forms:* Addendum to Declaration for Federal Employment, Child Care and Indian Child Care Worker Positions.

Need and Use of Information Collection: This is a request for approval of the collection of information as required by Section 408 of the Indian Child Protection and Family Violence Prevention Act, Public Law (Pub. L.) 101–630, 104 Stat. 4544, and 25 United States Code (U.S.C.) Sections 3201–3211. The IHS is required to compile a list of all authorized positions within the IHS where the duties and responsibilities involve regular contact with, or control over, Indian children; and to conduct an investigation of the character of each individual who is employed, or is being considered for employment in a position having regular contact with, or control over, Indian children. 25 U.S.C. 3207 requires regulations prescribing the minimum standards of character to ensure that none of the individuals appointed to positions involving regular contact with, or control over, Indian children have been found guilty of, or entered a plea of nolo contendere or guilty to any felonious offense, or any of two or more misdemeanor offenses under Federal, State, or Tribal law involving crimes of violence; sexual assault, molestation, exploitation, contact or prostitution; crimes against persons; or offenses committed against children. In addition, 42 U.S.C. 13041 requires each agency of the Federal Government, and every facility operated by the Federal Government (or operated under contract with the Federal Government), that hires (or contracts for hire) individuals involved with the provision of child care services to children under the age of 18 to assure that all existing and newly hired employees undergo a criminal history background check. The background investigation is to be initiated through the personnel program of the applicable Federal agency. This section requires employment applications for individuals who are seeking work for an agency of the Federal Government, or for a facility or program operated by (or through contract with) the Federal Government, in positions involved with the provision of child care services to children under the age of 18, to contain a question asking whether the individual has ever been arrested for or charged with a crime involving a child. *Affected Public:* Individuals and households. *Type of Respondents:* Individuals.

The table below provides: Types of data collection instruments, Estimated number of respondents, Number of responses per respondent, Average burden hour per response, and Total annual burden hour(s).

ESTIMATED ANNUAL BURDEN HOURS

Data Collection Instrument	Estimated number of respondents	Responses per respondent	Average burden hour per response	Total annual burden hours
Addendum to Declaration for Federal Employment (OMB 0917–0028)	3000	1	12/60	600
Total	3000			600

There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

Requests for Comments: Your written comments and/or suggestions are invited on one or more of the following points: (a) Whether the information collection activity is necessary to carry out an agency function; (b) whether the agency processes the information collected in a useful and timely fashion; (c) the accuracy of the public burden estimate (the estimated amount of time needed for individual respondents to provide the requested information); (d) whether the methodology and assumptions used to determine the estimates are logical; (e) ways to enhance the quality, utility, and clarity of the information being collected; and (f) ways to minimize the public burden through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct your comments to OMB: Send your comments and suggestions regarding the proposed information collection contained in this notice, especially regarding the estimated public burden and associated response time to: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for IHS.

To request more information on the proposed collection, or to obtain a copy of the data collection instruments and/or instruction(s) contact: Tamara Clay, Reports Clearance Officer, 801 Thompson Avenue, TMP, Suite 450, Rockville, MD 20852, call non-toll free (301) 443–4750, send via facsimile to (301) 443–2316, or send your email requests, comments, and return address to: *Tamara.Clay@ihs.gov.*

Comment Due Date: October 1, 2012. Your comments regarding this information collection are best assured of having full effect if received within 30 days of the date of this publication.

Dated: August 24, 2012.

Yvette Roubideaux,

Director, Indian Health Service.

[FR Doc. 2012–21376 Filed 8–29–12; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), 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 of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel HALT–PKD DCC.

Date: October 17, 2012.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: D. G. Patel, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 756, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7682, *pateldg@niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel R13 Conference Applications.

Date: October 18, 2012.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: D. G. Patel, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 756, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7682, *pateldg@niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: August 23, 2012.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–21330 Filed 8–29–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Council for Complementary and Alternative Medicine.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the 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 Advisory Council for Complementary and Alternative Medicine.

Date: October 12, 2012.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31/Conference Room 6, 31 Center Drive, Bethesda, MD 20892.

Open: 10:30 a.m. to 4 p.m.

Agenda: Report from the Institute Director and other business of the Council.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Contact Person: Martin H. Goldrosen, Ph.D. Director, Division of Extramural Activities, National Center for Complementary and Alternative Medicine, NIH, 6707 Democracy Blvd., Ste. 401, Bethesda, MD 20892–5475, (301) 594–2014, *goldrosm@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *nccam.nih.gov/about/naccam/*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: August 23, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–21410 Filed 8–29–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), 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 USC, as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, 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 Library of Medicine Special Emphasis Panel; G08.

Date: October 11–12, 2012.

Time: October 11, 2012, 9 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20817.
Time: October 12, 2012, 9 a.m. to 1 p.m.
Place: National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20817.
Contact Person: Zoe H. Huang, M.D., Scientific Review Officer, Extramural Programs, National Library of Medicine, NIH, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892–7968, 301–594–4937, *huangz@mail.nih.gov.*

Name of Committee: National Library of Medicine Special Emphasis Panel; R01/R21/G13.
Date: October 26, 2012.
Time: 12 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20817 (Telephone Conference Call).
Contact Person: Zoe H. Huang, M.D., Scientific Review Officer, Extramural Programs, National Library of Medicine, NIH, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892–7968, 301–594–4937, *huangz@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: August 23, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–21409 Filed 8–29–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), 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 Center for Complementary and Alternative Medicine Special Emphasis Panel; Training, fellowships and career development.
Date: October 19, 2012.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Marriott Courtyard Gaithersburg Washingtonian Ctr, 204 Boardwalk Place, Gaithersburg, MD 20878.
Contact Person: Peter Kozel, Ph.D., Scientific Review Officer, NCCAM, 6707 Democracy Boulevard, Suite 401, Bethesda, MD 20892–5475, 301–496–8004, *kozelp@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: August 23, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–21408 Filed 8–29–12; 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 (5 U.S.C. App.), 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: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Molecular Neuropharmacology and Signaling Study Section.
Date: September 24–25, 2012.
Time: 8 a.m. to 12 p.m.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites Washington DC Convention Center, 900 10th Street NW., Washington, DC 20001.
Contact Person: Deborah L. Lewis, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4183, MSC 7850, Bethesda, MD 20892, 301–408–9129, *lewisdeb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Oral Microbiology and Restorative Dentistry.
Date: September 26, 2012.
Time: 11 a.m. to 1:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Priscilla B. Chen, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787, *chenp@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Neurological, Aging, and Musculoskeletal Epidemiology.
Date: September 26, 2012.
Time: 5 p.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.
Contact Person: Denise Wiesch, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3150, MSC 7770, Bethesda, MD 20892, (301) 435–0684, *wieschd@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Neurotransporters, Receptors, and Calcium Signaling Study Section.
Date: September 27, 2012.
Time: 8 a.m. to 6:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites, DC Convention Center, 900 10th Street NW., Washington, DC 20001.
Contact Person: Peter B. Guthrie, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4182, MSC 7850, Bethesda, MD 20892, (301) 435–1239, *guthriep@csr.nih.gov.*

Name of Committee: Cell Biology Integrated Review Group, Intercellular Interactions Study Section.
Date: October 3, 2012.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Hotel Rouge, 1315 16th Street NW., Washington, DC 20036.
Contact Person: Wallace Ip, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, MSC 7840, Bethesda, MD 20892, 301–435–1191, *ipws@mail.nih.gov.*

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group, Surgery, Anesthesiology and Trauma Study Section.
Date: October 3–4, 2012.
Time: 1 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Georgetown, 2101 Wisconsin Ave, NW., Washington, DC 20007.
Contact Person: Weihua Luo, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5114, MSC 7854, Bethesda, MD 20892, (301) 435–1170, *luow@csr.nih.gov.*

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group, Medical Imaging Study Section.

Date: October 3–4, 2012.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Xiang-Ning Li, M.D., Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7854, Bethesda, MD 20892, 301–435–1744, *lixiang@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: August 24, 2012.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–21331 Filed 8–29–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Council on Drug Abuse.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the 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 Advisory Council on Drug Abuse.

Date: September 5–6, 2012.

Closed: September 5, 2012, 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Rooms C & D, Rockville, MD 20852.

Open: September 6, 2012, 8:30 a.m. to 1 p.m.

Agenda: This portion of the meeting will be open to the public for announcements and reports of administrative, legislative and program developments in the drug abuse field.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Rooms C & D, Rockville, MD 20852.

Contact Person for More Information: Teresa Levitin, Ph.D., Director, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 4243, MSC 9550, 6001 Executive Boulevard, Bethesda, MD 20892–89550, (301) 443–2755, *tlevitin.nida.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *www.drugabuse.gov/NACDA/NACDAHome.html,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: August 24, 2012.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–21332 Filed 8–29–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Refugee Resettlement

[C.F.D.A. Number: 93.566]

Notice of FY 2012 Refugee Social Services Formula Awards to States and Wilson/Fish Alternative Project Grantees

AGENCY: Office of Refugee Resettlement, ACF, HHS.

ACTION: Notice of awards.

CFDA Number: 93.566.

SUMMARY: The Office of Refugee Resettlement, Administration for Children and Families (ACF), announces the allocation of Refugee Social Services formula awards to States and Wilson/Fish Alternative Project grantees. The purpose of the Social Services program is to provide employment, English language, orientation, and other resettlement services to refugees, Amerasians, asylees, Cuban and Haitian entrants, victims of trafficking, and Iraqis and Afghans with Special Immigrant Visas. The awards are determined by the number of the eligible populations residing in the State during the two-year period from October 1, 2009, to September 30, 2011. States with allocations under $100,000 through this calculation instead receive floor allocations ranging from $75,000 to $100,000 depending on the number of the eligible population in each State. The purpose of the floor allocations is to ensure that all participating States receive an award sufficient to maintain a program of resettlement services.

The FY 2012 formula allocations for Social Services are available on ORR's Web site at: *http://www.acf.hhs.gov/programs/orr/policy/fy2012_formula_allocations_refugee_socialservices.htm.*

DATES: The awards are effective immediately. Funds must be obligated by September 30, 2013, and funds must be expended by September 30, 2014.

FOR FURTHER INFORMATION CONTACT: Henley Portner, Office of the Director, Office of Refugee Resettlement, (202) 401–5363, *Henley.Portner@acf.hhs.gov.*

Statutory Authority: Sections 412(c)(1)(B) of the Immigration and Nationality Act (INA) (8 U.S.C. 1522(c)(1)(B)).

Eskinder Negash,

Director, Office of Refugee Resettlement.

[FR Doc. 2012–21401 Filed 8–29–12; 8:45 am]

BILLING CODE 4184–46–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4065–DR; Docket ID FEMA–2012–0002]

New Hampshire; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for State of New Hampshire (FEMA–4065–DR), dated June 15, 2012, and related determinations.

DATES: *Effective Date:* August 22, 2012.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Mark H. Landry, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of James N. Russo as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2012–21489 Filed 8–29–12; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4022–DR; Docket ID FEMA–2012–0002]

Vermont; Amendment No. 10 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for State of Vermont (FEMA–4022–DR), dated September 1, 2011, and related determinations.

DATES: *Effective Date:* August 22, 2012.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Mark H. Landry, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of James N. Russo as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2012–21490 Filed 8–29–12; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

U.S. Customs and Border Protection 2012 East Coast Trade Symposium: ''Expanding 21st Century Global Partnerships''

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security (DHS).

ACTION: Notice of trade symposium.

SUMMARY: This document announces that CBP will convene the second of this year's two trade symposia on Monday, October 29 and Tuesday, October 30, 2012. The East Coast Trade Symposium will be held in Washington, DC and will feature panel discussions involving agency personnel, members of the trade community and other government agencies, on the agency's role in international trade initiatives and programs. This year marks our twelfth year hosting trade symposia. Members of the international trade and transportation communities and other interested parties are encouraged to attend.

DATES: Monday, October 29, 2012, (opening remarks, breakout sessions, and panel discussions 1 p.m.–5:40 p.m.). Tuesday, October 30, 2012, (opening remarks, panel discussions, and closing remarks 8:45 a.m.–5:30 p.m.).

ADDRESSES: The CBP 2012 East Coast Trade Symposium will be held at the Renaissance DC Hotel, at 999 9th Street, NW., Washington, DC 20001, Renaissance Ballroom.

FOR FURTHER INFORMATION CONTACT: The Office of Trade Relations at (202) 344–1440, or at *tradeevents@dhs.gov*. To obtain the latest information on the Symposium and to register online, visit the CBP Web site at *http://cbp.gov/xp/cgov/trade/trade_outreach/2012_tradesymp/*. Requests for special needs should be sent to the Office of Trade Relations at *tradeevents@dhs.gov*.

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** (77 FR 16048) on March 19, 2012, CBP announced that it was planning on holding two trade symposia this year, one on the West Coast and one on the East Coast. A West Coast Symposium, announced in that same **Federal Register** notice, was held on May 10, 2012 in Long Beach, California.

This document announces that CBP will convene the second of this year's two trade symposia—the East Coast Symposium on Monday, October 29 and

Tuesday, October 30, 2012 in Washington, DC. The theme for the 2012 East Coast Trade Symposium will be ''Expanding 21st Century Global Partnerships.'' The format of this year's East Coast Symposium will be held with general sessions and breakout sessions. Discussions will be held regarding CBP's role in international trade initiatives and partnerships.

The agenda for the 2012 East Coast Trade Symposium and the keynote speakers will be announced at a later date on the CBP Web site (*http://www.cbp.gov*). The registration fee is $151.00 per person. Interested parties are requested to register early, as space is limited. Registration will open to the public on or about Wednesday, August 29, 2012. All registrations must be made on-line at the CBP Web site (*http://www.cbp.gov*) and will be confirmed with payment by credit card only.

Due to the overwhelming interest to attend past symposiums, each company is requested to limit their company's registrations to no more than three participants, in order to afford equal representation from all members of the international trade community. If a company exceeds the limitation, any additional names submitted for registration will automatically be placed on the waiting list.

As an alternative to on-site attendance, access to live webcasting of the event will be available for a fee of $131.00. This includes the broadcast and historical access to recorded sessions for a period of time after the event.

Hotel accommodations will be announced at a later date on the CBP Web site (*http://www.cbp.gov*).

Dated: August 24, 2012.

Mindy J. Wallace,

Senior Management and Program Analyst, Office of Trade Relations.

[FR Doc. 2012–21379 Filed 8–29–12; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–ES–2012–N179; FXES11120300000F2–123–FF03E00000]

Draft Midwest Wind Energy Multi-Species Habitat Conservation Plan Within Eight-State Planning Area

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent, request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), advise the public that we, in coordination with our planning partners, intend to prepare the Midwest Wind Energy Multi-Species Habitat Conservation Plan (MSHCP) under the Endangered Species Act of 1973, as amended (ESA). The planning partners are currently considering for inclusion in the MSHCP certain species that are federally listed, as well as other species likely to become listed, within the eight-State planning area. Planning partners in this effort include the conservation agencies for the eight states, The Conservation Fund, and the American Wind Energy Association (AWEA). We provide this notice to (1) Describe the proposal; (2) advise other Federal and State agencies, potentially affected tribal interests, and the public of our intent to prepare the MSHCP; (3) seek public input, suggestions, and information on any issues pertaining to this planning process; (4) and to seek public input on what the permit area should be within the eight-State planning area.

DATES: To ensure consideration, we request written comments on or before October 1, 2012.

ADDRESSES: Send your comments or request information by any one of the following methods:

U.S. Mail: Regional Director, Attn: Rick Amidon, U.S. Fish and Wildlife Service, Ecological Services, 5600 American Blvd. West, Suite 990, Bloomington, MN 55437–1458;

Facsimile: 612/713–5292 (Attn: Rick Amidon); or

Email: midwestwindhcp@fws.gov.

FOR FURTHER INFORMATION CONTACT: Rick Amidon, (612) 713–5164.

SUPPLEMENTARY INFORMATION: Section 9 of the ESA (16 U.S.C. 1538) and its implementing regulations prohibit take of species listed as endangered or threatened. The definition of take under the ESA includes to ''harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed species or to attempt to engage in such conduct'' (16 U.S.C. 1532(19)). Section 10 of the ESA (16 U.S.C. 1539) establishes a program whereby persons seeking to pursue activities that are otherwise legal, but could result in take of federally protected species, may receive an incidental take permit (ITP).

Covered Land

The planning area encompasses the Midwest Region of the Service and includes all or portions of the following eight States: Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin. The specific land that the MSHCP will cover (''covered land or permit area'') have yet to be determined and could be all or portions of the eight States. Once identified, the ''covered land'' will be the general locations where future ITPs could be issued under the MSHCP. Land not identified as ''covered land'' will not be eligible for an ITP under this planning effort; however, individual take authorizations could be developed for those areas outside of this planning effort.

Covered Activities

The activities proposed to be covered (''covered activities'') under the MSHCP include the siting, construction, operation, maintenance, and decommissioning of wind energy facilities within all or portions of the eight-State planning area. Activities associated with the management of mitigation land would also be covered. We anticipate that this MSHCP will include new and existing small-scale wind energy facilities, such as single-turbine demonstration projects, as well as large, multi-turbine commercial wind facilities.

Covered Species

The planning partners are currently considering, for inclusion in the MSHCP, certain species that are federally listed or likely to become listed, and have the potential to be taken by wind energy facilities within the planning area. Those ''covered species'' include the endangered Indiana bat (*Myotis sodalis*), the endangered gray bat (*Myotis grisescens*), the endangered piping plover (*Charadrius melodus*), the endangered interior least tern (*Sternula antillarum athalassos*), the endangered Kirtland's warbler (*Setophaga kirtlandii*), the little brown bat (*Myotis lucifugus*), the northern-long eared bat (*Myotis septentrionalis*), and the eastern small-footed bat (*Myotis leibii*), all of which are species of concern. The bald eagle (*Haliaeetus leucocephalus*) is also being considered as a ''covered species,'' but no decision has been made at this time. The final list of ''covered species'' may include all these species, a subset of these species, or additional species, based on the outcome of the planning process. The MSHCP will be multifaceted in addressing species protection, including, but not limited to, avoidance, minimization of take (e.g., through proven and defined best management practices), and mitigation to offset the impacts of take through potential habitat preservation, restoration, and enhancement. Future applicants seeking an ITP must also ensure that adequate funding for implementation, including biological and compliance monitoring, is provided.

Partners

The eight State conservation agencies participating in the development of this MSHCP are the Illinois Department of Natural Resources, Indiana Division of Fish and Wildlife, Iowa Department of Natural Resources, Michigan Department of Natural Resources, Minnesota Department of Natural Resources, Missouri Department of Conservation, Ohio Department of Natural Resources, and Wisconsin Department of Natural Resources.

AWEA is a national trade association for the wind industry and is representing the interests of a group of wind energy companies in the development of this MSHCP. This consortium of companies is known as the Wind Energy Bat Action Team (WEBAT). Member companies at this time include Acciona Wind Energy; Akuo Energy USA; Apex Wind Energy; BP Wind Energy; Clipper Windpower Development Company, LLC; Duke Energy Renewables; EDP Renewables; Element Power; enXco; E.ON Climate & Renewables; EverPower Wind Holdings, Inc.; Iberdrola Renewables; Invenergy LLC; NextEra Energy Resources; Nordex USA; Tradewind Energy LLC; US Mainstream Renewable Power; and Wind Capital Group.

The Conservation Fund is a nonprofit organization headquartered in Arlington, Virginia, with offices throughout the United States. The Conservation Fund would serve as the administrative agent on behalf of the States overseeing the development of the MSHCP and the accompanying environmental impact statement (EIS). Moreover, The Conservation Fund would develop a regional framework of conservation lands to be used as a decision support tool for the selection of appropriate mitigation options required for offsetting incidental take of the ''covered species''.

MSHCP Structure

In 2009, the eight States that make up the planning area submitted an application for and were awarded a grant under Section 6 of the ESA (16 U.S.C. 1535) to develop the MSHCP and an incidental take permitting program. The States' grant application envisioned that the MSHCP would be developed as a template/umbrella MSHCP or as a programmatic MSHCP. Under the template approach, the Service would issue individual ITPs to applicants that agree to implement the MSHCP, whereas under the programmatic approach, each State agency would apply for and receive an ITP and would issue certificates of inclusion to wind energy companies that agreed to implement the MSHCP at their facility. At this time it is anticipated that the issuance of individual ITPs would be the permitting approach under this MSHCP. Currently there are additional permit structure options being considered; however, under any permit structure, the MSHCP would meet all ITP issuance criteria found at 50 CFR 13.21, 17.22(b), and 17.32(b), and would be evaluated under the National Environmental Policy Act (NEPA) and Section 7 of the ESA (16 U.S.C. 1536). The partners envision that under any permit approach, no additional NEPA or Section 7 analysis would occur, and ''No Surprises'' assurances would apply to the MSHCP. Evaluation of the MSHCP and permitting program would include public review by all interested parties. In the event that the MSHCP might need to be amended in the future (e.g., to add a species or consider an activity not previously evaluated), further public review would occur.

Public Comments

The Service is requesting information and comment from interested government agencies, Native American Tribes, the scientific community, industry, or other interested parties concerning the planning process, our permitting approach, biological aspects of the interaction of wind facilities and species, scientific data that may help inform the MSHCP or monitoring of impacts, and any other information that interested parties would like to offer.

Please note that comments merely stating support for, or opposition to, the MSHCP under consideration without providing supporting information, although noted, will not provide information useful in determining relevant issues and impacts. The public will receive additional opportunity to provide comments on the draft EIS and draft MSHCP when they are completed. The Service will solicit comments by publishing notice in the **Federal Register**.

You may submit your comments and supporting documentation by any of the methods described in **ADDRESSES**, above.

National Environmental Policy Act

The Service is responsible for ensuring NEPA (42 U.S.C. 4321 *et seq.*) compliance during the MSHCP process. In compliance with NEPA, we have made an initial determination that the proposed issuance of ITPs under this planning effort will require the development of an EIS. A third-party contractor will be selected in the future to work with the Service and the planning partners to develop an EIS that will satisfy all NEPA requirements. Subsequent notice will be provided when the planning process has progressed to the point where scoping under NEPA is appropriate.

Dated: August 17, 2012.

Terence J. Miller,

Acting, Assistant Regional Director, Ecological Services, Midwest Region.

[FR Doc. 2012–21498 Filed 8–29–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2012–N202; 40120–1112–0000–F2]

Programmatic Incidental Take Permit and Environmental Assessment for Development Activities, Perdido Key, Escambia County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Under the Endangered Species Act (Act), we, the U.S. Fish and Wildlife Service, announce the receipt and availability of a proposed habitat conservation plan (HCP) and accompanying documents for private development projects and municipal infrastructure improvements (activities) regulated or authorized by the Escambia County Board of Commissioners (Applicant). The activities would result in take of six federally-listed species on Perdido Key in Escambia County, Florida. The HCP analyzes the take incidental to activities conducted or permitted by the Applicant. We invite public comments on these documents.

DATES: We must receive any written comments at our Regional Office (see **ADDRESSES**) on or before October 29, 2012.

ADDRESSES: Documents are available for public inspection by appointment during normal business hours at the Fish and Wildlife Service's Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, GA 30345; or the Panama City Field Office, Fish and Wildlife Service, 1601 Balboa Avenue, Panama City, FL 32405.

FOR FURTHER INFORMATION CONTACT: Mr. David Dell, Regional HCP Coordinator, (see **ADDRESSES**), telephone: 404–679–7313; or Mr. Jon Hemming, Field Office Project Manager, at the Panama City Field Office (see **ADDRESSES**), telephone: 850–769–0552, ext. 238.

SUPPLEMENTARY INFORMATION: We announce the availability of the proposed HCP, accompanying incidental take permit (ITP) application, and an environmental assessment (EA), which analyze the take of the following listed species incidental to activities conducted or permitted by the Applicant: The endangered Perdido Key beach mouse (*Peromyscus polionotus trissyllepsis*), threatened Loggerhead (*Caretta caretta*), endangered Green (*Chelonia mydas*), endangered Leatherback (*Dermochelys coriacea*), and endangered Kemp's Ridley (*Lepidochelys kempii*) sea turtles, and the threatened Piping Plover (*Charadrius melodus*). The Applicant requests a 30-year ITP under section 10(a)(1)(B) of the Act (16 U.S.C. 1531 *et seq.*), as amended. The Applicant's HCP describes the mitigation and minimization measures proposed to address the impacts to the species.

We specifically request information, views, and opinions from the public via this notice on our proposed Federal action, including identification of any other aspects of the human environment not already identified in the EA pursuant to National Environmental Policy Act (NEPA) regulations in the Code of Federal Regulations (CFR) at 40 CFR 1506.6. Further, we specifically solicit information regarding the adequacy of the HCP per 50 CFR parts 13 and 17.

The EA assesses the likely environmental impacts associated with the implementation of the activities, including the environmental consequences of the no-action alternative and the proposed action. The proposed action alternative is issuance of the ITP and implementation of the HCP as submitted by the Applicant. The HCP covers activities conducted or permitted by the Applicant, including private residential and commercial development activities as well as development and infrastructure improvements on Escambia County-owned lands. Avoidance, minimization and mitigation measures include: Informing the Perdido Key property owners of the sensitive nature of the habitat and listed species on Perdido Key by developing a public awareness program and brochure; siting a project to maximize the best habitat conservation and incorporating appropriate connectivity and buffers between developments; designing homes and other structures to reduce their vulnerability to storm damage; minimizing impervious surfaces; maximizing use of vegetation native to Perdido Key; developing and implementing guidelines to minimize disturbances to sea turtles, shorebirds, and their nests caused by the operation of official vehicles involved in public safety, beach maintenance, law enforcement, HCP implementation, and other official business on Perdido Key; and implementing an effective monitoring program for all species covered by the ITP to identify and ameliorate factors impeding their recovery.

Public Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

If you wish to comment, you may submit comments by any one of several methods. Please reference TE46592A–0 in such comments. You may mail comments to the Fish and Wildlife Service's Regional Office (see **ADDRESSES**). You may also comment via the Internet to *david_dell@fws.gov.* Please include your name and return address in your internet message. If you do not receive a confirmation from us that we have received your Internet message, contact us directly at either telephone number listed under **FOR FURTHER INFORMATION CONTACT**.

Finally, you may hand-deliver comments to either of our offices listed under **ADDRESSES**.

Covered Area

Perdido Key, a barrier island 16.9 miles long, constitutes the entire historic range of the Perdido Key beach mouse. The area encompassed by the HCP and ITP application consists of privately owned and Escambia County-owned lands from Gulf Islands National Seashore to the Florida-Alabama state line.

Next Steps

We will evaluate the ITP application, including the HCP and any comments we receive, to determine whether the application meets the requirements of section 10(a)(1)(B) of the Act. We will also evaluate whether issuance of a section 10(a)(1)(B) ITP complies with section 7 of the Act by conducting an intra-Service section 7 consultation. We will use the results of this consultation, in combination with the above findings, in our final analysis to determine whether or not to issue the ITP. If we determine that the requirements are met, we will issue the ITP for the incidental take of Perdido Key beach mouse, Loggerhead, Green, Leatherback and Kemp's Ridley sea turtles and the Piping Plover.

Authority

We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).

Dated: August 6, 2012.

Mark J. Musaus,

Acting Regional Director.

[FR Doc. 2012–21393 Filed 8–29–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWYP00000–L51100000–GA0000–LVEMK09CK350; WYW173360 and WYW180711]

Notice of Availability of the Record of Decision for the South Gillette Area Maysdorf II Coal Lease-by-Application and Environmental Impact Statement, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, the Bureau of Land Management (BLM) announces the availability of the Record of Decision (ROD) for the Maysdorf II Coal Lease-by-Application (LBA) included in the South Gillette Area Coal Lease Applications Final Environmental Impact Statement (EIS).

ADDRESSES: The document is available electronically on the following Web site: *http://www.blm.gov/wy/st/en/info/NEPA/documents/hpd/SouthGillette.html.* Paper copies of the ROD are also available at the following BLM office locations:

- Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming 82009; and
- Bureau of Land Management, Wyoming High Plains District Office, 2987 Prospector Drive, Casper, Wyoming 82604.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Muller Ogle, Coal Program Coordinator, at 307–775–6206, or Ms. Teresa Johnson, EIS Project Manager, at 307–261–7510. Ms. Ogle's office is located at the BLM Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming 82009. Ms. Johnson's office is located at the BLM Wyoming High Plains District Office, 2987 Prospector Drive, Casper, Wyoming 82604. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individuals during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individuals. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The ROD covered by this Notice of Availability (NOA) is for the Maysdorf II Coal Tract and addresses leasing Federal coal in Campbell County, Wyoming, administered by the BLM Wyoming High Plains District Office. The BLM approves Alternative 3, the preferred alternative for this LBA in the South Gillette Area Coal Final EIS. Under Alternative 3, the Maysdorf II coal LBA area, as modified by the BLM, will be divided into two separate LBA tracts referred to as the Maysdorf II North Tract and the Maysdorf II South Tract. The Maysdorf II North Tract (WYW173360), as modified by the BLM, includes 1,338.37 acres, more or less, and contains an estimated 167 million tons of in-place Federal coal reserves. The Maysdorf II South Tract (WYW180711), as modified by the BLM, includes 2,305.90 acres, more or less, and contains an estimated 271 million tons of in-place Federal coal reserves. The BLM will announce two competitive coal lease sales in the **Federal Register** at a later date. The Environmental Protection Agency published a **Federal Register** notice announcing the Final EIS was publicly available on August 21, 2009 (74 FR 42295). This decision is subject to appeal to the Interior Board of Land Appeals (IBLA), as provided in 43 CFR part 4, within thirty (30) days from the date of publication of this NOA in the **Federal Register**. The ROD contains instructions for filing an appeal with the IBLA.

Mary E. Trautner,

Acting State Director.

[FR Doc. 2012–21459 Filed 8–29–12; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–CR–HPS–11148;2255–686]

Proposed Information Collection; Historic Preservation Certification Application

AGENCY: National Park Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (National Park Service) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. To comply with the Paperwork Reduction Act of 1995 and as a part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to comment on this IC. This IC is scheduled to expire on March 31, 2013. We may not conduct or sponsor and a person is not required to respond to a collection unless it displays a currently valid OMB control number.

DATES: Please submit your comment on or before October 29, 2012.

ADDRESSES: Please send your comments on the IC to Michael J. Auer, NPS Heritage Preservation Services, 1849 C St. NW. (2255), Washington, DC 20240; via fax at 202/371–1616; or via email at *michael_auer@nps.gov*. Please reference ''1024–0009, Historic Preservation Certification Application—36 CFR Part 67'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Michael J. Auer, NPS Heritage Preservation Services, 1849 C St. NW. (2255), Washington, DC 20240. You may send an email to *michael_auer@nps.gov* or contact him by telephone at (202) 354–2031 or via fax at (202) 371–1616.

SUPPLEMENTARY INFORMATION:

I. Abstract

Section 47 of the Internal Revenue Code requires that the Secretary of the Interior certify to the Secretary of the Treasury upon application by owners of historic properties for Federal tax benefits: (a) The historic character of the property, and (b) that the rehabilitation work is consistent with that historic character. The NPS administers the program with the Internal Revenue Service. The NPS uses the Historic Preservation Certification Application to evaluate the condition and historic significance of buildings undergoing rehabilitation for continued use, and to evaluate whether the rehabilitation work meets the Secretary of the Interior's Standards for Rehabilitation. The Department of the Interior regulation 36 CFR part 67 contains a requirement for completion of an application form. The information required on the application form is needed to allow the authorized officer to determine if the applicant is qualified to obtain historic preservation certifications from the Secretary of the Interior. These certifications are necessary in order for an applicant to receive substantial Federal tax incentives authorized by Section 47 of the Internal Revenue Code. These incentives include 20% Federal income tax credit for the rehabilitation of historic buildings and an income tax deduction for the donation of easements on historic properties. The Internal Revenue Code also provides 10% Federal income tax credit for the rehabilitation of non-historic buildings built before 1936, and owners of non-historic buildings in historic districts must also use the application to obtain a certification from the Secretary of the Interior that their building does not contribute to the significance of the historic district before they claim this lesser tax credit for rehabilitation.

II. Data

OMB Control Number: 1024–0009.

Title: Historic Preservation Certification Application—36 CFR Part 67.

Form(s): 10–168, Historic Preservation Certification Application (HPCA); 10–168a, Description of Rehabilitation; 10–168b, Continuation/Amendment Sheet; 10–168c, Certification of Completed Work.

Type of Request: Extension of a previously approved collection of information.

Description of Respondents: Individuals or households, businesses, and other for profit entities.

Respondent's Obligation: Required to obtain or retain benefits.

Frequency of Collection: One per respondent.

Estimated Number of Annual Respondents: 5,578.

Completion Time per Response: Completion times vary from 0.5 hours to 39.8 hours.

Estimated Total Annual Burden Hours: 25,798.

III. Comments

We invite comments concerning this IC on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- 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 respondents.

Please note that the comments submitted in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: August 23, 2012.

Madonna L. Baucum,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2012–21394 Filed 8–29–12; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Agency Information Collection Activities under OMB Review; Renewal of a Currently Approved Collection; Reclamation Rural Water Supply Program

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of renewal and request for comments.

SUMMARY: The Bureau of Reclamation has forwarded the following Information Collection Request to the Office of Management and Budget (OMB) for review and approval: Reclamation Rural Water Supply Program, OMB Control Number: 1006–0029. Title 43 CFR part 404 requires entities interested in participating in the Rural Water Supply Program (Rural Water Program) to submit information to allow the Bureau of Reclamation to evaluate and prioritize requests for financial or technical assistance.

DATES: OMB has up to 60 days to approve or disapprove this information collection, but may respond after 30 days; therefore, public comments must be received on or before October 1, 2012.

ADDRESSES: Send written comments to the Desk Officer for the Department of the Interior at the Office of Management and Budget, Office of Information and Regulatory Affairs, via facsimile to (202) 395–5806, or email to *OIRA_DOCKET@omb.eop.gov.* A copy of your comments should also be directed to the Bureau of Reclamation, Attention: 84–55000, P.O. Box 25007, Denver, CO 80225.

FOR FURTHER INFORMATION CONTACT: Christopher Perry at 303–445–2887. You may also view the Information Collection Request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The purpose of the Rural Water Program is to provide assistance to small communities of 50,000 inhabitants or less, including tribes and tribal organizations, to plan the design and construction of projects to serve rural areas with industrial, municipal, and residential water. Specifically, the Bureau of Reclamation (Reclamation) is authorized to provide financial and technical assistance to conduct appraisal investigations and feasibility studies for rural water supply projects. Reclamation's regulation, 43 CFR part 404, establishes criteria governing how the program will be implemented, including eligibility and prioritization criteria, and criteria to evaluate appraisal and feasibility studies. Entities interested in participating in the Rural Water Program are requested to submit information regarding proposed appraisal investigation and feasibility studies, to allow Reclamation to evaluate and prioritize requests for financial or technical assistance under the program. Reclamation will apply the program criteria to the information provided to determine whether the entity seeking assistance is eligible, whether the project is eligible for assistance, and to what extent the project meets Reclamation's prioritization criteria. Requests for assistance under the Rural Water Program will be made on a voluntary basis. There is no form associated with this information collection.

II. Data

OMB Control Number: 1006–0029.

Title: Reclamation Rural Water Supply Program, 43 CFR part 404.

Frequency: Once annually.

Respondents: States, tribes, municipalities, water districts, and other entities created under State law with water management authority.

Estimated Annual Total Number of Respondents: 56.

Estimated Number of Responses per Respondent: 1.

Estimated Total Number of Annual Responses: 56.

Estimated Total Annual Burden on Respondents: 2,100 hours.

III. Request for Comments

We invite your comments on:

(a) Whether the proposed collection of information is necessary for the proper performance of our functions, including whether the information will have practical use;

(b) The accuracy of our burden estimate for the proposed collection of information;

(c) Ways to enhance the quality, usefulness, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

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. A 60-day comment period soliciting comments on this collection of information was published in the **Federal Register** (77 FR 33766) on June 7, 2012. No public comments were received.

IV. Public Disclosure

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: August 24, 2012.

Roseann Gonzales,

Director, Policy and Administration, Denver Office.

[FR Doc. 2012–21392 Filed 8–29–12; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1189 (Final)]

Large Power Transformers From Korea

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission (Commission) determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is materially injured, by reason of imports from Korea of large power transformers, provided for in subheadings 8504.23.00 and 8504.90.95 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (Commerce) to be sold in the

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Daniel R. Pearson not participating.

United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective July 14, 2011, following receipt of a petition filed with the Commission and Commerce by ABB Inc., Cary, NC; Delta Star Inc., Lynchburg, VA; and Pennsylvania Transformer Technology Inc., Canonsburg, PA. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by Commerce that imports of large power transformers from Korea were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of March 21, 2012 (77 FR 16559). The hearing was held in Washington, DC, on July 10, 2012, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on August 24, 2012. The views of the Commission are contained in USITC Publication 4346 (August 2012), entitled *Large Power Transformers from Korea: Investigation No. 731–TA–1189 (Final).*

By order of the Commission.

Issued: August 24, 2012.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2012–21371 Filed 8–29–12; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–745]

Certain Wireless Communication Devices, Portable Music and Data Processing Devices, Computers and Components Thereof; Notice of Commission Decision Finding No Violation of Section 337 as to Three Patents and Remanding the Investigation to the ALJ as to One Patent

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has found no violation of 337 of the Tariff Act of 1930, 19 U.S.C. 1337, in the above-captioned investigation with respect to U.S. Patent Nos. 6,272,333 (''the '333 patent''); 6,246,697 (''the '697 patent''); and 5,636,223 (''the '223 patent''). The investigation is remanded to the presiding administrative law judge (''ALJ'') with respect to U.S. Patent No. 6,246,862 (''the '862 patent'').

FOR FURTHER INFORMATION CONTACT: Megan M. Valentine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–2301. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.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: The Commission instituted this investigation on November 8, 2010, based on a complaint filed by Motorola Mobility, Inc. of Libertyville, Illinois (''Motorola''). 75 FR 68619–20 (Nov. 8, 2010). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337''), in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain wireless communication devices, portable music and data processing devices, computers and components thereof by reason of infringement of certain claims of the '333 patent, the '862 patent, the '697 patent, U.S. Patent No. 5,359,317 (''the '317 patent''), the '223 patent, and U.S. Patent No. 7,751,826 (''the '826 patent''). The complaint further alleges the existence of a domestic industry. The Commission's notice of investigation named Apple Inc. of Cupertino, California (''Apple'') as respondent. The Office of Unfair Import Investigation (''OUII'') was named as a participating party, however, on July 29, 2011, OUII withdrew from further participation in the investigation. *See* Commission Investigative Staff's Notice of Nonparticipation (July 29, 2011). The Commission later partially terminated the investigation as to the '317 patent and the '826 patent. Notice (June 28, 2011); Notice (Jan 27, 2012).

On April 24, 2012, the ALJ issued his final ID, finding a violation of section 337 as to the '697 patent and finding no violation as to the '223, '333, and '697 patents. On May 9, 2012, the ALJ issued his recommended determination on remedy and bonding. In his final ID, the ALJ found that the products accused of infringing the '697 patent literally infringe claims 1–4 of that patent, and that Apple induces others to infringe the asserted claims of the '697 patent. The ALJ also found that the asserted claims of the '697 patent are not invalid as anticipated under 35 U.S.C. 102, as obvious under 35 U.S.C. 103, or for failure to satisfy the written description requirement or the best mode requirement of 35 U.S.C. 112. The ALJ also found that the '697 patent is not unenforceable for unclean hands. The ALJ further found that Motorola has satisfied the domestic industry requirement for the '697 patent. The ALJ found that the products accused of infringing the '223 patent literally infringe the asserted claim of that patent and that Apple induces others to infringe the claim 1 of the '223 patent. The ALJ further found, however, that the asserted claim of the '223 patent is invalid as anticipated under 35 U.S.C. 102. The ALJ also found that Motorola has satisfied the domestic industry requirement for the '223 patent. The ALJ found that the products accused of infringing the '333 patent do not literally infringe claim 12 of that patent. The ALJ also found that the asserted claim of the '333 patent is not invalid as anticipated under 35 U.S.C. 102 or for obviousness under 35 U.S.C. 103. The ALJ further found that Motorola has not satisfied the domestic industry requirement for the '333 patent. The ALJ found that claim 1 of the '862 patent is invalid as indefinite under 35 U.S.C. 112, ¶ 2 and, therefore, that the products accused of infringing the '862 patent do not literally infringe the asserted claim of that patent and that Motorola has not satisfied the domestic industry requirement for the '862 patent.

On May 7, 2012, Motorola filed a joint petition for review and contingent petition for review of certain aspects of the final ID's findings concerning claim construction, infringement, validity, and domestic industry. Also on May 7, 2012, Apple filed a joint petition for review and contingent petition for review of certain aspects of the final ID's findings concerning claim construction, infringement, validity, and patent unenforceability. On May 15, 2012, Motorola filed a response to Apple's petition. Also on May 15, 2012, Apple filed a response to Motorola's petition.

On June 6, 2012, Apple filed a post-RD statement on the public interest pursuant to Commission Rule 201.50(a)(4). Also on June 6, 2012, several non-parties filed public interest statements in response to the post-RD Commission Notice issued on May 15, 2012. *See* 77 FR 28621–22 (May 15, 2012). The non-parties include: Federal Trade Commission; Business Software Alliance; Association for Competitive Technology; Retail Industry Leaders Association; Verizon; Nokia Corporation; Hewlett-Packard Company; and Microsoft Corporation.

On June 25, 2012, the Commission determined to review the final ID in part and requested briefing on the issues it determined to review, remedy, the public interest, and bonding. 77 FR 38826–29 (June 29, 2012). Specifically, with respect to the '223 patent the Commission determined to review the ID's construction of the limitation ''access priority value'' in claim 1. The Commission also determined to review the ID with respect to the validity of claim 1 of the '223 patent under 35 U.S.C. 102 in light of U.S. Patent No. 5,453,987 to Tran (''Tran '987) and U.S. Patent No. 5,657,317 to Mahany et al. (''Mahany '317'') and under 35 U.S.C. 103 in light of Tran '987 in combination with Mahany '317. The Commission further determined to review the ID's finding that the 802.11n standard necessarily practices claim 1 of the '223 patent, and thus, the ID's findings concerning infringement and the technical prong of the domestic industry requirement with respect to the '223 patent.

With respect to the '697 patent, the Commission determined to review the ID's construction of the limitation ''selecting a chip time in a complex PN [pseudonoise] sequence generator'' in claim 1. The Commission also determined to review the ID's construction of the limitation ''restricting a phase difference between a previous complex PN chip and a next complex PN chip to a preselected phase angle.'' The Commission further determined to review the ID's findings with respect to the validity of claims 1–4 of the '697 patent under 35 U.S.C. 102 in light of prior art $\pi/2$-shift BPSK modulation and under 35 U.S.C. 103 in light of the combination of prior art QPSK and $\pi/2$-shift BPSK modulation schemes. The Commission also determined to review the ID's finding of direct and induced infringement with respect to the '697 patent. The Commission further determined to review the ID's finding that Motorola has satisfied the technical prong of the domestic industry requirement for the '697 patent.

With respect to the '862 patent, the Commission determined to review the ID's construction of the limitation ''close proximity to a user'' in claim 1 and his finding that claim 1 is indefinite.

With respect to the '333 patent, the Commission determined to review the ID's construction of the limitation ''a list of all software applications that are currently accessible to the subscriber unit'' in claim 12. The Commission further determined to review the ALJ's finding that claim 12 is not invalid under 35 U.S.C. 102 in light of U.S. Patent Nos. 5,502,831 to Grube *et al.* (''Grube '831''), 6,008,737 to DeLuca *et al.* (''DeLuca '797''), or 5,612,682 to DeLuca *et al.* (''DeLuca '682''), or under 35 U.S.C. 103 in view of Grube '831 combined with DeLuca '682. The Commission also determined to review the ALJ's finding of non-infringement of claim 12. The Commission further determined to review the ID's finding that Motorola's domestic industry product does not practice claim 12 of the '333 patent.

With respect to whether Motorola has satisfied the economic prong of the domestic industry requirement, the Commission determined to review the ID's finding that Motorola has not satisfied the economic prong as to the '333 patent under section 337(a)(3)(C) by its investments in licensing. The Commission also determined to review in part the ID's finding that Motorola has satisfied the economic prong with respect to the '223 and '697 patents under section 337(a)(3)(A) and (B). The Commission determined not to review the remaining issues decided in the ID.

On July 9, 2012, the Motorola and Apple filed initial written submissions regarding the issues on review, remedy, the public interest, and bonding. On July 16, 2012, the parties filed response submissions. Also on July 9, 2012, several non-parties filed submissions concerning the public interest. On July 16, 2012, several non-parties filed response submissions.

Having examined the record of this investigation, including the ALJ's final ID and the parties' submissions, the Commission has determined to affirm the final ID's finding of no violation as to the '223 and '333 patents and to reverse the finding of violation as to the '697 patent. The Commission has also determined remand the investigation to the ALJ with respect to the '862 patent.

Specifically, the Commission has determined to affirm the ID's finding of no violation with respect to the '223 patent with modifications. In particular, the Commission has determined to modify the ID's claim construction of the claim limitation ''access priority value'' in claim 1 to mean ''a value based on information available to the terminal, or based on information available to the terminal and information received from the infrastructure, used to determine relative priority among multiple terminals for access to a data communications system.'' The Commission has determined to affirm the ID's finding that claim 1 of the '223 patent is anticipated by Mahany '317 and Tran '987. The Commission also finds that claim 1 of the '223 patent is obvious in light of Tran '987 in combination with Mahany '317. The Commission has determined to reverse the ID's finding that products compliant with the 802.11n standard necessarily practice claim 1 of the '223 patent. The Commission, therefore, finds that the accused products do not infringe claim 1 of the '233 patent and that Motorola has not satisfied the technical prong of the domestic industry requirement with respect to the '223 patent.

With respect to the '697 patent, the Commission has determined to reverse the ID's finding of violation of section 337. In particular, the Commission has determined to affirm, with modified reasoning, the ID's construction of the limitation ''selecting every chip time'' of claim 1 of the '697 patent. The Commission also finds that the limitation ''restricting a phase difference between a previous complex PN chip and a next complex PN chip to a preselected phase angle'' in claim 1 means ''at the selected chip time, the next complex PN chip is limited to a predetermined phase transition,'' with the understanding that the phrase ''preselected phase angle'' requires a single unique angle with a predetermined direction and magnitude at a particular ''selected chip time,'' but that the phase transition need not be the same at every chip time. The Commission further finds that claim 1 is limited to $\pi/2$ BPSK modulation ''at selected chip times,'' and thus, that the claimed ''phase difference'' must be $\pm 90°$ ''at selected chip times.'' The Commission affirms the ID's finding that claims 1–4 of the '697 patent are not anticipated by prior art $\pi/2$-shift BPSK modulation. The Commission also affirms the ID's finding that claims 1–4 are not obviousness in light of the combination of prior art QPSK and π/2-shift BPSK modulation schemes. The Commission reverses the ID's finding that generation of the complex-valued long scrambling sequence, $C_{long,n}$ used to scramble PRACH messages in the scheme defined by the 3GPP–UMTS standard necessarily practices the method claims 1–4 of the '697 patent, and thus, finds no direct or induced infringement with respect to the '697 patent. The Commission further reverses the ID's finding that Motorola has satisfied the technical prong of the domestic industry requirement for the '697 patent, and finds that Motorola has not satisfied this requirement.

With respect to the '862 patent, the Commission has determined to reverse the ID's finding that claim 1 is indefinite. The Commission remands the investigation to the ALJ to consider the issues of infringement, validity, and the domestic industry requirement for the '862 patent.

With respect to the '333 patent, the Commission has determined to affirm the ID's finding of no violation of section 337 with modifications. In particular, the Commission finds that the limitation ''a list of all software applications that are currently accessible to the subscriber unit'' of claim 12 means ''a list of all software applications that are available and enabled for present use by the subscriber.'' The Commission affirms the ID's finding that claim 12 of the '333 patent is not anticipated by Grube '831, DeLuca '737 or DeLuca '682, and is not rendered obvious by Grube '831 in view of DeLuca '682. The Commission also affirms, with modified reasoning, the ALJ's finding of non-infringement of claim 12 of the '333 patent. The Commission further affirms, with modified reasoning, the ID's finding that Motorola's domestic industry product does not practice claim 12 of the '333 patent.

With respect to whether Motorola has satisfied the economic prong of the domestic industry requirement, the Commission has determined to affirm-in-part the ID's finding that Motorola has satisfied the economic prong of the domestic industry requirement under section 337(a)(3)(A) and (B) by making substantial investments in its CliqXT and Droid 2 products, and further finds that these investments satisfy the economic prong requirement as to the '223, '697, and '333 patents. In addition to its investments in seedstock for its CliqXT and Droid 2 products, the Commission also finds that Motorola's expenditures relating to the creation of prototypes for its CliqXT and Droid 2 products and its costs associated with post-assembly loading of vendor-specific software and testing of those products are sufficient to support a finding that Motorola has satisfied the economic prong under section 337(a)(3)(A) and (B). The Commission vacates and takes no further position on the ID's finding that Motorola has not satisfied the economic prong as to the '333 patent under section 337(a)(3)(C) for its investments in licensing.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42–.50 of the Commission's Rules of Practice and Procedure (19 CFR 210.42–.50).

By order of the Commission.

Issued: August 24, 2012.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2012–21373 Filed 8–29–12; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decrees Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

Notice is hereby given that on August 23, 2012, two proposed Consent Decrees (''Decrees'') in *United States and the State of South Dakota* v. *Cyprus Mines Corporation, Cyprus Amax Minerals Company, Inc., Blue Tee Corp., and Homestake Mining Company of California,* Case No. 5:12–CV–05058–JLV, were lodged with the United States District Court for the District of South Dakota, Western Division. The case was brought under Sections 107(a) and 113(g)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9607(a) and 9613(g)(2), for the recovery of response costs related to the cleanup at the Gilt Edge Mine Superfund Site (''Site'') in Lawrence County, South Dakota.

The Consent Decrees require the Defendants to pay a combined $30.2 million to settle their liability at the Site. Cyprus Mines Corporation, Cyprus Amax Minerals Company, Inc., and Blue Tee Corp. will pay a total of $26 million. Homestake Mining Company of California will pay $4.2 million. The money will be used to help pay for response costs related to the cleanup at the Site.

The United States and the State of South Dakota filed a Complaint simultaneous with the Consent Decrees alleging that the Defendants are jointly and severally liable for response costs related to the cleanup at the Site. 42 U.S.C. 9607(a), 9613(g)(2). The Consent Decrees would resolve the claims against the Defendants as described in the Complaint.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decrees. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emailed to the *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States and the State of South Dakota* v. *Cyprus Mines Corporation, Cyprus Amax Minerals Company, Inc., Blue Tee Corp., and Homestake Mining Company of California,* Case No. 5:12–CV–05058–JLV, D.J. Ref. No. 90–11–3–08278.

The Decrees may be examined at the Office of the United States Attorney, District of South Dakota, 515 Ninth Street, Suite 201, Rapid City, South Dakota 57701. They also may be examined at the offices of U.S. EPA Region 8, 1595 Wynkoop Street, Denver, Colorado 80202. During the public comment period, the Decrees may be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.*

A copy of the Decrees may be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or emailing a request to ''Consent Decree Copy'' (*EESCDCopy.ENRD@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–5271. If requesting a copy from the Consent Decree Library by mail, please enclose a check in the amount of $14.25 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if requesting by email or fax, forward a check in that amount to the Consent Decree Library at the address given above.

Robert Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2012–21348 Filed 8–29–12; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to The Clean Water Act

In accordance with 28 CFR 50.7, 38 FR 19029, notice is hereby given that on August 23, 2012, a Modified Consent Decree was lodged with the United States District Court for the District of Massachusetts in *United States of America and Commonwealth of Massachusetts* v. *City of Gloucester, Massachusetts,* Civil Action No. 89–2206–WGY (D. Mass.). The Modified Consent Decree addresses, among other things, alleged violations of the federal Clean Water Act, 33 U.S.C. 1251, *et seq.,* and the Massachusetts Clean Waters Act, Mass. Gen. Laws ch. 21, § 42. The Modified Consent Decree requires Gloucester to: (1) Adjust the existing Combined Sewer Overflows schedule to accommodate information collected during construction of currently required projects; (2) more accurately characterize drainage basin overflows and propose mitigation measures; and (3) incorporates a milestone for completing upgrades to the City's treatment plant. Under the proposed modified consent decree, Gloucester will not pay a civil penalty because the EPA has determined that the Gloucester is unable to pay a civil penalty.

For a period of thirty (30) days from the date of this publication, the United States Department of Justice will receive comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, and should either be emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, Washington, DC 20044–7611. The comments should refer to *United States of America and Commonwealth of Massachusetts* v. *City of Gloucester, Massachusetts,* D.J. Ref. # 90–5–1–1–3388/1.

During the public comment period, the proposed Consent Decree may be examined at the office of the United States Attorney, Suite 9200, 1 Courthouse Way, Boston, Massachusetts 02110, and at the Region I office of the Environmental Protection Agency, One Congress Street, Suite 1100, Boston, Massachusetts 02114. The proposed Consent Decree may also be obtained at the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy may also be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044–7611 or by faxing or emailing a request to ''Consent Decree Copy'' (*EESCDCopy.enrd@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–5271. If requesting a copy from the Consent Decree Library by mail, please enclose a check in the amount of $2.25 ($.25 per page) payable to the U.S. Treasury, or if by email or fax, forward a check in that amount to the Consent Decree Library at the address given above.

Ronald Gluck,

Assistant Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 2012–21369 Filed 8–29–12; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Unemployment Compensation for Federal Employees Handbook No. 391

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employment and Training Administration (ETA) sponsored information collection request (ICR) titled, ''Unemployment Compensation for Federal Employees Handbook No. 391,'' to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*).

DATES: Submit comments on or before October 1, 2012.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–ETA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503, Telephone: 202–395–6929/Fax: 202–395–6881 (these are not toll-free numbers), email: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: The Unemployment Compensation for Federal Employees Act, 5 U.S.C. 8501, *et seq.,* requires State Workforce Agencies (SWAs) to administer the Unemployment Compensation for Federal Employees (UCFE) Program in accordance with the same terms and provisions of the paying State's unemployment insurance law that apply to unemployed claimants who worked in the private sector. Each SWA must be able to obtain certain information (wage and separation data) about each claimant for UCFE benefits to enable an eligibility determination. The DOL has prescribed forms to enable SWAs to obtain this necessary information. Each of these forms is essential to the UCFE claims process. SWAs may customize these model forms, as needed, to collect the necessary information required to operate the UCFE program.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1205–0179. The current approval is scheduled to expire on August 31, 2012; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on May 30, 2012 (77 FR 31879).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205–0179. The OMB 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; and

• 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.

Agency: DOL–ETA.

Title of Collection: Unemployment Compensation for Federal Employees Handbook No. 391.

OMB Control Number: 1205–0179.

Affected Public: Individuals or Households and State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 69,720.

Total Estimated Number of Responses: 342,997.

Total Estimated Annual Burden Hours: 27,190.

Total Estimated Annual Other Costs Burden: $0.

Dated: August 24, 2012.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2012–21455 Filed 8–29–12; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Reports of Injuries to Employees Operating Mechanical Power Presses

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Occupational Safety and Health Administration (OSHA) sponsored information collection request (ICR) titled, ''Reports of Injuries to Employees Operating Mechanical Power Presses,'' to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*).

DATES: Submit comments on or before October 1, 2012.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the *RegInfo.gov* Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OSHA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503, Telephone: 202–395–6929/Fax: 202–395–6881 (these are not toll-free numbers), email: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: In the event a worker is injured while operating a mechanical power press, Regulations 29 CFR 1910.217(g) makes it mandatory for an employer to report, within 30 days of the occurrence, all point-of-operation injuries to operators or other employees either to the Director of the Directorate of Standards or to the State Agency administering a plan approved by the Assistant Secretary of Labor for Occupational Safety and Health. Particularly, this information identifies the equipment used and conditions associated with these injuries. These reports are a source of up-to-date information on power press machines.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1218–0070. The current approval is scheduled to expire on August 31, 2012; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on May 25, 2012 (77 FR 31396).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1218–0070. The OMB 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; and

• 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.

Agency: DOL–OSHA.

Title of Collection: Reports of Injuries to Employees Operating Mechanical Power Presses.

OMB Control Number: 1218–0070.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 1,370.

Total Estimated Number of Responses: 1,370.

Total Estimated Annual Burden Hours: 453.

Total Estimated Annual Other Costs Burden: $0.

Dated: August 27, 2012.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2012–21457 Filed 8–29–12; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Division of Federal Employees' Compensation Proposed Extension of Existing Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance 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 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. 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. Currently, the Office of Workers' Compensation Programs is soliciting comments concerning its proposal to extend OMB approval of the information collection: Request for Employment Information (CA–1027). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before October 29, 2012.

ADDRESSES: Ms. Yoon Ferguson, U.S. Department of Labor, 200 Constitution Ave. NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0701, fax (202) 693–2447, Email *ferguson.yoon@dol.gov.* Please use only one method of transmission for comments (mail, fax, or Email).

SUPPLEMENTARY INFORMATION

I. Background

Payment of compensation for partial disability to injured Federal workers is required by 5 U.S.C. 8106. That section also requires the Office of Workers' Compensation Programs (OWCP) to obtain information regarding a claimant's earnings during a period of eligibility to compensation. The CA–1027, Request for Employment Information, is the form used to obtain information for an individual who is employed by a private employer. This information is used to determine the claimant's entitlement to compensation benefits. This information collection is currently approved for use through December 31, 2012.

II. Review Focus

The Department of Labor is particularly interested in comments which:

* 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; and

* 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.

III. Current Actions

The Department of Labor seeks the approval for the extension of this currently approved information collection in order to determine a claimant's eligibility for compensation benefits.

Type of Review: Extension.

Agency: Office of Workers' Compensation Programs.

Title: Request for Employment Information.

OMB Number: 1240–0047.

Agency Number: CA–1027.

Affected Public: Business or other for-profit.

Total Respondents: 431.

Total Annual Responses: 431.

Average Time per Response: 15 minutes.

Estimated Total Burden Hours: 108

Frequency: On occasion.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $207.

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 will also become a matter of public record.

Dated: August 27, 2012.

Yoon Ferguson,

Agency Clearance Officer, Office of Workers' Compensation Programs, U.S. Department of Labor.

[FR Doc. 2012–21399 Filed 8–29–12; 8:45 am]

BILLING CODE 4510–CH–P

NATIONAL LABOR RELATIONS BOARD

Sunshine Act Meetings: September 2012

TIME AND DATES: All meetings are held at 2:30 p.m.:

Tuesday, September 4;
Wednesday, September 5;
Thursday, September 6;
Tuesday, September 11;
Wednesday, September 12;
Thursday, September 13;
Tuesday, September 18;
Wednesday, September 19;
Thursday, September 20;
Tuesday, September 25;
Wednesday, September 26;
Thursday, September 27.

PLACE: Board Agenda Room, No. 11820, 1099 14th St. NW., Washington, DC 20570.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Pursuant to § 102.139(a) of the Board's Rules and Regulations, the Board or a panel thereof will consider ''the issuance of a subpoena, the Board's participation in a civil action or proceeding or an arbitration, or the initiation, conduct, or disposition * * * of particular representation or unfair labor practice proceedings under section 8, 9, or 10 of the [National Labor Relations] Act, or any court proceedings collateral or ancillary thereto.'' See also 5 U.S.C. 552b(c)(10).

CONTACT PERSON FOR MORE INFORMATION: Lester A. Heltzer, (202) 273–1067.

Dated: August 28, 2012.

Lester A. Heltzer,

Executive Secretary.

[FR Doc. 2012–21580 Filed 8–28–12; 4:15 pm]

BILLING CODE 7545–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of a permit modification issued under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit modifications issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On June 21, 2012, the National Science

Foundation published a notice in the **Federal Register** of a permit modification request received. The permit modification was issued on August 24, 2012 to:

Permit No. 2012–003 Mod. #1

Jo-Ann Mellish

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 2012–21365 Filed 8–29–12; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–423; NRC–2012–0197]

Dominion Nuclear Connecticut, Inc. Millstone Power Station, Unit 3; Exemption

1.0 Background

Dominion Nuclear Connecticut, Inc., (the licensee, Dominion) is the holder of Renewed Facility Operating License No. NPF–49, which authorizes operation of the Millstone Power Station, Unit 3 (MPS3). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

MPS3 shares the site with Millstone Power Station Unit 1, a permanently defueled boiling water reactor nuclear unit, and Millstone Power Station Unit 2, a pressurized water reactor. The facility is located in Waterford, Connecticut, approximately 3.2 miles west southwest of New London, CT. This exemption applies to MPS3 only. The other units, Units 1 and 2, are not part of this exemption.

2.0 Request/Action

Section 50.46 of Title 10 of the *Code of Federal Regulations* (10 CFR), ''Acceptance criteria for emergency core cooling systems [ECCS] for light-water nuclear power reactors,'' requires that each power reactor meet the acceptance criteria for ECCS provided therein for zircaloy or ZIRLO™ cladding. Appendix K of 10 CFR part 50, ''ECCS Evaluation Models,'' requires the rate of energy release, hydrogen generation, and cladding oxidation from the metal/water reaction to be calculated using the Baker-Just equation (Baker, L., Just, L.C., ''Studies of Metal Water Reactions at High Temperatures, III. Experimental and Theoretical Studies of the Zirconium-Water Reaction,'' ANL–6548, page 7, May 1962).

Both of the above requirements require the use of zircaloy or ZIRLO™ cladding. The licensee proposes to use Optimized ZIRLO™ as the cladding material and therefore is requesting an exemption from the requirements.

In summary, by letter dated November 17, 2011, (Agencywide Documents Access and Management System (ADAMS), Accession No. ML11329A003), the licensee requested an exemption from the requirements of 10 CFR 50.46 and Appendix K to 10 CFR part 50. The reason for the exemption is to allow the use of Optimized ZIRLO™ as a cladding material.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. These circumstances include the special circumstances that application of the regulation is not necessary to achieve the underlying purpose of the rule.

Authorized by Law

This exemption would allow the licensee to use Optimized ZIRLO ™ fuel rod cladding material at MPS3. As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR part 50. The NRC staff has determined that granting of the licensee's proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

No Undue Risk to Public Health and Safety

The underlying purpose of 10 CFR 50.46 is to establish acceptance criteria for adequate ECCS performance. By letter dated June 10, 2005 (ADAMS Accession No. ML051670408), the NRC staff issued a safety evaluation (SE) approving Addendum 1 to Westinghouse Topical Report WCAP–12610–P–A and CENPD–404–P–A, ''Optimized ZIRLO™'' (ADAMS Accession No. ML062080576), wherein the NRC staff approved the use of Optimized ZIRLO™ as a fuel cladding material. The NRC staff approved the use of Optimized ZIRLO™ as a fuel cladding material based on: (1) Similarities with ZIRLO™, (2) demonstrated material performance, and (3) a commitment to provide irradiated data and validate fuel performance models ahead of burnups achieved in batch application. The NRC staff's SE for Optimized ZIRLO™ includes 10 conditions and limitations for its use. As previously documented in the NRC staff's review of topical reports submitted by Westinghouse Electric Company, LLC (Westinghouse), and subject to compliance with the specific conditions of approval established therein, the NRC staff finds that the applicability of these ECCS acceptance criteria to Optimized ZIRLO™ has been demonstrated by Westinghouse. Ring compression tests performed by Westinghouse on Optimized ZIRLO™ (NRC reviewed, approved, and documented in Appendix B of WCAP–12610–P–A and CENPD–404–P–A, Addendum 1–A, ''Optimized ZIRLO™'') (ADAMS Accession No. ML062080576) demonstrate an acceptable retention of post-quench ductility up to 10 CFR 50.46 limits of 2200 °F and 17 percent equivalent clad reacted. Furthermore, the NRC staff has concluded that oxidation measurements provided by the licensee illustrate that oxide thickness (and associated hydrogen pickup) for Optimized ZIRLO™ at any given burnup would be less than both zircaloy-4 and ZIRLO™. Hence, the NRC staff concludes that Optimized ZIRLO™ would be expected to maintain better post-quench ductility than ZIRLO™. This finding is further supported by an ongoing loss-of-coolant accident (LOCA) research program at Argonne National Laboratory, which has identified a strong correlation between cladding hydrogen content (due to in-service corrosion) and post-quench ductility.

The underlying purpose of 10 CFR Part 50, Appendix K, Section I.A.5, ''Metal-Water Reaction Rate,'' is to ensure that cladding oxidation and hydrogen generation are appropriately limited during a LOCA and conservatively accounted for in the ECCS evaluation model. Appendix K states that the rates of energy release, hydrogen concentration, and cladding oxidation from the metal-water reaction shall be calculated using the Baker-Just equation. Since the Baker-Just equation presumes the use of zircaloy clad fuel, strict application of the rule would not permit use of the equation for Optimized ZIRLO ™ cladding for determining acceptable fuel performance. However, the NRC staff has found that metal-water reaction tests performed by Westinghouse on Optimized ZIRLO ™ demonstrate conservative reaction rates relative to the Baker-Just equation and are bounded by those approved for ZIRLO™ under anticipated operational occurrences and postulated accidents.

Based on the above, no new accident precursors are created by using Optimized ZIRLO™, thus, the probability of postulated accidents is not increased. Also, based on the above, the consequences of postulated accidents are not increased. Therefore, there is no undue risk to public health and safety.

Consistent With Common Defense and Security

The proposed exemption would allow the use of Optimized ZIRLO™ fuel rod cladding material at MPS3. This change to the plant configuration has no relation to security issues. Therefore, the common defense and security is not impacted by this exemption.

Special Circumstances

Special circumstances, in accordance with 10 CFR 50.12(a)(2)(ii), are present whenever application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. The underlying purpose of 10 CFR 50.46 and Appendix K to 10 CFR part 50 is to establish acceptance criteria for ECCS performance and to ensure that cladding oxidation and hydrogen generation are appropriately limited during a LOCA and conservatively accounted for in the ECCS evaluation model. The wording of the regulations in 10 CFR 50.46 and Appendix K is not directly applicable to Optimized ZIRLO™, even though the evaluations above show that the intent of the regulation is met. Therefore, since the underlying purposes of 10 CFR 50.46 and Appendix K are achieved through the use of Optimized ZIRLO™ fuel rod cladding material, the special circumstances required by 10 CFR 50.12(a)(2)(ii) for the granting of an exemption from certain requirements of 10 CFR 50.46 and Appendix K exist.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants Dominion an exemption from certain requirements of 10 CFR 50.46 and Appendix K to 10 CFR part 50, to allow the use of Optimized ZIRLO™ fuel rod cladding material, for MPS3.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (77 FR 50533).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 23rd day of August 2012.

For the Nuclear Regulatory Commission.

Michele G. Evans,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2012–21485 Filed 8–29–12; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act; Board of Directors Meeting

September 13, 2012.

TIME AND DATE: Thursday, September 13, 2012, 9:30 a.m. (Open Portion); 10 a.m. (Closed Portion).

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue NW., Washington, DC.

STATUS: Meeting OPEN to the Public from 9:30 a.m. to 10 a.m. Closed portion will commence at 10 a.m. (approx.).

MATTERS TO BE CONSIDERED:

1. President's Report.
2. Confirmation: John F. Moran as Vice President, Insurance.
3. Minutes of the Open Session of the June 14, 2012 Board of Directors Meeting.

FURTHER MATTERS TO BE CONSIDERED (Closed to the Public 10 a.m.):

1. Finance Project—Jordan.
2. Finance Project—South Africa.
3. Finance Project—Turkey.
4. Insurance Project—Ghana.
5. Insurance Project—Egypt, Jordan and Pakistan.
6. Insurance Project—Ghana.
7. Finance Project—Pan-Africa.
8. Finance Project—Indonesia.
9. Finance Project—Russia.
10. Finance Project—India.
11. Finance Project—India.
12. Minutes of the Closed Session of the June 14, 2012 Board of Directors Meeting.
13. Reports.
14. Pending Major Projects.

Written summaries of the projects to be presented have been posted on OPIC's Web site.

CONTACT PERSON FOR INFORMATION: Information on the meeting may be obtained from Connie M. Downs at (202) 336–8438.

Dated: August 28, 2012.

Connie M. Downs,

Corporate Secretary, Overseas Private Investment Corporation.

[FR Doc. 2012–21595 Filed 8–28–12; 4:15 pm]

BILLING CODE 3210–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67725; File No. 4–652]

Technology and Trading Roundtable

AGENCY: Securities and Exchange Commission.

ACTION: Notice of roundtable discussion; request for comment.

SUMMARY: The Securities and Exchange Commission will host a one day roundtable entitled ''Technology and Trading: Promoting Stability in Today's Markets'' to discuss ways to promote stability in markets that rely on highly automated systems. The roundtable will focus on the relationship between the operational stability and integrity of our securities market and the ways in which market participants design, implement, and manage complex and inter-connected trading technologies.

The roundtable discussion will be held in the multi-purpose room of the Securities and Exchange Commission headquarters at 100 F Street NE., in Washington, DC on September 14, 2012 from 10 a.m. to approximately 4 p.m. The public is invited to observe the roundtable discussion. Seating will be available on a first-come, first-served basis. The roundtable discussion also will be available via webcast on the Commission's Web site at *www.sec.gov.*

The roundtable will consist of two panels. The morning panel will focus on error prevention—where technology experts will discuss current best practices and practical constraints for creating, deploying, and operating mission-critical systems, including those that are used to automatically generate and route orders, match trades, confirm transactions, and disseminate data. The afternoon panel will focus on error response—where panelists will discuss how the market might employ independent filters, objective tests, and other real-time processes or crisis-management procedures to detect, limit, and possibly terminate erroneous market activities when they do occur, thereby limiting the impact of such errors.

DATES: The roundtable discussion will take place on September 14, 2012. The Commission will accept comments regarding issues addressed at the roundtable until October 5, 2012.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/other.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number 4–652 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submission should refer to File Number 4–652. This file number should be included on the subject line if email is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/other.shtml*). Comments are also available for Web site 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 a.m. and 3 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Arisa Tinaves, Special Counsel, at (202) 551–5676, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–7010.

By the Commission.

Dated: August 24, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–21387 Filed 8–29–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Proposing to Offer Certain Proprietary Options Data Products

August 23 2012.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on August 13, 2012, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III 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 proposes to offer certain proprietary options data products. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.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 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 Statutory Basis for, Proposed Rule Change

1. Purpose

The Exchange proposes to offer certain proprietary options data products. Specifically, the products are ArcaBook for Amex Options—Trades, ArcaBook for Amex Options—Top of Book, ArcaBook for Amex Options—Depth of Book, ArcaBook for Amex Options—Complex, ArcaBook for Amex Options—Series Status, and ArcaBook for Amex Options—Order Imbalance.[4] Each of these products, which are described in more detail below, is either identical or substantially similar to products offered by other exchanges.

ArcaBook for Amex Options—Trades would make available NYSE Amex Options last sale information on a real-time basis as it is reported to the Options Price Reporting Authority (''OPRA'') and disseminated on a consolidated basis under the OPRA Plan.[5] Other exchanges also offer this product.[6]

ArcaBook for Amex Options—Top of Book would make available NYSE Amex Options best bids and offers (''BBO'') (including orders and quotes) on a real-time basis as it is reported to OPRA and disseminated on a consolidated basis under the OPRA Plan. Other exchanges also offer this product.[7]

ArcaBook for Amex Options—Depth of Book would make available NYSE Amex Options quotes and orders at the first five price levels in each series on a real-time basis as it is reported to OPRA and disseminated on a consolidated basis under the OPRA Plan. One exchange offers an identical

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] For these products, the name ''ArcaBook'' is used strictly for marketing purposes to describe the technology used to support the product. All of the data that will be distributed through the products is solely NYSE Amex Options data.

[5] The OPRA Plan is a national market system plan approved by the Securities and Exchange Commission (''Commission'') pursuant to Section 11A of the Securities Exchange Act of 1934 (the ''Act'') and Rule 608 thereunder (formerly Rule 11Aa3–2). *See* Securities Exchange Act Release No. 17638 (March 18, 1981), 22 SE.C. Docket 484 (March 31, 1981). The full text of the OPRA Plan is available at *http://www.opradata.com*.

The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the participant exchanges. Section 5.2(c) of the OPRA Plan also permits OPRA Plan participants to disseminate unconsolidated market information to certain of their members under certain circumstances. The manner in which the Exchange proposes to disseminate the proposed products would comply with Section 5.2(c).

[6] For example, Chicago Board Options Exchange (''CBOE''), NASDAQ Options Market (''NOM''), and NASDAQ OMX PHLX LLC (''PHLX'') offer proprietary products that include their last sale data as reported to OPRA. *See* Securities Exchange Act Release No. 66486 (February 28, 2012), 77 FR 13166 (March 5, 2012) (SR–CBOE–2012–016); NOM Rules, Chapter VI, Section 1(a)(3) and Securities Exchange Act Release No. 64652 (June 13, 2011), 76 FR 35498 (June 17, 2011) (SR–NASDAQ–2011–075); and Securities Exchange Act Release No. 67352 (July 5, 2012), 77 FR 40930 (July 11, 2012) (SR–Phlx–2012–83), respectively.

[7] *See id. See also* Securities Exchange Act Release No. 65000 (August 1, 2011), 76 FR 47627 (August 5, 2011) (SR–ISE–2011–44).

product; other exchanges also offer similar products.[8]

ArcaBook for Amex Options—Complex would make available NYSE Amex Options quote and trade information (including orders/quotes, requests for responses, and trades) for the complex order book on a real-time basis.[9] Other exchanges also offer similar data feeds related to their complex order execution facilities.[10]

ArcaBook for Amex Options—Series Status would make available series status messages for each individual options series in the event of a delayed opening or trading halt. The equity trading facility of NYSE Arca, Inc. (''NYSE Arca Equities'') currently makes this information available via one of its market data products.[11]

Finally, ArcaBook for Amex Options—Order Imbalance would make available a data feed that includes order imbalance information prior to the opening and closing of the market, a data product that is offered by NYSE Arca Equities [12] and is similar to products offered by other options exchanges.[13]

Each of these options data products will be offered through the Exchange's Liquidity Center Network (''LCN''), a local area network in the Exchange's Mahwah, New Jersey data center that is available to users of the Exchange's co-location services. The Exchange would also offer the products through the Exchange's Secure Financial Transaction Infrastructure (''SFTI'') network, through which all other Users and member organizations access the Exchange's trading and execution systems and other proprietary market data products.

The Exchange will submit a separate rule filing to establish fees for the data products.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) [14] of the Act, in general, and furthers the objectives of Section 6(b)(5) [15] of the Act, in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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 it is not designed to permit unfair discrimination among customers, brokers, or dealers.

In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to consumers of such data. It was believed that this authority would expand the amount of data available to users and consumers of such data and also spur innovation and competition for the provision of market data. The Exchange believes that the options data products proposed herein are precisely the sort of market data products that the Commission envisioned when it adopted Regulation NMS. The Commission concluded that Regulation NMS—by lessening regulation of the market in proprietary data—would itself further the Act's goals of facilitating efficiency and competition:

[E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.[16]

By removing ''unnecessary regulatory restrictions'' on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history.

The Exchange further notes that the existence of alternatives to the Exchange's products, including real-time consolidated data, free delayed consolidated data, and proprietary data from other sources, ensures that the Exchange is not unreasonably discriminatory because vendors and subscribers can elect these alternatives.

The proposed options data products will help to protect a free and open market by providing additional data to the marketplace and give investors greater choices. In addition, the proposal would not permit unfair discrimination because the products will be available to all of the Exchange's customers and broker-dealers through both the LCN and SFTI.

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 market for proprietary data products is currently competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data. Numerous exchanges compete with each other for listings, trades, and market data itself, providing virtually limitless opportunities for entrepreneurs who wish to produce and distribute their own market data. This proprietary data is produced by each individual exchange, as well as other entities (such as internalizing broker-dealers and various forms of alternative trading systems, including dark pools and electronic communication networks), in a vigorously competitive market. It is common for market participants to further and exploit this competition by sending their order flow and transaction reports to multiple markets, rather than providing them all to a single market.

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.

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 [17] and Rule 19b–4(f)(6) thereunder.[18] Because the proposed rule change does not: (i) Significantly affect the protection of

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[8] International Securities Exchange (''ISE'') currently offers ISE Depth of Market Feed, which includes the first five price levels on ISE's limit order book. *See* Securities Exchange Act Release No. 59949 (May 20, 2009), 74 FR 25593 (May 28, 2009) (SR–ISE–2007–97). NOM and PHLX also offer full depth of market feeds. *See supra* note 6.

[9] *See* Rule 900.3NY, which defines complex orders, and Rule 980NY, which describes electronic complex order trading, including requests for responses.

[10] *See, e.g.,* description of ISE Spread Feed in SR–ISE–2011–44, *supra* note 7, and description of TOPO of PHLX Options Plus Orders feed in SR–Phlx–2012–83, *supra* note 6.

[11] *See* Securities Exchange Act Release No. 65669 (November 2, 2011), 76 FR 69311 (November 8, 2011) (SR–NYSEArca–2011–78).

[12] *See id.*

[13] *See, e.g.,* SR–Phlx–2012–83 and SR–NASDAQ–2011–075, *supra* note 3 [sic]. PHLX disseminates an Imbalance Message during the PHLX Opening Process. *See* Securities Exchange Act Release No. 66967 (May 11, 2012); 77 FR 29400 [sic] (May 17, 2012) (SR–Phlx–2012–60). NASDAQ's ITTO data product includes the order imbalance information relating to the opening as described in NASDAQ Options Market Rules Chapter VI, Section 8.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

[16] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

[17] 15 U.S.C. 78s(b)(3)(A)(iii).

[18] 17 CFR 240.19b–4(f)(6).

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) [19] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[20] [sic] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

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.

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–NYSEMKT–2012–40 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

All submissions should refer to File Number SR–NYSEMKT–2012–40. 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 Web site (*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 Web site 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NYSE MKT. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2012–40 and should be submitted on or before September 20, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–21385 Filed 8–29–12; 8:45 am]

BILLING CODE 8011–01–P

[19] 17 CFR 240.19b–4(f)(6).

[20] 17 CFR 240.19b–4(f)(6)(iii).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Proposing To Offer Certain Proprietary Options Data Products

August 23, 2012.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on August 16, 2012, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III 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 proposes to rule change will have any direct effect, or any significant indirect effect, on any other Exchange rule in effect at the time of this filing. [sic] The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.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 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 Statutory Basis for, Proposed Rule Change

1. Purpose

The Exchange proposes to offer certain proprietary options data products. Specifically, the products are ArcaBook for Arca Options—Trades, ArcaBook for Arca Options—Top of Book, ArcaBook for Arca Options—Depth of Book, ArcaBook for Arca Options—Complex, ArcaBook for Arca Options—Series Status, and ArcaBook for Arca Options—Order Imbalance. Each of these products, which are described in more detail below, is either identical or substantially similar to products offered by other exchanges.

ArcaBook for Arca Options—Trades would make available NYSE Arca Options last sale information on a real-time basis as it is reported to the Options Price

Reporting Authority (''OPRA'') and disseminated on a consolidated basis

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

under the OPRA Plan.[4] Other exchanges also offer this product.[5]

ArcaBook for Arca Options—Top of Book would make available NYSE Arca Options best bids and offers (''BBO'') (including orders and quotes) on a real-time basis as it is reported to OPRA and disseminated on a consolidated basis under the OPRA Plan. Other exchanges also offer this product.[6]

ArcaBook for Arca Options—Depth of Book would make available NYSE Arca Options quotes and orders at the first five price levels in each series on a real-time basis as it is reported to OPRA and disseminated on a consolidated basis under the OPRA Plan. One exchange offers an identical product; other exchanges also offer similar products.[7]

ArcaBook for Arca Options—Complex would make available NYSE Arca Options quote and trade information (including orders/quotes, requests for responses, and trades) for the complex order book on a real-time basis.[8] Other exchanges also offer similar data feeds related to their complex order execution facilities.[9]

ArcaBook for Arca Options—Series Status would make available series status messages for each individual options series in the event of a delayed opening or trading halt. The Exchange's equity trading facility currently makes this information available via one of its market data products.[10]

Finally, ArcaBook for Arca Options—Order Imbalance would make available a data feed that includes order imbalance information prior to the opening and closing of the market, a data product that is offered by the Exchange's equity trading facility[11] and is similar to products offered by other options exchanges.[12]

Each of these options data products will be offered through the Exchange's Liquidity Center Network (''LCN''), a local area network in the Exchange's Mahwah, New Jersey data center that is available to users of the Exchange's co-location services. The Exchange would also offer the products through the Exchange's Secure Financial Transaction Infrastructure (''SFTI'') network, through which all other Users and member organizations access the Exchange's trading and execution systems and other proprietary market data products.

The Exchange will submit a separate rule filing to establish fees for the data products.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[13] of the Act, in general, and furthers the objectives of Section 6(b)(5)[14] of the Act, in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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 it is not designed to permit unfair discrimination among customers, brokers, or dealers.

In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to consumers of such data. It was believed that this authority would expand the amount of data available to users and consumers of such data and also spur innovation and competition for the provision of market data. The Exchange believes that the options data products proposed herein are precisely the sort of market data products that the Commission envisioned when it adopted Regulation NMS. The Commission concluded that Regulation NMS—by lessening regulation of the market in proprietary data—would itself further the Act's goals of facilitating efficiency and competition:

[E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.[15]

By removing ''unnecessary regulatory restrictions'' on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history.

The Exchange further notes that the existence of alternatives to the Exchange's products, including real-time consolidated data, free delayed consolidated data, and proprietary data from other sources, ensures that the Exchange is not unreasonably discriminatory because vendors and subscribers can elect these alternatives.

The proposed options data products will help to protect a free and open market by providing additional data to the marketplace and give investors greater choices. In addition, the proposal would not permit unfair discrimination because the products will be available to all of the Exchange's customers and broker-dealers through both the LCN and SFTI.

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

[4] The OPRA Plan is a national market system plan approved by the Securities and Exchange Commission (''Commission'') pursuant to Section 11A of the Securities Exchange Act of 1934 (the ''Act'') and Rule 608 thereunder (formerly Rule 11Aa3–2). *See* Securities Exchange Act Release No. 17638 (March 18, 1981), 22 SE.C. Docket 484 (March 31, 1981). The full text of the OPRA Plan is available at *http://www.opradata.com.*

The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the participant exchanges. Section 5.2(c) of the OPRA Plan also permits OPRA Plan participants to disseminate unconsolidated market information to certain of their members under certain circumstances. The manner in which the Exchange proposes to disseminate the proposed products would comply with Section 5.2(c).

[5] For example, Chicago Board Options Exchange (''CBOE''), NASDAQ Options Market (''NOM''), and NASDAQ OMX PHLX LLC (''PHLX'') offer proprietary products that include their last sale data as reported to OPRA. *See* Securities Exchange Act Release No. 66486 (February 28, 2012), 77 FR 13166 (March 5, 2012) (SR–CBOE–2012–016); NOM Rules, Chapter VI, Section 1(a)(3) and Securities Exchange Act Release No. 64652 (June 13, 2011), 76 FR 35498 (June 17, 2011) (SR–NASDAQ–2011–075); and Securities Exchange Act Release No. 67352 (July 5, 2012), 77 FR 40930 (July 11, 2012) (SR–Phlx–2012–83), respectively.

[6] *See id. See also* Securities Exchange Act Release No. 65000 (August 1, 2011), 76 FR 47627 (August 5, 2011) (SR–ISE–2011–44).

[7] International Securities Exchange (''ISE'') currently offers ISE Depth of Market Feed, which includes the first five price levels on ISE's limit order book. *See* Securities Exchange Act Release No. 59949 (May 20, 2009), 74 FR 25593 (May 28, 2009) (SR–ISE–2007–97). NOM and PHLX also offer full depth of market feeds. *See supra* note 5.

[8] *See* Rule 6.62(e), which defines complex orders, and Rule 6.91, that describes electronic complex order trading, including requests for responses.

[9] *See, e.g.,* description of ISE Spread Feed in SR–ISE–2011–44, *supra* note 6, and description of TOPO of PHLX Options Plus Orders feed in SR–Phlx–2012–83, *supra* note 5.

[10] *See* Securities Exchange Act Release No. 65669 (November 2, 2011), 76 FR 69311 (November 8, 2011) (SR–NYSEArca–2011–78).

[11] *See id.*

[12] *See, e.g.,* SR–Phlx–2012–83 and SR–NASDAQ–2011–075, *supra* note 5. PHLX disseminates an Imbalance Message during the PHLX Opening Process. *See* Securities Exchange Act Release No. 66967 (May 11, 2012); 77 FR 29400 [sic] (May 17, 2012) (SR–Phlx–2012–60). NASDAQ's ITTO data product includes the order imbalance information relating to the opening as described in NASDAQ Options Market Rules Chapter VI, Section 8.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

necessary or appropriate in furtherance of the purposes of the Act. The market for proprietary data products is currently competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data. Numerous exchanges compete with each other for listings, trades, and market data itself, providing virtually limitless opportunities for entrepreneurs who wish to produce and distribute their own market data. This proprietary data is produced by each individual exchange, as well as other entities (such as internalizing broker-dealers and various forms of alternative trading systems, including dark pools and electronic communication networks), in a vigorously competitive market. It is common for market participants to further and exploit this competition by sending their order flow and transaction reports to multiple markets, rather than providing them all to a single market.

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.

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 [16] and Rule 19b–4(f)(6) thereunder.[17] 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) [18] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[19] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

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.

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–NYSE–Arca–2012—89 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

All submissions should refer to File Number SR–NYSE–Arca–2012–89. 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 Web site (*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 Web site 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NYSE Arca. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–Arca–2012–89 and should be submitted on or before September 20, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–21386 Filed 8–29–12; 8:45 am]

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[16] 15 U.S.C. 78s(b)(3)(A)(iii).

[17] 17 CFR 240.19b–4(f)(6).

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 240.19b–4(f)(6)(iii).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67726; File No. SR–EDGA–2012–28]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Order Approving a Proposed Rule Change To Amend EDGA Rules To Add the Route Peg Order

August 24, 2012.

I. Introduction

On June 26, 2012, EDGA Exchange, Inc. (''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 amend Exchange Rule 11.5 to provide an additional order type, the Route Peg Order. In addition, the Exchange proposed to amend Exchange Rule 11.8 to describe the priority of the Route Peg Order relative to other orders on the EDGA Book. The proposed rule change was published for comment in the **Federal Register** on July 5, 2012.[3] The Commission received no comment letters on the proposed rule change. On August 16, 2012, the Commission extended to October 3, 2012, the time period in which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[4] This order approves the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 67291 (June 28, 2012), 77 FR 39785 (''Notice'').

[4] *See* Securities Exchange Act Release No. 67677 (August 16, 2012), 77 FR 50740 (August 22, 2012).

II. Description of the Proposed Rule Change

The Exchange proposed to add a new order type, the Route Peg Order.[5] A Route Peg Order would be a non-displayed limit order eligible for execution at the national best bid (the ''NBB'') for Route Peg Orders to buy, and at the national best offer (the ''NBO'')[6] for Route Peg Orders to sell, against routeable orders that are equal to or less than the size of the Route Peg Order. The Route Peg Order would be a passive, resting order that could only provide liquidity. The Route Peg Order would not be permitted to take liquidity. Incoming orders that are designated as eligible for routing would be able to interact with Route Peg Orders. The incoming order would first be matched according to the price/time priority rules established by Exchange Rule 11.8(a)(2)(A)–(C). If any portion of the incoming order remained unexecuted only then would such order be eligible to execute against Route Peg Orders.[7] The Route Peg Order is intended to provide liquidity in the event that a marketable order would otherwise route to another destination. In addition, a Route Peg Order would only trade with orders that are equal to or smaller in quantity than the original order quantity of the Route Peg Order.[8] If a Route Peg Order were partially executed, it would be assigned a new time priority and new timestamp after each partial execution until either the remaining size is exhausted or the Route Peg Order is cancelled by the Member.[9]

Route Peg Orders would be able to be entered, cancelled and cancelled/replaced prior to and during Regular Trading Hours.[10] Route Peg Orders would be eligible for execution in a given security during Regular Trading Hours, except that, even after the commencement of Regular Trading Hours, Route Peg Orders would not be eligible for execution (1) in the opening cross, and (2) until such time that regular session orders in that security could be posted to the EDGA Book.[11] A Route Peg Order would not execute at a price that is inferior to a Protected Quotation,[12] and would not be permitted to execute if the NBBO were locked or crossed. Any and all remaining, unexecuted Route Peg Orders would be cancelled at the conclusion of Regular Trading Hours.

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[13] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[14] which requires, among other things, that the rules of a national securities exchange be 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 not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange notes that the Route Peg Order is designed to incentivize Users[15] to place greater liquidity at the NBBO, thereby promoting more favorable executions for the benefit of public customers. According to the Exchange, the Route Peg Order would result in more favourable and efficient executions by: (1) Offering liquidity providers a means to use the Exchange to post larger limit orders that are only executable at the NBBO and that do not disclose their trading interest to other market participants in advance of execution; (2) offering market participants seeking to access liquidity a greater expectation of market depth at the NBBO than may currently be the case; and (3) offering more predictable executions at the NBBO for Users by reducing the risk that incremental latency associated with routing an order to an away destination may result in an inferior execution.

Further, the Exchange believes that these benefits of the Route Peg Order would be realized only if they interact with orders that are eligible for routing, as they are characteristic of public customers who desire to execute at the best price. In contrast, notes the Exchange, professional traders typically expect to post to the book, execute immediately against the Exchange's best bid or offer, or ferret out hidden liquidity at or inside the NBBO and use non-routable orders to achieve these ends. The Exchange believes that Users would be reluctant to post liquidity through the Route Peg Order if such orders could interact with professional traders. Finally, the Exchange highlights that any User can place a routable order that is eligible for execution against a Route Peg Order.

Based on the Exchange's statements, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (SR–EDGA–2012–28) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–21388 Filed 8–29–12; 8:45 am]

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[5] The Exchange proposed to amend Exchange Rule 11.5(c) to add a new subparagraph (14) describing the Route Peg Order. *See* Notice, *supra* note 3 at 39785.

[6] Together, the NBO and NBB are referred to as the ''NBBO.''

[7] The Exchange proposed to codify the priority of the Route Peg Order in proposed new paragraph (a)(2)(D) of Exchange Rule 11.8. *See* Notice, *supra* note 3 at 39785 n. 5.

[8] If a Route Peg Order were partially executed, it would be able to execute against orders that were larger than the remaining balance of the Route Peg Order, but those orders would still need to be equal to or smaller than the original order quantity of the Route Peg Order. The Exchange stated that it elected to design the system in this manner to avoid the possibility of a single block-sized order potentially clearing all of the liquidity posted on the Exchange attributable to Route Peg Orders. *Id.* at 39786.

[9] The Exchange proposed to codify this principle in new subparagraph (a)(7) of Exchange Rule 11.8. The Exchange also proposes to add an exception for the Route Peg Order in Exchange Rule 11.8(a)(5), which otherwise would require that a partially executed order retain priority at the same limit price. The Exchange asserted that assigning a new timestamp after each partial execution would allow for a rotating priority of execution for Users (as defined in Exchange Rule 1.5(ee)) who place Route Peg Orders. *Id.* at 39786 n. 6.

[10] As defined in Exchange Rule 1.5(y).

[11] For example, for stocks listed on the New York Stock Exchange LLC (the ''NYSE''), regular session orders can be posted to the EDGA Book upon the dissemination by the responsible Securities Information Processor (''SIP'') of an opening print in that stock on the NYSE. Conversely, for stocks listed on the NASDAQ Stock Market LLC, regular session orders can be posted to the EDGA Book upon the dissemination of the NBBO by the responsible SIP in that stock.

[12] As defined in Exchange Rule 1.5(v).

[13] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78f(b)(5).

[15] As defined in Exchange Rule 1.5(ee).

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67727; File No. SR–EDGX–2012–25]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Order Approving a Proposed Rule Change To Amend EDGX Rules To Add the Route Peg Order

August 24, 2012.

I. Introduction

On June 26, 2012, EDGX Exchange, Inc. (''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 amend Exchange Rule 11.5 to provide an additional order type, the Route Peg Order. In addition, the Exchange proposed to amend Exchange Rule 11.8 to describe the priority of the Route Peg Order relative to other orders on the EDGX Book. The proposed rule change was published for comment in the **Federal Register** on July 5, 2012.[3] The Commission received no comment letters on the proposed rule change. On August 16, 2012, the Commission extended to October 3, 2012, the time period in which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[4] This order approves the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposed to add a new order type, the Route Peg Order.[5] A Route Peg Order would be a non-displayed limit order eligible for execution at the national best bid (the ''NBB'') for Route Peg Orders to buy, and at the national best offer (the ''NBO'') [6] for Route Peg Orders to sell, against routeable orders that are equal to or less than the size of the Route Peg Order. The Route Peg Order would be a passive, resting order that could only provide liquidity. The Route Peg Order would not be permitted to take liquidity. Incoming orders that are designated as eligible for routing would be able to interact with Route Peg Orders. The incoming order would first be matched according to the price/time priority rules established by Exchange Rule 11.8(a)(2)(A)–(D). If any portion of the incoming order remained unexecuted only then would such order be eligible to execute against Route Peg Orders.[7] The Route Peg Order is intended to provide liquidity in the event that a marketable order would otherwise route to another destination. In addition, a Route Peg Order would only trade with orders that are equal to or smaller in quantity than the original order quantity of the Route Peg Order.[8] If a Route Peg Order were partially executed, it would be assigned a new time priority and new timestamp after each partial execution until either the remaining size is exhausted or the Route Peg Order is cancelled by the Member.[9]

Route Peg Orders would be able to be entered, cancelled and cancelled/replaced prior to and during Regular Trading Hours.[10] Route Peg Orders would be eligible for execution in a given security during Regular Trading Hours, except that, even after the commencement of Regular Trading Hours, Route Peg Orders would not be eligible for execution (1) in the opening cross, and (2) until such time that regular session orders in that security could be posted to the EDGX Book.[11] A Route Peg Order would not execute at a price that is inferior to a Protected Quotation,[12] and would not be permitted to execute if the NBBO were locked or crossed. Any and all remaining, unexecuted Route Peg Orders would be cancelled at the conclusion of Regular Trading Hours.

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[13] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[14] which requires, among other things, that the rules of a national securities exchange be 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 not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange notes that the Route Peg Order is designed to incentivize Users [15] to place greater liquidity at the NBBO, thereby promoting more favorable executions for the benefit of public customers. According to the Exchange, the Route Peg Order would result in more favourable and efficient executions by: (1) Offering liquidity providers a means to use the Exchange to post larger limit orders that are only executable at the NBBO and that do not disclose their trading interest to other market participants in advance of execution; (2) offering market participants seeking to access liquidity a greater expectation of market depth at the NBBO than may currently be the case; and (3) offering more predictable executions at the NBBO for Users by reducing the risk that incremental latency associated with routing an order to an away destination may result in an inferior execution.

Further, the Exchange believes that these benefits of the Route Peg Order would be realized only if they interact with orders that are eligible for routing, as they are characteristic of public customers who desire to execute at the best price. In contrast, notes the Exchange, professional traders typically

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 67290 (June 28, 2012), 77 FR 39768 (''Notice'').

[4] *See* Securities Exchange Act Release No. 67676 (August 16, 2012), 77 FR 50740 (August 22, 2012).

[5] The Exchange proposed to amend Exchange Rule 11.5(c) to add a new subparagraph (17) describing the Route Peg Order. *See* Notice, *supra* note 3 at 39769.

[6] Together, the NBO and NBB are referred to as the ''NBBO.''

[7] The Exchange proposed to codify the priority of the Route Peg Order in proposed new paragraph (a)(2)(E) of Exchange Rule 11.8. *See* Notice, *supra* note 3 at 39769 n. 5.

[8] If a Route Peg Order were partially executed, it would be able to execute against orders that were larger than the remaining balance of the Route Peg Order, but those orders would still need to be equal to or smaller than the original order quantity of the Route Peg Order. The Exchange stated that it elected to design the system in this manner to avoid the possibility of a single block-sized order potentially clearing all of the liquidity posted on the Exchange attributable to Route Peg Orders. *Id.* at 39769.

[9] The Exchange proposed to codify this principle in new subparagraph (a)(7) of Exchange Rule 11.8. The Exchange also proposes to add an exception for the Route Peg Order in Exchange Rule 11.8(a)(5), which otherwise would require that a partially executed order retain priority at the same limit price. The Exchange asserted that assigning a new timestamp after each partial execution would allow for a rotating priority of execution for Users (as defined in Exchange Rule 1.5(ee)) who place Route Peg Orders. *Id.* at 39769 n. 6.

[10] As defined in Exchange Rule 1.5(y).

[11] For example, for stocks listed on the New York Stock Exchange LLC (the ''NYSE''), regular session orders can be posted to the EDGX Book upon the dissemination by the responsible Securities Information Processor (''SIP'') of an opening print in that stock on the NYSE. Conversely, for stocks listed on the NASDAQ Stock Market LLC, regular session orders can be posted to the EDGX Book upon the dissemination of the NBBO by the responsible SIP in that stock.

[12] As defined in Exchange Rule 1.5(v).

[13] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78f(b)(5).

[15] As defined in Exchange Rule 1.5(ee).

expect to post to the book, execute immediately against the Exchange's best bid or offer, or ferret out hidden liquidity at or inside the NBBO and use non-routable orders to achieve these ends. The Exchange believes that Users would be reluctant to post liquidity through the Route Peg Order if such orders could interact with professional traders. Finally, the Exchange highlights that any User can place a routable order that is eligible for execution against a Route Peg Order.

Based on the Exchange's statements, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (SR–EDGX–2012–25) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–21389 Filed 8–29–12; 8:45 am]

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[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67728; File No. SR–NYSEArca–2012–96]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Arca Rule 6.47, ''Crossing'' Orders—OX

August 24, 2012.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b-4 thereunder,[3] notice is hereby given that, on August 20, 2012, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III 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.

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Rule 6.47, ''Crossing'' Orders—OX. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.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 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 amend NYSE Arca Rule 6.47 to adopt a new procedure that provides for the execution of Customer-to-Customer Crosses on the Trading Floor. The proposal is based on a nearly identical customer-to-customer cross functionality provided in NYSE Amex Rule 934NY(a).[4]

NYSE Arca Options Rule 6.47 currently provides procedures for executing four different cross order types: (i) Non-Facilitation Cross (Regular way Cross); (ii) Facilitation Cross; (iii) Solicited Order Cross; and (iv) Mid-Point Cross.[5] Each of the existing methods to cross orders is designed to provide a useful order execution functionality to market participants. The Exchange now proposes to add a new cross order type, the Customer-to-Customer Cross, in order to provide customers with a new method to get executions on the Trading Floor while allowing them to benefit from price improvement from the Trading Crowd quotes.

Currently, if a Floor Broker intends to cross customer orders, to buy and sell the same option contract, the orders are executed pursuant to the Non-Facilitation Cross procedures.[6] When utilizing these procedures, a Floor Broker must request bids and offers for the option series involved and make the trading crowd and the Trading Official aware of the request for a market via open outcry. Then, after providing an opportunity for such bids and offers to be made, the Floor Broker must bid above the highest bid in the crowd, or offer below the lowest offer in the crowd, by at least the MPV. If such higher bid or lower offer is not taken by members of the trading crowd, the Floor Broker may cross the orders at such higher bid or lower offer by announcing by open outcry that he is crossing the orders and giving the quantity and price. The crossing of the orders is contingent on the requirements that: (i) the execution price must be equal to or better than the NBBO; and (ii) the Floor Broker may not trade through any bids or offers on the Consolidated Book that are priced equal to or better than the proposed execution price. If there are bids or offers on the Consolidated Book at or better than the proposed execution price, the Floor Broker must trade against such bids or offers in the Consolidated Book on behalf of the customer order(s). Once bids or offers in the Consolidated Book are satisfied, the Floor Broker may cross the remaining balance of the orders, if any. The orders will be cancelled or posted in the Consolidated Book if an execution would take place at a price that is inferior to the NBBO.[7]

The Exchange proposes to make available a new crossing procedure for Customer orders in situations when a Floor Broker who holds a Customer order to buy and a Customer order to sell the same option contract.[8] Under the proposal, to conduct a Customer-to-Customer Cross, a Floor Broker would be required to request bids and offers for the option series involved and make the Trading Crowd and the Trading Official aware of the request for a market via

[4] *See* Securities Exchange Act Release No. 59472 (February 27, 2009), 74 FR 9843 (March 6, 2009) (SR–NYSEAlternext–2008–14).

[5] *See* NYSE Arca Options Rule 6.47.

[6] *See* NYSE Arca Options Rule 6.47(a).

[7] The Floor Broker, at the direction of the Customer, will cancel or post the order to the Consolidated Book.

[8] ''Customer'' for purposes of the proposed Customer-to-Customer Order type is defined in NYSE Arca Options Rule 6.1A(a)(4). NYSE Arca Options Rule 6.1A(a)(4) provides that the term ''Customer'' shall not include a broker or dealer. *See* NYSE Arca Options Rule 6.1A(a)(4). NYSE Amex uses a nearly identical definition of customer for purposes of its customer-to-customer cross order. NYSE Amex Options Rule 900.2NY(18) provides that ''[t]he term ''Customer'' means an individual or organization that is not a Broker/Dealer; when not capitalized, ''customer'' refers to any individual or organization whose order is being represented, including a Broker/Dealer.'' *See* NYSE Amex Options Rule 900.2NY(18).

open outcry and provide opportunity for such bids and offers to be made, in a manner similar to the current Non-Facilitation Cross procedures. Once the best bids and offers are established in the trading crowd, the Floor Broker would be required to bid above the highest bid in the crowd, and offer below the lowest offer in the crowd.[9] Upon doing so, a Floor Broker could cross the orders at such higher bid and lower offer by announcing he is crossing orders on behalf of Customers, provided that: (i) the execution price is equal to or better than the NBBO; and (ii) the execution price does not trade through any equal or better priced bids or offers in the Consolidated Book. Thus, the Customers that are party to the order would benefit from price improvement over bids/offers in the Trading Crowd, yet still respect the priority of orders resting in the Consolidated Book. Finally, similar to the Non-Facilitation Cross procedures, Customer-to-Customer cross orders will be cancelled or posted in the Consolidated Book if an execution would take place at a price that is inferior to the NBBO.

The Exchange notes that the Customer-to-Customer Cross procedure is almost identical to the existing Non-Facilitation Cross; except that in contrast to the procedures for executing a Non-Facilitation Cross as detailed above, when a Customer-to-Customer Cross is properly announced, and after the execution price is established, the Customer orders will have priority over equal priced bids/offers in the Trading Crowd and would be executed against each other.[10]

The Exchange believes that Customers will benefit by have [sic] another method to execute their transactions on the Trading Floor, while allowing them to benefit from price improvement from the Trading Crowds quotes. While the Exchange currently has four crossing procedures to meet the execution needs of its market participants, the Exchange does not have one that is narrowly tailored to Customer only transactions that other competing options market have. The Exchange believes that having the ability to offer similar functionality on the Exchange will help the Exchange compete for Customer orders and facilitate transitions on the Exchange in the competitive marketplace for order flow. In addition, the Exchange believes that all market participants will benefit from the enhanced liquidity from facilitating the execution of these transactions on the Exchange. The Exchange notes that this proposal raises no novel issues and that several other options exchanges have similar crossing functionality.[11]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[12] in general, and furthers the objectives of Section 6(b)(5),[13] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The new Customer-to-Customer Cross procedure will provide a new method for Customers to get executions on the Trading Floor, while allowing them to benefit from price improvement from the Trading Crowd's quotes in a manner designed to promote just and equitable principles of trade on the Exchange. The Customer-to-Customer Cross will allow Customers an additional opportunity to trade their orders in situations where they do not want the risk of their order being broken-up and thus facilitate additional transactions on the Exchange and boost liquidity for all market participants.

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.

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.

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 [14] and Rule 19b–4(f)(6) thereunder.[15] 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) [16] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[17] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

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.

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–NYSEArca–2012–96 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2012–96. 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 Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the

[9] If the Floor Broker is unable to bid above the highest bid or below the lowest offer in the crowd, then the cross will not be able to be executed.

[10] *See* NYSE Arca Options Rule 6.47(a) and Proposed NYSE Arca Options Rule 6.47(e).

[11] *See* NYSE Amex Options Rule 934NY(a) and Phlx Rule 1064(a).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78s(b)(3)(A)(iii).

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii).

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 Web site 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2012–96 and should be submitted by September 20, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Kevin M. O'Neill,

Deputy Secretary.

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[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67729; File No. SR–NYSEArca–2012–92]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to the Listing and Trading of iShares 2018 S&P AMT-Free Municipal Series and iShares 2019 S&P AMT-Free Municipal Series Under NYSE Arca Equities Rule 5.2(j)(3), Commentary .02

August 24, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 16, 2012, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially 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 list and trade under NYSE Arca Equities Rule 5.2(j)(3), Commentary .02, the shares of the following two series of iShares Trust: iShares 2018 S&P AMT-Free Municipal Series and iShares 2019 S&P AMT-Free Municipal Series. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.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 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 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 Statutory Basis for, the Proposed Rule Change

1. *Purpose*

The Exchange proposes to list and trade shares (''Shares'') of the following two series of iShares Trust (''Trust'') under NYSE Arca Equities Rule 5.2(j)(3), Commentary .02, which governs the listing and trading of Investment Company Units (''Units'') based on fixed income securities indexes: iShares 2018 S&P AMT-Free Municipal Series (''2018 Fund'') and iShares 2019 S&P AMT-Free Municipal Series[3] (''2019 Fund'' and, together with the 2018 Fund, ''Funds'').[4]

Blackrock Fund Advisors (''BFA'') is the investment adviser for the Funds. SEI Investments Distribution Co. is the Funds' distributor (''Distributor'').

iShares 2018 S&P AMT-Free Municipal Series

The 2018 Fund will seek investment results that correspond generally to the price and yield performance, before fees and expenses, of the S&P AMT-Free Municipal Series 2018 Index™ (''2018 Index'').[5] The 2018 Fund will not seek

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission has previously approved listing and trading of Units based on certain fixed income indexes. *See, e.g.,* Securities Exchange Act Release No. 48662 (October 20, 2003), 68 FR 61535 (October 28, 2003) (SR–PCX–2003–41) (approving trading either by listing or pursuant to unlisted trading privileges of certain fixed income exchange-traded funds). In addition, the Commission has approved NYSE Arca generic listing rules for Units based on a fixed income index in Securities Exchange Act Release No. 55783 (May 17, 2007), 72 FR 29194 (May 24, 2007) (SR–NYSEArca–2007–36). The Commission has approved pursuant to Section 19(b)(2) of the Exchange Act the listing on the American Stock Exchange (''Amex'') of exchange-traded funds based on fixed income indexes. *See, e.g.,* Securities Exchange Act Release No. 48534 (September 24, 2003), 68 FR 56353 (September 30, 2003) (SR–Amex–2003–75) (order approving listing on Amex of eight series of iShares Lehman Bond Funds). The Commission has approved two actively managed funds of the PIMCO ETF Trust that hold municipal bonds. *See* Securities Exchange Act Release No. 60981 (November 10, 2009), 74 FR 59594 (November 18, 2009) (SR–NYSEArca–2009–79) (order approving listing and trading of PIMCO Short-Term Municipal Bond Strategy Fund and PIMCO Intermediate Municipal Bond Strategy Fund, among others). The Commission has approved listing and trading on the Exchange of the SPDR Nuveen S&P High Yield Municipal Bond Fund. *See* Securities Exchange Act Release No. 63881 (February 9, 2011), 76 FR 9065 (February 16, 2011) (SR–NYSEArca–2010–120). The Commission also has issued a notice of filing and immediate effectiveness of a proposed rule change relating to listing and trading on the Exchange of the iShares Taxable Municipal Bond Fund. *See* Securities Exchange Act Release No. 63176 (October 25, 2010), 75 FR 66815 (October 29, 2010) (SR–NYSEArca–2010–94).

[4] *See* Post-Effective Amendment No. 745 (with respect to the 2018 Fund, ''2018 Registration Statement'') and Post-Effective Amendment No. 746 (with respect to the 2019 Fund, ''2019 Registration Statement'') to the Trust's registration statement on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a) and the Investment Company Act of 1940 (''1940 Act'') (15 U.S.C. 80a–1), each dated June 29, 2012 (File *Nos.* 333–92935 and 811–09729) (collectively, ''Registration Statements''). The description of the operation of the Trust and the Funds herein is based, in part, on the Registration Statements. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 27608 (December 21, 2006) (File No. 812–13208) (''Exemptive Order'').

[5] Each of the 2018 Index and 2019 Index (as defined below) (collectively, ''Underlying Indexes'') is sponsored by an organization (''Index Provider'') that is independent of the Funds and BFA. The Index Provider determines the composition and relative weightings of the securities in the Underlying Indexes and publishes information

to return any predetermined amount at maturity.

According to the 2018 Registration Statement, the 2018 Index measures the performance of investment-grade U.S. municipal bonds maturing in 2018. As of May 1, 2012, there were 1,443 issues in the 2018 Index.

The 2018 Index includes municipal bonds primarily from issuers that are state or local governments or agencies (including the Commonwealth of Puerto Rico and U.S. territories such as the U.S. Virgin Islands and Guam) such that the interest on the bonds is exempt from U.S. federal income taxes and the federal alternative minimum tax (''AMT''). Each bond must have a rating of at least BBB− by S&P, Baa3 by Moody's Investors Service, Inc. (''Moody's''), or BBB− by Fitch, Inc. and must have a minimum maturity par amount of $2 million to be eligible for inclusion in the 2018 Index. To remain in the 2018 Index, bonds must maintain a minimum par amount greater than or equal to $2 million as of each rebalancing date. All bonds in the 2018 Index will mature between June 1 and August 31 of 2018. When a bond matures in the 2018 Index, an amount representing its value at maturity will be included in the 2018 Index throughout the remaining life of the 2018 Index, and any such amount will be assumed to earn a rate equal to the performance of the S&P's Weekly High Grade Index, which consists of Moody's Investment Grade-1 municipal tax-exempt notes that are not subject to federal AMT. By August 31, 2018, the 2018 Index is expected to consist entirely of cash carried in this manner. The 2018 Index is a market value weighted index and is rebalanced after the close on the last business day of each month.

The Exchange is submitting this proposed rule change because the 2018 Index for the 2018 Fund does not meet all of the ''generic'' listing requirements of Commentary .02(a) to NYSE Arca Equities Rule 5.2(j)(3) applicable to the listing of Units based on fixed income securities indexes. The 2018 Index meets all such requirements except for those set forth in Commentary .02(a)(2).[6] Specifically, as of May 1, 2012, 9.95% of the weight of the 2018 Index components have a minimum original principal amount outstanding of $100 million or more.

The 2018 Fund generally will invest at least 80% of its assets in the securities of the 2018 Index, except during the last months of such Fund's operations, as described below. The 2018 Fund may at times invest up to 20% of its assets in cash and cash equivalents (including money market funds affiliated with BFA), as well as in municipal bonds not included in the 2018 Index, but which BFA believes will help the 2018 Fund track the 2018 Index. For example, the 2018 Fund may invest in municipal bonds not included in the 2018 Index in order to reflect prospective changes in the 2018 Index (such as 2018 Index reconstitutions, additions, and deletions). The 2018 Fund will generally hold municipal bond securities issued by state and local municipalities whose interest payments are exempt from U.S. federal income tax, the federal AMT and, effective beginning in 2013, a federal Medicare contribution tax of 3.8% on ''net investment income,'' including dividends, interest, and capital gains. In addition, the 2018 Fund may invest any cash assets in one or more affiliated municipal money market funds. In the last months of operation, as the bonds held by the 2018 Fund mature, the proceeds will not be reinvested in bonds but instead will be held in cash and cash equivalents, including without limitation, AMT-free tax-exempt municipal notes, variable rate demand notes and obligations, tender option bonds, and municipal commercial paper. These cash equivalents may not be included in the 2018 Index. On or about August 31, 2018, the 2018 Fund will wind up and terminate, and its net assets will be distributed to then-current shareholders.

As of May 1, 2012, 81.50% of the weight of the 2018 Index components was comprised of individual maturities that were part of an entire municipal bond offering with a minimum original principal amount outstanding of $100 million or more for all maturities of the offering. In addition, the total dollar amount outstanding of issues in the 2018 Index was approximately $16.59 billion and the average dollar amount outstanding of issues in the 2018 Index was approximately $11.50 million. Further, the most heavily weighted component represents 4.06% of the weight of the 2018 Index, and the five most heavily weighted components represent 8.20% of the weight of the 2018 Index.[7] Therefore, the Exchange believes that, notwithstanding that the 2018 Index does not satisfy the criterion in NYSE Arca Equities Rule 5.2(j)(3), Commentary .02(a)(2), the 2018 Index is sufficiently broad-based to deter potential manipulation, given that it is comprised of approximately 1,443 issues. In addition, the 2018 Index securities are sufficiently liquid to deter potential manipulation in that a substantial portion (81.50%) of the 2018 Index weight is comprised of maturities that are part of a minimum original principal amount outstanding of $100 million or more, and in view of the substantial total dollar amount outstanding and the average dollar amount outstanding of 2018 Index issues, as referenced above.

In addition, the average daily notional trading volume for 2018 Index components for the period April 1, 2011 to April 30, 2012 was $12,417,528, and the sum of the notional trading volumes for the same period was approximately $3.38 billion. As of May 1, 2012, 54.78% of the 2018 Index weight consisted of issues with a rating of AA/Aa2 or higher.

The 2018 Index value, calculated and disseminated at least once daily, as well as the components of the 2018 Index and their percentage weightings, will be available from major market data vendors. In addition, the portfolio of securities held by the 2018 Fund will be disclosed on the Fund's Web site at *www.iShares.com.*

iShares 2019 S&P AMT-Free Municipal Series

The 2019 Fund will seek investment results that correspond generally to the price and yield performance, before fees and expenses, of the S&P AMT-Free Municipal Series 2019 Index™ (''2019 Index'').[8] The 2019 Fund will not seek to return any predetermined amount at maturity.

According to the 2019 Registration Statement, the 2019 Index measures the performance of investment-grade U.S. municipal bonds maturing in 2019. As of May 1, 2012, there were 1,157 issues in the 2019 Index.

The 2019 Index includes municipal bonds primarily from issuers that are state or local governments or agencies

regarding the market value of the Underlying Indexes. The Index Provider with respect to the Underlying Indexes is Standard & Poor's Financial Services LLC (a subsidiary of The McGraw-Hill Companies) (''S&P''). The Index Provider is not a broker-dealer or affiliated with a broker-dealer and has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Underlying Indexes.

[6] Commentary .02(a)(2) to NYSE Arca Equities Rule 5.2(j)(3) provides that components that in the aggregate account for at least 75% of the weight of the index or portfolio each shall have a minimum original principal amount outstanding of $100 million or more.

[7] Commentary .02(a)(4) to NYSE Arca Equities Rule 5.2(j)(3) provides that no component fixed-income security (excluding Treasury Securities and GSE Securities, as defined therein) shall represent more than 30% of the weight of the index or portfolio, and the five most heavily weighted component fixed-income securities in the index or portfolio shall not in the aggregate account for more than 65% of the weight of the index or portfolio.

[8] S&P is the 2019 Fund's Index Provider. *See* note 5, *supra.*

(including the Commonwealth of Puerto Rico and U.S. territories such as the U.S. Virgin Islands and Guam) such that the interest on the bonds is exempt from U.S. federal income taxes and the federal AMT. Each bond must have a rating of at least BBB– by S&P, Baa3 by Moody's, or BBB– by Fitch, Inc. and must have a minimum maturity par amount of $2 million to be eligible for inclusion in the 2019 Index. To remain in the 2019 Index, bonds must maintain a minimum par amount greater than or equal to $2 million as of each rebalancing date. All bonds in the 2019 Index will mature between June 1 and August 31 of 2019. When a bond matures in the 2019 Index, an amount representing its value at maturity will be included in the 2019 Index throughout the remaining life of the 2019 Index, and any such amount will be assumed to earn a rate equal to the performance of the S&P's Weekly High Grade Index, which consists of Moody's Investment Grade-1 municipal tax-exempt notes that are not subject to federal AMT. By August 31, 2019, the 2019 Index is expected to consist entirely of cash carried in this manner. The 2019 Index is a market value weighted index and is rebalanced after the close on the last business day of each month.

The Exchange is submitting this proposed rule change because the 2019 Index for the 2019 Fund does not meet all of the ''generic'' listing requirements of Commentary .02(a) to NYSE Arca Equities Rule 5.2(j)(3) applicable to listing of Units based on fixed income securities indexes. The 2019 Index meets all such requirements except for those set forth in Commentary .02(a)(2).[9] Specifically, as of May 1, 2012, 9.62% of the weight of the 2019 Index components have a minimum original principal amount outstanding of $100 million or more.

The 2019 Fund generally will invest at least 80% of its assets in the securities of the 2019 Index, except during the last months of the 2019 Fund's operations, as described below. The Fund may at times invest up to 20% of its assets in cash and cash equivalents (including money market funds affiliated with BFA), as well as in municipal bonds not included in the 2019 Index, but which BFA believes will help the 2019 Fund track the 2019 Index. For example, the 2019 Fund may invest in municipal bonds not included in the 2019 Index in order to reflect prospective changes in the 2019 Index (such as 2019 Index reconstitutions, additions, and deletions). The 2019 Fund will generally hold municipal bond securities issued by state and local municipalities whose interest payments are exempt from U.S. federal income tax, the federal AMT and, effective beginning in 2013, a federal Medicare contribution tax of 3.8% on ''net investment income,'' including dividends, interest, and capital gains. In addition, the 2019 Fund may invest any cash assets in one or more affiliated municipal money market funds. In the last months of operation, as the bonds held by the 2019 Fund mature, the proceeds will not be reinvested in bonds but instead will be held in cash and cash equivalents, including without limitation, AMT-free tax-exempt municipal notes, variable rate demand notes and obligations, tender option bonds, and municipal commercial paper. These cash equivalents may not be included in the 2019 Index. On or about August 31, 2019, the 2019 Fund will wind up and terminate, and its net assets will be distributed to then-current shareholders.

As of May 1, 2012, 81.66% of the weight of the 2019 Index components was comprised of individual maturities that were part of an entire municipal bond offering with a minimum original principal amount outstanding of $100 million or more for all maturities of the offering. In addition, the total dollar amount outstanding of issues in the 2019 Index was approximately $13.50 billion, and the average dollar amount outstanding of issues in the 2019 Index was approximately $11.67 million. Further, the most heavily weighted component represents 3.67% of the weight of the 2019 Index, and the five most heavily weighted components represent 9.62% of the weight of the 2019 Index.[10] Therefore, the Exchange believes that, notwithstanding that the 2019 Index does not satisfy the criterion in NYSE Arca Equities Rule 5.2(j)(3), Commentary .02(a)(2), the 2019 Index is sufficiently broad-based to deter potential manipulation, given that the 2019 Index is comprised of approximately 1,157 issues. In addition, the 2019 Index securities are sufficiently liquid to deter potential manipulation in that a substantial portion (81.66%) of the 2019 Index weight is comprised of maturities that are part of a minimum original principal amount outstanding of $100 million or more, and in view of the substantial total dollar amount outstanding and the average dollar amount outstanding of 2019 Index issues, as referenced above.

In addition, the average daily notional trading volume for 2019 Index components for the period April 1, 2011 to April 30, 2012 was $14,434,454, and the sum of the notional trading volumes for the same period was approximately $3.93 billion. As of May 1, 2012, 52.52% of the 2019 Index weight consisted of issues with a rating of AA/Aa2 or higher.

The 2019 Index value, calculated and disseminated at least once daily, as well as the components of the 2019 Index and their percentage weightings, will be available from major market data vendors. In addition, the portfolio of securities held by the 2019 Fund will be disclosed on the Fund's Web site at *www.iShares.com.*

According to the Registration Statements, BFA expects that, over time, each Fund's tracking error will not exceed 5%. ''Tracking error'' is the difference between the performance (return) of a Fund's portfolio and that of the applicable Underlying Index.

The Exchange represents that: (1) Except for Commentary .02(a)(2) to NYSE Arca Equities Rule 5.2(j)(3), the Shares of the Funds currently satisfy all of the generic listing standards under NYSE Arca Equities Rule 5.2(j)(3); (2) the continued listing standards under NYSE Arca Equities Rules 5.2(j)(3) and 5.5(g)(2) applicable to Units shall apply to the Shares; and (3) the Trust is required to comply with Rule 10A–3 under the Exchange Act[11] for the initial and continued listing of the Shares. In addition, the Exchange represents that the Shares will comply with all other requirements applicable to Units including, but not limited to, requirements relating to the dissemination of key information such as the value of the Underlying Indexes and the applicable Intraday Indicative Value (''IIV''),[12] rules governing the trading of equity securities, trading hours, trading halts, surveillance, and the Information Bulletin to Equity Trading Permit Holders (''ETP Holders''), as set forth in Exchange rules applicable to Units and prior Commission orders approving the generic listing rules applicable to the listing and trading of Units.[13]

[9] *See* note 6, *supra.*

[10] *See* note *7, supra.*

[11] 17 CFR 240.10A–3.

[12] The IIV will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session of 9:30 a.m. to 4 p.m. Eastern Time. Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available IIVs *taken from* the Consolidated Tape Association (''CTA'') or other data feeds.

[13] *See, e.g.,* Securities Exchange Act Release Nos. 55783 (May 17, 2007), 72 FR 29194 (May 24, 2007) (SR–NYSEArca–2007–36) (order approving NYSE Arca generic listing standards for Units based on a fixed income index); 44551 (July 12, 2001), 66 FR 37716 (July 19, 2001) (SR–PCX–2001–14) (order approving generic listing standards for Units and

The current value of the 2018 Index and 2019 Index will be widely disseminated by one or more major market data vendors at least once per day, as required by NYSE Arca Equities Rule 5.2(j)(3), Commentary .02(b)(ii). The IIV for Shares of each Fund will be disseminated by one or more major market data vendors, updated at least every 15 seconds during the Exchange's Core Trading Session, as required by NYSE Arca Equities Rule 5.2(j)(3), Commentary .02(c).

Correlation Among Municipal Bond Instruments With Common Characteristics

With respect to each of the Funds, BFA represents that the nature of the municipal bond market and municipal bond instruments makes it feasible to categorize individual issues represented by CUSIPs (*i.e.,* the specific identifying number for a security) into categories according to common characteristics—specifically, rating, purpose (*i.e.,* general obligation bonds, revenue bonds, or ''double-barreled'' bonds),[14] geographical region, and maturity. Bonds that share similar characteristics tend to trade similarly to one another; therefore, within these categories, the issues may be considered fungible from a portfolio management perspective, allowing one CUSIP to be represented by another that shares similar characteristics for purposes of developing an investment strategy. Therefore, while 9.95% of the weight of the 2018 Index components and 9.62% of the weight of the 2019 Index have a minimum original principal amount outstanding of $100 million or more, the nature of the municipal bond market makes the issues relatively fungible for investment purposes when aggregated into categories such as ratings, purpose, geographical region, and maturity. In addition, within a single municipal bond issuer, there are often multiple contemporaneous or sequential issuances that have the same rating, structure, and maturity, but have different CUSIPs; these separate issues by the same issuer are also likely to trade similarly to one another.

BFA represents that iShares municipal bond funds are managed utilizing the principle that municipal bond issues are generally fungible in nature when sharing common characteristics, and specifically make use of the four categories referred to above. In addition, this principle is used in, and consistent with, the portfolio construction process for other iShares funds—namely, portfolio optimization. These portfolio optimization techniques are designed to facilitate the creation and redemption process, and to enhance liquidity (among other benefits, such as reducing transaction costs), while still allowing each fund to closely track its reference index.

In addition, individual CUSIPs within the 2018 and 2019 Indexes that share characteristics with other CUSIPs based on the four categories described above have a high yield to maturity correlation, and frequently have a correlation of one or close to one. Such correlation demonstrates that the CUSIPs within their respective category behave similarly; this reinforces the fungible nature of municipal bond issues for purposes of developing an investment strategy.

The following examples, which are based on the top 100 index constituents in the 2018 Index and 2019 Index, respectively, by weight and sampling of each category, reflect the yield to maturity correlation among CUSIPs in each Index.[15] These examples show the correlation of selected constituents in each Index that share three common characteristics: rating, purpose, and geographical region.

Example 1: 2018 Index; yield to maturity of issues sharing three common characteristics:

Rating AAA / Aaa;[16] Western Region; GO Bonds

Security	917542RT1	917542QQ8	917542SR4	917542PJ5	917542PK2	917542PL0	917542PQ9
917542RT1	1						
917542QQ8	1	1					
917542SR4	1	1	1				
917542PJ5	0.996	0.996	0.996	1			
917542PK2	0.996	0.996	0.996	1	1		
917542PL0	0.996	0.996	0.996	1	1	1	
917542PQ9	0.996	0.996	0.996	1	1	1	1

Portfolio Depositary Receipts); 41983 (October 6, 1999), 64 FR 56008 (October 15, 1999) (SR–PCX–98–29) (order approving rules for listing and trading of Units).

[14] General obligation (''GO'') bonds are backed by the full faith and credit of the issuer and by its taxing power. Revenue bonds (''REV'') are payable solely from net or gross non-tax revenues derived from a specific project. Double-barreled (''DB'') GO bonds are secured by both a specific revenue stream and by the taxing power of the issuer. As of May 1, 2012, the market value of GO, REV, and DB bonds in the 2018 Index was approximately $6.1 billion, $6.56 billion, and $1.26 billion, respectively, representing 36.21%, 39.53%, and 7.62% of the 2018 Index weight, respectively. As of May 1, 2012, the market value of GO, REV, and DB bonds in the 2019 Index was approximately $4.82 billion, $5.21 billion, and $1.16 billion, respectively, representing 43.11%, 46.54%, and 10.34% of the 2019 Index weight, respectively.

[15] The correlation data below is based on data from Bloomberg, reflecting yield to maturity over a one year period from May 1, 2011 to May 1, 2012.

[16] This is a composite rating among Standard & Poor's, Moody's and Fitch ratings. Under BFA's methodology, the median rating is used if all three ratings are available; the lowest rating is used if only two ratings are available; and, if only one rating is available, that one is used.

Example 2: 2019 Index: Rating AAA / Aaa; Southeast Region; GO Bonds

Security	373384PL4	658256H39	880541SL2	83710D3Y2	34153PYX0	34153PNF1	373383GK8
373384PL4	1.000						
658256H39	0.996	1.000					
880541SL2	0.992	0.977	1.000				
83710D3Y2	0.996	0.994	0.990	1.000			
34153PYX0	0.974	0.979	0.951	0.979	1.000		
34153PNF1	0.974	0.979	0.951	0.979	1.000	1.000	
373383GK8	1.000	0.995	0.993	0.996	0.973	0.973	1.000

Creation and Redemption of Shares

According to the Registration Statements, the Funds will issue and redeem Shares on a continuous basis at the net asset value per Share (''NAV'') only in a large specified number of Shares called a ''Creation Unit,'' or multiples thereof, with each Creation Unit consisting of 50,000 Shares, provided, however, that from time to time a Fund may change the number of Shares (or multiples thereof) required for each Creation Unit, if such Fund determines such a change would be in the best interests of such Fund.

The consideration for purchase of Creation Units of each Fund generally will consist of the in-kind deposit of a designated portfolio of securities (including any portion of such securities for which cash may be substituted) (*i.e.,* Deposit Securities), which constitutes a representative sample of the securities of the applicable Underlying Index,[17] and the ''Cash Component'' computed as described below. Together, the Deposit Securities and the Cash Component constitute the ''Fund Deposit,'' which represents the minimum initial and subsequent investment amount for a Creation Unit of the respective Fund.

The portfolio of securities required for purchase of a Creation Unit may not be identical to the portfolio of securities the respective Fund will deliver upon redemption of Fund shares. The Deposit Securities and Fund Securities (as defined below), as the case may be, in connection with a purchase or redemption of a Creation Unit, generally will correspond pro rata, to the extent practicable, to the securities held by such Fund. As the planned termination date of a Fund approaches, and particularly as the bonds held by the respective Fund begin to mature, such Fund would expect to effect both creations and redemptions increasingly for cash.

The Cash Component will be an amount equal to the difference between the NAV of the respective Shares (per Creation Unit) and the ''Deposit Amount,'' which will be an amount equal to the market value of the Deposit Securities, and serve to compensate for any differences between the NAV per Creation Unit and the Deposit Amount. Each Fund currently will offer Creation Units for in-kind deposits but reserves the right to utilize a ''cash'' option in lieu of some or all of the applicable Deposit Securities for creation of Shares.

BFA will make available through the National Securities Clearing Corporation (''NSCC'') on each business day, prior to the opening of business on the Exchange, the list of names and the required number or par value of each Deposit Security and the amount of the Cash Component to be included in the current Fund Deposit (based on information as of the end of the previous business day) for each Fund.

The identity and number or par value of the Deposit Securities will change pursuant to changes in the composition of the respective Fund's portfolio and as rebalancing adjustments and corporate action events will be reflected from time to time by BFA with a view to the investment objective of each Fund. The composition of the Deposit Securities may also change in response to adjustments to the weighting or composition of the component securities constituting the applicable Underlying Index.

Each Fund reserves the right to permit or require the substitution of a ''cash in lieu'' amount to be added to the Cash Component to replace any Deposit Security that may not be available in sufficient quantity for delivery or that may not be eligible for transfer through the Depository Trust Company (''DTC'').

Creation Units may be purchased only by or through a DTC participant that has entered into an ''Authorized Participant Agreement'' (as described in the Registration Statements) with the Distributor (''Authorized Participant''). Except as noted below, all creation orders must be placed for one or more Creation Units and must be received by the Distributor in proper form no later than the closing time of the regular trading session of the Exchange (normally 4 p.m. Eastern Time) in each case on the date such order is placed in order for creation of Creation Units to be effected based on the NAV of Shares of the respective Fund as next determined on such date after receipt of the order in proper form. Orders requesting substitution of a ''cash in lieu'' amount generally must be received by the Distributor no later than 2 p.m. Eastern Time. On days when the Exchange or the bond markets close earlier than normal, the Funds may require orders to create Creation Units to be placed earlier in the day.

Fund Deposits must be delivered through the Federal Reserve System (for cash and government securities) and through DTC (for corporate and municipal securities) by an Authorized Participant. The Fund Deposit transfer must be ordered by the DTC *participant* in a timely fashion so as to ensure the delivery of the requisite number of Deposit Securities through DTC to the account of each Fund by no later than 3 p.m. Eastern Time, on the ''Settlement Date.'' The Settlement Date is generally the third business day after the transmittal date.

A standard creation transaction fee will be imposed to offset the transfer and other transaction costs associated with the issuance of Creation Units.

Shares of the Funds may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form by the

[17] According to the Registration Statements, ''representative sampling'' is an indexing strategy that involves investing in a representative sample of securities that collectively has an investment profile similar to the applicable Underlying Index. The securities selected are expected to have, in the aggregate, investment characteristics (based on factors such as market capitalization and industry weightings), fundamental characteristics (such as return variability, duration, maturity or credit ratings and yield), and liquidity measures similar to those of the applicable Underlying Index. The Funds may or may not hold all of the securities in the applicable Underlying Index.

Distributor and only on a business day. BFA will make available through the NSCC, prior to the opening of business on the Exchange on each business day, the designated portfolio of securities (including any portion of such securities for which cash may be substituted) that will be applicable (subject to possible amendment or correction) to redemption requests received in proper form on that day (''Fund Securities''). Fund Securities received on redemption may not be identical to Deposit Securities that are applicable to creations of Creation Units.

Unless cash redemptions are available or specified for the respective Fund, the redemption proceeds for a Creation Unit generally will consist of a specified amount of cash, Fund Securities, plus additional cash in an amount equal to the difference between the NAV of the Shares being redeemed, as next determined after the receipt of a request in proper form, and the value of the specified amount of cash and Fund Securities, less a redemption transaction fee. Each Fund currently will redeem Shares for Fund Securities, but each Fund reserves the right to utilize a ''cash'' option for redemption of Shares.

A standard redemption transaction fee will be imposed to offset transfer and other transaction costs that may be incurred by the Funds.

Redemption requests for Creation Units of the Funds must be submitted to the Distributor by or through an Authorized Participant no later than 4 p.m. Eastern Time on any business day, in order to receive that day's NAV. The Authorized Participant must transmit the request for redemption in the form required by each Fund to the Distributor in accordance with procedures set forth in the Authorized Participant Agreement.

Detailed descriptions of the Funds, the Underlying Indexes, procedures for creating and redeeming Shares, transaction fees and expenses, dividends, distributions, taxes, risks, and reports to be distributed to beneficial owners of the Shares can be found in the Registration Statements or on the Web site for the Funds (*www.iShares.com*), as applicable.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5) [18] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 5.2(j)(3). The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange may obtain information via the Intermarket Surveillance Group (''ISG'') from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. The Index Provider is not a broker-dealer or affiliated with a broker-dealer and has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Underlying Indexes. With respect to the 2018 Fund, as of May 1, 2012, there were 1,443 issues in the 2018 Index. As of May 1, 2012, 81.50% of the weight of the 2018 Index components was comprised of individual maturities that were part of an entire municipal bond offering with a minimum original principal amount outstanding of $100 million or more for all maturities of the offering. In addition, the total dollar amount outstanding of issues in the 2018 Index was approximately $16.59 billion and the average dollar amount outstanding of issues in the 2018 Index was approximately $11.50 million. Further, the most heavily weighted component represents 4.06% of the weight of the 2018 Index and the five most heavily weighted components represent 8.20% of the weight of the 2018 Index. Therefore, the 2018 Index is sufficiently broad-based and sufficiently liquid to deter potential manipulation. With respect to the 2019 Fund, as of May 1, 2012, there were 1,157 issues in the 2019 Index. As of May 1, 2012, 81.66% of the weight of the 2019 Index components was comprised of individual maturities that were part of an entire municipal bond offering with a minimum original principal amount outstanding of $100 million or more for all maturities of the offering. In addition, the total dollar amount outstanding of issues in the 2019 Index was approximately $13.50 billion and the average dollar amount outstanding of issues in the 2019 Index was approximately $11.67 million. Further, the most heavily weighted component represents 3.67% of the weight of the 2019 Index and the five most heavily weighted components represent 9.62% of the weight of the 2019 Index. Therefore, the 2019 Index is sufficiently broad-based and sufficiently liquid to deter potential manipulation. The 2018 Index value and 2019 Index value, calculated and disseminated at least once daily, as well as the components of the 2018 Index and 2019 Index and their respective percentage weightings, will be available from major market data vendors. In addition, the portfolio of securities held by the 2018 Fund and 2019 Fund will be disclosed on the Funds' Web site at *www.iShares.com.* The IIV for Shares of each Fund will be disseminated by one or more major market data vendors, updated at least every 15 seconds during the Exchange's Core Trading Session. According to the Registration Statements, BFA expects that, over time, each Fund's tracking error will not exceed 5%. BFA represents that bonds that share similar characteristics, as described above, tend to trade similarly to one another; therefore, within these categories, the issues may be considered fungible from a portfolio management perspective. Within a single municipal bond issuer, BFA represents that separate issues by the same issuer are also likely to trade similarly to one another. In addition, BFA represents that individual CUSIPs within the 2018 and 2019 Indexes that share characteristics with other CUSIPs based on the four categories described above have a high yield to maturity correlation, and frequently have a correlation of one or close to one.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest. In addition, a large amount of information is publicly available regarding the Funds and the Shares, thereby promoting market transparency. The Funds' portfolio holdings will be disclosed on the Funds' Web site daily after the close of trading on the Exchange and prior to the opening of trading on the Exchange the following day. Moreover, the IIV will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session. The current value of the Underlying Indexes will be disseminated by one or more major market data vendors at least once per day. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic

[18] 15 U.S.C. 78f(b)(5).

services, and quotation and last-sale information will be available via the CTA high-speed line. The Web site for the Funds will include the prospectus for the Funds and additional data relating to NAV and other applicable quantitative information. Moreover, prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. If the Exchange becomes aware that the NAV is not being disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants. With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the *Funds.* Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. If the IIV or the Underlying Index values are not being disseminated as required, NYSE Arca Equities, Inc. (''Corporation'') may halt trading during the day in which the interruption to the dissemination of the applicable IIV or Underlying Index value occurs. If the interruption to the dissemination of the applicable IIV or Underlying Index value persists past the trading day in which it occurred, the Corporation will halt trading. Trading in Shares of the Funds will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to NYSE Arca Equities Rule 7.34, which sets forth circumstances under which Shares of the Funds may be halted. In addition, investors will have ready access to information regarding the IIV, and quotation and last-sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of additional types of exchange-traded funds that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, investors will have ready access to information regarding the IIV and quotation and last-sale information for the Shares.

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.

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.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission shall:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be 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–NYSEArca–2012–92 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2012–92. 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 Web site (*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 Web site 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 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NYSEArca–2012–92 and should be submitted on or before September 20, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–21391 Filed 8–29–12; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice 7998]

Certification Related to Colombian Armed Forces Under the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2012

Pursuant to the section 7045(a) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2012 (Div. I, Pub. L. 112–74) (''FY 2012 SFOAA'') and Delegation of Authority 245–1, I hereby certify and report that the Colombian Armed Forces and the Government of Colombia are meeting the conditions contained in section 7045 of the Joint Explanatory Statement that accompanies the FY 2012 SFOAA.

[19] 17 CFR 200.30–3(a)(12).

This Certification shall be published in the **Federal Register**, and copies shall be transmitted to the appropriate committees of Congress.

Dated: August 20, 2012.

Wendy R. Sherman,

Under Secretary of State.

[FR Doc. 2012–21421 Filed 8–29–12; 8:45 am]

BILLING CODE 4710–29–P

DEPARTMENT OF STATE

[Public Notice 8001]

Culturally Significant Objects Imported for Exhibition Determinations: ''Federico Barocci: Renaissance Master''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Federico Barocci: Renaissance Master,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Saint Louis Art Museum, St. Louis, Missouri, from on or about October 21, 2012, until on or about January 20, 2013, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6469). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: August 22, 2012.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2012–21422 Filed 8–29–12; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 8003]

Culturally Significant Objects Imported for Exhibition Determinations: ''Rudolf Nureyev: A Life in Dance''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Rudolf Nureyev: A Life in Dance'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Fine Arts Museums of San Francisco, San Francisco, CA, from on or about October 6, 2012, until on or about February 17, 2013, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: August 22, 2012.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2012–21429 Filed 8–29–12; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 8002]

Culturally Significant Objects Imported for Exhibition Determinations: ''Dancing Around the Bride: Cage, Cunningham, Johns, Rauschenberg, and Duchamp''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Dancing Around the Bride: Cage, Cunningham, Johns, Rauschenberg, and Duchamp,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Philadelphia Museum of Art, Philadelphia, PA, from on or about October 25, 2012, until on or about January 21, 2013, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: August 22, 2012.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2012–21428 Filed 8–29–12; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 7999]

In the Matter of the Review of the Designation of the Jaish-e-Mohammed, (JEM and Other Aliases), as a Foreign Terrorist Organization Pursuant to Section 219 of the Immigration and Nationality Act, as Amended

Based upon a review of the Administrative Record assembled pursuant to Section 219(a)(4)(C) of the Immigration and Nationality Act, as amended (8 U.S.C. 1189(a)(4)(C)) (''INA''), and in consultation with the Attorney General and the Secretary of the Treasury, I conclude that the circumstances that were the basis for the

2008 determination to maintain the designation of the aforementioned organization as a foreign terrorist organization have not changed in such a manner as to warrant revocation of the designation and that the national security of the United States does not warrant a revocation of the designation.

Therefore, I hereby determine that the designation of the aforementioned organization as a foreign terrorist organization, pursuant to Section 219 of the INA (8 U.S.C. 1189), shall be maintained.

This determination shall be published in the **Federal Register**.

Dated: August 16, 2012.

Hillary Rodham Clinton,

Secretary of State, Department of State.

[FR Doc. 2012–21424 Filed 8–29–12; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice 8000]

U.S. Department of State Advisory Committee on Private International Law: Notice of Annual Meeting

The Department of State's Advisory Committee on Private International Law (ACPIL) will hold its annual meeting on developments in private international law on Thursday, October 11 and Friday, October 12, 2012 in Washington, DC. The meeting will be held at the Michael K. Young Faculty Conference Center, George Washington University Law School, 2000 H Street NW., Washington, DC 20052. The program is scheduled to run from 9:30 a.m. to 5 p.m. on Thursday and from 9 a.m. to 2 p.m. on Friday.

Time permitting, we expect that the discussion will focus on developments in a number of areas, e.g., international family law; federalism issues in implementing the Hague Convention on Choice of Court Agreements; international contract law; developments in major PIL organizations; agricultural finance and food security; and simplified incorporation and other initiatives to promote the growth of microenterprises and small and medium-sized enterprises. We also expect to discuss possible future work in the PIL field and solicit suggestions in that regard.

Documents on these subjects are available at *www.hcch.net; www.uncitral.org; www.unidroit.org; www.oas.org,* and *www.nccusl.org.* We may, by email, supplement those with additional documents.

Please advise as early as possible if you plan to attend. The meeting is open to the public up to the capacity of the conference facility, and space will be reserved on a first come, first served basis. Persons who wish to have their views considered are encouraged, but not required, to submit written comments in advance. Those who are unable to attend are also encouraged to submit written views. Comments should be sent electronically to *smeltzertk@state.gov.* Those planning to attend should provide name, affiliation and contact information to Tricia Smeltzer at 202–776–8423 and Niesha Toms at 202–776–8420, or by email to *tomsnn@state.gov* and *smeltzertk@state.gov.* A member of the public needing reasonable accommodation should advise those same contacts not later than September 28th. Requests made after that date will be considered, but might not be able to be fulfilled.

Dated: August 22, 2012.

Keith Loken,

Assistant Legal Adviser, Office of Private International Law, Office of the Legal Adviser, Department of State.

[FR Doc. 2012–21423 Filed 8–29–12; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2012–0059]

2012 Temporary Closure of I–395 Just South of Conway Street in the City of Baltimore to Vehicular Traffic to Accommodate the Construction and Operation of the Baltimore Grand Prix

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final notice.

SUMMARY: The FHWA has approved a request from Maryland Transportation Authority (MDTA) to temporarily close a portion of I–395 (just south of Conway Street in Baltimore City) from approximately 6 p.m. on Wednesday, August 29, until approximately 6 a.m. on Tuesday, September 4. The closure is requested to accommodate the construction and operation of the Baltimore Grand Prix (BGP), which will use the streets of downtown Baltimore as a race course.

The approval is granted in accordance with the provisions of 23 CFR 658.11 which authorizes the deletion of segments of the federally designated routes that make up the National Network designated in Appendix A of 23 CFR part 658. The FHWA published a Notice and Request for Comment on July 9, 2012, seeking comments from the general public on this request submitted by the MDTA for a deletion in accordance with 23 CFR 658.11(d). No public comments were received.

DATES: *Effective Date(s):* This Notice is effective immediately.

FOR FURTHER INFORMATION CONTACT: Mr. John Nicholas, Truck Size and Weight Program Manager in the Office of Freight Management, (202) 366–2317; Mr. William Winne, Office of the Chief Counsel, (202) 366–0791, Federal Highway Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590; and Mr. Gregory Murrill, FHWA Division Administrator—DELMAR Division, (410) 962–4440. Office hours for the FHWA are from 8 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may retrieve a copy of the Notice and Request for Comment, comments submitted to the docket, and a copy of this final notice through the Federal eRulemaking portal at: *http://www.regulations.gov.* The Web site is available 24 hours each day, every day of the year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

An electronic copy of this document may also be downloaded from Office of the Federal Register's home page at: *http://www.archives.gov/federal_register* and the Government Printing Office's Web page at: *http://www.gpoaccess.gov.*

Background

The MDTA submitted a request to the FHWA for approval of the temporary closure of I–395 just south of Conway Street in the city of Baltimore from the period beginning Wednesday, August 29, at approximately 6 p.m. through Tuesday, September 4, at around 6 a.m., encompassing the Labor Day holiday. This closure will be undertaken in support of the BGP which will use the streets of downtown Baltimore as a race course. The MDTA is the owner and operator of I–395 and I–95 within the city of Baltimore.

The FHWA is responsible for enforcing the Federal regulations applicable to the National Network of highways that can safely and efficiently accommodate the large vehicles authorized by provisions of the Surface Transportation Assistance Act of 1982, as amended, designated in accordance with 23 CFR part 658 and listed in Appendix A. In accordance with 23 CFR 658.11, the FHWA may approve deletions or restrictions of the Interstate system or other National Network route based upon specified justification criteria in section 658.11(d)(2). Requests for deletions are published in the **Federal Register** for notice and comment.

Notice and Request for Comment

The FHWA published a Notice and Request for Comment on July 9, seeking comments from the general public on this request submitted by the MDTA for a deletion in accordance with 23 CFR 658.11(d). The comment period closed on August 9. No public comments were received.

The FHWA sought comments on this request for temporary deletion from the National Network in accordance with 23 CFR 658.11(d). Specifically, the request is for approval of the temporary closure of I–395 just south of Conway Street in the city of Baltimore from the period beginning Wednesday August 29, at approximately 6 p.m. through Tuesday, September 4, at around 6 a.m., encompassing the Labor Day holiday. This closure will be undertaken in support of the BGP which will use the streets of downtown Baltimore as a race course. It is anticipated the BGP event will be hosted in the city of Baltimore for the next 4 consecutive years. The inaugural event occurred September 2 through September 4, 2011. The event is expected to attract 160,000 spectators over a 3–4 day period, not including the event organizer workforce and volunteers, the racing organizations and their respective personnel, or media and vendors. Event planners expect spectators from within a 400-mile radius of the city, with a large portion traveling the I–95 corridor. It is anticipated that the attendance for the peak day (Sunday) will reach 70,000 people with most arriving by private vehicle.

The construction and operation of the race course will create safety concerns by obstructing access from the I–395 northern terminus to the local street system including Howard Street, Conway Street, and Lee Street. However, an existing connection from I–395 to Martin Luther King, Jr. Boulevard will remain open throughout the event. In addition, access to and from I–95 into and out of the city along alternative access routes, including US 1, US 40, Russell Street, and Washington Boulevard will be maintained. The BGP and the city plan to update the 2011 signing plan to inform and guide motorists to, through, and around the impacted downtown area. The statewide transportation operations system, the Coordinated Highways Action Response Team, will provide real-time traffic information to motorists through dynamic message signs and highway advisory radio. The MDTA states that the temporary closure of this segment of I–395 to general traffic should have no impact on Interstate commerce. I–95, the main north-south Interstate route in the region, will remain open during the time period of the event. There are five additional I–95 interchanges, just to the north or south of I–395, with connections to the local street system including the arterials servicing the city's downtown area. A sign and supplemental traffic control systems plan was developed as part of the 2011 event's Traffic Management Plan (TMP). In addition, I–695 (Baltimore Beltway) will provide motorists traveling through the region the ability to bypass the impact area by circling around the city.

Commercial motor vehicles of the dimensions and configurations described in 23 CFR 658.13 and 658.15 which serve the impacted area, may use the alternate routes listed above. Vehicles servicing the businesses bordering the impacted area will still be able to do so by also using the alternative routes noted above to circulate around the restricted area. In addition, vehicles not serving businesses in the restricted area but, currently using I–395 and the local street system to reach their ultimate destinations, will be able to use the I–95 interchanges north and south of I–395 to access the alternative routes. A map depicting the alternative routes is available electronically at the docket established for this notice at *http://www.regulations.gov.* The MDTA has reviewed these alternative routes and determined the routes to generally be capable of safely accommodating the diverted traffic during the period of temporary restriction. As mentioned previously, the sign and supplemental traffic control system plan is also being updated as part of the event's TMP. Commercial vehicles as well as general traffic leaving the downtown area will also be able to use the alternative routes to reach I–95 and the rest of the Interstate System. The BGP and the city are working closely with businesses, including the hotels and restaurants located within the impact area, to schedule deliveries prior to the proposed I–395 closure to the extent feasible. The BGP is also working with affected businesses to schedule delivery services during the event period.

The original plan uses a credentialing process for access through designated gates with access to specific loading areas. This request to temporarily close I–395 was prepared for the MDTA by the BGP and the city. In addition, the city has reached out to the Federal, State, and local agencies to collaborate and coordinate efforts to address the logistical challenges of hosting the BGP. The BGP and the city have worked extensively with the businesses and residential communities in the city that could be affected by the event. These efforts include the formation of Task Forces and event Sub-Committees, to guide the development of plans for event security, transportation management, public safety and more.

The FHWA did not receive any comments in response to the Notice and Request for Comment. After full consideration of the MDTA request discussed in this final notice and determining that the request meets the requirements of 23 CFR 658.11(d), FHWA approves the deletion as proposed.

Authority: 23 U.S.C. 127, 315 and 49 U.S.C. 31111, 31112, and 31114; 23 CFR part 658.

Issued on: August 24, 2012.

Victor M. Mendez,

Administrator.

[FR Doc. 2012–21396 Filed 8–29–12; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 27, 2012.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before October 1, 2012 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestion for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.GOV* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by calling (202) 927–5331, email at *PRA@treasury.gov,* or the entire information collection request maybe found at *www.reginfo.gov.*

Internal Revenue Service (IRS)

OMB Number: 1545–0169.

Type of Review: Extension without change of a currently approved collection.

Title: Form 4461, Application for Approval of Master or Prototype Defined Contribution Plan; Form 4461–A, Application for Approval of Master or Prototype Defined Benefit Plan; Form 4461–B, Application for Approval of Master or Prototype or Volume Submitter Plans.

Form: Forms 4461, 4461–A, 4461–B.

Abstract: The IRS uses these forms to determine from the information submitted whether the applicant plan qualifies under section 401(a) of the Internal Revenue Code for plan approval. The application is also used to determine if the related trust qualifies for tax exempt status under Code section 501(a).

Affected Public: Private Sector: Business or other for-profits.

Estimated Total Burden Hours: 65,765.

OMB Number: 1545–0202.

Type of Review: Revision of a currently approved collection.

Title: Form 5310, Application for Determination for Terminating Plan; Form 6088, Distributable Benefits from Employee Pension Benefit Plans.

Form: 5310, 6088.

Abstract: Employers who have qualified deferred compensation plans can take an income tax deduction for contributions to their plans. IRS uses the data on Forms 5310 and 6088 to determine whether a plan still qualifies and whether there is any discrimination in benefits.

Affected Public: Private Sector: Business or other for-profits.

Estimated Total Burden Hours: 1,718,300.

OMB Number: 1545–0770.

Type of Review: Extension without change of a currently approved collection.

Title: FI–182–78 (NPRM)—Transfers of Securities Under Certain Agreements.

Abstract: Section 1058 of the Internal Revenue Code provides tax-free treatment for transfers of securities pursuant to a securities lending agreement. The agreement must be in writing and is used by the taxpayer, in a tax audit situation, to justify no recognition treatment of gain or loss on the exchange of the securities.

Affected Public: Private Sector: Business or other for-profits.

Estimated Total Burden Hours: 9,781.

OMB Number: 1545–0919.

Type of Review: Extension without change of a currently approved collection.

Title: Limitations on Percentage Depletion in the Case of Oil and Gas Wells (PS–105–75) Final.

Abstract: The regulations require each partner to separately keep records of his share of the adjusted basis of partnership oil and gas property and require each partnership, trusts, estate, and operator to provide information necessary to certain persons to compute depletion with respect to oil and gas.

Affected Public: Private Sector: Business or other for-profits.

Estimated Total Burden Hours: 1.

OMB Number: 1545–1049.

Type of Review: Extension without change of a currently approved collection.

Title: IA–7–88, (T.D. 8379) Excise Tax Relating to Gain or Other Income Realized by Any Person on Receipt of Greenmail.

Abstract: The final regulations provide rules relating to the manner and method of reporting and paying the nondeductible 50 percent tax imposed by section 5881 of the Internal Revenue Code with respect to the receipt of greenmail.

Affected Public: Private Sector: Business or other for-profits.

Estimated Total Burden Hours: 2.

OMB Number: 1545–1233.

Type of Review: Extension without change of a currently approved collection.

Title: Adjusted Current Earnings (IA–14–91)(Final).

Abstract: This regulation affects business and other for profit institutions. This information is required by the IRS to ensure the proper application of section 1.56(g)–1 of the regulation. It will be used to verify that taxpayers have properly elected the benefits of section 1.56(g)–1(r) of the regulation.

Affected Public: Private Sector: Business or other for-profits.

Estimated Total Burden Hours: 1,000.

OMB Number: 1545–1347.

Type of Review: Extension without change of a currently approved collection.

Title: FI–7–94 and FI–36–92 (Final) Arbitrage Restrictions on Tax-Exempt Bonds.

Abstract: The Code limits the ability of state and local government issuers of tax-exempt bonds to earn and/or keep arbitrage profits earned with bond proceeds. This regulation requires recordkeeping of certain interest rate hedges so that the hedges are taken into account in determining those profits.

Affected Public: State, Local and Tribal Governments.

Estimated Total Burden Hours: 42,050.

OMB Number: 1545–1480.

Type of Review: Extension without change of a currently approved collection.

Title: REG–107047–00 (TD 8985—Final), Hedging Transactions.

Abstract: The information is required by the IRS to aid it in administering the law and to prevent manipulation. The information will be used to verify that a taxpayer is properly reporting its business hedging transactions.

Affected Public: Private Sector: Business or other for-profits.

Estimated Total Burden Hours: 171,050.

OMB Number: 1545–1504.

Type of Review: Extension without change of a currently approved collection.

Title: Application for Taxpayer Assistance Order (ATAO).

Abstract: This form is used by taxpayers to apply for relief from a significant hardship which may have already occurred or is about to occur if the IRS takes or fails to take certain actions. This form is submitted to the IRS Taxpayer Advocate Office in the state or city where the taxpayer lives.

Affected Public: Individuals or Households.

Estimated Total Burden Hours: 46,500.

OMB Number: 1545–1510.

Type of Review: Extension without change of a currently approved collection.

Title: Revenue Procedure 2004–53; Procedure for filing Forms W–2 is certain Acquisitions (Rev Proc. 96–60).

Abstract: Information is required by the Internal Revenue Service to assist predecessor and successor employers in complying with the reporting requirements under Code sections 6051 and 6011 for Forms W–2 and 941.

Affected Public: Private Sector: Business or other for-profits.

Estimated Total Burden Hours: 110,700.

OMB Number: 1545–1531.

Type of Review: Extension without change of a currently approved collection.

Title: Notice 97–19 and Notice 98–34 Guidance for Expatriates Under Sections 877, 2501, 2107, and 6039F.

Abstract: Notice 97–19 and Notice 98–34 provide guidance for individuals affected by amendments to Code sections 877, 2107, and 2501, as amended by the Health Insurance Portability and Accountability Act. These notices also provide guidance on Code section 6039F.

Affected Public: Individuals or Households.

Estimated Total Burden Hours: 6,525.
OMB Number: 1545–1533.
Type of Review: Extension without change of a currently approved collection.
Title: Revenue Procedure 97–22–26 CFR 601.105 Examination of returns and claims for refund, credits, or abatement, determination of correct tax liability.
Abstract: The information requested in Revenue Procedure 97–22 under sections 4 and 5 is required to ensure that records maintained in an electronic storage system will constitute records within the meaning of section 6001.
Affected Public: Private Sector: Business or other for-profits.
Estimated Total Burden Hours: 1,000,400.
OMB Number: 1545–1540.
Type of Review: Extension without change of currently approved collection.
Title: REG–125071–06 (TD 9308)—Reporting Requirements for Widely Held Fixed Investment Trusts (TD 9308), previously (TD 9279)
Abstract: The regulations clarify the reporting requirements of trustees and middlemen involved with widely held fixed investment trusts.
Affected Public: Private Sector: Business or other for-profits.
Estimated Total Burden Hours: 2,400.
OMB Number: 1545–1617.
Type of Review: Extension without change of currently approved collection.
Title: REG–124069–02 (Final) Section 6038—Returns Required with Respect to Controlled Foreign Partnerships; REG–118966–97 (Final) Information Reporting with Respect to Certain Foreign Partnership.
Abstract: REG–124069–02 Treasury Regulation Sec. 1.6038–3 requires certain United States persons who own interests in controlled foreign partnership to annually report information to the IRS on Form 8865. This regulation amends the reporting rules under Treasury Regulation section 1.6038–e to provide that a U.S. person must follow the filing requirements that are specified in the instructions for Form 8865 when the U.S. person must file Form 8865 and the foreign partnership completes and files Form 1065 or Form 1065–B. REG–118966–97 Section 6038 requires certain U.S. persons who own interest in controlled foreign partnerships.
Affected Public: Private Sector: Business or other for-profits.
Estimated Total Burden Hours: 500.
OMB Number: 1545–1667.
Type of Review: Extension without change of currently approved collection.
Title: Revenue Procedure 99–50 Combined Information Reporting.
Abstract: The revenue procedure permits combined information reporting by a successor ''business entity'' (i.e., a corporation, partnership, or sole proprietorship) in certain situations following a merger or an acquisition. The successor must file a statement with the Internal Revenue Service indicating what forms are being filed on a combined basis.
Affected Public: Private Sector: Business or other for-profits.
Estimated Total Burden Hours: 500.
OMB Number: 1545–1676.
Type of Review: Extension without change of currently approved collection.
Title: REG–113572–99 (TD 8933) Qualified Transportation Fringe Benefits.
Abstract: These regulations provide guidance to employers that provide qualified transportation fringe benefits under section 132(f), including guidance to employers that provide cash reimbursement for qualified transportation fringes and employers that offer qualified transportation fringes in lieu of compensation. Employers that provide cash reimbursement are required to keep records of documentation received from employees who receive reimbursement. Employers that offer qualified transportation fringes in lieu of compensation are required to keep records of employee compensation reduction elections.
Affected Public: Private Sector: Business or other for-profits.
Estimated Total Burden Hours: 12,968,728.
OMB Number: 1545–1678.
Type of Review: Extension without change of currently approved collection.
Title: REG–161424–01 (Final), Information Reporting for Qualified Tuition and Related Expenses; Magnetic Media Filing Requirements for Information Returns; REC–105316–98 (Final) Information.
Abstract: These regulations relate to the information reporting requirements in section 6050S of the Internal Revenue Code for payments of qualified tuition and related expenses and interest on qualified education loans. These regulations provide guidance to eligible education institutions, insurers, and payees required to file information returns and to furnish information statements under section 6050S.
Affected Public: Private Sector: Not-for-profit institutions.
Estimated Total Burden Hours: 1.
OMB Number: 1545–1684.
Type of Review: Extension without change of currently approved collection.
Title: Revenue Procedure 2009–14, Prefiling Agreements Program (Superseded 2007–17).
Abstract: Revenue Procedure 2009–14 permits a taxpayer under the jurisdiction of the Large and Mid-Size Business Division to request that the Service examines specific issues relating to tax returns before those returns are filed. This revenue procedure provides the framework within which a taxpayer and the Service may work together in a cooperative environment to resolve, after examination, issues accepted into the program.
Affected Public: Private Sector: Businesses or other for-profits.
Estimated Total Burden Hours: 13,134.
OMB Number: 1545–1810.
Type of Review: Extension without change of currently approved collection.
Title: Credit for Small Employer Pension Plan Startup Costs.
Form: 8881.
Abstract: Qualified small employers use Form 8881 to request a credit for start-up costs related to eligible retirement plans. Form 8881 implements section 45E, which provides a credit based on costs incurred by an employer in establishing or administering an eligible employer plan or for the retirement related education of employees with respect to the plan. The credit is 50% of the qualified costs for the tax year, up to a maximum credit of $500 for the first tax year and each of the two subsequent tax years.
Affected Public: Private Sector: Businesses or other for-profits.
Estimated Total Burden Hours: 235,335.
OMB Number: 1545–1815.
Type of Review: Extension without change of currently approved collection.
Title: Coverdell ESA Contribution Information.
Form: 5498–ESA.
Abstract: Form 5498–ESA is used by trustees and issuers of Coverdell Education Savings accounts to report contributions made to these accounts to beneficiaries.
Affected Public: Private Sector: Businesses or other for-profits.
Estimated Total Burden Hours: 18,000.
OMB Number: 1545–1824.
Type of Review: Extension without change of currently approved collection.
Title: REG–139768–02 (Final) Excise Tax Relating to Structured Settlement Factoring Transactions.
Abstract: The regulations provide rules relating to the manner and method of reporting and paying the 40 percent excise tax imposed by section 5891 of the Internal Revenue Code with respect to acquiring of structured payment rights in a structured settlement factoring transaction.
Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 2.

OMB Number: 1545–1843.

Type of Review: Extension without change of currently approved collection.

Title: TD 9207 (final)—Assumptions of Partner Liabilities; REG–106736–00 (NPRM).

Abstract: In order to be entitled to a deduction with respect to the economic performance of a contingent liability that was contributed by a partner and assumed by a partnership, the partner, or former partner of the partnership, must receive notification of economic performance of the contingent liability from the partnership or other partner assuming the liability.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 125.

OMB Number: 1545–1968.

Type of Review: Extension without change of currently approved collection.

Title: Alternative Tax on Qualifying Shipping Activities.

Form: 8902.

Abstract: Form 8902 is used to elect the alternative tax on notional income from qualifying shipping activities and to figure the alternative tax.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 3,056.

OMB Number: 1545–1980.

Type of Review: Extension without change of currently approved collection.

Title: Notice 2007–70—Charitable Contributions of Certain Motor Vehicles, Boats, and Airplanes (Reporting requirements under Sec. 170(f)(12)(D)).

Abstract: Charitable organizations are required to send an acknowledgement of car donations to the donor and to the Service. The purpose of is to prevent donors from taking inappropriate deductions.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Total Burden Hours: 21,930.

OMB Number: 1545–1982.

Type of Review: Extension without change of currently approved collection.

Title: Distilled Spirits Credit.

Form: 8906.

Abstract: Form 8906, Distilled Spirits Credit, was developed to carry out the provisions of IRC section 5011(a). This section allows eligible wholesalers and persons subject to IRC section 5055 an income tax credit for the average cost of carrying excise tax on bottled distilled spirits. The form provides a means for the eligible taxpayer to compute the amount of credit.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 558.

OMB Number: 1545–1994.

Type of Review: Extension without change of currently approved collection.

Title: Notice 2008–36: Amplification of Notice 2006–28 Energy Efficient Homes Credit; Manufactured Homes.

Abstract: This notice supersedes Notice 2006–28 by substantially republishing the guidance contained in that publication. This notice clarifies the meaning of the terms equivalent rating network and eligible contractor, and permits calculation procedures other than those identified in Notice 2006–28 to be used to calculate energy consumption. Finally, this notice clarifies the process for removing software from the list of approved software and reflects the extension of the tax credit through December 31, 2008. Notice 2006–28, as updated, provided guidance regarding the calculation of heating and cooling energy consumption for purposes of determining the eligibility of a manufactured home for the New Energy Efficient Home Credit under Internal Revenue Code § 45L. Notice 2006–28 also provided guidance relating to the public list of software programs that may be used to calculate energy consumption. Guidance relating to dwelling units other than manufactured homes is provided in Notice 2008–35.

Affected Public: Individuals and Households.

Estimated Total Burden Hours: 60.

OMB Number: 1545–2071.

Type of Review: Extension without change of currently approved collection.

Title: TE/GE Compliance Check Questionnaires.

Abstract: Compliance questionnaires are an invaluable tool for obtaining supplemental information to determine the compliance of specific entities without the burden for the taxpayer or the cost to the IRS of a traditional, full-scale audit. The information collected will be used to improve the quality of data available for monitoring compliance, to correct identified instances of non-compliance and to determine where additional guidance, education or enforcement resources are most needed to prevent future non-compliance.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Total Burden Hours: 37,500.

OMB Number: 1545–2109.

Type of Review: Extension without change of currently approved collection.

Title: Notice of Election of an Agreement to Special Lien Under Internal Revenue Code Section 6324A and Regulations.

Form: 13925.

Abstract: TD 7941: Internal Revenue Code section 6324A permits the executor of a decedent's estate to elect a lien on section 6166 property in favor of the United States in lieu of a bond or personal liability if an election under section 6166 was made and the executor files an agreement under section 6324A(c). This regulation clarifies the procedures for complying with the statutory requirements. Form 13925: Under IRC section 6166, an estate may elect to pay the estate tax in installments over 14 years if certain conditions are met. If the IRS determines that the government's interest in collecting estate tax is sufficiently at risk, it may require the estate provide a bond. Alternatively, the executor may elect to provide a lien in lieu of bond. Under section 6324A(c) and the regulations there under (OMB 1545–0757), to make this election the executor must submit a lien agreement to the IRS. Form 13925 is a form lien agreement that executors may use for this purpose.

Affected Public: Individuals or Households.

Estimated Total Burden Hours: 510.

OMB Number: 1545–2119.

Type of Review: Extension without change of currently approved collection.

Title: Notice 2008–79, Tax-exempt Housing Bonds and 2008 Housing Legislation.

Abstract: This notice provides guidance regarding certain provisions affecting tax-exempt bonds and related matters under the Housing Assistance Tax Act of 2008, Division C of Public Law 110–289, enacted on July 30, 2008 (''2008 Housing Act''). Section 3021 of the 2008 Housing Act amends §§ 143 and 146 of the Internal Revenue Code (''Code'') to provide a temporary $11 billion increase in the annual private activity bond volume cap under § 146 for qualified housing issues and to allow the use of qualified mortgage bonds to refinance certain subprime mortgage loans. (Except as otherwise provided, section references in this notice are to the Code.) This notice provides guidance on allocations, carryforwards, information reporting, and uses of this additional bond volume cap, and guidance on the use of qualified mortgage revenue bonds to refinance certain subprime mortgage loans. In addition, § 3005 of the 2008 Housing Act amends § 142(d)(2)of the Code to disregard basic housing allowance payments to military members at certain military bases for purposes of applicable low-income set-aside income limitations under § 42 and § 142. This notice lists certain affected military bases. Section 3023 of the 2008 Housing Act provides temporary authority to Federal Home Loan Banks to guarantee certain tax-exempt bonds. This notice provides guidance on tax-exempt bonds eligible for such guarantees.

Affected Public: State, Local, and Tribal Governments.

Estimated Total Burden Hours: 300.

OMB Number: 1545–2131.

Type of Review: Extension without change of currently approved collection.

Title: Application for Extension of Time for Payment of Tax.

Form: 1127, 1127–A.

Abstract: Under IRC 6161, individual taxpayers and business taxpayers are allowed to request an extension of time for payment of tax shown or required to be shown on a return or for a tax due on a notice of deficiency. In order to be granted this extension, they must file Form 1127, providing evidence of undue hardship, inability to borrow, and collateral to ensure payment of the tax. Under IRC 6161 and the Service's Fresh Start initiative, individual taxpayers are allowed to request an extension of time for payment of tax shown or required to be shown on a return for 2011. In order to be granted this extension, they must file Form 1127–A, self-certifying hardship due to the current economic downturn.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 8,680.

OMB Number: 1545–2132.

Type of Review: Extension without change of currently approved collection.

Title: Carbon Dioxide Sequestration Credit.

Form: 8933.

Abstract: Form 8933 will provide a standardized format to claim this credit to an eligible person that captures, after October 3, 2008, qualified carbon dioxide at a qualified facility and physically or contractually ensures the disposal of or the use as a tertiary injectant of the qualified carbon dioxide.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 215.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. 2012–21402 Filed 8–29–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 27, 2012.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before October 1, 2012 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestion for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.GOV* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or on-line at *www.PRAComment.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by calling (202) 927–5331, email at *PRA@treasury.gov,* or the entire information collection request maybe found at *www.reginfo.gov.*

Office of Foreign Assets Control (OFAC)

OMB Number: 1505–0170.

Type of Review: Revision of a currently approved collection.

Title: OFAC Application for the Release of Blocked Funds.

Form: TD–F–90–22.54.

Abstract: Transactions prohibited pursuant to the Trading With the Enemy Act, 50 U.S.C. App. 1–44, the International Emergency Economic Powers Act, 50 U.S.C. 1701 *et seq.,* and other authorities may be authorized by means of specific licenses issued by the Office of Foreign Assets Control (''OFAC''). Such licenses are issued in response to applications submitted by persons whose property and interests in property have been blocked or who wish to engage in transactions that would otherwise be prohibited. The OFAC Application for the Release of Blocked Funds, which provides a standardized method of application for all applicants seeking the unblocking of funds, is available in electronic format on OFAC's Web site. Use of the form greatly facilitates and speeds applicants' submissions and OFAC's processing of such applications. By obviating the need for applicants to write lengthy letters to OFAC, this form reduces the overall burden of the application process. Since February 2000, use of the OFAC Application for the Release of Blocked Funds to apply for the unblocking of funds has been mandatory pursuant to a revision in OFAC's regulations at 31 CFR 501.801.

Affected Public: Private Sector: businesses or other for-profits.

Estimated Total Annual Burden Hours: 1,500.

OMB Number: 1505–0243.

Type of Review: Extension without change of a currently approved collection.

Title: Iranian Financial Sanctions Regulations Report on Closure by U.S. Financial Institutions of Correspondent Accounts and Payable-Through Accounts.

Abstract: Section 561.504(b) of the Iranian Financial Sanctions Regulations, 31 CFR part 561 (the ''IFSR''), specifies that a U.S. financial institution that maintained a correspondent account or payable-through account for a foreign financial institution whose name is added to the Part 561 List on OFAC's Web site (*www.treasury.gov/ofac*) as subject to a prohibition on the maintaining of such accounts must file a report with OFAC that provides full details on the closing of each such account within 30 days of the closure of the account. This collection of information assists in verifying that U.S. financial institutions are complying with prohibitions on maintaining correspondent accounts or payable through accounts for foreign financial institutions listed on the Part 561 List.

Affected Public: Private Sector: businesses or other for-profits.

Estimated Total Annual Burden Hours: 2.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. 2012–21406 Filed 8–29–12; 8:45 am]

BILLING CODE 4810–25–P

FEDERAL REGISTER

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Part II

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Parts 3, 5, 6, *et al.*

Federal Reserve System

12 CFR Parts 208, 217, and 225

Federal Deposit Insurance Corporation

12 CFR Parts 324, 325, and 362

Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III, Minimum Regulatory Capital Ratios, Capital Adequacy, Transition Provisions, and Prompt Corrective Action; Proposed Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 3, 5, 6, 165, and 167

[Docket ID OCC–2012–0008]

RIN 1557–AD46

FEDERAL RESERVE SYSTEM

12 CFR Parts 208, 217, and 225 Regulations H, Q, and Y

[Docket No. R–1442]

RIN 7100–AD87

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 324, 325, and 362

RIN 3064–AD95

Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III, Minimum Regulatory Capital Ratios, Capital Adequacy, Transition Provisions, and Prompt Corrective Action

AGENCIES: Office of the Comptroller of the Currency, Treasury; the Board of Governors of the Federal Reserve System; and the Federal Deposit Insurance Corporation.

ACTION: Joint notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) (collectively, the agencies) are seeking comment on three Notices of Proposed Rulemaking (NPR) that would revise and replace the agencies' current capital rules. In this NPR, the agencies are proposing to revise their risk-based and leverage capital requirements consistent with agreements reached by the Basel Committee on Banking Supervision (BCBS) in ''Basel III: A Global Regulatory Framework for More Resilient Banks and Banking Systems'' (Basel III). The proposed revisions would include implementation of a new common equity tier 1 minimum capital requirement, a higher minimum tier 1 capital requirement, and, for banking organizations subject to the advanced approaches capital rules, a supplementary leverage ratio that incorporates a broader set of exposures in the denominator measure. Additionally, consistent with Basel III, the agencies are proposing to apply limits on a banking organization's capital distributions and certain discretionary bonus payments if the banking organization does not hold a specified amount of common equity tier 1 capital in addition to the amount necessary to meet its minimum risk-based capital requirements. This NPR also would establish more conservative standards for including an instrument in regulatory capital. As discussed in the proposal, the revisions set forth in this NPR are consistent with section 171 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), which requires the agencies to establish minimum risk-based and leverage capital requirements.

In connection with the proposed changes to the agencies' capital rules in this NPR, the agencies are also seeking comment on the two related NPRs published elsewhere in today's **Federal Register**. The two related NPRs are discussed further in the **SUPPLEMENTARY INFORMATION.**

DATES: Comments must be submitted on or before October 22, 2012.

ADDRESSES: Comments should be directed to:

OCC: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by the Federal eRulemaking Portal or email, if possible. Please use the title ''Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III, Minimum Regulatory Capital Ratios, Capital Adequacy, Transition Provisions, and Prompt Corrective Action'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

Federal eRulemaking Portal—''regulations.gov'': Go to *http://www.regulations.gov*. Click ''Advanced Search''. Select ''Document Type'' of ''Proposed Rule'', and in ''By Keyword or ID'' box, enter Docket ID ''OCC–2012–0008,'' and click ''Search''. If proposed rules for more than one agency are listed, in the ''Agency'' column, locate the notice of proposed rulemaking for the OCC. Comments can be filtered by agency using the filtering tools on the left side of the screen. In the ''Actions'' column, click on ''Submit a Comment'' or ''Open Docket Folder'' to submit or view public comments and to view supporting and related materials for this rulemaking action.

- Click on the ''Help'' tab on the Regulations.gov home page to get information on using Regulations.gov, including instructions for submitting or viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.
- *Email: regs.comments@occ.treas.gov*.
- *Mail:* Office of the Comptroller of the Currency, 250 E Street SW., Mail Stop 2–3, Washington, DC 20219.
- *Fax:* (202) 874–5274.
- *Hand Delivery/Courier:* 250 E Street SW., Mail Stop 2–3, Washington, DC 20219.

Instructions: You must include ''OCC'' as the agency name and ''Docket ID OCC–2012–0008'' in your comment. In general, the OCC will enter all comments received into the docket and publish them on Regulations.gov without change, including any business or personal information that you provide such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this notice by any of the following methods:

- *Viewing Comments Electronically:* Go to *http://www.regulations.gov*. Click ''Advanced Search''. Select ''Document Type'' of ''Public Submission'' and in ''By Keyword or ID'' box enter Docket ID ''OCC–2012–0008,'' and click ''Search.'' If comments from more than one agency are listed, the ''Agency'' column will indicate which comments were received by the OCC. Comments can be filtered by Agency using the filtering tools on the left side of the screen.
- *Viewing Comments Personally:* You may personally inspect and photocopy comments at the OCC, 250 E Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.
- *Docket:* You may also view or request available background documents and project summaries using the methods described previously.

Board: When submitting comments, please consider submitting your comments by email or fax because paper mail in the Washington, DC, area and at the Board may be subject to delay. You may submit comments, identified by Docket No. R–1430; RIN No. 7100–AD87, by any of the following methods:

• *Agency Web Site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Email: regs.comments@federalreserve.gov.* Include docket number in the subject line of the message.

• *Fax:* (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 Street NW., Washington, DC 20551) between 9 a.m. and 5 p.m. on weekdays.

FDIC: You may submit comments by any of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Agency Web site: http://www.FDIC.gov/regulations/laws/federal/propose.html.*

• *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

• *Hand Delivered/Courier:* The guard station at the rear of the 550 17th Street building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

• *Email: comments@FDIC.gov.*

• *Instructions:* Comments submitted must include ''FDIC'' and ''RIN 3064–AD95.'' Comments received will be posted without change to *http://www.FDIC.gov/regulations/laws/federal/propose.html*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT:

OCC: Margot Schwadron, Senior Risk Expert, (202) 874–6022; David Elkes, Risk Expert, (202) 874–3846; Mark Ginsberg, Risk Expert, (202) 927–4580; or Ron Shimabukuro, Senior Counsel, Patrick Tierney, Counsel, or Carl Kaminski, Senior Attorney, Legislative and Regulatory Activities Division, (202) 874–5090, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219.

Board: Anna Lee Hewko, Assistant Director, (202) 530–6260, Thomas Boemio, Manager, (202) 452–2982, Constance M. Horsley, Manager, (202) 452–5239, or Juan C. Climent, Senior Supervisory Financial Analyst, (202) 872–7526, Capital and Regulatory Policy, Division of Banking Supervision and Regulation; or Benjamin McDonough, Senior Counsel, (202) 452–2036, April C. Snyder, Senior Counsel, (202) 452–3099, or Christine Graham, Senior Attorney, (202) 452–3005, 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*; Ryan Billingsley, Senior Policy Analyst, *rbillingsley@fdic.gov*; Karl Reitz, Senior Policy Analyst, *kreitz@fdic.gov*, Division of Risk Management Supervision; David Riley, Senior Policy Analyst, *dariley@fdic.gov*, Division of Risk Management Supervision, Capital Markets Branch, (202) 898–6888; or Mark Handzlik, Counsel, *mhandzlik@fdic.gov*, Michael Phillips, Counsel, *mphillips@fdic.gov*, Greg Feder, Counsel, *gfeder@fdic.gov*, or Ryan Clougherty, Senior Attorney, *rclougherty@fdic.gov*; Supervision Branch, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: In connection with the proposed changes to the agencies' capital rules in this NPR, the agencies are also seeking comment on the two related NPRs published elsewhere in today's **Federal Register**. In the notice titled ''Regulatory Capital Rules: Standardized Approach for Risk-Weighted Assets; Market Discipline and Disclosure Requirements'' (Standardized Approach NPR), the agencies are proposing to revise and harmonize their rules for calculating risk-weighted assets to enhance risk sensitivity and address weaknesses identified over recent years, including by incorporating aspects of the BCBS's Basel II standardized framework in the ''International Convergence of Capital Measurement and Capital Standards: A Revised Framework,'' including subsequent amendments to that standard, and recent BCBS consultative papers. The Standardized Approach NPR also includes alternatives to credit ratings, consistent with section 939A of the Dodd-Frank Act. The revisions include methodologies for determining risk-weighted assets for residential mortgages, securitization exposures, and counterparty credit risk. The Standardized Approach NPR also would introduce disclosure requirements that would apply to top-tier banking organizations domiciled in the United States with $50 billion or more in total assets, including disclosures related to regulatory capital instruments.

The proposals in this NPR and the Standardized Approach NPR would apply to all banking organizations that are currently subject to minimum capital requirements (including national banks, state member banks, state nonmember banks, state and federal savings associations, and top-tier bank holding companies domiciled in the United States not subject to the Board's Small Bank Holding Company Policy Statement (12 CFR part 225, appendix C)), as well as top-tier savings and loan holding companies domiciled in the United States (together, banking organizations).

In the notice titled ''Regulatory Capital Rules: Advanced Approaches Risk-Based Capital Rule; Market Risk Capital Rule,'' (Advanced Approaches and Market Risk NPR) the agencies are proposing to revise the advanced approaches risk-based capital rules consistent with Basel III and other changes to the BCBS's capital standards. The agencies also propose to revise the advanced approaches risk-based capital rules to be consistent with section 939A and section 171 of the Dodd-Frank Act. Additionally, in the Advanced Approaches and Market Risk NPR, the OCC and FDIC are proposing that the market risk capital rules be applicable to federal and state savings associations and the Board is proposing that the advanced approaches and market risk capital rules apply to top-tier savings and loan holding companies domiciled in the United States, in each case, if stated thresholds for trading activity are met.

As described in this NPR, the agencies also propose to codify their regulatory capital rules, which currently reside in various appendixes to their respective regulations. The proposals are published in three separate NPRs to reflect the distinct objectives of each proposal, to allow interested parties to better understand the various aspects of the overall capital framework, including which aspects of the rules would apply to which banking organizations, and to help interested parties better focus their comments on areas of particular interest.

Table of Contents [1]

I. Introduction

A. Overview of the Proposed Changes to the Agencies' Current Capital Framework

The Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) (collectively, the agencies) are proposing comprehensive revisions to their regulatory capital framework through three concurrent notices of proposed rulemaking (NPR). These proposals would revise the agencies' current general risk-based rules, advanced approaches risk-based capital rules (advanced approaches), and leverage capital rules (collectively, the current capital rules).[2] The proposed

[1] Sections marked with an asterisk generally would not apply to less-complex banking organizations.

[2] The agencies' general risk-based capital rules are at 12 CFR part 3, appendix A, 12 CFR part 167 (OCC); 12 CFR parts 208 and 225, appendix A (Board); and 12 CFR part 325, appendix A, and 12 CFR part 390, subpart Z (FDIC). The agencies'

revisions incorporate changes made by the Basel Committee on Banking Supervision (BCBS) to the Basel capital framework, including those in ''Basel III: A Global Regulatory Framework for More Resilient Banks and Banking Systems'' (Basel III).[3] The proposed revisions also would implement relevant provisions of the Dodd-Frank Act and restructure the agencies' capital rules into a harmonized, codified regulatory capital framework.[4]

This notice (Basel III NPR) proposes the Basel III revisions to international capital standards related to minimum requirements, regulatory capital, and additional capital ''buffers'' to enhance the resiliency of banking organizations, particularly during periods of financial stress. It also proposes transition periods for many of the proposed requirements, consistent with Basel III and the Dodd-Frank Act. A second NPR (Standardized Approach NPR) would revise the methodologies for calculating risk-weighted assets in the general risk-based capital rules, incorporating aspects of the Basel II Standardized Approach and other changes.[5] The Standardized Approach NPR also proposes alternative standards of creditworthiness (to credit ratings) consistent with section 939A of the Dodd-Frank Act.[6] A third NPR (Advanced Approaches and Market Risk NPR) proposes changes to the advanced approaches rules to incorporate applicable provisions of Basel III and other agreements reached by the BCBS since 2009, proposes to apply the market risk capital rule (market risk rule) to savings associations and savings and loan holding companies and to apply the advanced approaches rule to savings and loan holding companies, and also removes references to credit ratings.

Other than bank holding companies subject to the Board's Small Bank Holding Company Policy Statement[7] (small bank holding companies), the proposals in the Basel III NPR and the Standardized Approach NPR would apply to all banking organizations currently subject to minimum capital requirements, including national banks, state member banks, state nonmember banks, state and federal savings associations, top-tier bank holding companies domiciled in the United States that are not small bank holding companies, as well as top-tier savings and loan holding companies domiciled in the United States (together, banking organizations).[8] Certain aspects of these proposals would apply only to advanced approaches banking organizations or banking organizations with total consolidated assets of more than $50 billion. Consistent with the Dodd-Frank Act, a bank holding company subsidiary of a foreign banking organization that is currently relying on the Board's Supervision and Regulation Letter (SR) 01–1 would not be required to comply with the proposed capital requirements under any of these NPRs until July 21, 2015.[9] In addition, the Board is proposing for all three NPRs to apply on a consolidated basis to top-tier savings and loan holding companies domiciled in the United States, subject to the applicable thresholds of the advanced approaches rules and the market risk rules.

The agencies are publishing all the proposed changes to the agencies' current capital rules at the same time in these three NPRs so that banking organizations can read the three NPRs together and assess the potential cumulative impact of the proposals on their operations and plan appropriately. The overall proposal is being divided into three separate NPRs to reflect the distinct objectives of each proposal and to allow interested parties to better understand the various aspects of the overall capital framework, including which aspects of the rules will apply to which banking organizations, and to help interested parties better focus their comments on areas of particular interest. The agencies believe that separating the proposals into three NPRs makes it easier for banking organizations of all sizes to more easily understand which proposed changes are related to the agencies' objective to improve the quality and increase the quantity of capital (Basel III NPR) and which are related to the agencies' objective to enhance the overall risk-sensitivity of the calculation of a banking organization's total risk-weighted assets (Standardized Approach NPR).

The agencies believe that the proposals would result in capital requirements that better reflect banking organizations' risk profiles and enhance their ability to continue functioning as financial intermediaries, including during periods of financial stress, thereby improving the overall resiliency of the banking system. The agencies have carefully considered the potential impact of the three NPRs on all banking organizations, including community banking organizations, and sought to minimize the potential burden of these changes where consistent with applicable law and the agencies' goals of

current leverage rules are at 12 CFR 3.6(b), 3.6(c), and 167.6 (OCC); 12 CFR part 208, appendix B, and 12 CFR part 225, appendix D (Board); and 12 CFR 325.3, and 390.467 (FDIC) (general risk-based capital rules). For banks and bank holding companies with significant trading activity, the general risk-based capital rules are supplemented by the agencies' market risk rules, which appear at 12 CFR part 3, appendix B (OCC); 12 CFR part 208, appendix E, and 12 CFR part 225, appendix E (Board); and 12 CFR part 325, appendix C (FDIC) (market risk rules).

The agencies' advanced approaches rules are at 12 CFR part 3, appendix C, 12 CFR part 167, appendix C, (OCC); 12 CFR part 208, appendix F, and 12 CFR part 225, appendix G (Board); 12 CFR part 325, appendix D, and 12 CFR part 390, subpart Z, Appendix A (FDIC) (advanced approaches rules). The advanced approaches rules are generally mandatory for banking organizations and their subsidiaries that have $250 billion or more in total consolidated assets or that have consolidated total on-balance sheet foreign exposure at the most recent year-end equal to $10 billion or more. Other banking organizations may use the advanced approaches rules with the approval of their primary federal supervisor. See 12 CFR part 3, appendix C, section 1(b) (national banks); 12 CFR part 167, appendix C (federal savings associations); 12 CFR part 208, appendix F, section 1(b) (state member banks); 12 CFR part 225, appendix G, section 1(b) (bank holding companies); 12 CFR part 325, appendix D, section 1(b) (state nonmember banks); and 12 CFR part 390, subpart Z, appendix A, section 1(b) (state savings associations).

The market risk capital rules apply to a banking organization if its total trading assets and liabilities is 10 percent or more of total assets or exceeds $1 billion. *See* 12 CFR part 3, appendix B, section 1(b) (national banks); 12 CFR parts 208 and 225, appendix E, section 1(b) (state member banks and bank holding companies, respectively); and 12 CFR part 325, appendix C, section 1(b) (state nonmember banks).

[3] The BCBS is a committee of banking supervisory authorities, which was established by the central bank governors of the G–10 countries in 1975. It currently consists of senior representatives of bank supervisory authorities and central banks from Argentina, Australia, Belgium, Brazil, Canada, China, France, Germany, Hong Kong SAR, India, Indonesia, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, Russia, Saudi Arabia, Singapore, South Africa, Sweden, Switzerland, Turkey, the United Kingdom, and the United States. Documents issued by the BCBS are available through the Bank for International Settlements Web site at *http://www.bis.org*.

[4] Public Law 111–203, 124 Stat. 1376, 1435–38 (2010) (Dodd-Frank Act).

[5] *See* BCBS, ''International Convergence of Capital Measurement and Capital Standards: A Revised Framework,'' (June 2006), available at *http://www.bis.org/publ/bcbs128.htm (Basel II).*

[6] *See* section 939A of the Dodd-Frank Act (15 U.S.C. 78o–7 note).

[7] 12 CFR part 225, appendix C (Small Bank Holding Company Policy Statement).

[8] Small bank holding companies would continue to be subject to the Small Bank Holding Company Policy Statement. Application of the proposals to all savings and loan holding companies (including small savings and loan holding companies) is consistent with the transfer of supervisory responsibilities to the Board and the requirements of section 171 of the Dodd-Frank Act. Section 171 of the Dodd-Frank Act by its terms does not apply to small bank holding companies, but there is no exemption from the requirements of section 171 for small savings and loan holding companies. *See* 12 U.S.C. 5371.

[9] *See* section 171(b)(4)(E) of the Dodd-Frank Act (12 U.S.C. 5371(b)(4)(E)); *see also* SR letter 01–1 (January 5, 2001), available at *http://www.federalreserve.gov/boarddocs/srletters/2001/sr0101.htm.*

establishing a robust and comprehensive capital framework.

In developing each of the three NPRs, wherever possible and appropriate, the agencies have tailored the proposed requirements to the size and complexity of a banking organization. The agencies believe that most banking organizations already hold sufficient capital to meet the proposed requirements, but recognize that the proposals entail significant changes with respect to certain aspects of the agencies' capital requirements. The agencies are proposing transition arrangements or delayed effective dates for aspects of the revised capital requirements consistent with Basel III and the Dodd-Frank Act. The agencies anticipate that they separately would seek comment on regulatory reporting instructions to harmonize regulatory reports with these proposals in a subsequent **Federal Register** notice.

Many of the proposed requirements in the three NPRs are not applicable to smaller, less complex banking organizations. To assist these banking organizations in rapidly identifying the elements of these proposals that would apply to them, this NPR and the Standardized Approach NPR provide, as addenda to the corresponding preambles, a summary of the various aspects of each NPR designed to clearly and succinctly describe the two NPRs as they would typically apply to smaller, less complex banking organizations.[10]

Basel III NPR

In 2010, the BCBS published Basel III, a comprehensive reform package that is designed to improve the quality and the quantity of regulatory capital and to build additional capacity into the banking system to absorb losses in times of future market and economic stress.[11] This NPR proposes the majority of the revisions to international capital standards in Basel III, including a more restrictive definition of regulatory capital, higher minimum regulatory capital requirements, and a capital conservation and a countercyclical capital buffer, to enhance the ability of banking organizations to absorb losses and continue to operate as financial intermediaries during periods of economic stress.[12] The proposal would place limits on banking organizations' capital distributions and certain discretionary bonuses if they do not hold specified ''buffers'' of common equity tier 1 capital in excess of the new minimum capital requirements.

This NPR also includes a leverage ratio contained in Basel III that incorporates certain off-balance sheet assets in the denominator (supplementary leverage ratio). The supplementary leverage ratio would apply only to banking organizations that use the advanced approaches rules (advanced approaches banking organizations). The current leverage ratio requirement (computed using the proposed new definition of capital) would continue to apply to all banking organizations, including advanced approaches banking organizations.

In this NPR, the agencies also propose revisions to the agencies' prompt corrective action (PCA) rules to incorporate the proposed revisions to the minimum regulatory capital ratios.[13]

Standardized Approach NPR

The Standardized Approach NPR aims to enhance the risk-sensitivity of the agencies' capital requirements by revising the calculation of risk-weighted assets. It would do this by incorporating aspects of the Basel II Standardized Approach, including aspects of the 2009 ''Enhancements to the Basel II Framework'' (2009 Enhancements), and other changes designed to improve the risk-sensitivity of the general risk-based capital requirements. The proposed changes are described in further detail in the preamble to the Standardized Approach NPR.[14] As compared to the general risk-based capital rules, the Standardized Approach NPR includes a greater number of exposure categories for purposes of calculating total risk-weighted assets, provides for greater recognition of financial collateral, and permits a wider range of eligible guarantors. In addition, to increase transparency in the derivatives market, the Standardized Approach NPR would provide a more favorable capital treatment for derivative and repo-style transactions cleared through central counterparties (as compared to the treatment for bilateral transactions) in order to create an incentive for banking organizations to enter into cleared transactions. Further, to promote transparency and market discipline, the Standardized Approach NPR proposes disclosure requirements that would apply to top-tier banking organizations domiciled in the United States with $50 billion or more in total assets that are not subject to disclosure requirements under the advanced approaches rule.

In the Standardized Approach NPR, the agencies also propose to revise the calculation of risk-weighted assets for certain exposures, consistent with the requirements of section 939A of the Dodd-Frank Act by using standards of creditworthiness that are alternatives to credit ratings. These alternative standards would be used to assign risk weights to several categories of exposures, including sovereigns, public sector entities, depository institutions, and securitization exposures. These alternative standards and risk-based capital requirements have been designed to result in capital requirements that are consistent with safety and soundness, while also exhibiting risk sensitivity to the extent possible. Furthermore, these capital requirements are intended to be similar to those generated under the Basel capital framework.

The Standardized Approach NPR would require banking organizations to implement the revisions contained in that NPR on January 1, 2015; however, the proposal would also allow banking organizations to early adopt the Standardized Approach revisions.

Advanced Approaches and Market Risk NPR

The proposals in the Advanced Approaches and Market Risk NPR would amend the advanced approaches rules and integrate the agencies' revised market risk rules into the codified regulatory capital rules.[15] The Advanced Approaches and Market Risk NPR would incorporate revisions to the Basel capital framework published by the BCBS in a series of documents between 2009 and 2011, including the 2009 Enhancements and Basel III. The proposals would also revise the

[10] The Standardized Approach NPR also contains a second addendum to the preamble, which contains the definitions proposed under the Basel III NPR. Many of the proposed definitions also are applicable to the Standardized Approach NPR, which is published elsewhere in today's **Federal Register**.

[11] BCBS published Basel III in December 2010 and revised it in June 2011. The text is available at *http://www.bis.org/publ/bcbs189.htm*. This NPR does not incorporate the Basel III reforms related to liquidity risk management, published in December 2010, ''Basel III: International Framework for Liquidity Risk Measurement, Standards and Monitoring.'' The agencies expect to propose rules to implement the Basel III liquidity provisions in a separate rulemaking.

[12] Selected aspects of Basel III that would apply only to advanced approaches banking organizations are proposed in the Advanced Approaches and Market Risk NPR.

[13] 12 CFR part 6, 12 CFR 165 (OCC); 12 CFR part 208, subpart E (Board); 12 CFR part 325 and part 390, subpart Y (FDIC).

[14] *See* BCBS, ''Enhancements to the Basel II Framework'' (July 2009), available at *http://www.bis.org/publ/bcbs157.htm (2009 Enhancements).* See also BCBS, ''International Convergence of Capital Measurement and Capital Standards: A Revised Framework,'' (June 2006), available at *http://www.bis.org/publ/bcbs128.htm (Basel II).*

[15] The agencies' market risk rules are revised by a final rule published elsewhere today in the **Federal Register.**

advanced approaches rules to achieve consistency with relevant provisions of the Dodd-Frank Act.

Significant proposed revisions to the advanced approaches rules include the treatment of counterparty credit risk, the methodology for computing risk-weighted assets for securitization exposures, and risk weights for exposures to central counterparties. For example, the Advanced Approaches and Market Risk NPR proposes capital requirements to account for credit valuation adjustments (CVA), wrong-way risk, cleared derivative and repo-style transactions (similar to proposals in the Standardized Approach NPR) and default fund contributions to central counterparties. The Advanced Approaches and Market Risk NPR would also require banking organizations subject to the advanced approaches rules (advanced approaches banking organizations) to conduct more rigorous credit analysis of securitization exposures and implement certain disclosure requirements.

The Advanced Approaches and Market Risk NPR additionally proposes to remove the ratings-based approach and the internal assessment approach from the current advanced approaches rules' securitization hierarchy consistent with section 939A of the Dodd-Frank Act, and to include in the hierarchy the simplified supervisory formula approach (SSFA) as a methodology to calculate risk-weighted assets for securitization exposures. The SSFA methodology is also proposed in the Standardized Approach NPR and is included in the market risk rule. The agencies also are proposing to remove references to credit ratings from certain defined terms under the advanced approaches rules and replace them with alternative standards of creditworthiness.

Banking organizations currently subject to the advanced approaches rule would continue to be subject to the advanced approaches rules. In addition, the Board proposes to apply the advanced approaches and market risk rules to savings and loan holding companies, and the OCC and FDIC propose to apply the market risk rules to federal and state savings associations that meet the scope of application of those rules, respectively.

For advanced approaches banking organizations, the regulatory capital requirements proposed in this NPR and the Standardized Approach NPR would be ''generally applicable'' capital requirements for purposes of section 171 of the Dodd-Frank Act.[16]

Proposed Structure of the Agencies' Regulatory Capital Framework and Key Provisions of the Three Proposals

In connection with the changes proposed in the three NPRs, the agencies intend to codify their current regulatory capital requirements under applicable statutory authority. Under the revised structure, each agency's capital regulations would include definitions in subpart A. The minimum risk-based and leverage capital requirements and buffers would be contained in Subpart B and the definition of regulatory capital would be included in subpart C. Subpart D would include the risk-weighted asset calculations required of all banking organizations; these proposed risk-weighted asset calculations are described in the Standardized Approach NPR. Subpart E would contain the advanced approaches rules, including changes made pursuant to the advanced approach NPR. The market risk rule would be contained in subpart F. Transition provisions would be in subpart G. The agencies believe that this revision would reduce the burden associated with multiple reference points for applicable capital requirements, promote consistency of capital rules across the banking agencies, and reduce repetition of certain features, such as definitions, across the rules.

Table 1 outlines the proposed structure of the agencies' capital rules, as well as references to the proposed revisions to the PCA rules.

TABLE 1—PROPOSED STRUCTURE OF THE AGENCIES' CAPITAL RULES AND PROPOSED REVISIONS TO THE PCA FRAMEWORK

Subpart or regulation	Description of content
Subpart A (included in the Basel III NPR)	Purpose; applicability; reservation of authority; definitions.
Subpart B (included in the Basel III NPR)	Minimum capital requirements; minimum leverage capital requirements; capital buffers.
Subpart C (included in the Basel III NPR)	Regulatory capital: Eligibility criteria, minority interest, adjustments and deductions.
Subpart D (included in the Standardized Approach NPR)	Calculation of standardized total risk-weighted assets for general credit risk, off-balance sheet items, over the counter (OTC) derivative contracts, cleared transactions and default fund contributions, unsettled transactions, securitization exposures, and equity exposures. Description of credit risk mitigation.
Subpart E (included in the Advanced Approaches and Market Risk NPR).	Calculation of advanced approaches total risk-weighted assets.
Subpart F (included in the Advanced Approaches and Market Risk NPR).	Calculation of market risk-weighted assets.
Subpart G (included in the Basel III NPR)	Transition provisions.
Subpart D of Regulation H (Board), 12 CFR part 6 (OCC), Subpart H of part 324 (FDIC).	Revised PCA capital framework, including introduction of a common equity tier 1 capital threshold; revision of the current PCA thresholds to incorporate the proposed regulatory capital minimums; an update of the definition of tangible common equity, and, for advanced approaches organizations only, a supplementary leverage ratio.

While the agencies are mindful that the proposal will result in higher capital requirements and costs associated with changing systems to calculate capital requirements, the agencies believe that the proposed changes are necessary to address identified weaknesses in the agencies' current capital rules; strengthen the banking sector and help reduce risk to the deposit insurance fund and the financial system; and revise the agencies' capital rules

[16] *See* 12 U.S.C. 5371.

consistent with the international agreements and U.S. law. Accordingly, this NPR includes transition arrangements that aim to provide banking organizations sufficient time to adjust to the proposed new rules and that are generally consistent with the transitional arrangements of the Basel capital framework.

In December 2010, the BCBS conducted a quantitative impact study of internationally active banks to assess the impact of the capital adequacy standards announced in July 2009 and the Basel III proposal published in December 2009. Overall, the BCBS found that as a result of the proposed changes, banking organizations surveyed will need to hold more capital to meet the new minimum requirements. In addition, quantitative analysis by the Macroeconomic Assessment Group, a working group of the BCBS, found that the stronger Basel capital requirements would lower the probability of banking crises and their associated output losses while having only a modest negative impact on gross domestic product and lending costs, and that the negative impact could be mitigated by phasing the requirements in over time.[17] The agencies believe that the benefits of these changes to the U.S. financial system, in terms of the reduction of risk to the deposit insurance fund and the financial system, ultimately outweigh the burden on banking organizations of compliance with the new standards.

As part of developing this proposal, the agencies conducted an impact analysis using depository institution and bank holding company regulatory reporting data to estimate the change in capital that banking organizations would be required to hold to meet the proposed minimum capital requirements. The impact analysis assumed the proposed definition of capital for purposes of the numerator and the proposed standardized risk-weights for purposes of the denominator, and made stylized assumptions in cases where necessary input data were unavailable from regulatory reports. Based on the agencies' analysis, the vast majority of banking organizations currently would meet the fully phased-in minimum capital requirements as of March 31, 2012, and those organizations that would not meet the proposed minimum requirements should have ample time to adjust their capital levels by the end of the transition period.

Table 2 summarizes key changes proposed in the Basel III and Standardized Approach NPRs and how these changes compare with the agencies' general risk-based and leverage capital rules.

TABLE 2—KEY PROVISIONS OF THE BASEL III AND STANDARDIZED APPROACH NPRS AS COMPARED WITH THE CURRENT RISK-BASED AND LEVERAGE CAPITAL RULES

Aspect of proposed requirements	Proposed treatment
Basel III NPR	
Minimum Capital Ratios:	
Common equity tier 1 capital ratio (section 10)	Introduces a minimum requirement of 4.5 percent.
Tier 1 capital ratio (section 10)	Increases the minimum requirement from 4.0 percent to 6.0 percent.
Total capital ratio (section 10)	Minimum unchanged (remains at 8.0 percent).
Leverage ratio (section 10)	Modifies the minimum leverage ratio requirement based on the new definition of tier 1 capital. Introduces a supplementary leverage ratio requirement for advanced approaches banking organizations.
Components of Capital and Eligibility Criteria for Regulatory Capital Instruments (sections 20–22).	Enhances the eligibility criteria for regulatory capital instruments and adds certain adjustments to and deductions from regulatory capital, including increased deductions for mortgage servicing assets (MSAs) and deferred tax assets (DTAs) and new limits on the inclusion of minority interests in capital. Provides that unrealized gains and losses on all available for sale (AFS) securities and gains and losses associated with certain cash flow hedges flow through to common equity tier 1 capital.
Capital Conservation Buffer (section 11)	Introduces a capital conservation buffer of common equity tier 1 capital above the minimum risk-based capital requirements, which must be maintained to avoid restrictions on capital distributions and certain discretionary bonus payments.
Countercyclical Capital Buffer (section 11)	Introduces for advanced approaches banking organizations a mechanism to increase the capital conservation buffer during times of excessive credit growth.
Standardized Approach NPR Risk-Weighted Assets	
Credit exposures to: U.S. government and its agencies. U.S. government-sponsored entities. U.S. depository institutions and credit unions. U.S. public sector entities, such as states and municipalities (section 32).	Unchanged.
Credit exposures to: Foreign sovereigns Foreign banks Foreign public sector entities (section 32)	Introduces a more risk-sensitive treatment using the Country Risk Classification measure produced by the Organization for Economic Co-operation and Development.
Corporate exposures (section 32)	Assigns a 100 percent risk weight to corporate exposures, including exposures to securities firms.

[17] *See* "Assessing the Macroeconomic Impact of the Transition to Stronger Capital and Liquidity Requirements" (August 2010), available at *http://www.bis.org/publ/othp10.pdf;* "An assessment of the long-term economic impact of stronger capital and liquidity requirements" (August 2010), available at *http://www.bis.org/publ/bcbs173.pdf.*

TABLE 2—KEY PROVISIONS OF THE BASEL III AND STANDARDIZED APPROACH NPRS AS COMPARED WITH THE CURRENT RISK-BASED AND LEVERAGE CAPITAL RULES—Continued

Aspect of proposed requirements	Proposed treatment
Residential mortgage exposures (section 32)	Introduces a more risk-sensitive treatment based on several criteria, including certain loan characteristics and the loan-to-value-ratio of the exposure.
High volatility commercial real estate exposures (section 32)	Applies a 150 percent risk weight to certain credit facilities that finance the acquisition, development or construction of real property.
Past due exposures (section 32)	Applies a 150 percent risk weight to exposures that are not sovereign exposures or residential mortgage exposures and that are more than 90 days past due or on nonaccrual.
Securitization exposures (sections 41–45)	Maintains the gross-up approach for securitization exposures. Replaces the current ratings-based approach with a formula-based approach for determining a securitization exposure's risk weight based on the underlying assets and exposure's relative position in the securitization's structure.
Equity exposures (sections 51–53)	Introduces more risk-sensitive treatment for equity exposures.
Off-balance Sheet Items (sections 33)	Revises the measure of the counterparty credit risk of repo-style transactions. Raises the credit conversion factor for most short-term commitments from zero percent to 20 percent.
Derivative Contracts (section 34)	Removes the 50 percent risk weight cap for derivative contracts.
Cleared Transactions (section 35)	Provides preferential capital requirements for cleared derivative and repo-style transactions (as compared to requirements for non-cleared transactions) with central counterparties that meet specified standards. Also requires that a clearing member of a central counterparty calculate a capital requirement for its default fund contributions to that central counterparty.
Credit Risk Mitigation (section 36)	Provides a more comprehensive recognition of collateral and guarantees.
Disclosure Requirements (sections 61–63)	Introduces qualitative and quantitative disclosure requirements, including regarding regulatory capital instruments, for banking organizations with total consolidated assets of $50 billion or more that are not subject to the separate advanced approaches disclosure requirements.

Under section 165 of the Dodd-Frank Act, the Board is required to establish the enhanced risk-based and leverage capital requirements for bank holding companies with total consolidated assets of $50 billion or more and nonbank financial companies that the Financial Stability Oversight Council has designated for supervision by the Board (collectively, covered companies).[18] The Board published for comment in the **Federal Register** on January 5, 2012, a proposal regarding the enhanced prudential standards and early remediation requirements. The capital requirements as proposed in the three NPRs would become a key part of the Board's overall approach to enhancing the risk-based capital and leverage standards applicable to covered companies in accordance with section 165 of the Dodd-Frank Act.[19] In addition, the Board intends to supplement the enhanced risk-based capital and leverage requirements included in its January 2012 proposal with a subsequent proposal to implement a quantitative risk-based capital surcharge for covered companies or a subset of covered companies. The BCBS is calibrating a methodology for assessing an additional capital surcharge for global systemically important banks (G–SIBs).[20] The Board intends to propose a quantitative risk-based capital surcharge in the United States based on the BCBS approach and consistent with the BCBS's implementation time frame. The forthcoming proposal would contemplate adopting implementing rules in 2014, and requiring G–SIBs to meet the capital surcharges on a phased-in basis from 2016–2019. The OCC also is reviewing the BCBS proposal and is considering whether to propose to apply a similar surcharge for globally significant national banks.

Question 1: The agencies solicit comment on all aspects of the proposals including comment on the specific issues raised throughout this preamble. Commenters are requested to provide a detailed qualitative or quantitative analysis, as appropriate, as well as any relevant data and impact analysis to support their positions.

B. Background

In 1989, the agencies established a risk-based capital framework for U.S. national banks, state member and nonmember banks, and bank holding companies with the general risk-based capital rules.[21] The agencies based the framework on the ''International Convergence of Capital Measurement and Capital Standards'' (Basel I), released by the BCBS in 1988.[22] The general risk-based capital rules instituted a uniform risk-based capital system that was more risk-sensitive than, and addressed several shortcomings in, the regulatory capital rules in effect prior to 1989. The agencies' capital rules also included a minimum leverage measure of capital to total assets, established in the early 1980s, to place a constraint on the maximum degree to which a banking organization can leverage its capital base.

In 2004, the BCBS introduced a new international capital adequacy framework (Basel II) that was intended

[18] *See* section 165 of the Dodd-Frank Act (12 U.S.C. 5365).

[19] 77 FR 594 (January 5, 2012).

[20] *See* ''Global Systemically Important Banks: Assessment Methodology and the Additional Loss Absorbency Requirement'' (July 2011), available at *http://www.bis.org/publ/bcbs201.pdf.*

[21] *See* 54 FR 4186 (January 27, 1989) (Board); 54 FR 4168 (January 27, 1989) (OCC); 54 FR 11500 (March 21, 1989).

[22] BCBS, ''International Convergence of Capital Measurement and Capital Standards'' (July 1988), available at *http://www.bis.org/publ/bcbs04a.htm.*

to improve risk measurement and management processes and to better align minimum risk-based capital requirements with risk of the underlying exposures.[23] Basel II is designed as a ''three pillar'' framework encompassing risk-based capital requirements for credit risk, market risk, and operational risk (Pillar 1); supervisory review of capital adequacy (Pillar 2); and market discipline through enhanced public disclosures (Pillar 3). To calculate risk-based capital requirements for credit risk, Basel II provides three approaches: the standardized approach (Basel II standardized approach), the foundation internal ratings-based approach, and the advanced internal ratings-based approach. Basel II also introduces an explicit capital requirement for operational risk, which may be calculated using one of three approaches: the basic indicator approach, the standardized approach, or the advanced measurement approaches. On December 7, 2007, the agencies implemented the advanced approaches rules that incorporated Basel II advanced internal ratings-based approach for credit risk and the advanced measurement approaches for operational risk.[24]

To address some of the shortcomings in the international capital standards exposed during the crisis, the BCBS issued the ''2009 Enhancements'' in July 2009 to enhance certain risk-based capital requirements and to encourage stronger management of credit and market risk. The ''2009 Enhancements'' strengthen the risk-based capital requirements for certain securitization exposures to better reflect their risk, increase the credit conversion factors for certain short-term liquidity facilities, and require that banking organizations conduct more rigorous credit analysis of their exposures.[25]

In 2010, the BCBS published a comprehensive reform package, Basel III, which is designed to improve the quality and the quantity of regulatory capital and to build additional capacity into the banking system to absorb losses in times of future market and economic stress. Basel III introduces or enhances a number of capital standards, including a stricter definition of regulatory capital, a minimum tier 1 common equity ratio, the addition of a regulatory capital buffer, a leverage ratio, and a disclosure requirement for regulatory capital instruments. Implementing Basel III is the focus of this NPR, as described below. Certain elements of Basel III are also proposed in the Standardized Approach NPR and the Advanced Approaches and Market Risk NPR, as discussed in those notices.

Quality and Quantity of Capital

The recent financial crisis demonstrated that the amount of high-quality capital held by banks globally was insufficient to absorb losses during that period. In addition, some non-common stock capital instruments included in tier 1 capital did not absorb losses to the extent previously expected. A lack of clear and easily understood disclosures regarding the amount of high-quality regulatory capital and characteristics of regulatory capital instruments, as well as inconsistencies in the definition of capital across jurisdictions, contributed to the difficulties in evaluating a bank's capital strength. To evaluate banks' creditworthiness and overall stability more accurately, market participants increasingly focused on the amount of banks' tangible common equity, the most loss-absorbing form of capital.

The crisis also raised questions about banks' ability to conserve capital during a stressful period or to cancel or defer interest payments on tier 1 capital instruments. For example, in some jurisdictions banks exercised call options on hybrid tier 1 capital instruments, even when it became apparent that the banks' capital positions would suffer as a result.

Consistent with Basel III, the proposals in this NPR would address these deficiencies by imposing, among other requirements, stricter eligibility criteria for regulatory capital instruments and increasing the minimum tier 1 capital ratio from 4 to 6 percent. To help ensure that a banking organization holds truly loss-absorbing capital, the proposal also introduces a minimum common equity tier 1 capital to total risk-weighted assets ratio of 4.5 percent. In addition, the proposals would require that most regulatory deductions from, and adjustments to, regulatory capital (for example, the deductions related to mortgage servicing assets (MSAs) and deferred tax assets (DTAs) be applied to common equity tier 1 capital. The proposals would also eliminate certain features of the current risk-based capital rules, such as adjustments to regulatory capital to neutralize the effect on the capital account of unrealized gains and losses on AFS debt securities. To reduce the double counting of regulatory capital, Basel III also limits investments in the capital of unconsolidated financial institutions that would be included in regulatory capital and requires deduction from capital if a banking organization has exposures to these institutions that go beyond certain percentages of its common equity tier 1 capital. Basel III also revises risk-weights associated with certain items that are subject to deduction from regulatory capital.

Finally, to promote transparency and comparability of regulatory capital across jurisdictions, Basel III introduces public disclosure requirements, including those for regulatory capital instruments, that are designed to help market participants assess and compare the overall stability and resiliency of banking organizations across jurisdictions.

Capital Conservation and Countercyclical Capital Buffer

As noted previously, some banking organizations continued to pay dividends and substantial discretionary bonuses even as their financial condition weakened as a result of the recent financial crisis and economic downturn. Such capital distributions had a significant negative impact on the overall strength of the banking sector. To encourage better capital conservation by banking organizations and to improve the resiliency of the banking system, Basel III and this proposal include limits on capital distributions and discretionary bonuses for banking organizations that do not hold a specified amount of common equity tier 1 capital in addition to the common equity necessary to meet the minimum risk-based capital requirements (capital conservation buffer).

Under this proposal, for advanced approaches banking organizations, the capital conservation buffer may be expanded by up to 2.5 percent of risk-weighted assets if the relevant national authority determines that financial markets in its jurisdiction are experiencing a period of excessive aggregate credit growth that is associated with an increase in system-wide risk. The countercyclical capital buffer is designed to take into account the macro-financial environment in which banking organizations function and help protect the banking system from the systemic vulnerabilities.

[23] *See* ''International Convergence of Capital Measurement and Capital Standards: A Revised Framework'' (June 2006), available at *http://www.bis.org/publ/bcbs128.htm.*

[24] *See* 72 FR 69288 (December 7, 2007).

[25] In July 2009, the BCBS also issued ''Revisions to the Basel II Market Risk Framework,'' available at *http://www.bis.org/publ/bcbs193.htm.* The agencies issued an NPR in January 2011 and a supplement in December 2011, that included provisions to implement the market-risk related provisions. 76 FR 1890 (January 11, 2011); 76 FR 79380 (December 21, 2011).

Basel III Leverage Ratio

Since the early 1980s, U.S. banking organizations have been subject to a minimum leverage measure of capital to total assets designed to place a constraint on the maximum degree to which a banking organization can leverage its equity capital base. However, prior to the adoption of Basel III, the Basel capital framework did not include a leverage ratio requirement. It became apparent during the crisis that some banks built up excessive on- and off-balance sheet leverage while continuing to present strong risk-based capital ratios. In many instances, banks were forced by the markets to reduce their leverage and exposures in a manner that increased downward pressure on asset prices and further exacerbated overall losses in the financial sector.

The BCBS introduced a leverage ratio (the Basel III leverage ratio) to discourage the acquisition of excess leverage and to act as a backstop to the risk-based capital requirements. The Basel III leverage ratio is defined as the ratio of tier 1 capital to a combination of on- and off-balance sheet assets; the minimum ratio is 3 percent. The introduction of the leverage requirement in the Basel capital framework should improve the resiliency of the banking system worldwide by providing an ultimate limit on the amount of leverage a banking organization may incur.

As described in section II.B of this preamble, the agencies are proposing to apply the Basel III leverage ratio only to advanced approaches banking organizations as an additional leverage requirement (supplementary leverage ratio). For all banking organizations, the agencies are proposing to update and maintain the current leverage requirement, as revised to reflect the proposed definition of tier 1 capital.

Additional Revisions to the Basel Capital Framework

To facilitate the implementation of Basel III, the BCBS issued a series of releases in 2011 in the form of frequently asked questions.[26] In addition, in 2011, the BCBS proposed to revise the treatment of counterparty credit risk and specific capital requirements for derivative and repo-style transaction exposures to central counterparties (CCP) to address concerns related to the interconnectedness and complexity of the derivatives markets.[27] The proposed revisions provide incentives for banking organizations to clear derivatives and repo-style transactions through qualifying central counterparties (QCCP) to help promote market transparency and improve the ability of market participants to unwind their positions quickly and efficiently. The agencies have incorporated these provisions in the Standardized Approach NPR and the Advanced Approaches and Market Risk NPR.

II. Minimum Regulatory Capital Ratios, Additional Capital Requirements, and Overall Capital Adequacy

A. Minimum Risk-Based Capital Ratios and Other Regulatory Capital Provisions

Consistent with Basel III, the agencies are proposing to require that banking organizations comply with the following minimum capital ratios: (1) A common equity tier 1 capital ratio of 4.5 percent; (2) a tier 1 capital ratio of 6 percent; (3) a total capital ratio of 8 percent; and (4) a tier 1 capital to average consolidated assets of 4 percent and, for advanced approaches banking organizations only, an additional requirement tier 1 capital to total leverage exposure ratio of 3 percent.[28] As noted above, the common equity tier 1 capital ratio would be a new minimum requirement. It is designed to ensure that banking organizations hold high-quality regulatory capital that is available to absorb losses. The proposed capital ratios would apply to a banking organization on a consolidated basis.

Under this NPR, tier 1 capital would equal the sum of common equity tier 1 capital and additional tier 1 capital. Total capital would consist of three capital components: common equity tier 1, additional tier 1, and tier 2 capital. The definitions of each of these categories of regulatory capital are discussed below in section III of this preamble. To align the proposed regulatory capital requirements with the agencies' current PCA rules, this NPR also would incorporate the proposed revisions to the minimum capital requirements into the agencies' PCA framework, as further discussed in section II.E of this preamble.

In addition, a banking organization would be subject to a capital conservation buffer in excess of the risk-based capital requirements that would impose limitations on its capital distributions and certain discretionary bonuses, as described in sections II.C and II.D of this preamble. Because the regulatory capital buffer would apply in addition to the regulatory minimum requirements, the restrictions on capital distributions and discretionary bonus payments associated with the regulatory capital buffer would not give rise to any applicable restrictions under section 38 of the Federal Deposit Insurance Act and the agencies' implementing PCA rules, which apply when an insured institution's capital levels drop below certain regulatory thresholds.[29]

As a prudential matter, the agencies have a long-established policy that banking organizations should hold capital commensurate with the level and nature of the risks to which they are exposed, which may entail holding capital significantly above the minimum requirements, depending on the nature of the banking organization's activities and risk profile. Section II.F of this preamble describes the requirement for overall capital adequacy of banking organizations and the supervisory assessment of an entity's capital adequacy.

Furthermore, consistent with the agencies' authority under the current capital rules, section 10(d) of the proposal includes a reservation of authority that would allow a banking organization's primary federal supervisor to require a banking organization to hold a different amount of regulatory capital than otherwise would be required under the proposal, if the supervisor determines that the regulatory capital held by the banking organization is not commensurate with a banking organization's credit, market, operational, or other risks.

B. Leverage Ratio

1. Minimum Tier 1 Leverage Ratio

Under the proposal, all banking organizations would remain subject to a 4 percent tier 1 leverage ratio, which would be calculated by dividing an organization's tier 1 capital by its average consolidated assets, minus amounts deducted from tier 1 capital. The numerator for this ratio would be a banking organization's tier 1 capital as defined in section 2 of the proposal. The denominator would be its average total on-balance sheet assets as reported on

[26] *See, e.g.,* "Basel III FAQs answered by the Basel Committee" (July, October, December 2011), available at *http://www.bis.org/list/press_releases/index.htm*.

[27] The BCBS left unchanged the treatment of exposures to CCPs for settlement of cash transactions such as equities, fixed income, spot foreign exchange and spot commodities. See "Capitalization of Banking Organization Exposures to Central Counterparties" (December 2010, revised November 2011) (CCP consultative release), available at *http://www.bis.org/publ/bcbs206.pdf*.

[28] Advanced approaches banking organizations should refer to section 10 of the proposed rule text and to the Advanced Approaches and Market Risk NPR for a more detailed discussion of the applicable minimum capital ratios.

[29] 12 U.S.C. 1831o; 12 CFR part 6, 12 CFR part 165 (OCC); 12 CFR 208.45 (Board); 12 CFR 325.105, 12 CFR 390.455 (FDIC).

the banking organization's regulatory report, net of amounts deducted from tier 1 capital.[30]

In this NPR, the agencies are proposing to remove the tier 1 leverage ratio exception for banking organizations with a supervisory composite rating of 1 that exists under the current leverage rules.[31] This exception provides for a 3 percent tier 1 leverage measure for such institutions.[32] The current exception would also be eliminated for bank holding companies with a supervisory composite rating of 1 and subject to the market risk rule. Accordingly, as proposed, all banking organizations would be subject to a 4 percent minimum tier 1 leverage ratio.

2. Supplementary Leverage Ratio for Advanced Approaches Banking Organizations

Advanced approaches banking organizations would also be required to maintain the supplementary leverage ratio of tier 1 capital to total leverage exposure of 3 percent. The supplementary leverage ratio incorporates the Basel III definition of tier 1 capital as the numerator and uses a broader exposure base, including certain off-balance sheet exposures (total leverage exposure), for the denominator.

The agencies believe that the supplementary leverage ratio is most appropriate for advanced approaches banking organizations because these banking organizations tend to have more significant amounts of off-balance sheet exposures that are not captured by the current leverage ratio. Applying the supplementary leverage ratio rather than the current tier 1 leverage ratio to other banking organizations would increase the complexity of their leverage ratio calculation, and in many cases could result in a reduced leverage capital requirement. The agencies believe that, along with the 5 percent ''well-capitalized'' PCA leverage threshold described in section II.E of this preamble, the proposed leverage requirements are, for the majority of banking organizations that are not subject to the advanced approaches rule, both more conservative and simpler than the supplementary leverage ratio.

An advanced approaches banking organization would calculate the supplementary leverage ratio, including each of the ratio components, at the end of every month and then calculate a quarterly leverage ratio as the simple arithmetic mean of the three monthly leverage ratios over the reporting quarter. As proposed, total leverage exposure would equal the sum of the following exposures:

(1) The balance sheet carrying value of all of the banking organization's on-balance sheet assets minus amounts deducted from tier 1 capital;

(2) The potential future exposure amount for each derivative contract to which the banking organization is a counterparty (or each single-product netting set for such transactions) determined in accordance with section 34 of the proposal;

(3) 10 percent of the notional amount of unconditionally cancellable commitments made by the banking organization; and

(4) The notional amount of all other off-balance sheet exposures of the banking organization (excluding securities lending, securities borrowing, reverse repurchase transactions, derivatives and unconditionally cancellable commitments).

The BCBS continues to assess the Basel III leverage ratio, including through supervisory monitoring during a parallel run period in which the proposed design and calibration of the Basel III leverage ratio will be evaluated, and the impact of any differences in national accounting frameworks material to the definition of the leverage ratio will be considered. A final decision by the BCBS on the measure of exposure for certain transactions and calibration of the leverage ratio is not expected until closer to 2018.

Due to these ongoing observations and international discussions on the most appropriate measurement of exposure for repo-style transactions, the agencies are proposing to maintain the current on-balance sheet measurement of repo-style transactions for purposes of calculating total leverage exposure. Under this NPR, a banking organization would measure exposure as the value of repo-style transactions (including repurchase agreements, securities lending and borrowing transactions, and reverse repos) carried as an asset on the balance sheet, consistent with the measure of exposure used in the agencies' current leverage measure. The agencies are participating in international discussions and ongoing quantitative analysis of the exposure measure for repo-style transactions, and will consider modifying in the future the measurement of repo-style transactions in the calculation of total leverage exposure to reflect results of these international efforts.

The agencies are proposing to apply the supplementary leverage ratio as a requirement for advanced approaches banking organizations beginning in 2018, consistent with Basel III. However, beginning on January 1, 2015, advanced approaches banking organizations would be required to calculate and report their supplementary leverage ratio.

Question 2: The agencies solicit comments on all aspects of this proposal, including regulatory burden and competitive impact. Should all banking organizations, banking organizations with total consolidated assets above a certain threshold, or banking organizations with certain risk profiles (for example, concentrations in derivatives) be required to comply with the supplementary leverage ratio, and why? What are the advantages and disadvantages of the application of two leverage ratio requirements to advanced approaches banking organizations?

Question 3: What modifications to the proposed supplementary leverage ratio should be considered and why? Are there alternative measures of exposure for repo-style transactions that should be considered by the agencies? What alternative measures should be used in cases in which the use of the current exposure method may overstate leverage (for example, in certain cases of calculating derivative exposure) or understate leverage (for example, in the case of credit protection sold)? The agencies request data and supplementary analysis that would support consideration of such alternative measures.

Question 4: Given differences in international accounting, particularly the difference in how International Financial Reporting Standards and GAAP treat securities for securities lending, the agencies solicit comments on the adjustments that should be contemplated to mitigate or offset such differences.

Question 5: The agencies solicit comments on the advantages and disadvantages of including off-balance sheet exposures in the supplementary leverage ratio. The agencies seek

[30] Specifically, to determine average total on-balance sheet assets, bank holding companies and savings and loan holding companies would use the Consolidated Financial Statements for Bank Holding Companies (FR Y–9C); national banks, state member banks, state nonmember banks, and savings associations would use On-balance sheet Reports of Condition and Income (Call Report).

[31] Under the agencies' current rules, the minimum ratio of tier 1 capital to total assets for strong banking organizations (that is, rated composite ''1'' under the CAMELS system for state nonmember and national banks, ''1'' under UFIRS for state member banks, and ''1'' under RFI/CD for bank holding companies) not experiencing or anticipating significant growth is 3 percent. *See* 12 CFR 3.6, 12 CFR 167.8 (OCC); 12 CFR 208.43, 12 CFR part 225, Appendix D (Board); 12 CFR 325.3, 12 CFR 390.467 (FDIC).

[32] *See* 12 CFR 3.6 (OCC); 12 CFR part 208, Appendix B and 12 CFR part 225, Appendix D (Board); and 12 CFR part 325.3 (FDIC).

detailed comments, with supporting data, on the proposed method of calculating exposures and estimates of burden, particularly for off-balance sheet exposures.

C. Capital Conservation Buffer

Consistent with Basel III, the proposal incorporates a capital conservation buffer that is designed to bolster the resilience of banking organizations throughout financial cycles. The buffer would provide incentives for banking organizations to hold sufficient capital to reduce the risk that their capital levels would fall below their minimum requirements during stressful conditions. The capital conservation buffer would be composed of common equity tier 1 capital and would be separate from the minimum risk-based capital requirements.

As proposed, a banking organization's capital conservation buffer would be the lowest of the following measures: (1) The banking organization's common equity tier 1 capital ratio minus its minimum common equity tier 1 capital ratio; (2) the banking organization's tier 1 capital ratio minus its minimum tier 1 capital ratio; and (3) the banking organization's total capital ratio minus its minimum total capital ratio.[33] If the banking organization's common equity tier 1, tier 1 or total capital ratio were less than or equal to its minimum common equity tier 1, tier 1 or total capital ratio, respectively, the banking organization's capital conservation buffer would be zero. For example, if a banking organization's common equity tier 1, tier 1, and total capital ratios are 7.5, 9.0, and 10 percent, respectively, and the banking organization's minimum common equity tier 1, tier 1, and total capital ratio requirements are 4.5, 6, and 8, respectively, the banking organization's applicable capital conservation buffer would be 2 percent for purposes of establishing a 60 percent maximum payout ratio under table 3.

Under the proposal, a banking organization would need to hold a capital conservation buffer in an amount greater than 2.5 percent of total risk-weighted assets (plus, for an advanced approaches banking organization, 100 percent of any applicable countercyclical capital buffer amount) to avoid being subject to limitations on capital distributions and discretionary bonus payments to executive officers, as defined under the proposal. The maximum payout ratio would be the percentage of eligible retained income that a banking organization would be allowed to pay out in the form of capital distributions and certain discretionary bonus payments during the current calendar quarter and would be determined by the amount of the capital conservation buffer held by the banking organization during the previous calendar quarter. Under the proposal, eligible retained income would be defined as a banking organization's net income (as reported in the banking organization's quarterly regulatory reports) for the four calendar quarters preceding the current calendar quarter, net of any capital distributions, certain discretionary bonus payments, and associated tax effects not already reflected in net income.

A banking organization's maximum payout amount for the current calendar quarter would be equal to the banking organization's eligible retained income, multiplied by the applicable maximum payout ratio in accordance with table 3. A banking organization with a capital conservation buffer that is greater than 2.5 percent (plus, for an advanced approaches banking organization, 100 percent of any applicable countercyclical buffer) would not be subject to a maximum payout amount as a result of the application of this provision (but the agencies' authority to restrict capital distributions for other reasons remains undiminished).

In a scenario where a banking organization's risk-based capital ratios fall below its minimum risk-based capital ratios plus 2.5 percent of total risk-weighted assets, the maximum payout ratio would also decline, in accordance with table 3. A banking organization that becomes subject to a maximum payout ratio would remain subject to restrictions on capital distributions and certain discretionary bonus payments until it is able to build up its capital conservation buffer through retained earnings, raising additional capital, or reducing its risk-weighted assets. In addition, as a general matter, a banking organization would not be able to make capital distributions or certain discretionary bonus payments during the current calendar quarter if the banking organization's eligible retained income is negative and its capital conservation buffer is less than 2.5 percent as of the end of the previous quarter.

As illustrated in table 3, the capital conservation buffer is divided into equal quartiles, each associated with increasingly stringent limitations on capital distributions and discretionary bonus payments to executive officers as the capital conservation buffer falls closer to zero percent. As described in more detail in the next section, each quartile, associated with a certain maximum payout ratio in table 3, would expand proportionately for advanced approaches banking organizations when the countercyclical capital buffer amount is greater than zero.

The agencies propose to define a capital distribution as: (1) A reduction of tier 1 capital through the repurchase of a tier 1 capital instrument or by other means; (2) a reduction of tier 2 capital through the repurchase, or redemption prior to maturity, of a tier 2 capital instrument or by other means; (3) a dividend declaration on any tier 1 capital instrument; (4) a dividend declaration or interest payment on any tier 2 capital instrument if such dividend declaration or interest payment may be temporarily or permanently suspended at the discretion of the banking organization; or (5) any similar transaction that the agencies determine to be in substance a distribution of capital. The proposed definition is similar in effect to the definition of capital distribution in the Board's rule requiring annual capital plan submissions for bank holding companies with $50 billion or more in total assets.[34]

The agencies propose to define a discretionary bonus payment as a payment made to an executive officer of a banking organization or an individual with commensurate responsibilities within the organization, such as a head of a business line, where: (1) The banking organization retains discretion as to the fact of the payment and as to the amount of the payment until the discretionary bonus is paid to the executive officer; (2) the amount paid is determined by the banking organization without prior promise to, or agreement with, the executive officer; and (3) the executive officer has no contract right, express or implied, to the bonus payment.

An executive officer would be defined as a person who holds the title or, without regard to title, salary, or compensation, performs the function of one or more of the following positions: president, chief executive officer, executive chairman, chief operating officer, chief financial officer, chief investment officer, chief legal officer, chief lending officer, chief risk officer, or head of a major business line, and other staff that the board of directors of the banking organization deems to have

[33] For purposes of the capital conservation buffer calculations, a banking organization would be required to use standardized total risk weighted assets if it is a standardized approach banking organization and it would be required to use advanced total risk weighted assets if it is an advanced approaches banking organization.

[34] *See* 12 CFR 225.8.

equivalent responsibility.[35] The purpose of limiting restrictions on discretionary bonus payments to executive officers is to focus these measures on the individuals within a banking organization who could expose the organization to the greatest risk. The agencies note that a banking organization may otherwise be subject to limitations on capital distributions under other laws or regulations.[36]

Table 3 shows the relationship between the capital conservation buffer and the maximum payout ratio. The maximum dollar amount that a banking organization would be permitted to pay out in the form of capital distributions or discretionary bonus payments during the current calendar quarter would be equal to the maximum payout ratio multiplied by the banking organization's eligible retained income. The calculation of the maximum payout amount would be made as of the last day of the previous calendar quarter and any resulting restrictions would apply during the current calendar quarter.

TABLE 3—CAPITAL CONSERVATION BUFFER AND MAXIMUM PAYOUT RATIO[37]

Capital conservation buffer (as a percentage of total risk-weighted assets)	Maximum payout ratio (as a percentage of eligible retained income)
Greater than 2.5 percent	No payout ratio limitation applies.
Less than or equal to 2.5 percent, and greater than 1.875 percent	60 percent.
Less than or equal to 1.875 percent, and greater than 1.25 percent	40 percent.
Less than or equal to 1.25 percent, and greater than 0.625 percent	20 percent.
Less than or equal to 0.625 percent	0 percent.

For example, a banking organization with a capital conservation buffer between 1.875 and 2.5 percent (for example, a common equity tier 1 capital ratio of 6.5 percent, a tier 1 capital ratio of 8 percent, or a total capital ratio of 10 percent) as of the end of the previous calendar quarter would be allowed to distribute no more than 60 percent of its eligible retained income in the form of capital distributions or discretionary bonus payments during the current calendar quarter. That is, the banking organization would need to conserve at least 40 percent of its eligible retained income during the current calendar quarter.

A banking organization with a capital conservation buffer of less than or equal to 0.625 percent (for example, a banking organization with a common equity tier 1 capital ratio of 5.0 percent, a tier 1 capital ratio of 6.5 percent, or a total capital ratio of 8.5 percent) as of the end of the previous calendar quarter would not be permitted to make any capital distributions or discretionary bonus payments during the current calendar quarter.

In contrast, a banking organization with a capital conservation buffer of more than 2.5 percent (for example, a banking organization with a common equity tier 1 capital ratio of 7.5 percent, a tier 1 capital ratio of 9.0 percent, and a total capital ratio of 11.0 percent) as of the end of the previous calendar quarter would not be subject to restrictions on the amount of capital distributions and discretionary bonus payments that could be made during the current calendar quarter. Consistent with the agencies' current practice with respect to regulatory restrictions on dividend payments and other capital distributions, each agency would retain its authority to permit a banking organization supervised by that agency to make a capital distribution or a discretionary bonus payment, if the agency determines that the capital distribution or discretionary bonus payment would not be contrary to the purposes of the capital conservation buffer or the safety and soundness of the banking institution. In making such a determination, the agency would consider the nature and extent of the request and the particular circumstances giving rise to the request.

The agencies are proposing that banking organizations that are not subject to the advanced approaches rule would calculate their capital conservation buffer using total risk-weighted assets as calculated by all banking organizations, and that banking organizations subject to the advanced approaches rule would calculate the buffer using advanced approaches total risk-weighted assets. Under the proposed approach, internationally active U.S. banking organizations using the advanced approaches would face capital conservation buffers determined in a manner comparable to those of their foreign competitors. Depending on the difference in risk-weighted assets calculated under the two approaches, capital distributions and bonus restrictions applied to an advanced approaches banking organization could be more or less stringent than if its capital conservation buffer were based on risk-weighted assets as calculated by all banking organizations.

Question 6: The agencies seek comment on all aspects of the proposed capital buffer framework, including issues of domestic and international competitive equity, and the adequacy of the proposed buffer to provide incentives for banking organizations to hold sufficient capital to withstand a stress event and still remain above regulatory minimum capital levels. What are the advantages and disadvantages of requiring advanced approaches banking organizations to calculate their capital buffers using total risk-weighted assets that are the greater of standardized total risk-weighted assets and advanced total risk-weighted assets? What is the potential effect of the proposal on banking organizations' processes for planning and executing capital distributions and utilization of discretionary bonus payments to retain key staff? What modifications, if any, should the agencies consider?

Question 7: The agencies solicit comments on the scope of the definition of executive officer for purposes of the limitations on discretionary bonus payments under the proposal. Is the scope too broad or too narrow? Should other categories of employees who could expose the institution to material risk be included within the scope of employees whose discretionary bonuses could be subject to the restriction? If so, how should such a class of employees be defined? What are the potential implications for a banking organization of restricting discretionary bonus payments for executive officers or for broader classes of employees? Please

[35] *See* 76 FR 21170 (April 14, 2011).

[36] *See* 12 U.S.C. 56, 60, and 1831o(d)(1); 12 CFR 1467a(f); *see also* 12 CFR 225.8.

[37] Calculations in this table are based on the assumption that the countercyclical buffer amount is zero.

provide data and analysis to support your views.

Question 8: What are the pros and cons of the proposed definition for eligible retained income in the context of the proposed quarterly limitations on capital distributions and discretionary bonus payments?

Question 9: What would be the impact, if any, in terms of the cost of raising new capital, of not allowing a banking organization that is subject to a maximum payout ratio of zero percent to make a penny dividend to common stockholders? Please provide data to support any responses.

D. Countercyclical Capital Buffer

Under Basel III, the countercyclical capital buffer is designed to take into account the macro-financial environment in which banking organizations function and to protect the banking system from the systemic vulnerabilities that may build-up during periods of excessive credit growth, then potentially unwind in a disorderly way that may cause disruptions to financial institutions and ultimately economic activity. As proposed and consistent with Basel III, the countercyclical capital buffer would serve as an extension of the capital conservation buffer.

The agencies propose to apply the countercyclical capital buffer only to advanced approaches banking organizations, because large banking organizations generally are more interconnected with other institutions in the financial system. Therefore, the marginal benefits to financial stability from a countercyclical buffer function should be greater with respect to such institutions. Application of the countercyclical buffer to advanced approaches banking organizations also reflects the fact that making cyclical adjustments to capital requirements is costly for institutions to implement and the marginal costs are higher for smaller institutions.

The countercyclical capital buffer aims to protect the banking system and reduce systemic vulnerabilities in two ways. First, the accumulation of a capital buffer during an expansionary phase could increase the resilience of the banking system to declines in asset prices and consequent losses that may occur when the credit conditions weaken. Specifically, when the credit cycle turns following a period of excessive credit growth, accumulated capital buffers would act to absorb the above-normal losses that a banking organization would likely face. Consequently, even after these losses are realized, banking organizations would remain healthy and able to access funding, meet obligations, and continue to serve as credit intermediaries. Countercyclical capital buffers may also reduce systemic vulnerabilities and protect the banking system by mitigating excessive credit growth and increases in asset prices that are not supported by fundamental factors. By increasing the amount of capital required for further credit extensions, countercyclical capital buffers may limit excessive credit extension.

Consistent with Basel III, the agencies propose a countercyclical capital buffer that would augment the capital conservation buffer under certain circumstances, upon a determination by the agencies.

The countercyclical capital buffer amount in the U.S. would initially be set to zero, but it could increase if the agencies determine that there is excessive credit in the markets, possibly leading to subsequent wide-spread market failures.[38] The agencies expect to consider a range of macroeconomic, financial, and supervisory information indicating an increase in systemic risk including, but not limited to, the ratio of credit to gross domestic product, a variety of asset prices, other factors indicative of relative credit and liquidity expansion or contraction, funding spreads, credit condition surveys, indices based on credit default swap spreads, options implied volatility, and measures of systemic risk. The agencies anticipate making such determinations jointly. Because the countercyclical capital buffer amount would be linked to the condition of the overall U.S. financial system and not the characteristics of an individual banking organization, the agencies expect that the countercyclical capital buffer amount would be the same at the depository institution and holding company levels.

To provide banking organizations with time to adjust to any changes, the agencies expect to announce an increase in the countercyclical capital buffer amount up to12 months prior to implementation. If the agencies determine that a more immediate implementation would be necessary based on economic conditions, the agencies may announce implementation of a countercyclical capital buffer in less than 12 months. The agencies would make their determination and announcement in accordance with any applicable legal requirements. The agencies would follow the same procedures in adjusting the countercyclical capital buffer applicable for exposures located in foreign jurisdictions.

A decrease in the countercyclical capital buffer amount would become effective the day following announcement or the earliest date permitted by applicable law or regulation. In addition, the countercyclical capital buffer amount would return to zero percent 12 months after its effective date, unless an agency announces a decision to maintain the adjusted countercyclical capital buffer amount or adjust it again before the expiration of the 12-month period.

In the United States, the countercyclical capital buffer would augment the capital conservation buffer by up to 2.5 percent of a banking organization's total risk-weighted assets. For other jurisdictions, an advanced approaches banking organization would determine its countercyclical capital buffer amount by calculating the weighted average of the countercyclical capital buffer amounts established for the national jurisdictions where the banking organization has private sector credit exposures, as defined below in this section. The contributing weight assigned to a jurisdiction's countercyclical capital buffer amount would be calculated by dividing the total risk-weighted assets for the banking organization's private sector credit exposures located in the jurisdiction by the total risk-weighted assets for all of the banking organization's private sector credit exposures.[39]

As proposed, a private sector credit exposure would be defined as an exposure to a company or an individual that is included in credit risk-weighted assets, not including an exposure to a sovereign, the Bank for International Settlements, the European Central Bank, the European Commission, the International Monetary Fund, a multilateral development bank (MDB), a public sector entity (PSE), or a government sponsored entity (GSE).

The geographic location of a private sector credit exposure (that is not a securitization exposure) would be the national jurisdiction where the borrower is located (that is, where the borrower

[38] The proposed operation of the countercyclical capital buffer is also consistent with section 616(c) of the Dodd-Frank Act. *See* 12 U.S.C. 3907(a)(1).

[39] As described in the discussion of the capital conservation buffer, an advanced approaches banking organization would calculate its total risk-weighted assets using the advanced approaches rules for purposes of determining the capital conservation buffer amount. An advanced approaches banking organizations may also be subject to the capital plan rule and its stress testing provisions, which may have a separate effect on a banking organization's capital distributions. *See* 12 CFR 225.8.

is incorporated, chartered, or similarly established or, if it is an individual, where the borrower resides). If, however, the decision to issue the private sector credit exposure is based primarily on the creditworthiness of the protection provider, the location of the non-securitization exposure would be the location of the protection provider. The location of a securitization exposure would be the location of the borrowers of the underlying exposures. If the borrowers on the underlying exposures are located in multiple jurisdictions, the location of a securitization exposure would be the location of the borrowers of the underlying exposures in one jurisdiction with the largest proportion of the aggregate unpaid principal balance of the underlying exposures.

Table 4 illustrates how an advanced approaches banking organization would calculate the weighted average countercyclical capital buffer. In the following example, the countercyclical capital buffer established in the various jurisdictions in which the banking organization has private sector credit exposures is reported in column A. Column B contains the banking organization's risk-weighted asset amounts for the private sector credit exposures in each jurisdiction. Column C shows the contributing weight for each countercyclical buffer amount, which is calculated by dividing each of the rows in column B by the total for column B. Column D shows the contributing weight applied to each countercyclical capital buffer amount, calculated as the product of the corresponding contributing weight (column C) and the countercyclical capital buffer set by each jurisdiction's national supervisor (column A). The sum of the rows in column D shows the banking organization's weighted average countercyclical capital buffer, which is 1.4 percent of risk-weighted assets.

TABLE 4—EXAMPLE OF WEIGHTED AVERAGE COUNTERCYCLICAL CAPITAL BUFFER CALCULATION FOR ADVANCED APPROACHES BANKING ORGANIZATIONS

	(A) Countercyclical buffer amount set by national supervisor (percent)	(B) Banking organization's risk-weighted assets (RWA) for private sector credit exposures ($b)	(C) Contributing weight (column B/column B total)	(D) Contributing weight applied to each countercyclical capital buffer amount (column A * column C)
Non-U.S. jurisdiction 1	2.0	250	0.29	0.6
Non-U.S. jurisdiction 2	1.5	100	0.12	0.2
U.S.	1	500	0.59	0.6
Total		850	1.00	1.4

A banking organization's maximum payout ratio for purposes of its capital conservation buffer would vary depending on its countercyclical buffer amount. For instance, if its countercyclical capital buffer amount is equal to zero percent of total risk-weighted assets, the banking organization that held only U.S. credit exposures would need to hold a combined capital conservation buffer of at least 2.5 percent to avoid restrictions on its capital distributions and certain discretionary bonus payments. However, if its countercyclical capital buffer amount is equal to 2.5 percent of total risk-weighted assets, the banking organization whose assets consist of only U.S. credit exposures would need to hold a combined capital conservation and countercyclical buffer of at least 5 percent to avoid restrictions on its capital distributions and discretionary bonus payments.

Question 10: The agencies solicit comment on potential inputs used in determining whether excessive credit growth is occurring and whether a formula-based approach might be useful in determining the appropriate level of the countercyclical capital buffer. What additional factors, if any, should the agencies consider when determining the countercyclical capital buffer amount? What are the pros and cons of using a formula-based approach and what factors might be incorporated in the formula to determine the level of the countercyclical capital buffer amount?

Question 11: The agencies recognize that a banking organization's risk-weighted assets for private sector credit exposures should include relevant covered positions under the market risk capital rule and solicit comment regarding appropriate methodologies for incorporating these positions; specifically, what position-specific or portfolio-specific methodologies should be used for covered positions with specific risk and particularly those for which a banking organization uses models to measure specific risk?

Question 12: The agencies solicit comment on the appropriateness of the proposed 12-month prior notification period to adjust to a newly implemented or adjusted countercyclical capital buffer amount.

E. Prompt Corrective Action Requirements

Section 38 of the Federal Deposit Insurance Act directs the federal banking agencies to take prompt corrective action (PCA) to resolve the problems of insured depository institutions at the least cost to the Deposit Insurance Fund.[40] To facilitate this purpose, the agencies have established five regulatory capital categories in the current PCA regulations that include capital thresholds for the leverage ratio, tier 1 risk-based capital ratio, and the total risk-based capital ratio for insured depository institutions. These five PCA categories under section 38 of the Act and the PCA regulations are: ''Well capitalized,'' ''adequately capitalized,'' ''undercapitalized,'' ''significantly undercapitalized,'' and ''critically undercapitalized.'' Insured depository institutions that fail to meet these capital measures are subject to increasingly strict limits on their activities, including their ability to make capital distributions, pay management fees, grow their balance sheet, and take other actions.[41] Insured depository institutions are expected to be closed within 90 days of becoming ''critically undercapitalized,'' unless their primary federal regulator takes such other action as the agency determines, with the concurrence of the

[40] 12 U.S.C. 1831o.

[41] 12 U.S.C. 1831o(e)–(i). *See* 12 CFR part 6 (OCC); 12 CFR part 208, subpart D (Board); 12 CFR part 325, subpart B (FDIC).

FDIC, would better achieve the purpose of PCA.[42]

All insured depository institutions, regardless of total asset size or foreign exposure, are required to compute PCA capital levels using the agencies' general risk-based capital rules, as supplemented by the market risk capital rule. Under this NPR, the agencies are proposing to augment the PCA capital categories by introducing a common equity tier 1 capital measure for four of the five PCA categories (excluding the critically undercapitalized PCA category).[43] In addition, the agencies are proposing to amend the current PCA leverage measure to include in the leverage measure for the ''adequately capitalized'' and ''undercapitalized'' capital categories for advanced approaches depository institutions an additional leverage ratio based on the leverage ratio in Basel III. All banking organizations would continue to be subject to leverage measure thresholds using the current tier 1, or ''standard'' leverage ratio in the form of tier 1 capital to total assets. In addition, the agencies are proposing to revise the three current capital measures for the five PCA categories to reflect the changes to the definition of capital, as provided in the proposed revisions to the agencies' PCA regulations.

The proposed changes to the current minimum PCA thresholds and the introduction of a new common equity tier 1 capital measure would take effect January 1, 2015. Consistent with transition provisions in Basel III, the proposed amendments to the current PCA leverage measure for advanced approaches depository institutions would take effect on January 1, 2018. In contrast, changes to the definitions of the individual capital components that are used to calculate the relevant capital measures under PCA would coincide with the transition arrangements discussed in section V of the preamble, or with the transition provisions of other capital regulations, as applicable. Thus, the changes to these definitions, including any deductions or modifications to capital, automatically would flow through to the definitions in the PCA framework.

Table 5 sets forth the current risk-based and leverage capital thresholds for each of the PCA capital categories for insured depository institutions.

TABLE 5—CURRENT PCA LEVELS

Requirement	Total Risk-Based Capital (RBC) measure (total RBC ratio—percent)	Tier 1 RBC measure (tier 1 RBC ratio—percent)	Leverage measure (tier 1 (standard) leverage ratio—percent)	PCA requirements
Well Capitalized	≥10	≥6	≥5	None.
Adequately Capitalized	≥8	≥4	[44] ≥4 (or ≥3)	May limit nonbanking activities at DI's FHC and includes limits on brokered deposits.
Undercapitalized	<8	<4	<4 (or <3)	Includes adequately capitalized restrictions, and also includes restrictions on asset growth; dividends; requires a capital plan.
Significantly undercapitalized	<6	<3	<3	Includes undercapitalized restrictions, and also includes restrictions on sub-debt payments.
Critically undercapitalized	Tangible Equity to Total Assets ≤2			Generally receivership/conservatorship within 90 days.

Table 6 sets forth the proposed risk-based and leverage capital thresholds for each of the PCA capital categories for insured depository institutions that are not advanced approaches banks. For each PCA category except critically undercapitalized, an insured depository institution would be required to meet a minimum common equity tier 1 capital ratio, in addition to a minimum tier 1 risk-based capital ratio, total risk-based capital ratio, and leverage ratio.

TABLE 6—PROPOSED PCA LEVELS FOR INSURED DEPOSITORY INSTITUTIONS NOT SUBJECT TO THE ADVANCED APPROACHES RULE

Requirement	Total RBC measure (total RBC ratio—percent)	Tier 1 RBC measure (tier 1 RBC ratio—percent)	Common equity tier 1 RBC measure (common equity tier 1 RBC ratio (percent)	Leverage Measure (leverage ratio—percent)	PCA requirements
Well Capitalized	≥10	≥8	≥6.5	≥5	Unchanged from current rules*.
Adequately Capitalized	≥8	≥6	≥4.5	≥4	Do.
Undercapitalized	<8	<6	<4.5	<4	Do.
Significantly undercapitalized	<6	<4	<3	<3	Do.
Critically undercapitalized	Tangible Equity (defined as tier 1 capital plus non-tier 1 perpetual preferred stock) to Total Assets ≤2				Do.

*Additional restrictions on capital distributions that are not reflected in the agencies' proposed revisions to the PCA regulations are described in section II.C of this preamble.

[42] 12 U.S.C. 1831o(g)(3).

[43] *See* 12 U.S.C. 1831o(c)(1)(B)(i).

[44] The minimum ratio of tier 1 capital to total assets for strong depository institutions (rated composite ''1'' under the CAMELS system and not experiencing or anticipating significant growth) is 3 percent.

To be well capitalized, an insured depository institution would be required to maintain a total risk-based capital ratio equal to or greater than 10 percent; a tier 1 capital ratio equal to or greater than 8 percent; a common equity tier 1 capital ratio equal to or greater than 6.5 percent; and a leverage ratio equal to or greater than 5 percent. An adequately capitalized depository institution would be required to maintain a total risk-based capital ratio equal to or greater than 8 percent; a tier 1 capital ratio equal to or greater than 6 percent; common equity tier 1 capital ratio equal to or greater than 4.5 percent; and a leverage ratio equal to or greater than 4 percent.[45]

An insured depository institution would be considered undercapitalized under the proposal if its total capital ratio were less than 8 percent, or if its tier 1 capital ratio were less than 6 percent, if its common equity tier 1 ratio were less than 4.5 percent, or if its leverage ratio were less than 4 percent. If an institution's tier 1 capital ratio were less than 4 percent, or if its common equity tier 1 ratio were less than 3 percent, it would be considered significantly undercapitalized. The other numerical capital ratio thresholds for being significantly undercapitalized would be unchanged.[46]

Table 7 sets forth the proposed risk-based and leverage thresholds for advanced approaches depository institutions. As indicated in the table, in addition to the PCA requirements and categories described above, the leverage measure for advanced approaches depository institutions in the adequately capitalized and undercapitalized PCA capital categories would include a supplementary leverage ratio based on the Basel III leverage ratio.

TABLE 7—PROPOSED PCA LEVELS FOR INSURED DEPOSITORY INSTITUTIONS SUBJECT TO THE ADVANCED APPROACHES RULE

Requirement	Total RBC measure (total RBC ratio—percent)	Tier 1 RBC measure (tier 1 RBC ratio—percent)	Common Equity tier 1 RBC measure (common equity tier 1 RBC ratio percent)	Leverage measure		PCA requirements
				Leverage ratio (percent)	Supplementary leverage ratio (percent)	
Well Capitalized	≥10	≥8	≥6.5	≥5	Not applicable	Unchanged from current rule *.
Adequately Capitalized.	≥8	≥6	≥4.5	≥4	≥3	Do.
Undercapitalized	<8	<6	<4.5	<4	<3	Do.
Significantly undercapitalized.	<6	<4	<3	<3	Not applicable	Do.
Critically undercapitalized.	Tangible Equity (defined as tier 1 capital plus non-tier 1 perpetual preferred stock) to Total Assets ≦2				Not applicable	Do.

* Additional restrictions on capital distributions that are not reflected in the agencies' proposed revisions to the PCA regulations are described in section II.C of this preamble.

As discussed above, the agencies believe that the supplementary leverage ratio is an important measure of an advanced approaches depository institution's ability to support its on-and off-balance sheet exposures, and advanced approaches institutions tend to have significant amounts of off-balance sheet exposures that are not captured by the current leverage ratio. Consistent with other minimum ratio requirements, the agencies propose that the minimum requirement for the supplementary leverage ratio in section 10 of the proposal would be the minimum supplementary leverage ratio a banking organization would need to maintain in order to be adequately capitalized. With respect to the other PCA categories (other than critically undercapitalized), the agencies are proposing ranges of minimum thresholds for comment. The agencies intend to specify the minimum threshold for each of those categories when the proposed PCA requirements are finalized.

Under the proposed PCA framework, for each measure other than the leverage measure, an advanced approaches depository institution would be well capitalized, adequately capitalized, undercapitalized, significantly undercapitalized, or critically undercapitalized on the same basis as all other insured depository institutions. An advanced approaches bank would also be subject to the same thresholds with respect to the leverage ratio on the same basis as other insured depository institutions. In addition, with respect to the supplementary leverage ratio, in order to be adequately capitalized, an advanced approaches depository institution would be required to maintain a supplementary leverage ratio of greater than or equal to 3 percent. An advanced approaches depository institution would be undercapitalized if its supplementary leverage ratio were less than 3 percent.

Question 13: The agencies seek comment regarding the proposed incorporation of the supplementary leverage ratio into the PCA framework, as well as the proposed ranges of PCA categories for the supplementary leverage ratio. Within the proposed ranges, what is the appropriate percentage for each PCA category? Please provide data to support your answer.

As discussed in section II of this preamble, the current PCA framework permits an insured depository institution that is rated composite 1 under the CAMELS rating system and not experiencing or anticipating significant growth to maintain a 3 percent ratio of tier 1 capital to average total consolidated assets (leverage ratio) rather than the 4.0 percent minimum

[45] An insured depository institution is considered adequately capitalized if it meets the qualifications for the adequately capitalized capital category and does not qualify as well capitalized.

[46] Under current PCA standards, in order to qualify as well capitalized, an insured depository institution must not be subject to any written agreement, order, capital directive, or prompt corrective action directive issued by the Board pursuant to section 8 of the Federal Deposit Insurance Act, the International Lending Supervision Act of 1983, or section 38 of the Federal Deposit Insurance Act, or any regulation thereunder, to meet a maintain a specific capital level for any capital measure. *See* 12 CFR 6.4(b)(1)(iv) (OCC); 12 CFR 208.43(b)(1)(iv) (Board); 12 CFR 325.103(b)(1)(iv) (FDIC). The agencies are not proposing any changes to this requirement.

leverage ratio that is otherwise required for an institution to be adequately capitalized under PCA. The agencies believe that it would be appropriate for all insured depository institutions, regardless of their CAMELS rating, to meet the same minimum leverage ratio requirements. Accordingly, the agencies propose to eliminate the 3 percent leverage ratio requirement for insured depository institutions with composite 1 CAMELS ratings.

The proposal would increase some of the existing PCA capital requirements while maintaining the structure of the current PCA framework. For example, similar to the current PCA requirements, the risk-based capital ratios for well capitalized banking organizations would be two percentage points higher than the ratios for adequately capitalized banking organizations. The tier 1 leverage ratio for well capitalized banking organizations would be one percentage point higher than for adequately capitalized banking organizations. While the PCA levels do not explicitly incorporate the capital conservation buffer, the agencies believe that the PCA and capital conservation buffer frameworks will complement each other to ensure that banking organizations hold an adequate amount of common equity tier 1 capital.

The determination of whether an insured depository institution is critically undercapitalized for PCA purposes is based on its ratio of tangible equity to total assets. This is a statutory requirement within the PCA framework, and the experience of the recent financial crisis has confirmed that tangible equity is of critical importance in assessing the viability of an insured depository institution. Tangible equity for PCA purposes is currently defined as including core capital elements, which consist of (1) Common stock holder's equity, (2) qualifying noncumulative perpetual preferred stock (including related surplus), and (3) minority interest in the equity accounts of consolidated subsidiaries; plus outstanding cumulative preferred perpetual stock; minus all intangible assets except mortgage servicing rights that are included in tier 1 capital. The current PCA definition of tangible equity does not address the treatment of DTAs in determining whether an insured depository institution is critically undercapitalized.

The agencies propose to clarify the calculation of the capital measures for the critically undercapitalized PCA category by revising the definition of tangible equity to consist of tier 1 capital, plus outstanding perpetual preferred stock (including related surplus) not included in tier 1 capital. The revised definition would more appropriately align the calculation of tangible equity with the calculation of tier 1 capital generally for regulatory capital requirements. Assets included in a banking organization's equity account under GAAP, such as DTAs, would be included in tangible equity only to the extent that they are included in tier 1 capital. This modification should promote consistency and provide for clearer boundaries across and between the various PCA categories. In connection with this modification to the definition of tangible equity, the agencies propose to retain the current critically undercapitalized capital category threshold for insured depository institutions of less than 2 percent tangible equity to total assets. Based on the proposed new definition of tier 1 capital, the agencies believe the proposed critically undercapitalized threshold is at least as stringent as the agencies' current approach.

Question 14: The agencies solicit comment on the proposed regulatory capital requirements in the PCA framework, the introduction of a common equity tier 1 ratio as a new capital measure for purposes of PCA, and the proposed PCA thresholds for each PCA category.

In addition to the changes described in this section, the OCC is proposing the following amendments to 12 CFR part 6 to integrate the rules governing national banks and federal savings associations. Under the proposal, part 6 would be applicable to federal savings associations. The OCC also would make various non-substantive, technical amendments to part 6. In addition, the OCC proposes to rescind the current PCA rules in part 165 governing federal savings associations, with the exception of sections 165.8, Procedures for reclassifying a federal savings association based on criteria other than capital, and 165.9, Order to dismiss a director or senior executive officer; and to make non-substantive, technical amendments to sections 165.8 and 165.9. Any substantive issues regarding sections 165.8 and 165.9 will be addressed as part of a separate integration rulemaking.

F. Supervisory Assessment of Overall Capital Adequacy

Capital helps to ensure that individual banking organizations can continue to serve as credit intermediaries even during times of stress, thereby promoting the safety and soundness of the overall U.S. banking system. The agencies' current capital rules indicate that the capital requirements are minimum standards based on broad credit-risk considerations. The risk-based capital ratios do not explicitly take account of the quality of individual asset portfolios or the range of other types of risk to which banking organizations may be exposed, such as interest-rate, liquidity, market, or operational risks.

A banking organization is generally expected to have internal processes for assessing capital adequacy that reflect a full understanding of its risks and to ensure that it holds capital corresponding to those risks to maintain overall capital adequacy.[47] Accordingly, a supervisory assessment of capital adequacy must take account of the internal processes for capital adequacy, as well as risks and other factors that can affect a banking organization's financial condition, including, for example, the level and severity of problem assets and its exposure to operational and interest rate risk. For this reason, a supervisory assessment of capital adequacy may differ significantly from conclusions that might be drawn solely from the level of a banking organization's risk-based capital ratios.

In light of these considerations, as a prudential matter, a banking organization is generally expected to operate with capital positions well above the minimum risk-based ratios and to hold capital commensurate with the level and nature of the risks to which it is exposed, which may entail holding capital significantly above the minimum requirement. For example, banking organizations contemplating significant expansion proposals are expected to maintain strong capital levels substantially above the minimum ratios and should not allow significant diminution of financial strength below these strong levels to fund their expansion plans. Banking organizations with high levels of risk are also expected to operate even further above minimum standards. In addition to evaluating the appropriateness of a banking organization's capital level given its overall risk profile, the supervisory assessment takes into account the quality and trends in a banking organization's capital composition, including the share of common and non-common-equity capital elements.

Section 10(d) of the proposal would maintain and reinforce these supervisory expectations by requiring that a banking organization maintain capital commensurate with the level

[47] The Basel framework incorporates similar requirements under Pillar 2 of Basel II.

and nature of all risks to which it is exposed and that a banking organization have a process for assessing its overall capital adequacy in relation to its risk profile, as well as a comprehensive strategy for maintaining an appropriate level of capital.

The supervisory evaluation of a banking organization's capital adequacy, including compliance with section 10(d), may include such factors as whether the banking organization is newly chartered, entering new activities, or introducing new products. The assessment would also consider whether a banking organization is receiving special supervisory attention, has or is expected to have losses resulting in capital inadequacy, has significant exposure due to risks from concentrations in credit or nontraditional activities, or has significant exposure to interest rate risk, operational risk, or could be adversely affected by the activities or condition of a banking organization's holding company.

In addition, a banking organization should have an appropriately rigorous process for assessing its overall capital adequacy in relation to its risk profile and a comprehensive strategy for maintaining an appropriate level of capital, consistent with the longstanding approach employed by the agencies in their supervision of banking organizations. Supervisors also would evaluate the comprehensiveness and effectiveness of a banking organization's capital planning in light of its activities and capital levels. An effective capital planning process would require a banking organization to assess the risks to which it is exposed and its processes for managing and mitigating those risks, evaluate its capital adequacy relative to its risks, and consider potential impact on its earnings and capital base from current and prospective economic conditions.[48]

While the elements of supervisory review of capital adequacy would be similar across banking organizations, evaluation of the level of sophistication of an individual banking organization's capital adequacy process would be commensurate with the banking organization's size, sophistication, and risk profile, similar to the current supervisory practice.

[48] *See,* for example, SR 09–4, *Applying Supervisory Guidance and Regulations on the Payment of Dividends, Stock Redemptions, and Stock Repurchases at Bank Holding Companies* (Board).

G. Tangible Capital Requirement for Federal Savings Associations

As part of the OCC's overall effort to integrate the regulatory requirements for national banks and federal savings associations, the OCC is proposing to include a tangible capital requirement for Federal savings associations in this NPR.[49] Under section 5(t)(2)(B) of the Home Owners' Loan Act (HOLA),[50] federal savings associations are required to maintain tangible capital in an amount not less than 1.5 percent of adjusted total assets.[51] This statutory requirement is implemented in the capital rules applicable to federal savings associations at 12 CFR 167.9.[52] Under that rule, tangible capital is defined differently from other capital measures, such as tangible equity in 12 CFR part 165.

After reviewing HOLA, the OCC has determined that a unique regulatory definition of tangible capital is not necessary to satisfy the requirement of the statute. Therefore, the OCC is proposing to define ''tangible capital'' as the amount of tier 1 capital plus the amount of outstanding perpetual preferred stock (including related surplus) not included in tier 1 capital. This definition mirrors the proposed definition of ''tangible equity'' for PCA purposes.[53]

While OCC recognizes that the terms used are not identical (''capital'' as compared to ''equity''), the OCC believes that this revised definition of tangible capital would reduce the computational burden on federal savings associations in complying with this statutory mandate, as well as being consistent with both the purposes of HOLA and PCA. Similarly, the FDIC also is proposing to include a tangible capital requirement for state savings associations as part of this proposal.

[49] Under Title III of the Dodd-Frank Act, the OCC assumed all functions of the Office of Thrift Supervision (OTS) and the Director of the OTS relating to Federal savings associations. As a result, the OCC has responsibility for the ongoing supervision, examination and regulation of Federal savings associations as of the transfer date of July 21, 2011. The Act also transfers to the OCC the rulemaking authority of the OTS relating to all savings associations, both state and Federal for certain rules. Section 312(b)(2)(B)(i) (to be codified 12 U.S.C. 5412(b)(2)(B)(i)). The FDIC has rulemaking authority for the capital and PCA rules pursuant to section 38 of the FDI Act (12 U.S.C. 1831n) and section 5(t)(1)(A) of the Home Owners' Loan Act (12 U.S.C.1464(t)(1)(A)).

[50] 12 U.S.C. 1464(t).

[51] ''Tangible capital'' is defined in section 5(t)(9)(B) to mean ''core capital minus any intangible assets (as intangible assets are defined by the Comptroller of the Currency for national banks.)'' Section 5(t)(9)(A) defines ''core capital'' to mean ''core capital as defined by the Comptroller of the Currency for national banks, less any unidentifiable intangible assets [goodwill]'' unless the OCC prescribes a more stringent definition.

[52] 54 FR 49649 (Nov. 30, 1989).

[53] *See* 12 CFR 6.2.

III. Definition of Capital

A. Capital Components and Eligibility Criteria for Regulatory Capital Instruments

1. Common Equity Tier 1 Capital

Under this proposal, a banking organization's common equity tier 1 capital would be the sum of its outstanding common equity tier 1 capital instruments and related surplus (net of treasury stock), retained earnings, accumulated other comprehensive income (AOCI), and common equity tier 1 minority interest subject to the provisions set forth in section 21 of the proposal, minus regulatory adjustments and deductions specified in section 22 of the proposal.

a. Criteria

To ensure that a banking organization's common equity tier 1 capital is available to absorb losses as they occur, consistent with Basel III, the agencies propose to require that common equity tier 1 capital instruments issued by a banking organization satisfy the following criteria:

(1) The instrument is paid in, issued directly by the banking organization, and represents the most subordinated claim in a receivership, insolvency, liquidation, or similar proceeding of the banking organization.

(2) The holder of the instrument is entitled to a claim on the residual assets of the banking organization that is proportional with the holder's share of the banking organization's issued capital after all senior claims have been satisfied in a receivership, insolvency, liquidation, or similar proceeding. That is, the holder has an unlimited and variable claim, not a fixed or capped claim.

(3) The instrument has no maturity date, can only be redeemed via discretionary repurchases with the prior approval of the agency, and does not contain any term or feature that creates an incentive to redeem.

(4) The banking organization did not create at issuance of the instrument through any action or communication an expectation that it will buy back, cancel, or redeem the instrument, and the instrument does not include any term or feature that might give rise to such an expectation.

(5) Any cash dividend payments on the instrument are paid out of the banking organization's net income and retained earnings and are not subject to

a limit imposed by the contractual terms governing the instrument.

(6) The banking organization has full discretion at all times to refrain from paying any dividends and making any other capital distributions on the instrument without triggering an event of default, a requirement to make a payment-in-kind, or an imposition of any other restrictions on the banking organization.

(7) Dividend payments and any other capital distributions on the instrument may be paid only after all legal and contractual obligations of the banking organization have been satisfied, including payments due on more senior claims.

(8) The holders of the instrument bear losses as they occur equally, proportionately, and simultaneously with the holders of all other common stock instruments before any losses are borne by holders of claims on the banking organization with greater priority in a receivership, insolvency, liquidation, or similar proceeding.

(9) The paid-in amount is classified as equity under GAAP.

(10) The banking organization, or an entity that the banking organization controls, did not purchase or directly or indirectly fund the purchase of the instrument.

(11) The instrument is not secured, not covered by a guarantee of the banking organization or of an affiliate of the banking organization, and is not subject to any other arrangement that legally or economically enhances the seniority of the instrument.

(12) The instrument has been issued in accordance with applicable laws and regulations. In most cases, the agencies, understand that the issuance of these instruments would require the approval of the board of directors of the banking organization or, where applicable, of the banking organization's shareholders or of other persons duly authorized by the banking organization's shareholders.

(13) The instrument is reported on the banking organization's regulatory financial statements separately from other capital instruments.

These proposed criteria have been designed to ensure that common equity tier 1 capital instruments do not possess features that would cause a banking organization's condition to further weaken during periods of economic and market stress. For example, the proposed requirement that a banking organization have full discretion on the amount and timing of distributions and dividend payments would enhance the ability of the banking organization to absorb losses during periods of stress. The agencies believe that most existing common stock instruments previously issued by U.S. banking organizations fully satisfy the proposed criteria.

The criteria would also apply to instruments issued by banking organizations where ownership of the company is neither freely transferable, nor evidenced by certificates of ownership or stock, such as mutual banking organizations. For these entities, instruments that would be considered common equity tier 1 capital would be those that are fully equivalent to common stock instruments in terms of their subordination and availability to absorb losses, and that do not possess features that could cause the condition of the company to weaken as a going concern during periods of market stress.

The agencies believe that stockholders' voting rights generally are a valuable corporate governance tool that permits parties with an economic interest at stake to take part in the decision-making process through votes on establishing corporate objectives and policy, and in electing the banking organization's board of directors. For that reason, the agencies continue to expect under the proposal that voting common stockholders' equity (net of the adjustments to and deductions from common equity tier 1 capital proposed under the rule) should be the dominant element within common equity tier 1 capital. To the extent that a banking organization issues non-voting common shares or common shares with limited voting rights, such shares should be identical to the banking organization's voting common shares in all respects except for any limitations on voting rights.

Question 15: The agencies solicit comments on the eligibility criteria for common equity tier 1 capital instruments. Which, if any, criteria could be problematic given the main characteristics of outstanding common stock instruments and why? Please provide supporting data and analysis.

b. Treatment of Unrealized Gains and Losses of Certain Debt Securities in Common Equity Tier 1 Capital

Under the agencies' general risk-based capital rules, unrealized gains and losses on AFS debt securities are not included in regulatory capital, unrealized losses on AFS equity securities are included in tier 1 capital, and unrealized gains on AFS equity securities are partially included in tier 2 capital.[54] As proposed, unrealized gains and losses on all AFS securities would flow through to common equity tier 1 capital. This would include those unrealized gains and losses related to debt securities whose valuations primarily change as a result of fluctuations in a benchmark interest rate, as opposed to changes in credit risk (for example, U.S. Treasuries and U.S. government agency debt obligations).

The agencies believe this proposed treatment would better reflect an institution's actual risk. In particular, while unrealized gains and losses on AFS securities might be temporary in nature and might reverse over a longer time horizon, (especially when they are primarily attributable to changes in a benchmark interest rate), unrealized losses could materially affect a banking organization's capital position at a particular point in time and associated risks should be reflected in its capital ratios. In addition, the proposed treatment would be consistent with the common market practice of evaluating a firm's capital strength by measuring its tangible common equity.

Accordingly, the agencies propose to require unrealized gains and losses on all AFS securities to flow through to common equity tier 1 capital. However, the agencies recognize that including unrealized gains and losses related to certain debt securities whose valuations primarily change as a result of fluctuations in a benchmark interest rate could introduce substantial volatility in a banking organization's regulatory capital ratios. The potential increased volatility could significantly change a banking organization's risk-based capital ratios, in some cases, due primarily to fluctuations in a benchmark interest rate and could result in a change in the banking organization's PCA category. Likewise, the agencies recognize that such volatility could discourage some banking organizations from holding highly liquid instruments with very low levels of credit risk even where prudent for liquidity risk management.

The agencies seek comment on alternatives to the proposed treatment of unrealized gains and losses on AFS securities, including an approach where the unrealized gains and losses related to debt securities whose valuations primarily change as a result of fluctuations in a benchmark interest rate would be excluded from a banking organization's regulatory capital. In particular, the agencies seek comment on an approach that would not include in regulatory capital unrealized gains and losses on U.S. government and agency debt obligations, U.S. GSE debt obligations and other sovereign debt obligations that would qualify for a zero

[54] *See* 12 CFR part 3, appendix A, section 2(b)(5) (OCC); 12 CFR parts 208 and 225, appendix A, section II.A.2.e (Board); 12 CFR part 325, appendix A, section I.A.2.f (FDIC).

percent risk weight under the proposed standardized approach. The agencies also seek comment on whether unrealized gains and losses on general obligations issued by states or other political subdivisions of the United States should receive similar treatment, even though unrealized gains and losses on these obligations are more likely to result from changes in credit risk and not primarily from fluctuations in a benchmark interest rate.

Question 16: To what extent would a requirement to include unrealized gains and losses on all debt securities whose changes in fair value are recognized in AOCI (1) result in excessive volatility in regulatory capital; (2) impact the levels of liquid assets held by banking organizations; (3) affect the composition of the banking organization's securities portfolios; and (4) pose challenges for banking organizations' asset-liability management? Please provide supporting data and analysis.

Question 17: What are the pros and cons of an alternative treatment that would allow U.S. banking organizations to exclude from regulatory capital unrealized gains and losses on debt securities whose changes in fair value are predominantly attributable to fluctuations in a benchmark interest rate (for example, U.S. government and agency debt obligations and U.S. GSE debt obligations)? In the context of such an alternative treatment, what other categories of securities should be considered and why? Are there other alternatives that the agencies should consider (for example, retaining the current treatment for unrealized gains and losses on AFS debt and equity securities)?

2. Additional Tier 1 Capital

Consistent with Basel III, under the proposal, additional tier 1 capital would be the sum of: Additional tier 1 capital instruments that satisfy certain criteria, related surplus, and tier 1 minority interest that is not included in a banking organization's common equity tier 1 capital (subject to the limitations on minority interests set forth in section 21 of the proposal); less applicable regulatory adjustments and deductions. Under the agencies' existing capital rules, non-cumulative perpetual preferred stock, which currently qualifies as tier 1 capital, generally would continue to qualify as additional tier 1 capital under the proposal. The proposed criteria for qualifying additional tier 1 capital instruments, consistent with Basel III criteria, are:

(1) The instrument is issued and paid in.

(2) The instrument is subordinated to depositors, general creditors, and subordinated debt holders of the banking organization in a receivership, insolvency, liquidation, or similar proceeding.

(3) The instrument is not secured, not covered by a guarantee of the banking organization or of an affiliate of the banking organization, and not subject to any other arrangement that legally or economically enhances the seniority of the instrument.

(4) The instrument has no maturity date and does not contain a dividend step-up or any other term or feature that creates an incentive to redeem.

(5) If callable by its terms, the instrument may be called by the banking organization only after a minimum of five years following issuance, except that the terms of the instrument may allow it to be called earlier than five years upon the occurrence of a regulatory event (as defined in the agreement governing the instrument) that precludes the instrument from being included in additional tier 1 capital or a tax event. In addition:

(i) The banking organization must receive prior approval from the agency to exercise a call option on the instrument.

(ii) The banking organization does not create at issuance of the instrument, through any action or communication, an expectation that the call option will be exercised.

(iii) Prior to exercising the call option, or immediately thereafter, the banking organization must either:

(A) Replace the instrument to be called with an equal amount of instruments that meet the criteria under section 20(b) or (c) of the proposal (replacement can be concurrent with redemption of existing additional tier 1 capital instruments); or

(B) Demonstrate to the satisfaction of the agency that following redemption, the banking organization will continue to hold capital commensurate with its risk.

(6) Redemption or repurchase of the instrument requires prior approval from the agency.

(7) The banking organization has full discretion at all times to cancel dividends or other capital distributions on the instrument without triggering an event of default, a requirement to make a payment-in-kind, or an imposition of other restrictions on the banking organization except in relation to any capital distributions to holders of common stock.

(8) Any capital distributions on the instrument are paid out of the banking organization's net income and retained earnings.

(9) The instrument does not have a credit-sensitive feature, such as a dividend rate that is reset periodically based in whole or in part on the banking organization's credit quality, but may have a dividend rate that is adjusted periodically independent of the banking organization's credit quality, in relation to general market interest rates or similar adjustments.

(10) The paid-in amount is classified as equity under GAAP.

(11) The banking organization, or an entity that the banking organization controls, did not purchase or directly or indirectly fund the purchase of the instrument.

(12) The instrument does not have any features that would limit or discourage additional issuance of capital by the banking organization, such as provisions that require the banking organization to compensate holders of the instrument if a new instrument is issued at a lower price during a specified time frame.

(13) If the instrument is not issued directly by the banking organization or by a subsidiary of the banking organization that is an operating entity, the only asset of the issuing entity is its investment in the capital of the banking organization, and proceeds must be immediately available without limitation to the banking organization or to the banking organization's top-tier holding company in a form which meets or exceeds all of the other criteria for additional tier 1 capital instruments. *De minimis* assets related to the operation of the issuing entity can be disregarded for purposes of this criterion.

(14) For an advanced approaches banking organization, the governing agreement, offering circular, or prospectus of an instrument issued after January 1, 2013 must disclose that the holders of the instrument may be fully subordinated to interests held by the U.S. government in the event that the banking organization enters into a receivership, insolvency, liquidation, or similar proceeding.

The proposed criteria are designed to ensure that additional tier 1 capital instruments are available to absorb losses on a going concern basis. Trust preferred securities and cumulative perpetual preferred securities, which are eligible for limited inclusion in tier 1 capital under the general risk-based capital rules for bank holding companies, would generally not qualify for inclusion in additional tier 1 capital.[55] The agencies believe that instruments that allow for the accumulation of interest payable are not sufficiently loss-absorbent to be included in tier 1 capital. In addition, the exclusion of these instruments from the tier 1 capital of depository institution holding companies is consistent with section 171 of the Dodd-Frank Act.

The agencies recognize that instruments classified as liabilities for accounting purposes could potentially be included in additional tier 1 capital under Basel III. However, as proposed, an instrument classified as a liability under GAAP would not qualify as additional tier 1 capital. The agencies believe that allowing only the inclusion of instruments classified as equity under GAAP in tier 1 capital would help strengthen the loss-absorption capabilities of additional tier 1 capital instruments, further increasing the quality of the capital base of U.S. banking organizations.

The agencies are also proposing to allow banking organizations to include in additional tier 1 capital instruments that were (1) issued under the Small Business Jobs Act of 2010 or, prior to October 4, 2010, under the Emergency Economic Stabilization Act of 2008, and (2) included in tier 1 capital under the agencies' current general risk-based capital rules.[56] These instruments would be included in tier 1 capital whether or not they meet the proposed qualifying criteria for common equity tier 1 or additional tier 1 capital instruments. The agencies believe that continued tier 1 capital treatment of these instruments is important to promote financial recovery and stability following the recent financial crisis.[57]

Question 18: The agencies solicit comments and views on the eligibility criteria for additional tier 1 capital instruments. Is there any specific criterion that could potentially be problematic given the main characteristics of outstanding non-cumulative perpetual preferred instruments? If so, please explain.

Additional Criterion Regarding Certain Institutional Investors' Minimum Dividend Payment Requirements

Some banking organizations may want or need to limit their capital distributions during a particular payout period, but may opt to pay a penny dividend instead of fully cancelling dividends to common shareholders because certain institutional investors only hold stocks that pay a dividend. The agencies believe that the payment of a penny dividend on common stock should not preclude a banking organization from canceling (or making marginal) dividend payments on additional tier 1 capital instruments. The agencies are therefore considering a revision to criterion (7) of additional tier 1 capital instruments that would require a banking organization to have the ability to cancel or substantially reduce dividend payments on additional tier 1 capital instruments during a period of time when the banking organization is paying a penny dividend to its common shareholders.

The agencies believe that such a requirement could substantially increase the loss-absorption capacity of additional tier 1 capital instruments. To maintain the hierarchy of the capital structure under these circumstances, banking organizations would have the ability to pay the holders of additional tier 1 capital instruments the equivalent of what they pay out to common shareholders.

Question 19: What is the potential impact of such a requirement on the traditional hierarchy of capital instruments and on the market dynamics and cost of issuing additional tier 1 capital instruments?

Question 20: What mechanisms could be used to ensure, contractually, that such a requirement would not result in an additional tier 1 capital instrument being effectively more loss absorbent than common stock?

3. Tier 2 Capital

Under the proposal, tier 2 capital would be the sum of: Tier 2 capital instruments that satisfy certain criteria, related surplus, total capital minority interests not included in a banking organization's tier 1 capital (subject to the limitations and requirements on minority interests set forth in section 21 of the proposal), and limited amounts of the allowance for loan and lease losses (ALLL); less any applicable regulatory adjustments and deductions. Consistent with the general risk-based capital rules, when calculating its standardized total capital ratio, a banking organization would be able to include in tier 2 capital the amount of ALLL that does not exceed 1.25 percent of its total standardized risk-weighted assets not including any amount of the ALLL (a banking organization subject to the market risk capital rules would exclude its standardized market risk-weighted assets from the calculation).[58]

When calculating its advanced approaches total capital ratio, rather than including in tier 2 capital the amount of ALLL described previously, an advanced approaches banking organization may include the excess of eligible credit reserves over its total expected credit losses (ECL) to the extent that such amount does not exceed 0.6 percent of its total credit risk weighted-assets.[59]

The proposed criteria for tier 2 capital instruments, consistent with Basel III, are:

(1) The instrument is issued and paid in.

(2) The instrument is subordinated to depositors and general creditors of the banking organization.

(3) The instrument is not secured, not covered by a guarantee of the banking organization or of an affiliate of the banking organization, and not subject to any other arrangement that legally or economically enhances the seniority of the instrument in relation to more senior claims.

(4) The instrument has a minimum original maturity of at least five years. At the beginning of each of the last five years of the life of the instrument, the amount that is eligible to be included in tier 2 capital is reduced by 20 percent of the original amount of the instrument (net of redemptions) and is excluded from regulatory capital when remaining maturity is less than one year. In addition, the instrument must not have any terms or features that require, or create significant incentives for, the banking organization to redeem the instrument prior to maturity.

(5) The instrument, by its terms, may be called by the banking organization only after a minimum of five years following issuance, except that the terms of the instrument may allow it to be called sooner upon the occurrence of an event that would preclude the instrument from being included in tier 2 capital, or a tax event. In addition:

(i) The banking organization must receive the prior approval of the agency to exercise a call option on the instrument.

[55] *See* 12 CFR part 225, appendix A, section II.A.1.

[56] Public Law 110–343, 122 Stat. 3765 (October 3, 2008).

[57] *See* 73 FR 43982 (July 29, 2008); *see also* 76 FR 35959 (June 21, 2011).

[58] A banking organization would deduct the amount of ALLL in excess of the amount permitted to be included in tier 2 capital, as well as allocated transfer risk reserves, from standardized total risk-weighted risk assets and use the resulting amount as the denominator of the standardized total capital ratio.

[59] An advanced approaches banking organization would deduct any excess eligible credit reserves that are not permitted to be included in tier 2 capital from advanced approaches total risk-weighted assets and use the resulting amount as the denominator of the total capital ratio.

(ii) The banking organization does not create at issuance, through action or communication, an expectation the call option will be exercised.

(iii) Prior to exercising the call option, or immediately thereafter, the banking organization must either:

(A) Replace any amount called with an equivalent amount of an instrument that meets the criteria for regulatory capital under this section,[60] or

(B) Demonstrate to the satisfaction of the agency that following redemption, the banking organization would continue to hold an amount of capital that is commensurate with its risk.

(6) The holder of the instrument must have no contractual right to accelerate payment of principal or interest on the instrument, except in the event of a receivership, insolvency, liquidation, or similar proceeding of the banking organization.

(7) The instrument has no credit-sensitive feature, such as a dividend or interest rate that is reset periodically based in whole or in part on the banking organization's credit standing, but may have a dividend rate that is adjusted periodically independent of the banking organization's credit standing, in relation to general market interest rates or similar adjustments.

(8) The banking organization, or an entity that the banking organization controls, has not purchased and has not directly or indirectly funded the purchase of the instrument.

(9) If the instrument is not issued directly by the banking organization or by a subsidiary of the banking organization that is an operating entity, the only asset of the issuing entity is its investment in the capital of the banking organization, and proceeds must be immediately available without limitation to the banking organization or the banking organization's top-tier holding company in a form that meets or exceeds all the other criteria for tier 2 capital instruments under this section.[61]

(10) Redemption of the instrument prior to maturity or repurchase requires the prior approval of the agency.

(11) For an advanced approaches banking organization, the governing agreement, offering circular, or prospectus of an instrument issued after January 1, 2013 must disclose that the holders of the instrument may be fully subordinated to interests held by the U.S. government in the event that the banking organization enters into a receivership, insolvency, liquidation, or similar proceeding.

As explained previously, under the proposed eligibility criteria for additional tier 1 capital instruments, trust preferred securities and cumulative perpetual preferred securities would not qualify for inclusion in additional tier 1 capital. However, many of these instruments could qualify for inclusion in tier 2 capital under the proposed eligibility criteria for tier 2 capital instruments.

Given that as proposed, unrealized gains and losses on AFS securities would flow through to common equity tier 1 capital, the agencies propose to eliminate the inclusion of a portion of certain unrealized gains on AFS equity securities in tier 2 capital.

As a result of the proposed new minimum common equity tier 1 capital requirement, higher tier 1 capital requirement, and the broader goal of simplifying the definition of tier 2 capital, the agencies are proposing to eliminate some existing limits related to tier 2 capital. Specifically, there would be no limit on the amount of tier 2 capital that could be included in a banking organization's total capital. Likewise, existing limitations on term subordinated debt, limited-life preferred stock and trust preferred securities within tier 2 would also be eliminated.[62]

Question 21: The agencies solicit comments on the eligibility criteria for tier 2 capital instruments. Is there any specific criterion that could potentially be problematic? If so, please explain.

For the reasons explained previously with respect to tier 1 capital instruments, the agencies propose to allow an instrument that qualified as tier 2 capital under the general risk-based capital rules and that was issued under the Small Business Jobs Act of 2010 or, prior to October 4, 2010, under the Emergency Economic Stabilization Act of 2008, to continue to be includable in tier 2 capital regardless of whether it meets all of the proposed qualifying criteria.

4. Capital Instruments of Mutual Banking Organizations

Most of the capital of mutual banking organizations is generally in the form of retained earnings (including retained earnings surplus accounts) and the agencies believe that mutual banking organizations generally should be able to meet the proposed regulatory capital requirements.

Consistent with Basel III, the proposed criteria for regulatory capital instruments would potentially permit the inclusion in regulatory capital of certain capital instruments issued by mutual banking organizations (for example, non-withdrawable accounts, pledged deposits, or mutual capital certificates), provided that the instruments meet all the proposed eligibility criteria of the relevant capital component.

However, some previously-issued mutual capital instruments that were includable in the regulatory capital of mutual banking organizations may not meet all of the relevant criteria for capital instruments under the proposal. For example, instruments that are liabilities or that are cumulative would not meet the criteria for additional tier 1 capital instruments. However, these instruments would be subject to the proposed transition provisions and excluded from capital over time.

Question 21: What instruments or accounts currently included in the regulatory capital of mutual banking organizations would not meet the proposed criteria for capital instruments?

Question 23: What impact, if any, would the exclusion of such instruments or accounts have on the regulatory capital ratios of mutual banking organizations? Please provide data supporting your answer.

Question 24: Would such instruments be unable to meet any of the proposed criteria? Could the terms of such instruments be modified to align with the proposed criteria for capital instruments? Please explain.

Question 25: Would the proposed criteria for capital instruments affect the ability of mutual banking organizations to increase regulatory capital levels going forward?

5. Grandfathering of Certain Capital Instruments

Under Basel III, capital investments in a banking organization made before September 12, 2010 by the government where the banking organization is domiciled are grandfathered until January 1, 2018. However, as described above with respect to qualifying criteria for tier 1 and tier 2 instruments, the agencies are proposing a different grandfathering treatment for the capital investments by the U.S. government, consistent with the Dodd-Frank Act.[63]

As discussed above, as proposed, capital investments by the U.S.

[60] Replacement of tier 2 capital instruments can be concurrent with redemption of existing tier 2 capital instruments.

[61] *De minimis* assets related to the operation of the issuing entity can be disregarded for purposes of this criterion.

[62] *See* 12 CFR part 3, Appendix A, section 2(b)(3); 12 CFR parts 208 and 225, appendix A, section II.A.2; 12 CFR part 325, appendix A, section I.A.2.

[63] *See* 12 U.S.C. 5371(b)(5)(A).

government included in the tier 1 and tier 2 capital of banking organizations issued under the Small Business Jobs Act of 2010 or, prior to October 4, 2010,[64] under the Emergency Economic Stabilization Act[65] (for example, tier 1 instruments issued under the TARP program) would be grandfathered permanently. Transitional arrangements for regulatory capital instruments that do not comply with the Basel III criteria and transitional arrangements for debt or equity instruments issued by depository institution holding companies that do not qualify as regulatory capital under the general risk-based capital rules are discussed under section V of this preamble.

6. Agency Approval of Capital Elements

The agencies expect that most existing common stock instruments that banking organizations currently include in tier 1 capital would meet the proposed eligibility criteria for common equity tier 1 capital instruments. In addition, the agencies expect that most existing non-cumulative perpetual preferred stock instruments that banking organizations currently include in tier 1 capital and most existing subordinated debt instruments they include in tier 2 capital would meet the proposed eligibility criteria for additional tier 1 and tier 2 capital instruments, respectively. However, the agencies recognize that over time, capital instruments that are equivalent in quality and loss-absorption capacity to existing instruments may be created to satisfy different market needs and are proposing to consider the eligibility of such instruments on a case-by-case basis.

Accordingly, the agencies propose to require a banking organization request approval from its primary federal supervisor before it may include a capital element in regulatory capital, unless:

(i) Such capital element is currently included in regulatory capital under the agencies' general risk-based capital and leverage rules and the underlying instrument complies with the applicable proposed eligibility criteria for regulatory capital instruments; or

(ii) The capital element is equivalent in terms of capital quality and loss-absorption capabilities to an element described in a previous decision made publicly available by the banking organization's primary federal supervisor.

The agency that is considering a request to include a new capital element in regulatory capital would consult with the other agencies when determining whether the element should be included in common equity tier 1, additional tier 1, or tier 2 capital. Once an agency determines that a capital element may be included in a banking organization's common equity tier 1, additional tier 1, or tier 2 capital, the agency would make its decision publicly available, including a brief description of the element and the rationale for the conclusion.

7. Addressing the Point of Non-Viability Requirements Under Basel III

During the recent financial crisis, in the United States and other countries, governments lent to, and made capital investments in, distressed banking organizations. These investments helped to stabilize the recipient banking organizations and the financial sector as a whole. However, because of the investments, the recipient banking organizations' existing tier 2 capital instruments, and (in some cases) tier 1 capital instruments, did not absorb the banking organizations' credit losses consistent with the purpose of regulatory capital. At the same time, taxpayers became exposed to those losses.

On January 13, 2011, the BCBS issued international standards for all additional tier 1 and tier 2 capital instruments issued by internationally active banking organizations, to ensure that such regulatory capital instruments fully absorb losses before taxpayers are exposed to such losses (Basel non-viability standard). Under the Basel non-viability standard, all non-common stock regulatory capital instruments issued by an internationally active banking organization must include terms that subject the instruments to write-off or conversion to common equity at the point that either (1) the write-off or conversion of those instruments occurs or (2) a government (or public sector) injection of capital would be necessary to keep the banking organization solvent. Alternatively, if the governing jurisdiction of the banking organization has established laws that require such tier 1 and tier 2 capital instruments to be written off or otherwise fully absorb losses before tax payers are exposed to loss, the standard is already met. If the governing jurisdiction has such laws in place, the Basel non-viability standard states that documentation for such instruments should disclose that information to investors and market participants, and should clarify that the holders of such instruments would fully absorb losses before taxpayers are exposed to loss.[66]

The agencies believe that U.S. law generally is consistent with the Basel non-viability standard. The resolution regime established in Title 2, section 210 of the Dodd-Frank Act provides the FDIC with the authority necessary to place failing financial companies that pose a significant risk to the financial stability of the United States into receivership.[67] The Dodd-Frank Act provides that this authority shall be exercised in the manner that minimizes systemic risk and moral hazard, so that (1) Creditors and shareholders will bear the losses of the financial company; (2) management responsible for the condition of the financial company will not be retained; and (3) the FDIC and other appropriate agencies will take steps necessary and appropriate to ensure that all parties, including holders of capital instruments, management, directors, and third parties having responsibility for the condition of the financial company, bear losses consistent with their respective ownership or responsibility.[68] Section 11 of the Federal Deposit Insurance Act has similar provisions for the resolution of depository institutions.[69] Additionally, under U.S. bankruptcy law, regulatory capital instruments issued by a company in bankruptcy would absorb losses before more senior unsecured creditors.

Furthermore, consistent with the Basel non-viability standard, under the proposal, additional tier 1 and tier 2 capital instruments issued by advanced approaches banking organizations after the proposed requirements for capital instruments are finalized would be required to include a disclosure that the holders of the instrument may be fully subordinated to interests held by the U.S. government in the event that the banking organization enters into receivership, insolvency, liquidation, or similar proceeding.

8. Qualifying Capital Instruments Issued by Consolidated Subsidiaries of a Banking Organization

Investments by third parties in a consolidated subsidiary of a banking organization may significantly improve the overall capital adequacy of that subsidiary. However, as became apparent during the financial crisis, while capital issued by consolidated subsidiaries and not owned by the

[64] Public Law 111–240 (September 27, 2010).

[65] Public Law 110–343, 122 Stat. 3765 (October 3, 2008).

[66] *See* ''Final Elements of the Reforms to Raise the Quality of Regulatory Capital'' (January 2011), available at: *http://www.bis.org/press/p110113.pdf.*

[67] *See* 12 U.S.C. 5384.

[68] 12 U.S.C. 5384.

[69] 12 U.S.C. 1821.

parent banking organization (minority interest) is available to absorb losses at the subsidiary level, that capital does not always absorb losses at the consolidated level. Therefore, inclusion of minority interests in the regulatory capital at the consolidated level should be limited to prevent highly capitalized subsidiaries from overstating the amount of capital available to absorb losses at the consolidated level.

Under the proposal, a banking organization would be allowed to include in its consolidated capital limited amounts of minority interests, if certain requirements are met. Minority interest would be classified as a common equity tier 1, tier 1, or total capital minority interest depending on the underlying capital instrument and on the type of subsidiary issuing such instrument. Any instrument issued by the consolidated subsidiary to third parties would need to meet the relevant eligibility criteria under section 20 of the proposal in order for the resulting minority interest to be included in the banking organization's common equity tier 1, additional tier 1 or tier 2 capital elements, as appropriate. In addition, common equity tier 1 minority interest would need to be issued by a depository institution or foreign bank that is a consolidated subsidiary of a banking organization.

The limits on the amount of minority interest that may be included in the consolidated capital of a banking organization would be based on the amount of capital held by the consolidated subsidiary, relative to the amount of capital the subsidiary would have to hold in order to avoid any restrictions on capital distributions and discretionary bonus payments under the capital conservation buffer framework, as provided in section 11 of the proposal.

For example, if a subsidiary needs to maintain a common equity tier 1 capital ratio of more than 7 percent to avoid limitations on capital distributions and discretionary bonus payments, and the subsidiary's common equity tier 1 capital ratio is 8 percent, the subsidiary would be considered to have ''surplus'' common equity tier 1 capital and, at the consolidated level, the banking organization would not be able to include the portion of such surplus common equity tier 1 capital held by third party investors.

The steps for determining the amount of minority interest includable in a banking organization's regulatory capital are described in this section below and are illustrated in a numerical example that follows. For example, the amount of common equity tier 1 minority interest includable in the common equity tier 1 capital of a banking organization under the proposal would be: the common equity tier 1 minority interest of the subsidiary minus the ratio of the subsidiary's common equity tier 1 capital owned by third parties to the total common equity tier 1 capital of the subsidiary, multiplied by the difference between the common equity tier 1 capital of the subsidiary and the lower of: (1) The amount of common equity tier 1 capital the subsidiary must hold to avoid restrictions on capital distributions and discretionary bonus payments, or (2) the total risk-weighted assets of the banking organization that relate to the subsidiary, multiplied by the common equity tier 1 capital ratio needed by the banking organization subsidiary to avoid restrictions on capital distributions and discretionary bonus payments. If the subsidiary were not subject to the same minimum regulatory capital requirements or capital conservation buffer framework of the banking organization, the banking organization would need to assume, for purposes of the calculation described above, that the subsidiary is subject to the minimum capital requirements and to the capital conservation buffer framework of the banking organization.

To determine the amount of tier 1 minority interest includable in the tier 1 capital of the banking organization and the total capital minority interest includable in the total capital of the banking organization, a banking organization would follow the same methodology as the one outlined previously for common equity tier 1 minority interest. Section 21 of the proposal sets forth the precise calculations. The amount of tier 1 minority interest that can be included in the additional tier 1 capital of the banking organization is equivalent to the banking organization's tier 1 minority interest, subject to the limitations outlined above, less any tier 1 minority interest that is included in the banking organization's common equity tier 1 capital. Likewise, the amount of total capital minority interest that can be included in the tier 2 capital of the banking organization is equivalent to its total capital minority interest, subject to the limitations outlined previously, less any tier 1 minority interest that is included in the banking organization's tier 1 capital.

As proposed, minority interest related to qualifying common or noncumulative perpetual preferred stock directly issued by a consolidated U.S. depository institution or foreign bank subsidiary, which are eligible for inclusion in tier 1 capital under the general risk-based capital rules without limitation, would generally qualify for inclusion in common equity tier 1 and additional tier 1 capital, respectively, subject to the appropriate limits under section 21 of the proposed rule. Likewise, under the proposed rule, minority interest related to qualifying cumulative perpetual preferred stock directly issued by a consolidated U.S. depository institution or foreign bank subsidiary, which are eligible for limited inclusion in tier 1 capital under the general risk-based capital rules, would generally not qualify for inclusion in additional tier 1 capital under the proposal.

TABLE 8— EXAMPLE OF THE CALCULATION OF THE PROPOSED LIMITS ON MINORITY INTEREST

	(a) Capital issued by subsidiary ($)	(b) Capital owned by third parties (percent)	(c) Amount of minority interest ($) ((a)*(b))	(d) Minimum capital requirement plus capital conservation buffer (percent)	(e) Minimum capital requirement plus capital conservation buffer ($) ((RWAs*(d))	(f) Surplus capital of subsidiary ($) ((a)–(e))	(g) Surplus minority interest ($) ((f)*(b))	(h) Minority interest included at banking organization level ($)((c)–(g))
Common equity tier 1 capital	80	30	24	7	70	10	3	21
Additional tier 1 capital	30	50	15					9.1
Tier 1 capital	110	35	39	8.5	85	25	8.9	30.1
Tier 2 capital	20	75	15					13.5
Total capital	130	42	54	10.5	105	25	10.4	43.6

For purposes of the example in table 8, assume a consolidated depository institution subsidiary has common equity tier 1, additional tier 1 and tier 2 capital of $80, $30, and $20, respectively, and third parties own 30 percent of the common equity tier 1 capital ($24), 50 percent of the additional tier 1 capital ($15) and 75 percent of the tier 2 capital ($15). If the subsidiary has $1000 of total risk-weighted assets, the sum of its minimum common equity tier 1 capital requirement (4.5 percent) plus the capital conservation buffer (2.5 percent) (assuming a countercyclical capital buffer amount of zero) is 7 percent ($70), the sum of its minimum tier 1 capital requirement (6.0 percent) plus the capital conservation buffer (2.5 percent) is 8.5 percent ($85), and the sum of its minimum total capital requirement (8 percent) plus the capital conservation buffer (2.5 percent) is 10.5 percent ($105).

In this example, the surplus common equity tier 1 capital of the subsidiary equals $10 ($80 − $70), the amount of the surplus common equity tier 1 minority interest is equal to $3 ($10*$24/$80), and therefore the amount of common equity tier 1 minority interest that may be included at the consolidated level is equal to $21 ($24 − $3).

The surplus tier 1 capital of the subsidiary is equal to $25 ($110 − $85), the amount of the surplus tier 1 minority interest is equal to $8.9 ($25*$39/$110), and therefore the amount of tier 1 minority interest that may be included in the banking organization is equal to $30.1 ($39 − $8.9). Since the banking organization already includes $21 of common equity tier 1 minority interest in its common equity tier 1 capital, it would include $9.1 ($30.1 − $21) of such tier 1 minority interest in its additional tier 1 capital.

The surplus total capital of the subsidiary is equal to $25 ($130 − $105), the amount of the surplus total capital minority interest is equal to $10.4 ($25*$54/$130), and therefore the amount of total capital minority interest that may be included in the banking organization is equal to $43.6 ($54 − $10.4). Since the banking organization already includes $30.1 of tier 1 minority interest in its tier 1 capital, it would include $13.5 ($43.6 − $30.1) of such total capital minority interest in its tier 2 capital.

Question 26: The agencies solicit comments on the proposed qualitative restrictions and quantitative limits for including minority interest in regulatory capital. What is the potential impact of these restrictions and limitations on the issuance of certain types of capital instruments (for example, subordinated debt) by depository institution subsidiaries of banking organizations? Please provide data to support your answer.

Real Estate Investment Trust Preferred Capital

A Real Estate Investment Trust (REIT) is a company that is required to invest in real estate and real estate-related assets and make certain distributions in order to maintain a tax-advantaged status. Some banking organizations have consolidated subsidiaries that are REITs, and such REITs may have issued capital instruments to be included in the regulatory capital of the consolidated banking organization as minority interest.

Under the agencies' general risk-based capital rules, preferred shares issued by a REIT subsidiary generally may be included in a banking organization's tier 1 capital as minority interest if the preferred shares meet the eligibility requirements for tier 1 capital.[70] The agencies have interpreted this requirement to entail that the REIT preferred shares must be exchangeable automatically into noncumulative perpetual preferred stock of the banking organization under certain circumstances. Specifically the primary federal supervisor may direct the banking organization in writing to convert the REIT preferred shares into noncumulative perpetual preferred stock of the banking organization because the banking organization: (1) Became undercapitalized under the PCA regulations;[71] (2) was placed into conservatorship or receivership; or (3) was expected to become undercapitalized in the near term.[72]

Under the proposed rule, the limitations described previously on the inclusion of minority interest in regulatory capital would apply to capital instruments issued by consolidated REIT subsidiaries. Specifically, REIT preferred shares issued by a REIT subsidiary that meets the proposed definition of an operating entity would qualify for inclusion in the regulatory capital of a banking organization subject to the limitations outlined in section 21 of the proposed rule only if the REIT preferred shares meet the criteria for additional tier 1 or tier 2 capital instruments outlined in section 20 of the proposed rule. Under the proposal, an operating entity is a subsidiary of the banking organization set up to conduct business with clients with the intention of earning a profit in its own right.

Because a REIT must distribute 90 percent of its earnings in order to maintain its beneficial tax status, a banking organization might be reluctant to cancel dividends on the REIT preferred shares. However, for a capital instrument to qualify as additional tier 1 capital, which must be available to absorb losses, the issuer must have the ability to cancel dividends. In cases where a REIT could maintain its tax status by declaring a consent dividend and has the ability to do so, the agencies generally would consider REIT preferred shares to satisfy criterion (7) of the proposed eligibility criteria for additional tier 1 capital instruments under the proposed rule.[73] The agencies do not expect preferred stock issued by a REIT that does not have the ability to declare a consent dividend to qualify as tier 1 minority interest; however, such instrument could qualify as total capital minority interest if it meets all of the relevant tier 2 eligibility criteria under the proposed rule.

Question 27: The agencies are seeking comment on the proposed treatment of REIT preferred capital. Specifically, how would the proposed minority interest limitations and interpretation of criterion (7) of the proposed eligibility criteria for additional tier 1 capital instruments affect the future issuance of REIT preferred capital instruments?

B. Regulatory Adjustments and Deductions

1. Regulatory Deductions From Common Equity Tier 1 Capital

The proposed rule would require a banking organization to make the deductions described in this section from the sum of its common equity tier 1 capital elements. Amounts deducted would be excluded from the banking organization's risk-weighted assets and leverage exposure.

[70] 12 CFR part 325, subpart B (FDIC); 12 CFR part 3, Appendix A, Sec. 2(a)(3) (OCC).

[71] 12 CFR part 3, appendix A, section 2(a)(3), 12 CFR 167.5(a)(1)(iii) (OCC); 12 CFR part 208, subpart D (Board); 12 CFR part 325, subpart B, 12 CFR part 390, subpart Y (FDIC).

[72] *See* OCC Corporate Decision No. 97–109 (December 1997) available at *http://www.occ.gov/static/interpretations-and-precedents/dec97/cd97–109.pdf* and the Comptroller's licensing manual, Capital and Dividends available at *http://www.occ.gov/static/publications/capital3.pdf*; 12 CFR parts 208 and 225, appendix A (Board); 12 CFR part 325, subpart B (FDIC).

[73] A consent dividend is a dividend that is not actually paid to the shareholders, but is kept as part of a company's retained earnings, yet the shareholders have consented to treat the dividend as if paid in cash and include it in gross income for tax purposes.

Goodwill and Other Intangibles (Other Than MSAs)

Goodwill and other intangible assets have long been either fully or partially excluded from regulatory capital in the U.S. because of the high level of uncertainty regarding the ability of the banking organization to realize value from these assets, especially under adverse financial conditions.[74] Likewise, U.S. federal banking statutes generally prohibit inclusion of goodwill in the regulatory capital of insured depository institutions.[75]

Accordingly, under the proposal, goodwill and other intangible assets other than MSAs (for example, purchased credit card relationships (PCCRs) and non-mortgage servicing assets), net of associated deferred tax liabilities (DTLs), would be deducted from common equity tier 1 capital elements. Goodwill for purposes of this deduction would include any goodwill embedded in the valuation of significant investments in the capital of an unconsolidated financial institution in the form of common stock. Such deduction of embedded goodwill would apply to investments accounted for under the equity method. Under GAAP, if there is a difference between the initial cost basis of the investment and the amount of underlying equity in the net assets of the investee, the resulting difference should be accounted for as if the investee were a consolidated subsidiary (which may include imputed goodwill). Consistent with Basel III, these deductions would be taken from common equity tier 1 capital. Although MSAs are also intangibles, they are subject to a different treatment under Basel III and the proposal, as explained in this section.

DTAs

As proposed, consistent with Basel III, a banking organization would deduct DTAs that arise from operating loss and tax credit carryforwards net of any related valuation allowances (and net of DTLs calculated as outlined in section 22(e) of the proposal) from common equity tier 1 capital elements because of the high degree of uncertainty regarding the ability of the banking organization to realize value from such DTAs.

DTAs arising from temporary differences that the banking organization could not realize through net operating loss carrybacks net of any related valuation allowances and net of DTLs calculated as outlined in section 22(e) of the proposal (for example, DTAs resulting from the banking organization's ALLL), would be subject to strict limitations described in section 22(d) of the proposal because of concerns regarding a banking organization's ability to realize such DTAs.

DTAs arising from temporary differences that the banking organization could realize through net operating loss carrybacks are not subject to deduction, and instead receive a 100 percent risk weight. For a banking organization that is a member of a consolidated group for tax purposes, the amount of DTAs that could be realized through net operating loss carrybacks may not exceed the amount that the banking organization could reasonably expect to have refunded by its parent holding company.

Gain-on-Sale Associated With a Securitization Exposure

A banking organization would deduct from common equity tier 1 capital elements any after-tax gain-on-sale associated with a securitization exposure. Under this proposal, gain-on-sale means an increase in the equity capital of a banking organization resulting from the consummation or issuance of a securitization (other than an increase in equity capital resulting from the banking organization's receipt of cash in connection with the securitization).

Defined Benefit Pension Fund Assets

As proposed, defined benefit pension fund liabilities included on the balance sheet of a banking organization would be fully recognized in common equity tier 1 capital (that is, common equity tier 1 capital cannot be increased via the de-recognition of these liabilities). However, under the proposal, defined benefit pension fund assets (defined as excess assets of the pension fund that are reported on the banking organization's balance sheet due to its overfunded status), net of any associated DTLs, would be deducted in the calculation of common equity tier 1 capital given the high level of uncertainty regarding the ability of the banking organization to realize value from such assets.

Consistent with Basel III, under the proposal, with supervisory approval, a banking organization would not be required to deduct a defined benefit fund assets to which the banking organization has unrestricted and unfettered access. In this case, the banking organization would assign to such assets the risk weight they would receive if they were directly owned by the banking organization. Under the proposal, unrestricted and unfettered access would mean that a banking organization is not required to request and receive specific approval from pension beneficiaries each time it would access excess funds in the plan.

The FDIC has unfettered access to the excess assets of an insured depository institution's pension plan in the event of receivership. Therefore, the agencies have determined that generally an insured depository institution would not be required to deduct any assets associated with a defined benefit pension plan from common equity tier 1 capital. Similarly, a holding company would not need to deduct any assets associated with a subsidiary insured depository institution's defined benefit pension plan from capital.

Activities by Savings Association Subsidiaries That Are Impermissible for National Banks

As part of the OCC's overall effort to integrate the regulatory requirements for national banks and federal savings associations, the OCC is proposing to incorporate in the proposal a deduction requirement specifically applicable to federal savings association subsidiaries that engage in activities impermissible for national banks. Similarly, the FDIC is proposing to incorporate in the proposal a deduction requirement specifically applicable to state savings association subsidiaries that engage in activities impermissible for national banks. Section 5(t)(5)[76] of HOLA requires a separate capital calculation for Federal savings associations for ''investments in and extensions of credit to any subsidiary engaged in activities not permissible for a national bank.'' This statutory provision is implemented through the definition of ''includable subsidiary'' as a deduction from the core capital of the federal savings association for those subsidiaries that are not ''includable subsidiaries.''[77] Specifically, where a subsidiary of a federal savings association engages in activities that are impermissible for national banks, the rules require the deconsolidation and deduction of the federal savings association's investment in the subsidiary from the assets and regulatory capital of the Federal savings association. If the activities of the federal savings association subsidiary are permissible for a national bank, then consistent with GAAP, the balance sheet of the subsidiary generally is consolidated with the balance sheet of the federal savings association.

[74] *See* 54 FR 4186, 4196 (1989) (Board); 54 FR 4168, 4175 (1989) (OCC); 54 FR 11509 (FDIC).

[75] 12 U.S.C. 1828(n).

[76] 12 U.S.C. 1464(t)(5).

[77] *See* 12 CFR 167.1; 12 CFR 167.5(a)(2)(iv).

The OCC is proposing to carry over the general regulatory treatment of includable subsidiaries, with some technical modifications, by adding a new paragraph to section 22(a) of the proposal. The OCC notes that such treatment is consistent with how a national bank deducts its equity investments in financial subsidiaries. Under this proposal, investments (both debt and equity) by a federal savings association in a subsidiary that is not an ''includable subsidiary'' are required to be deducted (with certain exceptions) from the common equity tier 1 capital of the federal savings association. Among other things, includable subsidiary is defined as a subsidiary of a federal savings association that engages solely in activities not impermissible for a national bank. Aside from a few technical modifications, this proposal is intended to carry over the current general regulatory treatment of includable subsidiaries for federal savings associations into the proposal.

Question 28: The OCC and FDIC request comments on all aspects of this proposal to incorporate the current deduction requirement for federal and state, savings association subsidiaries that engage in activities impermissible for national banks. In particular, the OCC and FDIC are interested in whether this statutorily required deduction can be revised to reduce burden on federal and state savings associations.

2. Regulatory Adjustments to Common Equity Tier 1 Capital

Unrealized Gains and Losses on Certain Cash Flow Hedges

Consistent with Basel III, the agencies are proposing that unrealized gains and losses on cash flow hedges that relate to the hedging of items that are not recognized at fair value on the balance sheet (including projected cash flows) be excluded from regulatory capital. That is, if the banking organization has an unrealized-net-cash-flow-hedge gain, it would deduct it from common equity tier 1 capital, and if it has an unrealized-net-cash-flow-hedge loss it would add it back to common equity tier 1 capital, net of applicable tax effects. That is, if the amount of the cash flow hedge is positive, a banking organization would deduct such amount from common equity tier 1 capital elements, and if the amount is negative, a banking organization would add such amount to common equity tier 1 capital elements.

This proposed regulatory adjustment would reduce the artificial volatility that can arise in a situation where the unrealized gain or loss of the cash flow hedge is included in regulatory capital but any change in the fair value of the hedged item is not. However, the agencies recognize that in a regulatory capital framework where unrealized gains and losses on AFS securities flow through to common equity tier 1 capital, the exclusion of unrealized cash flow hedge gains and losses might have an adverse effect on banking organizations that manage their interest rate risk by using cash flow hedges to hedge items that are not recognized on the balance sheet at fair value (for example, floating rate liabilities) and that are used to fund the banking organizations' AFS investment portfolios. In this scenario, a banking organization's regulatory capital could be adversely affected by fluctuations in a benchmark interest rate even if the banking organization's interest rate risk is effectively hedged because its unrealized gains and losses on the AFS securities would flow through to regulatory capital while its unrealized gains and losses on the cash flow hedges would not, resulting in a regulatory capital asymmetry.

Question 29: How would a requirement to exclude unrealized net gains and losses on cash flow hedges related to the hedging of items that are not measured at fair value in the balance sheet (in the context of a framework where the unrealized gains and losses on AFS debt securities would flow through to regulatory capital) change the way banking organizations currently hedge against interest rate risk? Please explain and provide supporting data and analysis.

Question 30: Could this adjustment potentially introduce excessive volatility in regulatory capital predominantly as a result of fluctuations in a benchmark interest rate for institutions that are effectively hedged against interest rate risk? Please explain and provide supporting data and analysis.

Question 31: What are the pros and cons of an alternative treatment where floating rate liabilities are deemed to be fair valued for purposes of the proposed adjustment for unrealized gains and losses on cash flow hedges? Please explain and provide supporting data and analysis.

Changes in the Banking Organization's Creditworthiness

The agencies believe that it would be inappropriate to allow banking organizations to increase their capital ratios as a result of a deterioration in their own creditworthiness, and are therefore proposing, consistent with Basel III, that banking organizations not be allowed to include in regulatory capital any change in the fair value of a liability that is due to changes in their own creditworthiness. Therefore, a banking organization would be required to deduct any unrealized gain from and add back any unrealized loss to common equity tier 1 capital elements due to changes in a banking organization's own creditworthiness. An advanced approaches banking organization would deduct from common equity tier 1 capital elements any unrealized gains associated with derivative liabilities resulting from the widening of a banking organization's credit spread premium over the risk free rate.

3. Regulatory Deductions Related to Investments in Capital Instruments

Deduction of Investments in own Regulatory Capital Instruments

To avoid the double-counting of regulatory capital, under the proposal a banking organization would be required to deduct the amount of its investments in its own capital instruments, whether held directly or indirectly, to the extent such investments are not already derecognized from regulatory capital. Specifically, a banking organization would deduct its investment in its own common equity tier 1, own additional tier 1 and own tier 2 capital instruments from the sum of its common equity tier 1, additional tier 1, and tier 2 capital elements, respectively. In addition, any common equity tier 1, additional tier 1 or tier 2 capital instrument issued by a banking organization which the banking organization could be contractually obliged to purchase would also be deducted from its common equity tier 1, additional tier 1 or tier 2 capital elements, respectively. If a banking organization already deducts its investment in its own shares (for example, treasury stock) from its common equity tier 1 capital elements, it does not need to make such deduction twice.

A banking organization would be required to look through its holdings of index securities to deduct investments in its own capital instruments. Gross long positions in investments in its own regulatory capital instruments resulting from holdings of index securities may be netted against short positions in the same underlying index. Short positions in indexes that are hedging long cash or synthetic positions may be decomposed to recognize the hedge. More specifically, the portion of the index that is composed of the same underlying exposure that is being hedged may be used to offset the long position only if both the exposure being hedged and the short position in the index are positions subject to the market risk rule, the positions are fair valued on the banking organization's balance sheet, and the hedge is deemed effective by the banking organization's internal control processes, which have been assessed by the primary supervisor of the banking organization. If the banking organization finds it operationally burdensome to estimate the exposure amount as a result of an index holding, it may, with prior approval from the primary federal supervisor, use a conservative estimate. In all other cases, gross long positions would be allowed to be deducted net of short positions in the same underlying instrument only if the short positions involve no counterparty risk (for example, the position is fully collateralized or the counterparty is a qualifying central counterparty).

Definition of Financial Institution

Consistent with Basel III, the proposal would require banking organizations to deduct investments in the capital of unconsolidated financial institutions where those investments exceed certain thresholds, as described further below. These deduction requirements are one of the measures included in Basel III designed to address systemic risk arising out of interconnectedness between banking organizations.

Under the proposal, ''financial institution'' would mean bank holding companies, savings and loan holding companies, non-bank financial institutions supervised by the Board under Title I of the Dodd-Frank Act, depository institutions, foreign banks, credit unions, insurance companies, securities firms, commodity pools (as defined in the Commodity Exchange Act), covered funds under section 619 of the Dodd-Frank Act (and regulations issued thereunder), benefit plans, and other companies predominantly engaged in certain financial activities, as set forth in the proposal. See the definition of ''financial institution'' in section 2 of the proposed rules.

The proposed definition is designed to include entities whose primary business is financial activities and therefore could contribute to risk in the financial system, including entities whose primary business is banking, insurance, investing, and trading, or a combination thereof. The proposed definition is also designed to align with similar definitions and concepts included in other rulemakings, including those funds that are covered by the restrictions of section 13 of the Bank Holding Company Act. The proposed definition also includes a standard for ''predominantly engaged'' in financial activities similar to the standard from the Board's proposed rule to define ''predominantly engaged in financial activities'' for purposes of Title I of the Dodd-Frank Act.[78] Likewise, the proposed definition seeks to exclude firms that are predominantly engaged in activities that have a financial nature but are focused on community development, public welfare projects, and similar objectives.

Question 32: The agencies seek comment on the proposed definition of financial institution. The agencies have sought to achieve consistency in the definition of financial institution with similar definitions proposed in other proposed regulations. The agencies seek comment on the appropriateness of this standard for purposes of the proposal and whether a different threshold, such as greater than 50 percent, would be more appropriate. The agencies ask that commenters provide detailed explanations in their responses.

The Corresponding Deduction Approach

The proposal incorporates the Basel III corresponding deduction approach for the deductions from regulatory capital related to reciprocal cross holdings, non-significant investments in the capital of unconsolidated financial institutions, and non-common stock significant investments in the capital of unconsolidated financial institutions. Under this approach a banking organization would be required to make any such deductions from the same component of capital for which the underlying instrument would qualify if it were issued by the banking organization itself. If a banking organization does not have a sufficient amount of a specific regulatory capital component to effect the deduction, the shortfall would be deducted from the next higher (that is, more subordinated) regulatory capital component. For example, if a banking organization does not have enough additional tier 1 capital to satisfy the required deduction from additional tier 1 capital, the shortfall would be deducted from common equity tier 1 capital.

If the banking organization invests in an instrument issued by a non-regulated financial institution, the banking organization would treat the instrument as common equity tier 1 capital if the instrument is common stock (or if it is otherwise the most subordinated form of capital of the financial institution) and as additional tier 1 capital if the instrument is subordinated to all creditors of the financial institution except common shareholders. If the investment is in the form of an instrument issued by a regulated financial institution and the instrument does not meet the criteria for any of the regulatory capital components for banking organizations, the banking organization would treat the instrument as (1) Common equity tier 1 capital if the instrument is common stock included in GAAP equity or represents the most subordinated claim in liquidation of the financial institution; (2) additional tier 1 capital if the instrument is GAAP equity and is subordinated to all creditors of the financial institution and is only senior in liquidation to common shareholders; and (3) tier 2 capital if the instrument is not GAAP equity but it is considered regulatory capital by the primary regulator of the financial institution.

Deduction of Reciprocal Cross Holdings in the Capital Instruments of Financial Institutions

A reciprocal cross holding results from a formal or informal arrangement between two financial institutions to swap, exchange, or otherwise intend to hold each other's capital instruments. The use of reciprocal cross holdings of capital instruments to artificially inflate the capital positions of each of the banking organizations involved would undermine the purpose of regulatory capital, potentially affecting the stability of such banking organizations as well as the financial system.

Under the agencies' general risk-based capital rules, reciprocal holdings of capital instruments of banking organizations are deducted from regulatory capital. Consistent with Basel III, the proposal would require a banking organization to deduct reciprocal holdings of capital instruments of other financial institutions, where these investments are made with the intention of artificially inflating the capital positions of the banking organizations involved. The deductions would be made by using the corresponding deduction approach.

Determining the Exposure Amount for Investments in the Capital of Unconsolidated Financial Institutions

Under the proposal, the exposure amount of an investment in the capital of an unconsolidated financial institution would refer to a net long position in an instrument that is recognized as capital for regulatory purposes by the primary supervisor of an unconsolidated regulated financial institution or in an instrument that is part of the GAAP equity of an unconsolidated unregulated financial

[78] 76 FR 7731 (February 11, 2011) and 77 FR 21494 (April 10, 2012).

institution. It would include direct, indirect, and synthetic exposures to capital instruments, and exclude underwriting positions held by the banking organization for five business days or less. It would be equivalent to the banking organization's potential loss on such exposure should the underlying capital instrument have a value of zero.

The net long position would be the gross long position in the exposure (including covered positions under the market risk capital rules) net of short positions in the same exposure where the maturity of the short position either matches the maturity of the long position or has a residual maturity of at least one year. The long and short positions in the same index without a maturity date would be considered to have matching maturities. For covered positions under the market risk capital rules, if a banking organization has a contractual right or obligation to sell a long position at a specific point in time, and the counterparty in the contract has an obligation to purchase the long position if the banking organization exercises its right to sell, this point in time may be treated as the maturity of the long position. Therefore, if these conditions are met, the maturity of the long position and the short position would be deemed to be matched even if the maturity of the short position is less than one year.

Gross long positions in investments in the capital instruments of unconsolidated financial institutions resulting from holdings of index securities may be netted against short positions in the same underlying index. However, short positions in indexes that are hedging long cash or synthetic positions may be decomposed to recognize the hedge. More specifically, the portion of the index that is composed of the same underlying exposure that is being hedged may be used to offset the long position as long as both the exposure being hedged and the short position in the index are positions subject to the market risk rule, the positions are fair valued on the banking organization's balance sheet, and the hedge is deemed effective by the banking organization's internal control processes assessed by the primary supervisor of the banking organization. Also, instead of looking through and monitoring its exact exposure to the capital of other financial institutions included in an index security, a banking organization may be permitted, with the prior approval of its primary federal supervisor, to use a conservative estimate of the amount of its investments in the capital instruments of other financial institutions through the index security.

An indirect exposure would result from the banking organization's investment in an unconsolidated entity that has an exposure to a capital instrument of a financial institution. A synthetic exposure results from the banking organization's investment in an instrument where the value of such instrument is linked to the value of a capital instrument of a financial institution. Examples of indirect and synthetic exposures would include: (1) An investment in the capital of an unconsolidated entity that has an investment in the capital of an unconsolidated financial institution; (2) a total return swap on a capital instrument of another financial institution; (3) a guarantee or credit protection, provided to a third party, related to the third party's investment in the capital of another financial institution; (4) a purchased call option or a written put option on the capital instrument of another financial institution; and (5) a forward purchase agreement on the capital of another financial institution.

Investments, including indirect and synthetic exposures, in the capital of unconsolidated financial institutions would be subject to the corresponding deduction approach if they surpass certain thresholds described below. With the prior written approval of the primary federal supervisor, for the period of time stipulated by the supervisor, a banking organization would not be required to deduct investments in the capital of unconsolidated financial institutions described in this section if the investment is made in connection with the banking organization providing financial support to a financial institution in distress. Likewise, a banking organization that is an underwriter of a failed underwriting can request approval from its primary federal supervisor to exclude underwriting positions related to such failed underwriting for a longer period of time.

Question 33: The agencies solicit comments on the scope of indirect exposures for purposes of determining the exposure amount for investments in the capital of unconsolidated financial institutions. Specifically, what parameters (for example, a specific percentage of the issued and outstanding common shares of the unconsolidated financial institution) would be appropriate for purposes of limiting the scope of indirect exposures in this context and why?

Question 34: What are the pros and cons of the proposed exclusion from the exposure amount of an investment in the capital of an unconsolidated financial institution for underwriting positions held by the banking organization for 5 business days or fewer? Would limiting the exemption to 5 days affect banking organizations' willingness to underwrite stock offerings by smaller banking organizations? Please provide data to support your answer.

Deduction of Non-Significant Investments in the Capital of Unconsolidated Financial Institutions

Under the proposal, non-significant investments in the capital of unconsolidated financial institutions would be investments where a banking organization owns 10 percent or less of the issued and outstanding common shares of an unconsolidated financial institution.

Under the proposal, if the aggregate amount of a banking organization's non-significant investments in the capital of unconsolidated financial institutions exceeds 10 percent of the sum of the banking organization's common equity tier 1 capital elements, minus certain applicable deductions and other regulatory adjustments to common equity tier 1 capital (the 10 percent threshold for non-significant investments), the banking organization would have to deduct the amount of the non-significant investments that are above the 10 percent threshold for non-significant investments, applying the corresponding deduction approach.[79]

The amount to be deducted from a specific capital component would be equal to the amount of a banking organization's non-significant investments in the capital of unconsolidated financial institutions exceeding the 10 percent threshold for non-significant investments multiplied by the ratio of (1) the amount of non-significant investments in the capital of

[79] The regulatory adjustments and deductions applied in the calculation of the 10 percent threshold for non-significant investments are those required under sections 22(a) through 22(c)(3) of the proposal. That is, the required deductions and adjustments for goodwill and other intangibles (other than MSAs) net of associated DTLs, DTAs that arise from operating loss and tax credit carryforwards net of related valuation allowances and DTLs (as described below), cash flow hedges associated with items that are not reported at fair value, excess ECLs (for advanced approaches banking organizations only), gains-on-sale on securitization exposures, gains and losses due to changes in own credit risk on fair valued financial liabilities, defined benefit pension fund net assets for banking organizations that are not insured by the FDIC (net of associated DTLs), investments in own regulatory capital instruments (not deducted as treasury stock), and reciprocal cross holdings.

unconsolidated financial institutions in the form of such capital component to (2) the amount of the banking organization's total non-significant investments in the capital of unconsolidated financial institutions. The amount of a banking organization's non-significant investments in the capital of unconsolidated financial institutions that does not exceed the 10 percent threshold for non-significant investments would generally be assigned the applicable risk weight under sections 32 (in the case of non-common stock instruments), 52 (in the case of common stock instruments), or 53 (in the case of indirect investments via a mutual fund) of the proposal, as appropriate.

For example, if a banking organization has a total of $200 in non-significant investments in the capital of unconsolidated financial institutions (of which 50 percent is in the form of common stock, 30 percent is in the form of an additional tier 1 capital instrument, and 20 percent is in the form of tier 2 capital subordinated debt) and $100 of these investments exceed the 10 percent threshold for non-significant investments, the banking organization would need to deduct $50 from its common equity tier 1 capital elements, $30 from its additional tier 1 capital elements and $20 from its tier 2 capital elements.

Deduction of Significant Investments in the Capital of Unconsolidated Financial Institutions That Are Not in the Form of Common Stock

Under the proposal, a significant investment of a banking organization in the capital of an unconsolidated financial institution would be an investment where the banking organization owns more than 10 percent of the issued and outstanding common shares of the unconsolidated financial institution. Significant investments in the capital of unconsolidated financial institutions that are not in the form of common stock would be deducted applying the corresponding deduction approach described previously. Significant investments in the capital of unconsolidated financial institutions that are in the form of common stock would be subject to the common equity deduction threshold approach described in section III.B.4 of this preamble.

Section 121 of the Graham-Leach-Bliley Act (GLBA) allows national banks and insured state banks to establish entities known as financial subsidiaries.[80] One of the statutory requirements for establishing a financial subsidiary is that a national bank or insured state bank must deduct any investment in a financial subsidiary from the bank's capital.[81] The agencies implemented this statutory requirement through regulation at 12 CFR 5.39(h)(1) (OCC), 12 CFR 208.73 (Board), and 12 CFR 362.18 (FDIC). Under the agencies' current rules, a bank must deduct the aggregate amount of its outstanding equity investment, including retained earnings, in its financial subsidiaries from its total assets and tangible equity, and deduct such investment from its total risk-based capital (made equally from tier 1 and tier 2 capital).

Under the NPR, investments by a national bank or insured state bank in financial subsidiaries would be deducted entirely from the bank's common equity tier 1 capital.[82] Because common equity tier 1 capital is a component of tangible equity, the proposed deduction from common equity tier 1 would automatically result in a deduction from tangible equity. The agencies believe that the more conservative treatment is appropriate for financial subsidiaries, given the risks associated with nonbanking activities.

4. Items Subject to the 10 and 15 Percent Common Equity Tier 1 Capital Threshold Deductions

Under the proposal, a banking organization would deduct from the sum of its common equity tier 1 capital elements the amount of each of the following items that individually exceeds the 10 percent common equity tier 1 capital deduction threshold described below: (1) DTAs arising from temporary differences that could not be realized through net operating loss carrybacks (net of any related valuation allowances and net of DTLs, as described in section 22(e) of the proposal); (2) MSAs net of associated DTLs; and (3) significant investments in the capital of financial institutions in the form of common stock (referred to herein as items subject to the threshold deductions).

A banking organization would calculate the 10 percent common equity tier 1 capital deduction threshold by taking 10 percent of the sum of a banking organization's common equity tier 1 elements, less adjustments to, and deductions from common equity tier 1 capital required under sections 22(a) through (c) of the proposal.[83]

As mentioned above, banking organizations would deduct from common equity tier 1 capital elements any goodwill embedded in the valuation of significant investments in the capital of unconsolidated financial institutions in the form of common stock. Therefore, a banking organization would be allowed to net such embedded goodwill against the exposure amount of such significant investment. For example, if a banking organization has deducted $10 of goodwill embedded in a $100 significant investment in the capital of an unconsolidated financial institution in the form of common stock, the banking organization would be allowed to net such embedded goodwill against the exposure amount of such significant investment (that is, the value of the investment would be $90 for purposes of the calculation of the amount that would be subject to deduction under this part of the proposal).

In addition, the aggregate amount of the items subject to the threshold deductions that are not deducted as a result of the 10 percent common equity tier 1 capital deduction threshold described above would not be permitted to exceed 15 percent of a banking organization's common equity tier 1 capital, as calculated after applying all regulatory adjustments and deductions required under the proposal (the 15 percent common equity tier 1 capital deduction threshold). That is, a banking organization would be required to deduct the amounts of the items subject to the threshold deductions that exceed 17.65 percent (the proportion of 15 percent to 85 percent) of common equity tier 1 capital elements, less all regulatory adjustments and deductions required for the calculation of the 10 percent common equity tier 1 capital deduction threshold mentioned above, and less the items subject to the 10 and 15 percent common equity tier 1 capital

[80] Public Law 106–102, 113 Stat. 1338, 1373 (Nov. 12, 1999).

[81] 12 U.S.C. 24a(c); 12 U.S.C. 1831w(a)(2).

[82] The deduction provided for in the agencies' existing regulations would be removed.

[83] The regulatory adjustments and deductions applied in the calculation of the 10 percent common equity deduction threshold are those required under sections 22(a) through (c) of the proposal. That is, the required deductions and adjustments for goodwill and other intangibles (other than MSAs) net of associated DTLs, DTAs that arise from operating loss and tax credit carryforwards net of related valuation allowances and DTLs (as described below), cash flow hedges associated with items that are not reported at fair value, excess ECLs (for advanced approaches banking organizations only), gains-on-sale on securitization exposures, gains and losses due to changes in own credit risk on fair valued financial liabilities, defined benefit pension fund net assets for banking organizations that are not insured by the FDIC (net of associated DTLs), investments in own regulatory capital instruments (not deducted as treasury stock), reciprocal cross holdings, non-significant investments in the capital of unconsolidated financial institutions, and, if applicable, significant investments in the capital of unconsolidated financial institutions that are not in the form of common stock.

deduction thresholds in full. As described below, banking organization would be required to include the amounts of these three items that are not deducted from common equity tier 1 capital in its risk-weighted assets and assign a 250 percent risk weight to them.

Under section 475 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 1828 note), the amount of readily marketable MSAs that a banking organization may include in regulatory capital cannot be valued at more than 90 percent of their fair market value[84] and the fair market value of such MSAs must be determined at least on a quarterly basis. Therefore, if the amount of MSAs a banking organization deducts after the application of the 10 percent and 15 percent common equity tier 1 deduction threshold is less than 10 percent of the fair value of its MSAs, the banking organization must deduct an additional amount of MSAs so that the total amount of MSAs deducted is at least 10 percent of the fair value of its MSAs.

Question 35: The agencies solicit comments and supporting data on the additional regulatory capital deductions outlined in this section above.

5. Netting of DTLs Against DTAs and Other Deductible Assets

Under the proposal, the netting of DTLs against assets (other than DTAs) that are subject to deduction under section 22 of the proposal would be permitted provided the DTL is associated with the asset and the DTL would be extinguished if the associated asset becomes impaired or is derecognized under GAAP. Likewise, banking organizations would be prohibited from using the same DTL for netting purposes more than once. This practice would be generally consistent with the approach that the agencies currently take with respect to the netting of DTLs against goodwill.

With respect to the netting of DTLs against DTAs, the amount of DTAs that arise from operating loss and tax credit carryforwards, net of any related valuation allowances, and the amount of DTAs arising from temporary differences that the banking organization could not realize through net operating loss carrybacks, net of any related valuation allowances, would be allowed to be netted against DTLs if the following conditions are met. First, only the DTAs and DTLs that relate to taxes levied by the same taxation authority and that are eligible for offsetting by that authority would be offset for purposes of this deduction. And second, the amount of DTLs that the banking organization would be able to net against DTAs that arise from operating loss and tax credit carryforwards, net of any related valuation allowances, and against DTAs arising from temporary differences that the banking organization could not realize through net operating loss carrybacks, net of any related valuation allowances, would be allocated in proportion to the amount of DTAs that arise from operating loss and tax credit carryforwards (net of any related valuation allowances, but before any offsetting of DTLs) and of DTAs arising from temporary differences that the banking organization could not realize through net operating loss carrybacks (net of any related valuation allowances, but before any offsetting of DTLs), respectively.

6. Deduction From Tier 1 Capital of Investments in Hedge Funds and Private Equity Funds Pursuant to Section 619 of the Dodd-Frank Act

Section 619 of the Dodd-Frank Act (the Volcker Rule) contains a number of restrictions and other prudential requirements applicable to any ''banking entity''[85] that engages in proprietary trading or has certain interests in, or relationships with, a hedge fund or a private equity fund.[86]

Section 13(d)(3) of the Bank Holding Company Act, as added by the Volcker Rule, provides that the agencies ''shall * * * adopt rules imposing additional capital requirements and quantitative limitations, including diversification requirements, regarding activities permitted under the Volcker Rule if the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Future Trading Commission determine that additional capital and quantitative limitations are appropriate to protect the safety and soundness of banking entities engaged in such activities.''

The Volcker Rule also added section 13(d)(4)(B)(iii) to the Bank Holding Company Act, which pertains to ownership interests in a hedge fund or private equity fund organized and offered by a banking entity (or an affiliate or subsidiary thereof) and provides, ''For the purposes of determining compliance with the applicable capital standards under paragraph (3), the aggregate amount of the outstanding investments by a banking entity under this paragraph, including retained earnings, shall be deducted from the assets and tangible equity of the banking entity, and the amount of the deduction shall increase commensurate with the leverage of the hedge fund or private equity fund.''

In October 2011, the agencies and the SEC issued a proposal to implement the Volcker Rule (the Volcker Rule proposal).[87] Section 12(d) of the Volcker Rule proposal included a provision that would require a ''banking entity'' to deduct from tier 1 capital its investments in a hedge fund or a private equity fund that the banking entity organizes and offers pursuant to the Volcker rule as provided by section 13(d)(3) and (4)(B)(iii) of the Bank Holding Company Act.

Under the Volcker Rule proposal, a banking organization subject to the Volcker Rule[88] would be required to deduct from tier 1 capital the aggregate value of its investments in hedge funds and private equity funds that the banking organization organizes and offers pursuant to section 13(d)(1)(G) of the Bank Holding Company Act. As proposed, the Volcker Rule deduction would not apply to an ownership interest in a hedge fund or private

[84] Section 475 also provides that mortgage servicing rights may be valued at more than 90 percent of their fair market value but no more than 100 percent of such value, if the agencies jointly make a finding that such valuation would not have an adverse effect on the deposit insurance funds or the safety and soundness of insured depository institutions. The agencies have not made such a finding.

[85] The term ''banking entity'' is defined in section 13(h)(1) of the Bank Holding Company Act (BHC Act), as amended by section 619 of the Dodd-Frank Act. *See* 12 U.S.C. 1851(h)(1). The statutory definition includes any insured depository institution (other than certain limited purpose trust institutions), any company that controls an insured depository institution, any company that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978 (12 U.S.C. 3106), and any affiliate or subsidiary of any of the foregoing.

[86] Section 13 of the BHC Act defines the terms ''hedge fund'' and ''private equity fund'' as ''an issuer that would be an investment company, as defined in the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*), but for section 3(c)(1) or 3(c)(7) of that Act, or such similar funds as the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodities Futures Trading Commission may, by rule, * * * determine.'' *See* 12 U.S.C. 1851(h)(2).

[87] The agencies sought public comment on the Volcker Rule proposal on October 11, 2011, and the Securities and Exchange Commission sought public comment on the same proposal on October 12, 2011. *See* 76 FR 68846 (Nov. 7, 2011). On January 11, 2012, the Commodities Futures Trading Commission requested comment on a substantively similar proposed rule implementing section 13 of the BHC Act. *See* 77 FR 8332 (Feb. 14, 2012).

[88] The Volcker rule regulations apply to ''banking entities,'' as defined in section 13(h)(1) of the Bank Holding Company Act (BHC Act), as amended by section 619 of the Dodd-Frank Act. This term generally includes all banking organizations subject to the Federal banking agencies' capital regulations with the exception of limited purpose trust institutions that are not affiliated with a depository institution or bank holding company.

equity fund held by a banking entity pursuant to any of the exemption activity categories in section 13(d)(1) of the Bank Holding Company Act. For instance, a banking entity that acquires or retains an investment in a small business investment company or an investment designed to promote the public welfare of the type permitted under 12 U.S.C. 24 (Eleventh), which are specifically permitted under section 13(d)(1)(E) of the Bank Holding Company Act, would not be required to deduct the value of such ownership interest from its tier 1 capital.

The agencies believe that this proposed capital requirement, as it applies to banking organizations, should be considered within the context of the agencies' entire regulatory capital framework, so that its potential interaction with all other regulatory capital requirements is assessed fully. The agencies intend to avoid prescribing overlapping regulatory capital requirements for the same exposures. Therefore, once the regulatory capital requirements prescribed by the Volcker Rule are finalized, the Federal banking agencies expect to amend the regulatory capital treatment for investments in the capital of an unconsolidated financial institution—currently set forth in section 22 of the proposal—to include the deduction that would be required under the Volcker Rule. Exposures subject to that deduction would not also be subject to the capital requirements for investments in the capital of an unconsolidated financial institution nor would they be considered for the purpose of determining the relevant thresholds for the deductions from regulatory capital required for investments in the capital of an unconsolidated financial institution.

IV. Denominator Changes Related to the Proposed Regulatory Changes

Consistent with Basel III, for purposes of calculating total risk-weighted assets, the proposal would require a banking organization to assign a 250 percent risk weight to (1) MSAs, (2) DTAs arising from temporary differences that a banking organization could not realize through net operating loss carrybacks (net of any related valuation allowances and net of DTLs, as described in section 22(e) of the proposal), and (3) significant investments in the capital of unconsolidated financial institutions in the form of common stock that are not deducted from tier 1 capital pursuant to section 22 of the proposal.

Basel III also requires banking organizations to apply a 1,250 percent risk weight to certain exposures that are deducted from total capital under the general risk-based capital rules. Accordingly, for purposes of calculating total risk-weighted assets, the proposal would require a banking organization to apply a 1,250 percent risk weight to the portion of a credit-enhancing interest-only strips that does not constitute an after-tax-gain-on-sale. A banking organization would not be required to deduct such exposures from regulatory capital.

V. Transitions Provisions

The main goal of the transition provisions is to give banking organizations sufficient time to adjust to the proposal while minimizing the potential impact that implementation could have on their ability to lend. The proposed transition provisions have been designed to ensure compliance with the Dodd-Frank Act. As a result, they could, in certain circumstances, be more stringent than the transitional arrangements proposed in Basel III.

The transition provisions would apply to the following areas: (1) The minimum regulatory capital ratios; (2) the capital conservation and countercyclical capital buffers; (3) the regulatory capital adjustments and deductions; and (4) non-qualifying capital instruments. In the Standardized Approach NPR, the agencies are proposing changes to the calculation of risk-weighted assets that would be effective January 1, 2015, with an option to early adopt.

A. Minimum Regulatory Capital Ratios

The transition period for the minimum common equity tier 1 and tier 1 capital ratios is from January 1, 2013 to December 31, 2014 as set forth below.

TABLE 9—TRANSITION FOR MINIMUM CAPITAL RATIOS

Transition Minimum Common Equity Tier 1 and Tier 1 Capital Ratios		
Transition period	Common equity tier 1 capital ratio	Tier 1 capital ratio
Calendar year 2013	3.5	4.5
Calendar year 2014	4.0	5.5
Calendar year 2015 and thereafter	4.5	6.0

The minimum common equity tier 1 and tier 1 capital ratios, as well as the minimum total capital ratio, will be calculated during the transition period using the definitions for the respective capital components in section 20 of the proposed rule and using the proposed transition provisions for the regulatory adjustments and deductions and for the non-qualifying capital instruments described in this section.

B. Capital Conservation and Countercyclical Capital Buffer

As explained in more detail in section 11 of the proposed rule, a banking organization's applicable capital conservation buffer would be the lowest of the following three ratios: the banking organization's common equity tier 1, tier 1 and total capital ratio less its minimum common equity tier 1, tier 1 and total capital ratio requirement, respectively. Table 10 shows the regulatory capital levels banking organizations would generally need to meet during the transition period to avoid becoming subject to limitations on capital distributions and discretionary bonus payments from January 1, 2016 until January 1, 2019.

TABLE 10—PROPOSED REGULATORY CAPITAL LEVELS

	Jan. 1, 2013 (percent)	Jan. 1, 2014 (percent)	Jan. 1, 2015 (percent)	Jan. 1, 2016 (percent)	Jan. 1, 2017 (percent)	Jan. 1, 2018 (percent)	Jan. 1, 2019 (percent)
Capital conservation buffer				0.625	1.25	1.875	2.5
Minimum common equity tier 1 capital ratio + capital conservation buffer	3.5	4.0	4.5	5.125	5.75	6.375	7.0
Minimum tier 1 capital ratio + capital conservation buffer	4.5	5.5	6.0	6.625	7.25	7.875	8.5
Minimum total capital ratio + capital conservation buffer	8.0	8.0	8.0	8.625	9.25	9.875	10.5
Maximum potential countercyclical capital buffer				0.625	1.25	1.875	2.5

Banking organizations would not be subject to the capital conservation and the countercyclical capital buffer until January 1, 2016. From January 1, 2016 through December 31, 2018, banking organizations would be subject to transitional arrangements with respect to the capital conservation and countercyclical capital buffers as outlined in more detail in table 11.

TABLE 11—TRANSITION PROVISION FOR THE CAPITAL CONSERVATION AND COUNTERCYCLICAL CAPITAL BUFFER

Transition period	Capital conservation buffer (assuming a countercyclical capital buffer of zero)	Maximum payout ratio (as a percentage of eligible retained income)
Calendar year 2016	Greater than 0.625 percent	No payout ratio limitation applies
	Less than or equal to 0.625 percent, and greater than 0.469 percent	60 percent
	Less than or equal to 0.469 percent, and greater than 0.313 percent	40 percent
	Less than or equal to 0.313 percent, and greater than 0.156 percent	20 percent
	Less than or equal to 0.156 percent	0 percent
Calendar year 2017	Greater than 1.25 percent	No payout ratio limitation applies
	Less than or equal to 1.25 percent, and greater than 0.938 percent	60 percent
	Less than or equal to 0.938 percent, and greater than 0.625 percent	40 percent
	Less than or equal to 0.625 percent, and greater than 0.313 percent	20 percent
	Less than or equal to 0.313 percent	0 percent
Calendar year 2018	Greater than 1.875 percent	No payout ratio limitation applies
	Less than or equal to 1.875 percent, and greater than 1.406 percent	60 percent
	Less than or equal to 1.406 percent, and greater than 0.938 percent	40 percent
	Less than or equal to 0.938 percent, and greater than 0.469 percent	20 percent
	Less than or equal to 0.469 percent	0 percent

As illustrated in table 11, from January 1, 2016 through December 31, 2016, a banking organization would be able to make capital distributions and discretionary bonus payments without limitation under this section as long as it maintains a capital conservation buffer greater than 0.625 percent (plus for an advanced approaches banking organization, any applicable countercyclical capital buffer amount). From January 1, 2017 through December 31, 2017, a banking organization would be able to make capital distributions and discretionary bonus payments without limitation under this section as long as it maintains a capital conservation buffer greater than 1.25 percent (plus for an advanced approaches banking organization, any applicable countercyclical capital buffer amount). From January 1, 2018 through December 31, 2018, a banking organization would be able to make capital distributions and discretionary bonus payments without limitation under this section as long as it maintains a capital conservation buffer greater than 1.875 percent (plus for an advanced approaches banking organization, any applicable countercyclical capital buffer amount). From January 1, 2019 onward, a banking organization would be able to make capital distributions and discretionary bonus payments without limitation under this section as long as it maintains a capital conservation buffer greater than 2.5 percent (plus for an advanced approaches banking organization, 100 percent of the applicable countercyclical capital buffer amount).

For example, if a banking organization's capital conservation buffer is 1.0 percent (for example, its common equity tier 1 capital ratio is 5.5 percent or its tier 1 capital ratio is 7.0 percent) as of December 31, 2017, the banking organization's maximum payout ratio during the first quarter of 2018 would be 60 percent. If a banking organization has a capital conservation buffer of 0.25 percent as of December 31, 2017, the banking organization would not be allowed to make capital distributions and discretionary bonus payments during the first quarter of 2018 under the proposed transition provisions. If a banking organization has a capital conservation buffer of 1.5 percent as of December 31, 2017, it would not have any restrictions under this section on the amount of capital distributions and discretionary bonus payments during the first quarter of 2018.

If applicable, the countercyclical capital buffer would be phased-in according to the transition schedule described in table 11 by proportionately expanding each of the quartiles in the table by the countercyclical capital buffer amount. The maximum countercyclical capital buffer amount would be 0.625 percent on January 1, 2016 and would increase each subsequent year by an additional 0.625

percentage points, to reach its fully phased-in maximum of 2.5 percent on January 1, 2019.

C. Regulatory Capital Adjustments and Deductions

Banking organizations are currently subject to a series of deductions from and adjustments to regulatory capital, most of which apply at the tier 1 capital level, including deductions for goodwill, MSAs, certain DTAs, and adjustments for net unrealized gains and losses on AFS securities and for accumulated net gains and losses on cash flow hedges and defined benefit pension obligations. Under section 22 of the proposed rule, banking organizations would become subject to a series of deductions and adjustments, the bulk of which will be applied at the common equity tier 1 capital level. In order to give sufficient time to banking organizations to adapt to the new regulatory capital adjustments and deductions, the proposed rule incorporates transition provisions for such adjustments and deductions. From January 1, 2013 through December 31, 2017, a banking organization would be required to make the regulatory capital adjustments to and deductions from regulatory capital in section 22 of the proposed rule in accordance with the proposed transition provisions for such adjustments and deductions outlined below. Starting on January 1, 2018, banking organizations would apply all regulatory capital adjustments and deductions as outlined in section 22 of the proposed rule.

Deductions for Certain Items in Section 22(a) of the Proposed Rule

From January 1, 2013 through December 31, 2017, a banking organization would deduct from common equity tier 1 or from tier 1 capital elements goodwill (section 22(a)(1)), DTAs that arise from operating loss and tax credit carryforwards (section 22(a)(3)), gain-on-sale associated with a securitization exposure (section 22(a)(4)), defined benefit pension fund assets (section 22(a)(5)), and expected credit loss that exceeds eligible credit reserves for the case of banking organizations subject to subpart E of the proposed rule (section 22(a)(6)), in accordance with table 12 below. During this period, any of these items that are not deducted from common equity tier 1 capital, are deducted from tier 1 capital instead.

TABLE 12—PROPOSED TRANSITION DEDUCTIONS UNDER SECTION 22(a)(1) AND SECTIONS 22(a)(3)–(a)(6) OF THE PROPOSAL

Transition period	Transition deductions under section 22(a)(1)	Transition deductions under sections 22(a)(3)–(a)(6)	
	Percentage of the deductions from common equity tier 1 capital	Percentage of the deductions from common equity tier 1 capital	Percentage of the deductions from tier 1 capital
Calendar year 2013	100	0	100
Calendar year 2014	100	20	80
Calendar year 2015	100	40	60
Calendar year 2016	100	60	40
Calendar year 2017	100	80	20
Calendar year 2018 and thereafter	100	100	0

In accordance with table 12, starting in 2013, banking organizations would be required to deduct the full amount of goodwill (net of any associated DTLs), including any goodwill embedded in the valuation of significant investments in the capital of unconsolidated financial institutions, from common equity tier 1 capital elements. This approach is stricter than that under Basel III, which transitions the goodwill deduction from common equity tier 1 capital in line with the rest of the deductible items. Under U.S. law, goodwill cannot be included in a banking organization's regulatory capital. Additionally, the agencies believe that fully deducting goodwill from common equity tier 1 capital elements starting on January 1, 2013 would result in a more meaningful common equity tier 1 capital ratio from a supervisory and market perspective.

For example, from January 1, 2014 through December 31, 2014, a banking organization would deduct 100 percent of goodwill from common equity tier 1 capital elements. However, during that same period, only 20 percent of the aggregate amount of DTAs that arise from operating loss and tax credit carryforwards, gain-on-sale associated with a securitization exposure, defined benefit pension fund assets, and expected credit loss that exceeds eligible credit reserves (for a banking organization subject to subpart E of the proposed rule), would be deducted from common equity tier 1 capital elements while 80 percent of such aggregate amount would be deducted from tier 1 capital elements. Starting on January 1, 2018, 100 percent of the items in section 22(a) of the proposed rule would be fully deducted from common equity tier 1 capital elements.

Deductions for Intangibles Other Than Goodwill and MSAs

For intangibles other than goodwill and MSAs, including PCCRs (section 22(a)(2) of the proposal), the transition arrangement is outlined in table 13. During this transition period, any of these items that are not deducted would be subject to a risk weight of 100 percent.

TABLE 13—PROPOSED TRANSITION DEDUCTIONS UNDER SECTION 22(a)(2) OF THE PROPOSAL

Transition period	Transition deductions under section 22(a)(2)—Percentage of the deductions from common equity tier 1 capital
Calendar year 2013	0
Calendar year 2014	20

TABLE 13—PROPOSED TRANSITION DEDUCTIONS UNDER SECTION 22(a)(2) OF THE PROPOSAL—Continued

Transition period	Transition deductions under section 22(a)(2)—Percentage of the deductions from common equity tier 1 capital
Calendar year 2015	40
Calendar year 2016	60
Calendar year 2017	80
Calendar year 2018 and thereafter	100

For example, from January 1, 2014 through December 31, 2014, 20 percent of the aggregate amount of the deductions that would be required under section 22(a)(2) of the proposed rule for intangibles other than goodwill and MSAs would be applied to common equity tier 1 capital, while any such intangibles that are not deducted from capital during the transition period would be risk-weighted at 100 percent.

Regulatory Adjustments Under Section 22(b)(2) of the Proposed Rule

From January 1, 2013 through December 31, 2017, banking organizations would apply the regulatory adjustments under section 22(b)(2) of the proposed rule related to changes in the fair value of liabilities due to changes in the banking organization's own credit risk to common equity tier 1 or tier 1 capital in accordance with table 14. During this period, any of the adjustments related to this item that are not applied to common equity tier 1 capital are applied to tier 1 capital instead.

TABLE 14—PROPOSED TRANSITION ADJUSTMENTS UNDER SECTION 22(b)(2)

Transition period	Transition adjustments under section 22(b)(2)	
	Percentage of the adjustment applied to common equity tier 1 capital	Percentage of the adjustment applied to tier 1 capital
Calendar year 2013	0	100
Calendar year 2014	20	80
Calendar year 2015	40	60
Calendar year 2016	60	40
Calendar year 2017	80	20
Calendar year 2018 and thereafter	100	0

For example, from January 1, 2013 through December 31, 2013, no regulatory adjustments to common equity tier 1 capital related to changes in the fair value of liabilities due to changes in the banking organization's own credit risk would be applied to common equity tier 1 capital, but 100 percent of such adjustments would be applied to tier 1 capital (that is, if the aggregate amount of these adjustments is positive, 100 percent would be deducted from tier 1 capital elements and if such aggregate amount is negative, 100 percent would be added back to tier 1 capital elements). Likewise, from January 1, 2014 through December 31, 2014, 20 percent of the aggregate amount of the regulatory adjustments to common equity tier 1 capital related to this item would be applied to common equity tier 1 capital and 80 percent would be applied to tier 1 capital. Starting on January 1, 2018, 100 percent of the regulatory capital adjustments related to changes in the fair value of liabilities due to changes in the banking organization's own credit risk would be applied to common equity tier 1 capital.

Phase Out of Current AOCI Regulatory Capital Adjustments

Until December 31, 2017, the aggregate amount of net unrealized gains and losses on AFS debt securities, accumulated net gains and losses related to defined benefit pension obligations, unrealized gains on AFS equity securities, and accumulated net gains and losses on cash flow hedges related to items that are reported on the balance sheet at fair value included in AOCI (transition AOCI adjustment amount) is treated as set forth in table 15 below. Specifically, if a banking organization's transition AOCI adjustment amount is positive, it would need to adjust its common equity tier 1 capital by deducting the appropriate percentage of such aggregate amount in accordance with table 15 below and if such amount is negative, it would need to adjust its common equity tier 1 capital by adding back the appropriate percentage of such aggregate amount in accordance with table 15 below.

TABLE 15—PROPOSED PERCENTAGE OF THE TRANSITION AOCI ADJUSTMENT AMOUNT

Transition period	Percentage of the transition AOCI adjustment amount to be applied to common equity tier 1 capital
Calendar year 2013	100
Calendar year 2014	80
Calendar year 2015	60
Calendar year 2016	40
Calendar year 2017	20
Calendar year 2018 and thereafter	0

For example, if during calendar year 2013 a banking organization's transition AOCI adjustment amount is positive 100 percent would be deducted from common equity tier 1 capital elements and if such aggregate amount is negative 100 percent would be added back to common equity tier 1 capital elements. Starting on January 1, 2018, there would be no adjustment for net unrealized gains and losses on AFS securities or for accumulated net gains and losses on cash flow hedges related to items that are reported on the balance sheet at fair value included in AOCI.

Phase Out of Unrealized Gains on AFS Equity Securities in Tier 2 Capital

A banking organization would gradually decrease the amount of unrealized gains on AFS equity securities it currently holds in tier 2 capital during the transition period in accordance with table 16.

TABLE 16—PROPOSED PERCENTAGE OF UNREALIZED GAINS ON AFS EQUITY SECURITIES THAT MAY BE INCLUDED IN TIER 2 CAPITAL

Transition period	Percentage of unrealized gains on AFS equity securities that may be included in tier 2 capital
Calendar year 2013	45
Calendar year 2014	36
Calendar year 2015	27
Calendar year 2016	18
Calendar year 2017	9
Calendar year 2018 and thereafter	0

For example, during calendar year 2014, banking organizations would include up to 36 percent (80 percent of 45 percent) of unrealized gains on AFS equity securities in tier 2 capital; during calendar years 2015, 2016, 2017, and 2018 (and thereafter) these percentages would go down to 27, 18, 9 and zero, respectively.

Deductions Under Sections 22(c) and 22(d) of the Proposed Rule

From January 1, 2013 through December 31, 2017, a banking organization would calculate the appropriate deductions under sections 22(c) and 22(d) of the proposed rule related to investments in capital instruments and to the items subject to the 10 and 15 percent common equity tier 1 capital deduction thresholds (that is, MSAs, DTAs arising from temporary differences that the banking organization could not realize through net operating loss carrybacks, and significant investments in the capital of unconsolidated financial institutions in the form of common stock) as set forth in table 17. Specifically, during such transition period, the banking organization would make the percentage of the aggregate common equity tier 1 capital deductions related to these items in accordance with the percentages outlined in table 17 and would apply a 100 percent risk-weight to the aggregate amount of such items that are not deducted under this section. Beginning on January 1, 2018, a banking organization would be required to apply a 250 percent risk-weight to the aggregate amount of the items subject to the 10 and 15 percent common equity tier 1 capital deduction thresholds that are not deducted from common equity tier 1 capital.

TABLE 17—PROPOSED TRANSITION DEDUCTIONS UNDER SECTIONS 22(c) AND 22(d) OF THE PROPOSAL

Transition period	Transition deductions under sections 22(c) and 22(d)—Percentage of the deductions from common equity tier 1 capital elements
Calendar year 2013	0
Calendar year 2014	20
Calendar year 2015	40
Calendar year 2016	60
Calendar year 2017	80
Calendar year 2018 and thereafter	100

However, banking organizations would not be subject to the methodology to calculate the 15 percent common equity deduction threshold for DTAs arising from temporary differences that the banking organization could not realize through net operating loss carrybacks, MSAs, and significant investments in the capital of unconsolidated financial institutions in the form of common stock described in section 22(d) of the proposed rule from January 1, 2013 through December 31, 2017. During this transition period, a banking organization would be required to deduct from its common equity tier 1 capital elements a specified percentage of the amount by which the aggregate sum of the items subject to the 10 and 15 percent common equity tier 1 capital deduction thresholds exceeds 15 percent of the sum of the banking organization's common equity tier 1 capital elements after making the deductions required under sections 22(a) through (c) of the proposed rule. These deductions include goodwill, intangibles other than goodwill and MSAs, DTAs that arise from operating loss and tax credit carryforwards cash flow hedges associated with items that are not fair valued, excess ECLs (for advanced approaches banking organizations), gains-on-sale on certain securitization exposures, defined benefit pension fund net assets for banks that are not insured by the FDIC, and reciprocal cross holdings, gains (or adding back losses) due to changes in own credit risk on fair valued financial liabilities, and after applying the appropriate common equity tier 1 capital deductions related to non-significant investments in the capital of unconsolidated financial institutions (the 15 percent common equity deduction threshold for transition purposes).

Notwithstanding the transition provisions for the items under sections 22(c) and 22(d) of the proposed rule described above, if the amount of MSAs a banking organization deducts after the application of the appropriate thresholds is less than 10 percent of the fair value of its MSAs, the banking organization must deduct an additional amount of MSAs so that the total amount of MSAs deducted is at least 10 percent of the fair value of its MSAs.

Beginning January 1, 2018, the aggregate amount of the items subject to the 10 and 15 percent common equity tier 1 capital deduction thresholds would not be permitted to exceed 15 percent of the banking organization's common equity tier 1 capital after all deductions. That is, as of January 1, 2018, the banking organization would be required to deduct, from common equity tier 1 capital elements the items subject to the 10 and 15 percent common equity tier 1 capital deduction thresholds that exceed 17.65 percent of common equity tier 1 capital elements less the regulatory adjustments and deductions mentioned in the previous paragraph and less the aggregate amount of the items subject to the 10 and 15 percent common equity tier 1 capital deduction thresholds in full.

For example, during calendar year 2014, 20 percent of the aggregate amount of the deductions required for the items subject to the 10 and 15 percent common equity tier 1 capital deduction thresholds would be applied to common equity tier 1 capital, while any such items not deducted would be risk weighted at 100 percent. Starting on January 1, 2018, 100 percent of the appropriate aggregate deductions described in sections 22(c) and 22(d) of the proposed rule would be fully applied, while any of the items subject to the 10 and 15 percent common equity tier 1 capital deduction thresholds that are not deducted would be risk weighted at 250 percent.

Numerical Example for the Transition Provisions

The following example illustrates the potential impact from regulatory capital adjustments and deductions on the common equity tier 1 capital ratios of a banking organization. As outlined in table 18, the banking organization in this example has common equity tier 1 capital elements (before any deductions) and total risk weighted assets of $200 and $1000 respectively, and also has goodwill, DTAs that arise from operating loss and tax credit carryforwards, non-significant investments in the capital of unconsolidated financial institutions, DTAs arising from temporary differences that could not be realized through net operating loss carrybacks, MSAs, and significant investments in the capital of unconsolidated financial institutions in the form of common stock of $40, $30, $10, $30, $20, and $10, respectively. For simplicity, this example only focuses on common equity tier 1 capital and assumes that the risk weight applied to all assets is 100 percent (the only exception being the 250 percent risk weight applied in 2018 to the ''items subject to an aggregate 15% threshold'').

TABLE 18—EXAMPLE—IMPACT OF REGULATORY DEDUCTIONS DURING TRANSITION PERIOD

Common equity tier 1 capital elements, net of treasury stock (CET1) elements (before deductions)	200
Items subject to full deduction:	
Goodwill	40
Deferred tax assets (DTAs) that arise from operating loss and tax credit carryforwards (DTAs from operating loss carryforwards)	30
Items subject to threshold deductions:	
Non-significant investments in the capital of unconsolidated financial institutions (non-significant investments)	10
Items subject to aggregate 15% threshold:	
DTAs arising from temporary differences that the banking organization could not realize through net operating loss carrybacks (temporary differences DTAs)	30
MSAs	20
Significant investments in the capital of unconsolidated financial institutions in the form of common stock (significant investments)	10
Risk-weighted assets (RWAs)	1000

Table 19 below illustrates the process to calculate the deductions while showing the potential impact of the deductions on the common equity tier 1 capital ratio of the banking organization during the transition period.

TABLE 19—EXAMPLE—IMPACT OF REGULATORY DEDUCTIONS DURING TRANSITION PERIOD

Transition calendar years	*Base case*	2013	2014	2015	2016	2017	2018
Percentage of deduction	....	....	20%	40%	60%	80%	100%
CET1 before deductions	200	200	200	200	200	200	200
Deduction of goodwill	40	40	40	40	40	40	40
Deduction of DTAs from operating loss carryforwards	30	0	6	12	18	24	30
CET1 after non-threshold deductions	130	160	154	148	142	136	130
10% limit for non-significant investments	*13.0*	*16.0*	*15.4*	*14.8*	*14.2*	*13.6*	*13.0*
Deduction of non-significant investments	0	0	0	0	0	0	0
CET1 after non-threshold deductions and deduction of non-significant investments	130	160	154	148	142	136	130
10% CET1 limit for items subject to 15% threshold	*13.0*	*16.0*	*15.4*	*14.8*	*14.2*	*13.6*	*13.0*
Deduction of significant investments due to 10% limit	0	0	0	0	0	0	0
Deduction of temporary differences DTAs due to 10% limit	17.0	0	3.4	6.8	10.2	13.6	17.0
Deduction of MSAs due to 10% limit	7.0	0	1.4	2.8	4.2	5.6	7.0
CET1 after deductions related to 10% limit	106	160	149.2	138.4	127.6	116.8	106.0
Outstanding significant investments	10	10	10	10	10	10	10

TABLE 19—EXAMPLE—IMPACT OF REGULATORY DEDUCTIONS DURING TRANSITION PERIOD—Continued

Transition calendar years	*Base case*	2013	2014	2015	2016	2017	2018
Outstanding temporary differences DTAs	13	30	27	23	20	16	13
Outstanding MSAs	13	20	19	17	16	14	13
Sum of outstanding items subject to 15% threshold	36	60	55	50	46	41	36
15% CET1 limit (for items subject to 15% threshold) (pre-2018)	19.5	24.0	23.1	22.2	21.3	20.4	19.5
Deduction of outstanding items subject to 15% threshold due to 15% limit (pre-2018)	16.5	0.0	3.3	6.6	9.9	13.2	
Additional MSA deduction as of the statutory limit (*i.e.,* 10% of FV of MSAs)	*0*	*2*	*0*	*0*	*0*	*0*	*0*
CET1 after all deductions (pre-2018)	89.5	158.0	145.9	131.8	117.7	103.6	
Total New RWAs (pre-2018)	889.5	928.0	921.9	913.8	905.7	897.6	
15% CET1 limit (for items subject to 15% threshold) (2018)							*12*
Deduction of outstanding items subject to 15% threshold due to 15% limit (2018)							*24*
CET1 after all deductions—starting 2018							*82.4*
2018 RWAs							*901*
CET1 ratio		17.0%	15.8%	14.4%	13.0%	11.5%	9.1%

To establish the starting point (or ''base case'') for the deductions, the banking organization calculates the fully phased-in deductions, except in the case of the 15 percent deduction threshold, which is calculated during the transition period as described above. Common equity tier 1 capital elements, after the deduction of items that are not subject to the threshold deductions are $160, $154, $148, $142, and $136, and $130 as of January 1, 2013, January 1, 2014, January 1, 2015, January 1, 2016, January 1, 2017, and January 1, 2018, respectively. In this particular example, these numbers are obtained after fully deducting goodwill, and after deducting the base case deduction for DTAs that arise from operating loss and tax credit carryforwards multiplied by the appropriate percentage under the transition arrangement for deductions outlined in table 12 of this section. That is, after deducting from common equity tier 1 capital elements 100 percent of goodwill and 20 percent of the base case deduction for DTAs that arise from operating loss and tax credit carryforwards during 2014, 40 percent during 2015, 60 percent during 2016, 80 percent during 2017, and 100 percent during 2018).[89]

After applying the required deduction as a result of the 10 and 15 percent common equity tier 1 deduction thresholds outlined in table 17 of this section and after making the additional $2 deduction of MSAs during 2013 as a result of the MSA minimum statutory deduction (that is, 10 percent of the fair value of the MSAs), the common equity tier 1 capital elements would be $158, $146, $132, $118, $104, and $82 as of January 1, 2013, January 1, 2014, January 1, 2015, January 1, 2016, January 1, 2017, and January 1, 2018, respectively. After adjusting the total risk weighted assets measure as a result of the numerator deductions, the common equity tier 1 capital ratios would be 17.0 percent, 15.8 percent, 14.4 percent, 13.0 percent, 11.5 percent and 9.1 percent as of January 1, 2013, January 1, 2014, January 1, 2015, January 1, 2016, January 1, 2017, and January 1, 2018, respectively. Any DTAs arising from temporary differences that could not be realized through net operating loss carrybacks, MSAs, or significant investments in the capital of unconsolidated financial institutions in the form of common stock that are not deducted from common equity tier 1 capital elements as a result of the transitional arrangements would be risk weighted at 100 percent during the transition period and would be risk weighted at 250 percent starting on 2018.

D. Non-Qualifying Capital Instruments

Under the NPR, non-qualifying capital instruments, including instruments that are part of minority interest, would be phased out from regulatory capital depending on the size of the issuing banking organization and the type of capital instrument involved. Under the proposed rule, and in line with the requirements under the Dodd-Frank Act, instruments like cumulative perpetual preferred stock and trust preferred securities, which bank holding companies have historically included (subject to limits) in tier 1 capital under the ''restricted core capital elements'' bucket generally would not comply with either the eligibility criteria for additional tier 1 capital instruments outlined in section 20 of the proposed rule or the general risk-based capital rules for depository institutions and therefore would be phased out from tier 1 capital as outlined in more detail below. However, these instruments would generally be included without limits in tier 2 capital if they meet the eligibility criteria for tier 2 capital instruments outlined in section 20 of the proposed rule.

Phase-Out Schedule for Non-Qualifying Capital Instruments of Depository Institution Holding Companies of $15 Billion or More in Total Consolidated Assets

Under section 171 of the Dodd-Frank Act, depository institution holding companies with total consolidated assets greater than or equal to $15 billion as of December 31, 2009 (depository institution holding companies of $15 billion or more) would be required to phase out their non-qualifying capital instruments as set forth in table 20 below. In the case of depository institution holding companies of $15 billion or more, non-qualifying capital instruments are debt or equity instruments issued before May 19, 2010, that do not meet the criteria in section 20 of the proposed rule and were included in tier 1 or tier 2 capital as of May 19, 2010. Table 20 would apply separately to additional tier 1 and tier 2 non-qualifying capital instruments but the amount of non-qualifying capital instruments that would be excluded from additional tier 1 capital under this section would be included in tier 2

[89] As outlined in table 12, the amount of DTAs that arise from operating loss and tax credit carryforwards that are not deducted from common equity tier 1 capital during the transition period are deducted from tier 1 capital instead.

capital without limitation if they meet the eligibility criteria for tier 2 capital instruments under section 20 of the proposed rule. If a depository institution holding company of $15 billion or more acquires a depository institution holding company with total consolidated assets of less than $15 billion as of December 31, 2009 (depository institution holding company under $15 billion) or a depository institution holding company that was a mutual holding company as of May 19, 2010 (2010 MHC), the non-qualifying capital instruments of the resulting organization would be subject to the phase-out schedule outlined in table 20. Likewise, if a depository institution holding company under $15 billion makes an acquisition and the resulting organization has total consolidated assets of $15 billion or more, its non-qualifying capital instruments would also be subject to the phase-out schedule outlined in table 20.

TABLE 20—PROPOSED PERCENTAGE OF NON-QUALIFYING CAPITAL INSTRUMENTS INCLUDED IN ADDITIONAL TIER 1 OR TIER 2 CAPITAL

Transition period (calendar year)	Percentage of non-qualifying capital instruments included in additional tier 1 or tier 2 capital for depository institution holding companies of $15 billion or more
Calendar year 2013	75
Calendar year 2014	50
Calendar year 2015	25
Calendar year 2016 and thereafter	0

Accordingly, under the proposed rule a depository institution holding company of $15 billion or more would be allowed to include only 75 percent of non-qualifying capital instruments in regulatory capital as of January 1, 2013, 50 percent as of January 1, 2014, 25 percent as of January 1, 2015, and zero percent as of January 1, 2016 and thereafter.

Phase-Out Schedule for Non-Qualifying Capital Instruments of Depository Institution Holding Companies Under $15 Billion, 2010 MHCs, and Depository Institutions

Under the proposed rule, non-qualifying capital instruments of depository institutions and of depository institution holding companies under $15 billion and 2010 MHCs (issued before September 12, 2010), that were outstanding as of January 1, 2013 would be included in capital up to the percentage of the outstanding principal amount of such non-qualifying capital instruments as of December 31, 2013 indicated in table 21. Table 21 applies separately to additional tier 1 and tier 2 non-qualifying capital instruments but the amount of non-qualifying capital instruments that would be excluded from additional tier 1 capital under this section would be included in the tier 2 capital, provided the instruments meet the eligibility criteria for tier 2 capital instruments under section 20 of the proposed rule.

TABLE 21—PROPOSED PERCENTAGE OF NON-QUALIFYING CAPITAL INSTRUMENTS INCLUDED IN ADDITIONAL TIER 1 OR TIER 2 CAPITAL

Transition period (calendar year)	Percentage of non-qualifying capital instruments included in additional tier 1 or tier 2 capital for depository institution holding companies under $15 billion, depository institutions, and 2010 MHCs
Calendar year 2013	90
Calendar year 2014	80
Calendar year 2015	70
Calendar year 2016	60
Calendar year 2017	50
Calendar year 2018	40
Calendar year 2019	30
Calendar year 2020	20
Calendar year 2021	10
Calendar year 2022 and thereafter	0

For example, a banking organization that issued a tier 1 non-qualifying capital instrument in August 2010 would be able to count 90 percent of the notional outstanding amount of the instrument as of January 1, 2013 during calendar year 2013 and 80 percent during calendar year 2014. As of January 1, 2022, no tier 1 non-qualifying capital instruments would be recognized in tier 1 capital.

Phase-Out Schedule for Surplus and Non-Qualifying Minority Interest

From January 1, 2013 through December 31, 2018, a banking organization would be allowed to include in regulatory capital a portion of the common equity tier 1, tier 1, or total capital minority interest that would be disqualified from regulatory capital as a result of the requirements and limitations outlined in section 21 (surplus minority interest). If a banking organization has surplus minority interest outstanding as of January 1, 2013, such surplus minority interest would be subject to the phase-out schedule outlined in table 22. For example, if a banking organization has $10 of surplus common equity tier 1 minority interest as of January 1, 2013, it would be allowed to include all such surplus in its common equity tier 1 capital during calendar year 2013, $8 during calendar year 2014, $6 during calendar year 2015, $4 during calendar year 2016, $2 during calendar year 2017 and $0 starting in January 1, 2018. Likewise, from January 1, 2013 through December 31, 2018, a banking organization would be able to include in tier 1 or total capital a portion of the instruments issued by a consolidated subsidiary that qualified as tier 1 or total capital of the banking organization as of December 31, 2012 but that would not qualify as tier 1 or total minority interest as of January 1, 2013 (non-qualifying minority interest) in accordance with Table 22. For example, if a banking organization has $10 of non-qualifying minority interest that previously qualified as tier 1 capital, it would be allowed to include $10 in its tier 1 capital during calendar year 2013, $8 during calendar year 2014, $6 during calendar year 2015, $4 during calendar year 2016, $2 during calendar year 2017 and $0 starting in January 1, 2018.

TABLE 22—PERCENTAGE OF THE AMOUNT OF SURPLUS OR NON-QUALIFYING MINORITY INTEREST INCLUDABLE IN REGULATORY CAPITAL DURING TRANSITION PERIOD

Transition period	Percentage of the amount of surplus or non-qualifying minority interest that can be included in regulatory capital during the transition period
Calendar year 2013	100
Calendar year 2014	80
Calendar year 2015	60
Calendar year 2015	60
Calendar year 2016	40
Calendar year 2017	20
Calendar year 2018 and thereafter	0

Transition Provisions for Standardized Approach NPR

In addition, under the Standardized Approach NPR, beginning on January 1, 2015, a banking organization would be required to calculate risk-weighted assets using the proposed new approaches described in that NPR. The Standardized Approach NPR proposes that until then, the banking organization may calculate risk-weighted assets using the current methodologies unless it decides to early adopt the proposed changes. Notwithstanding the transition provisions in the Standardized Approach NPR, the banking organization would be subject to the transition provisions described in this Basel III NPR.

Question 36: The agencies solicit comments on the transition arrangements outlined previously. In particular, what specific regulatory reporting burden or complexities would result from the application of the transition arrangements described in this section of the preamble, and what specific alternatives exist to deal with such burden or complexity while still adhering to the general transitional provisions required under the Dodd-Frank Act?

Question 37: What are the pros and cons of a potentially stricter (but less complex) alternative transitions approach for the regulatory adjustments and deductions outlined in this section C under which banking organizations would be required to (1) apply all the regulatory adjustments and deductions currently applicable to tier 1 capital under the general risk-based capital rules to common equity tier 1 capital from January 1, 2013 through December 31, 2015; and (2) fully apply all the regulatory adjustments and deductions proposed in section 22 of the proposed rule starting on January 1, 2016? Please provide data to support your views.

E. Leverage Ratio

The agencies are proposing to apply the supplementary leverage ratio beginning in 2018. However, beginning on January 1, 2015, advanced approaches banking organizations would be required to calculate and report the supplementary leverage ratio using the proposed definition of tier 1 capital and total exposure measure.

Question 38: The agencies solicit comment on the proposed transition arrangements for the supplementary leverage ratio. In particular, what specific challenges do banking organizations anticipate with regard to the proposed arrangements and what specific alternative arrangements would address these challenges?

VI. Additional OCC Technical Amendments

In addition to the changes described above, the OCC is proposing to redesignate subpart C, Establishment of Minimum Capital Ratios for an Individual Bank, subpart D, Enforcement, and subpart E, Issuance of a Directive, as subparts H, I, and J, respectively. The OCC is also proposing to redesignate section 3.100, Capital and Surplus, as subpart K, Capital and Surplus. The OCC is carrying over redesignated subpart K, which includes definitions of the terms ''capital'' and ''surplus'' and related definitions that are used for determining statutory limits applicable to national banks that are based on capital and surplus. The agencies have systematically adopted a definition of capital and surplus that is based on tier 1 and tier 2 capital. The OCC believes that the definitions in redesignated subpart K may no longer be necessary and is considering whether to delete these definitions in the final rule. Finally, as part of the integration of the rules governing national banks and federal savings associations, the OCC proposes to make part 3 applicable to federal savings associations, make other non-substantive, technical amendments, and rescind part 167, Capital.

In the final rule, the OCC may need to make additional technical and conforming amendments to other OCC rules, such as § 5.46, subordinated debt, which contains cross references to Part 3 that we propose to change pursuant to this rule. Cross references to appendices A, B, or C will also need to be amended because we propose to replace those appendices with subparts A through H.

Question 39: The OCC requests comment on all aspects of these proposed changes, but is specifically interested in whether it is necessary to retain the definitions of capital and surplus and related terms in redesignated subpart K.

VII. Abbreviations

ABCP Asset-Backed Commercial Paper
ABS Asset Backed Security
AD.C. Acquisition, Development, or Construction
AFS Available For Sale

AOCI Accumulated Other Comprehensive Income
BCBS Basel Committee on Banking Supervision
BHC Bank Holding Company
BIS Bank for International Settlements
CAMELS Capital Adequacy, Asset Quality, Management, Earnings, Liquidity, and Sensitivity to Market Risk
CCF Credit Conversion Factor
CCP Central Counterparty
CD.C. Community Development Corporation
CDFI Community Development Financial Institution
CDO Collateralized Debt Obligation
CDS Credit Default Swap
CDSind Index Credit Default Swap
CEIO Credit-Enhancing Interest-Only Strip
CF Conversion Factor
CFR Code of Federal Regulations
CFTC Commodity Futures Trading Commission
CMBS Commercial Mortgage Backed Security
CPSS Committee on Payment and Settlement Systems
CRC Country Risk Classifications
CRAM Country Risk Assessment Model
CRM Credit Risk Mitigation
CUSIP Committee on Uniform Securities Identification Procedures
D.C.O Derivatives Clearing Organizations
DFA Dodd-Frank Act
DI Depository Institution
DPC Debts Previously Contracted
DTA Deferred Tax Asset
DTL Deferred Tax Liability
DVA Debit Valuation Adjustment
DvP Delivery-versus-Payment
E Measure of Effectiveness
EAD Exposure at Default
ECL Expected Credit Loss
EE Expected Exposure
E.O. Executive Order
EPE Expected Positive Exposure
FASB Financial Accounting Standards Board
FDIC Federal Deposit Insurance Corporation
FFIEC Federal Financial Institutions Examination Council
FHLMC Federal Home Loan Mortgage Corporation
FMU Financial Market Utility
FNMA Federal National Mortgage Association
FR **Federal Register**
GAAP Generally Accepted Accounting Principles
GDP Gross Domestic Product
GLBA Gramm-Leach-Bliley Act
GSE Government-Sponsored Entity
HAMP Home Affordable Mortgage Program
HELOC Home Equity Line of Credit
HOLA Home Owners' Loan Act
HVCRE High-Volatility Commercial Real Estate
IFRS International Reporting Standards
IMM Internal Models Methodology
I/O Interest-Only
IOSCO International Organization of Securities Commissions
LTV Loan-to-Value Ratio
M Effective Maturity
MDB Multilateral Development Banks
MSA Mortgage Servicing Assets
NGR Net-to-Gross Ratio
NPR Notice of Proposed Rulemaking
NRSRO Nationally Recognized Statistical Rating Organization
OCC Office of the Comptroller of the Currency
OECD Organization for Economic Co-operation and Development
OIRA Office of Information and Regulatory Affairs
OMB Office of Management and Budget
OTC Over-the-Counter
PCA Prompt Corrective Action
PCCR Purchased Credit Card Receivables
PFE Potential Future Exposure
PMI Private Mortgage Insurance
PSE Public Sector Entities
PvP Payment-versus-Payment
QCCP Qualifying Central Counterparty
RBA Ratings-Based Approach
REIT Real Estate Investment Trust
RFA Regulatory Flexibility Act
RMBS Residential Mortgage Backed Security
RTCRRI Act Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991
RVC Ratio of Value Change
RWA Risk-Weighted Asset
SEC Securities and Exchange Commission
SFA Supervisory Formula Approach
SFT Securities Financing Transactions
SBLF Small Business Lending Facility
SLHC Savings and Loan Holding Company
SPE Special Purpose Entity
SPV Special Purpose Vehicle
SR Supervision and Regulation Letter
SRWA Simple Risk-Weight Approach
SSFA Simplified Supervisory Formula Approach
UMRA Unfunded Mandates Reform Act of 1995
U.S. United States
U.S.C. United States Code
VaR Value-at-Risk

VIII. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA) requires an agency to provide an initial regulatory flexibility analysis with a proposed rule or to certify that the rule will not have a significant economic impact on a substantial number of small entities (defined for purposes of the RFA to include banking entities with assets less than or equal to $175 million) and publish its certification and a short, explanatory statement in the **Federal Register** along with the proposed rule.

The agencies are separately publishing initial regulatory flexibility analyses for the proposals as set forth in this NPR.

Board

A. Statement of the Objectives of the Proposal; Legal Basis

As discussed previously in the Supplementary Information, the Board is proposing in this NPR to revise its capital requirements to promote safe and sound banking practices, implement Basel III, and codify its capital requirements. The proposals also satisfy certain requirements under the Dodd-Frank Act by imposing new or revised minimum capital requirements on certain depository institution holding companies.[90] Under section 38(c)(1) of the Federal Deposit Insurance Act, the agencies may prescribe capital standards for depository institutions that they regulate.[91] In addition, among other authorities, the Board may establish capital requirements for state member banks under the Federal Reserve Act,[92] for state member banks and bank holding companies under the International Lending Supervision Act and Bank Holding Company Act,[93] and for savings and loan holding companies under the Home Owners Loan Act.[94]

B. Small Entities Potentially Affected by the Proposal

Under regulations issued by the Small Business Administration,[95] a small entity includes a depository institution or bank holding company with total assets of $175 million or less (a small banking organization). As of March 31, 2012 there were 373 small state member banks. As of December 31, 2011, there were approximately 128 small savings and loan holding companies and 2,385 small bank holding companies.[96]

The proposal would not apply to small bank holding companies that are not engaged in significant nonbanking activities, do not conduct significant off-balance sheet activities, and do not have a material amount of debt or equity securities outstanding that are registered with the SEC. These small bank holding companies remain subject to the Board's Small Bank Holding Company Policy Statement (Policy Statement).[97]

Small state member banks and small savings and loan holding companies (covered small banking organizations) would be subject to the proposals in this NPR.

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[90] *See* 12 U.S.C. 5371.

[91] *See* 12 U.S.C. 1831o(c)(1).

[92] *See* 12 CFR 208.43.

[93] *See* 12 U.S.C. 3907; 12 U.S.C. 1844.

[94] *See* 12 U.S.C. 1467a(g)(1).

[95] *See* 13 CFR 121.201.

[96] The December 31, 2011 data are the most recent available data on small savings and loan holding companies and small bank holding companies.

[97] *See* 12 CFR part 225, appendix C. Section 171 of the Dodd-Frank provides an exemption from its requirements for bank holding companies subject to the Policy Statement (as in effect on May 19, 2010). Section 171 does not provide a similar exemption for small savings and loan holding companies and they are therefore subject to the proposals. 12 U.S.C. 5371(b)(5)(C).

C. Impact on Covered Small Banking Organizations

The proposals may impact covered small banking organizations in several ways. The proposals would affect covered small banking organizations' regulatory capital requirements. They would change the qualifying criteria for regulatory capital, including required deductions and adjustments, and modify the risk weight treatment for some exposures. They also would require covered small banking organizations to meet new minimum common equity tier 1 to risk-weighted assets ratio of 4.5 percent and an increased minimum tier 1 capital to risk-weighted assets risk-based capital ratio of 6 percent. Under the proposals, all banking organizations would remain subject to a 4 percent minimum tier 1 leverage ratio.[98]

In addition, as described above, the proposals would impose limitations on capital distributions and discretionary bonus payments for covered small banking organizations that do not hold a buffer of common equity tier 1 capital above the minimum ratios. As a result of these new requirements, some covered small banking organizations may have to alter their capital structure (including by raising new capital or increasing retention of earnings) in order to achieve compliance.

Most small state member banks already hold capital in excess of the proposed minimum risk-based regulatory ratios. Therefore, the proposed requirements are not expected to significantly impact the capital structure of most covered small state member banks. Comparing the capital requirements proposed in this NPR and the Standardized Approach NPR on a fully phased-in basis to minimum requirements of the current rules, the capital ratios of approximately 1–2 percent of small state member banks would fall below at least one of the proposed minimum risk-based capital requirements. Thus, the Board believes that the proposals in this NPR and the Standardized NPR would affect an insubstantial number of small state member banks.

Because the Board has not fully implemented reporting requirements for savings and loan holding companies, it is unable to determine the impact of the proposed requirements on small savings and loan holding companies. The Board seeks comment on the potential impact of the proposed requirements on small savings and loan holding companies.

Covered small banking organizations that would have to raise additional capital to comply with the requirements of the proposals may incur certain costs, including costs associated with issuance of regulatory capital instruments. The Board has sought to minimize the burden of raising additional capital by providing for transitional arrangements that phase-in the new capital requirements over several years, allowing banking organizations time to accumulate additional capital through retained earnings as well as raising capital in the market. While the proposals would establish a narrower definition of capital, a minimum common equity tier 1 capital ratio and a minimum tier 1 capital ratio that is higher than under the general risk-based capital rules, the majority of capital instruments currently held by small covered banking organizations under existing capital rules, such as common stock and noncumulative perpetual preferred stock, would remain eligible as regulatory capital instruments under the proposed requirements.

As discussed above, the proposals would modify criteria for regulatory capital, deductions and adjustments to capital, and risk weights for exposures, as well as calculation of the leverage ratio. Accordingly, covered small banking organizations would be required to change their internal reporting processes to comply with these changes. These changes may require some additional personnel training and expenses related to new systems (or modification of existing systems) for calculating regulatory capital ratios.

For small savings and loan holding companies, the compliance burdens described above may be greater than for those of other covered small banking organizations. Small savings and loan holding companies previously were not subject to regulatory capital requirements and reporting requirements tied regulatory capital requirements. Small savings and loan holding companies may therefore need to invest additional resources in establishing internal systems (including purchasing software or hiring personnel) or raising capital to come into compliance with the proposed requirements.

D. Transitional Arrangements To Ease Compliance Burden

For those covered small banking organizations that would not immediately meet the proposed minimum requirements, this NPR provides transitional arrangements for banking organizations to make adjustments and to come into compliance. Small covered banking organizations would be required to meet the proposed minimum capital ratio requirements beginning on January 1, 2013 thorough to December 31, 2014. On January 1, 2015, small covered banking organizations would be required to comply with the proposed minimum capital ratio requirements.

E. Identification of Duplicative, Overlapping, or Conflicting Federal Rules

The Board is unaware of any duplicative, overlapping, or conflicting federal rules. As noted above, the Board anticipates issuing a separate proposal to implement reporting requirements that are tied to (but do not overlap or duplicate) the proposed requirements. The Board seeks comments and information regarding any such rules that are duplicative, overlapping, or otherwise in conflict with the proposed requirements.

F. Discussion of Significant Alternatives

The Board has sought to incorporate flexibility and provide alternative treatments in this NPR and the Standardized NPR to lessen burden and complexity for smaller banking organizations wherever possible, consistent with safety and soundness and applicable law, including the Dodd-Frank Act. These alternatives and flexibility features include the following:

- Covered small banking organizations would not be subject to the proposed enhanced disclosure requirements.
- Covered small banking organizations would not be subject to possible increases in the capital conservation buffer through the countercyclical buffer.
- Covered small banking organizations would not be subject to the new supplementary leverage ratio.
- Covered small institutions that have issued capital instruments to the U.S. Treasury through the Small Business Lending Fund (a program for banking organizations with less than $10 billion in consolidated assets) or under the Emergency Economic Stabilization Act of 2008 prior to October 4, 2010, would be able to continue to include those

[98] Banking organizations subject to the advanced approaches rules also would be required in 2018 to achieve a minimum tier 1 capital to total leverage exposure ratio (the supplementary leverage ratio) of 3 percent. Advanced approaches banking organizations should refer to section 10 of subpart B of the proposed rule and section II.B of the preamble for a more detailed discussion of the applicable minimum capital ratios.

instruments in tier 1 or tier 2 capital (as applicable) even if not all criteria for inclusion under the proposed requirements are met.

- Covered small banking organizations that issued capital instruments that could no longer be included in tier 1 capital or tier 2 capital under the proposed requirements would have a longer transition period for removing the instruments from tier 1 or tier 2 capital (as applicable).

The Board welcomes comment on any significant alternatives to the proposed requirements applicable to covered small banking organizations that would minimize their impact on those entities, as well as on all other aspects of its analysis. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

OCC

In accordance with section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA), the OCC is publishing this summary of its Initial Regulatory Flexibility Analysis (IRFA) for this NPR. The RFA requires an agency to publish in the **Federal Register** its IRFA or a summary of its IRFA at the time of the publication of its general notice of proposed rulemaking [99] or to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.[100] For its IRFA, the OCC analyzed the potential economic impact of this NPR on the small entities that it regulates.

The OCC welcomes comment on all aspects of the summary of its IRFA. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

A. Reasons Why the Proposed Rule Is Being Considered by the Agencies; Statement of the Objectives of the Proposed Rule; and Legal Basis

As discussed in the Supplementary Information section above, the agencies are proposing to revise their capital requirements to promote safe and sound banking practices, implement Basel III, and harmonize capital requirements across charter type. Federal law authorizes each of the agencies to prescribe capital standards for the banking organizations that it regulates.[101]

B. Small Entities Affected by the Proposal

Under regulations issued by the Small Business Administration,[102] a small entity includes a depository institution or bank holding company with total assets of $175 million or less (a small banking organization). As of March 31, 2012, there were approximately 599 small national banks and 284 small federally chartered savings associations.

C. Projected Reporting, Recordkeeping, and Other Compliance Requirements

This NPR includes changes to the general risk-based capital requirements that affect small banking organizations. Under this NPR, the changes to minimum capital requirements that would impact small national banks and federal savings associations include a more conservative definition of regulatory capital, a new common equity tier 1 capital ratio, a higher minimum tier 1 capital ratio, new thresholds for prompt corrective action purposes, and a new capital conservation buffer. To estimate the impact of this NPR on national banks' and federal savings associations' capital needs, the OCC estimated the amount of capital the banks will need to raise to meet the new minimum standards relative to the amount of capital they currently hold. To estimate new capital ratios and requirements, the OCC used currently available data from banks' quarterly Consolidated Report of Condition and Income (Call Reports) to approximate capital under the proposed rule, which shows that most banks have raised their capital levels well above the existing minimum requirements. After comparing existing levels with the proposed new requirements, the OCC has determined that 28 small institutions that it regulates would fall short of the proposed increased capital requirements. Together, those institutions would need to raise approximately $82 million in regulatory capital to meet the proposed minimum requirements. The OCC estimates that the cost of lost tax benefits associated with increasing total capital by $82 million will be approximately $0.5 million per year. Averaged across the 28 affected institutions, the cost is approximately $18,000 per institution per year.

To determine if a proposed rule has a significant economic impact on small entities, we compared the estimated annual cost with annual noninterest expense and annual salaries and employee benefits for each small entity. Based on this analysis, the OCC has concluded for purposes of this IRFA that the changes described in this NPR, when considered without regard to other changes to the capital requirements that the agencies simultaneously are proposing, would not result in a significant economic impact on a substantial number of small entities.

However, as discussed in the Supplementary Information section above, the changes proposed in this NPR also should be considered together with changes proposed in the separate Standardized Approach NPR also published in today's **Federal Register**. The changes described in the Standardized NPR include:

1. Changing the denominator of the risk-based capital ratios by revising the asset risk weights;
2. Revising the treatment of counterparty credit risk;
3. Replacing references to credit ratings with alternative measures of creditworthiness;
4. Providing more comprehensive recognition of collateral and guarantees; and
5. Providing a more favorable capital treatment for transactions cleared through qualifying central counterparties.

These changes are designed to enhance the risk-sensitivity of the calculation of risk-weighted assets. Therefore, capital requirements may go down for some assets and up for others. For those assets with a higher risk weight under this NPR, however, that increase may be large in some instances, *e.g.,* requiring the equivalent of a dollar-for-dollar capital charge for some securitization exposures.

The Basel Committee on Banking Supervision has been conducting periodic reviews of the potential quantitative impact of the Basel III framework.[103] Although these reviews monitor the impact of implementing the Basel III framework rather than the proposed rule, the OCC is using estimates consistent with the Basel Committee's analysis, including a conservative estimate of a 20 percent increase in risk-weighted assets, to gauge the impact of the Standardized Approach NPR on risk-weighted assets. Using this assumption, the OCC estimates that a total of 56 small national banks and federally chartered savings associations will need to raise additional capital to meet their regulatory minimums. The OCC

[99] 5 U.S.C. 603(a).

[100] 5 U.S.C. 605(b).

[101] *See, e.g.,* 12 U.S.C. 1467a(g)(1); 12 U.S.C. 1831o(c)(1); 12 U.S.C. 1844; 12 U.S.C. 3907; and 12 U.S.C. 5371.

[102] *See* 13 CFR 121.201.

[103] *See,* ''Update on Basel III Implementation Monitoring,'' Quantitative Impact Study Working Group, (January 28, 2012).

estimates that this total projected shortfall will be $143 million and that the cost of lost tax benefits associated with increasing total capital by $143 million will be approximately $0.8 million per year. Averaged across the 56 affected institutions, the cost is approximately $14,000 per institution per year.

To comply with the proposed rules in the Standardized Approach NPR, covered small banking organizations would be required to change their internal reporting processes. These changes would require some additional personnel training and expenses related to new systems (or modification of existing systems) for calculating regulatory capital ratios.

Additionally, covered small banking organizations that hold certain exposures would be required to obtain additional information under the proposed rules in order to determine the applicable risk weights. Covered small banking organizations that hold exposures to sovereign entities other than the United States, foreign depository institutions, or foreign public sector entities would have to acquire Country Risk Classification ratings produced by the OECD to determine the applicable risk weights. Covered small banking organizations that hold residential mortgage exposures would need to have and maintain information about certain underwriting features of the mortgage as well as the LTV ratio in order to determine the applicable risk weight. Generally, covered small banking organizations that hold securitization exposures would need to obtain sufficient information about the underlying exposures to satisfy due diligence requirements and apply either the simplified supervisory formula or the gross-up approach described in section __.43 of the Standardized Approach NPR to calculate the appropriate risk weight, or be required to assign a 1,250 percent risk weight to the exposure.

Covered small banking organizations typically do not hold significant exposures to foreign entities or securitization exposures, and the agencies expect any additional burden related to calculating risk weights for these exposures, or holding capital against these exposures, would be relatively modest. The OCC estimates that, for small national banks and federal savings associations, the cost of implementing the alternative measures of creditworthiness will be approximately $36,125 per institution.

Some covered small banking organizations may hold significant residential mortgage exposures. However, if the small banking organization originated the exposure, it should have sufficient information to determine the applicable risk weight under the proposed rule. If the small banking organization acquired the exposure from another institution, the information it would need to determine the applicable risk weight is consistent with information that it should normally collect for portfolio monitoring purposes and internal risk management.

Covered small banking organizations would not be subject to the disclosure requirements in subpart D of the proposed rule. However, the agencies expect to modify regulatory reporting requirements that apply to covered small banking organizations to reflect the changes made to the agencies' capital requirements in the proposed rules. The agencies expect to propose these changes to the relevant reporting forms in a separate notice.

To determine if a proposed rule has a significant economic impact on small entities the OCC compared the estimated annual cost with annual noninterest expense and annual salaries and employee benefits for each small entity. If the estimated annual cost was greater than or equal to 2.5 percent of total noninterest expense or 5 percent of annual salaries and employee benefits the OCC classified the impact as significant. As noted above, the OCC has concluded for purposes of this IRFA that the proposed rules in this NPR, when considered without regard to changes in the Standardized NPR, would not exceed these thresholds and therefore would not result in a significant economic impact on a substantial number of small entities. However, the OCC has concluded that the proposed rules in the Standardized Approach NPR would have a significant impact on a substantial number of small entities. The OCC estimates that together, the changes proposed in this NPR and the Standardized Approach NPR will exceed these thresholds for 500 small national banks and 253 small federally chartered private savings institutions. Accordingly, when considered together, this NPR and the Standardized Approach NPR appear to have a significant economic impact on a substantial number of small entities.

D. Identification of Duplicative, Overlapping, or Conflicting Federal Rules

The OCC is unaware of any duplicative, overlapping, or conflicting federal rules. As noted previously, the OCC anticipates issuing a separate proposal to implement reporting requirements that are tied to (but do not overlap or duplicate) the requirements of the proposed rules. The OCC seeks comments and information regarding any such federal rules that are duplicative, overlapping, or otherwise in conflict with the proposed rule.

E. Discussion of Significant Alternatives to the Proposed Rule

The agencies have sought to incorporate flexibility into the proposed rule and lessen burden and complexity for smaller banking organizations wherever possible, consistent with safety and soundness and applicable law, including the Dodd-Frank Act. The agencies are requesting comment on potential options for simplifying the rule and reducing burden, including whether to permit certain small banking organizations to continue using portions of the current general risk-based capital rules to calculate risk-weighted assets. Additionally, the agencies proposed the following alternatives and flexibility features:

- Covered small banking organizations are not subject to the enhanced disclosure requirements of the proposed rules.
- Covered small banking organizations would continue to apply a 100 percent risk weight to corporate exposures (as described in section __.32 of the Standardized Approach NPR).
- Covered small banking organizations may choose to apply the simpler gross-up method for securitization exposures rather than the Simplified Supervisory Formula Approach (SSFA) (as described in section __.43 of the Standardized Approach NPR).
- The proposed rule offers covered small banking organizations a choice between a simpler and more complex methods of risk weighting equity exposures to investment funds (as described in section __.53 of the Standardized Approach NPR).

The agencies welcome comment on any significant alternatives to the proposed rules applicable to covered small banking organizations that would minimize their impact on those entities.

FDIC

Regulatory Flexibility Act

Summary of the FDIC's Initial Regulatory Flexibility Analysis (IRFA)

In accordance with section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA), the FDIC is publishing this summary of the IRFA for this NPR. The RFA requires an agency to publish in the **Federal Register** an IRFA or a summary of its IRFA at the time of the publication of its general notice of proposed rulemaking [104] or to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.[105] For purposes of this IRFA, the FDIC analyzed the potential economic impact of this NPR on the small entities that it regulates.

The FDIC welcomes comment on all aspects of the summary of its IRFA. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

A. Reasons Why the Proposed Rule Is Being Considered by the Agencies; Statement of the Objectives of the Proposed Rule; and Legal Basis

As discussed in the Supplementary Information section above, the agencies are proposing to revise their capital requirements to promote safe and sound banking practices, implement Basel III and certain aspects of the Dodd-Frank Act, and harmonize capital requirements across charter type. Federal law authorizes each of the agencies to prescribe capital standards for the banking organizations that it regulates.[106]

B. Small Entities Affected by the Proposal

Under regulations issued by the Small Business Administration,[107] a small entity includes a depository institution or bank holding company with total assets of $175 million or less (a small banking organization). As of March 31, 2012, there were approximately 2,433 small state nonmember banks, 115 small state savings banks, and 45 small state savings associations (collectively, small banks and savings associations).

C. Projected Reporting, Recordkeeping, and Other Compliance Requirements

This NPR includes changes to the general risk-based capital requirements that affect small banking organizations. Under this NPR, the changes to minimum capital requirements that would impact small banks and savings associations include a more conservative definition of regulatory capital, a new common equity tier 1 capital ratio, a higher minimum tier 1 capital ratio, new thresholds for prompt corrective action purposes, and a new capital conservation buffer. To estimate the impact of this NPR on the capital needs of small banks and savings associations, the FDIC estimated the amount of capital such institutions will need to raise to meet the new minimum standards relative to the amount of capital they currently hold. To estimate new capital ratios and requirements, the FDIC used currently available data from the quarterly Consolidated Report of Condition and Income (Call Reports) filed by small banks and savings associations to approximate capital under the proposed rule. The Call Reports show that most small banks and savings associations have raised their capital to levels well above the existing minimum requirements. After comparing existing levels with the proposed new requirements, the FDIC has determined that 62 small banks and savings associations that it regulates would fall short of the proposed increased capital requirements. Together, those institutions would need to raise approximately $164 million in regulatory capital to meet the proposed minimum requirements. The FDIC estimates that the cost of lost tax benefits associated with increasing total capital by $164 million will be approximately $0.9 million per year. Averaged across the 62 affected institutions, the cost is approximately $15,000 per institution per year.

To determine if the proposed rule has a significant economic impact on small entities we compared the estimated annual cost with annual noninterest expense and annual salaries and employee benefits for each small entity. Based on this analysis, the FDIC has concluded for purposes of this IRFA that the changes described in this NPR, when considered without regard to other changes to the capital requirements that the agencies simultaneously are proposing, would not result in a significant economic impact on a substantial number of small entities.

However, as discussed in the Supplementary Information section above, the changes proposed in this NPR also should be considered together with changes proposed in the separate Standardized Approach NPR also published in today's **Federal Register**. The changes described in the Standardized NPR include:

1. Changing the denominator of the risk-based capital ratios by revising the asset risk weights;

2. Revising the treatment of counterparty credit risk;

3. Replacing references to credit ratings with alternative measures of creditworthiness;

4. Providing more comprehensive recognition of collateral and guarantees; and

5. Providing a more favorable capital treatment for transactions cleared through qualifying central counterparties.

These changes are designed to enhance the risk-sensitivity of the calculation of risk-weighted assets. Therefore, capital requirements may go down for some assets and up for others. For those assets with a higher risk weight under this NPR, however, that increase may be large in some instances, for example, the equivalent of a dollar-for-dollar capital charge for some securitization exposures.

In order to estimate the impact of the Standardized Approach NPR on small banks and savings associations, the FDIC used currently available data from the quarterly Consolidated Report of Condition and Income (Call Reports) filed by small banks and savings associations to approximate the change in capital under the proposed rule. After comparing the existing risk-based capital rules with the proposed rule, the FDIC estimates that risk-weighted assets may increase by 10 percent under the proposed rule. Using this assumption, the FDIC estimates that a total of 76 small national banks and federally chartered savings associations will need to raise additional capital to meet their regulatory minimums. The FDIC estimates that this total projected shortfall will be $34 million and that the cost of lost tax benefits associated with increasing total capital by $34 million will be approximately $0.2 million per year. Averaged across the 76 affected institutions, the cost is approximately $2,500 per institution per year.

To comply with the proposed rules in the Standardized Approach NPR, covered small banking organizations would be required to change their internal reporting processes. These changes would require some additional personnel training and expenses related to new systems (or modification of existing systems) for calculating regulatory capital ratios.

Additionally, small banks and savings associations that hold certain exposures would be required to obtain additional information under the proposed rules in order to determine the applicable risk weights. For example, small banks and savings associations that hold exposures to sovereign entities other than the United States, foreign depository institutions, or foreign public sector entities would have to acquire Country Risk Classification ratings produced by the OECD to determine the applicable risk weights. Small banks and savings

[104] 5 U.S.C. 603(a).

[105] 5 U.S.C. 605(b).

[106] *See, e.g.,* 12 U.S.C. 1467a(g)(1); 12 U.S.C. 1831o(c)(1); 12 U.S.C. 1844; 12 U.S.C. 3907; and 12 U.S.C. 5371.

[107] *See* 13 CFR 121.201.

associations that hold residential mortgage exposures would need to have and maintain information about certain underwriting features of the mortgage as well as the LTV ratio to determine the applicable risk weight. Generally, small banks and savings associations that hold securitization exposures would need to obtain sufficient information about the underlying exposures to satisfy due diligence requirements and apply either the simplified supervisory formula or the gross-up approach described in section __.43 of the Standardized Approach NPR to calculate the appropriate risk weight, or be required to assign a 1,250 percent risk weight to the exposure.

Small banks and savings associations typically do not hold significant exposures to foreign entities or securitization exposures, and the agencies expect any additional burden related to calculating risk weights for these exposures, or holding capital against these exposures, would be relatively modest. The FDIC estimates that, for small banks and savings associations, the cost of implementing the alternative measures of creditworthiness will be approximately $39,000 per institution.

Small banks and savings associations may hold significant residential mortgage exposures. If the institution originated the exposure, it should have sufficient information to determine the applicable risk weight under the proposed rule. However, if the exposure is acquired from another institution, the information that would be needed to determine the applicable risk weight is consistent with information that should normally be collected for portfolio monitoring purposes and internal risk management.

Small banks and savings associations would not be subject to the disclosure requirements in subpart D of the proposed rule. However, the agencies expect to modify regulatory reporting requirements that apply to such institutions to reflect the changes made to the agencies' capital requirements in the proposed rules. The agencies expect to propose these changes to the relevant reporting forms in a separate notice.

To determine if a proposed rule has a significant economic impact on small entities the FDIC compared the estimated annual cost with annual noninterest expense and annual salaries and employee benefits for each small bank and savings association. If the estimated annual cost was greater than or equal to 2.5 percent of total noninterest expense or 5 percent of annual salaries and employee benefits the FDIC classified the impact as significant. As noted above, the FDIC has concluded for purposes of this IRFA that the proposed rules in this NPR, when considered without regard to changes in the Standardized NPR, would not exceed these thresholds and therefore would not result in a significant economic impact on a substantial number of small banks and savings associations. However, the FDIC has concluded that the proposed rules in the Standardized Approach NPR would have a significant impact on a substantial number of small banks and savings associations. The FDIC estimates that together, the changes proposed in this NPR and the Standardized Approach NPR will exceed these thresholds for 2,413 small state nonmember banks, 114 small savings banks, and 45 small savings associations. Accordingly, when considered together, this NPR and the Standardized Approach NPR appear to have a significant economic impact on a substantial number of small entities.

D. Identification of Duplicative, Overlapping, or Conflicting Federal Rules

The FDIC is unaware of any duplicative, overlapping, or conflicting federal rules. As noted previously, the FDIC anticipates issuing a separate proposal to implement reporting requirements that are tied to (but do not overlap or duplicate) the requirements of the proposed rules. The FDIC seeks comments and information regarding any such federal rules that are duplicative, overlapping, or otherwise in conflict with the proposed rule.

E. Discussion of Significant Alternatives to the Proposed Rule

The agencies have sought to incorporate flexibility into the proposed rule and lessen burden and complexity for small bank and savings associations wherever possible, consistent with safety and soundness and applicable law, including the Dodd-Frank Act. The agencies are requesting comment on potential options for simplifying the rule and reducing burden, including whether to permit certain small banking organizations to continue using portions of the current general risk-based capital rules to calculate risk-weighted assets. Additionally, the agencies proposed the following alternatives and flexibility features:

- Small banks and savings associations are not subject to the enhanced disclosure requirements of the proposed rules.
- Small banks and savings associations would continue to apply a 100 percent risk weight to corporate exposures (as described in section __.32 of the Standardized Approach NPR).
- Small banks and savings associations may choose to apply the simpler gross-up method for securitization exposures rather than the SSFA (as described in section __.43 of the Standardized Approach NPR).
- The proposed rule offers small banks and savings associations a choice between a simpler and more complex methods of risk weighting equity exposures to investment funds (as described in section __.53 of the Standardized Approach NPR).

The agencies welcome comment on any significant alternatives to the proposed rules applicable to small banks and savings associations that would minimize their impact on those entities.

IX. Paperwork Reduction Act

Paperwork Reduction Act

A. Request for Comment on Proposed Information Collection

In accordance with the requirements of the Paperwork Reduction Act (PRA) of 1995, 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 Office of Management and Budget (OMB) control number. The agencies are requesting comment on a proposed information collection.

The information collection requirements contained in this joint notice of proposed rulemaking (NPR) have been submitted by the OCC and FDIC to OMB for review under the PRA, under OMB Control Nos. 1557–0234 and 3064–0153. In accordance with the PRA (44 U.S.C. 3506; 5 CFR part 1320, Appendix A.1), the Board has reviewed the NPR under the authority delegated by OMB. The Board's OMB Control No. is 7100–0313. The requirements are found in §§ __.2.

The agencies have published two other NPRs in this issue of the **Federal Register**. Please see the NPRs entitled ''Regulatory Capital Rules: Standardized Approach for Risk-Weighted Assets; Market Discipline and Disclosure Requirements'' and ''Regulatory Capital Rules: Advanced Approaches Risk-based Capital Rules; Market Risk Capital Rule.'' While the three NPRs together comprise an integrated capital framework, the PRA burden has been divided among the three NPRs and a PRA statement has been provided in each.

Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the Agencies' functions, including whether the information has practical utility;

(b) The accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

All comments will become a matter of public record. Comments should be addressed to:

OCC: Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mail Stop 1–5, Attention: 1557–0234, 250 E Street SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov*. You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–5043.

Board: You may submit comments, identified by R–1442, by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov*. Follow the instructions for submitting comments on the *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm*.
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov*. Include docket number in the subject line of the message.
- *Fax:* 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 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.

FDIC: You may submit written comments, which should refer to RIN 3064–AD95 Implementation of Basel III 0153, by any of the following methods:

- *Agency Web Site: http://www.fdic.gov/regulations/laws/federal/propose.html*. Follow the instructions for submitting comments on the FDIC Web site.
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Email: Comments@FDIC.gov*.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, FDIC, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery/Courier:* Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Public Inspection: All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/propose/html* including any personal information provided. Comments may be inspected at the FDIC Public Information Center, Room 100, 801 17th Street NW., Washington, DC, between 9 a.m. and 4:30 p.m. on business days.

B. Proposed Information Collection

Title of Information Collection: Basel III.

Frequency of Response: On occasion.

Affected Public:

OCC: National banks and federally chartered savings associations.

Board: State member banks, bank holding companies, and savings and loan holding companies.

FDIC: Insured state nonmember banks, state savings associations, and certain subsidiaries of these entities.

Abstract: Section __.2 allows the use of a conservative estimate of the amount of a bank's investment in the capital of unconsolidated financial institutions held through the index security with prior approval by the appropriate agency. It also provides for termination and close-out netting across multiple types of transactions or agreements if the bank obtains a written legal opinion verifying the validity and enforceability of the agreement under certain circumstances and maintains sufficient written documentation of this legal review.

Estimated Burden: The burden estimates below exclude any regulatory reporting burden associated with changes to the Consolidated Reports of Income and Condition for banks (FFIEC 031 and FFIEC 041; OMB Nos. 7100–0036, 3064–0052, 1557–0081), the Financial Statements for Bank Holding Companies (FR Y–9; OMB No. 7100–0128), and the Capital Assessments and Stress Testing information collection (FR Y–14A/Q/M; OMB No. 7100–0341). The agencies are still considering whether to revise these information collections or to implement a new information collection for the regulatory reporting requirements. In either case, a separate notice would be published for comment on the regulatory reporting requirements.

OCC

Estimated Number of Respondents: Independent national banks, 172; federally chartered savings banks, 603.

Estimated Burden per Respondent: 16 hours.

Total Estimated Annual Burden: 12,400 hours.

Board

Estimated Number of Respondents: SMBs, 831; BHCs, 933; SLHCs, 438.

Estimated Burden per Respondent: 16 hours.

Total Estimated Annual Burden: 35,232 hours.

FDIC

Estimated Number of Respondents: 4,571.

Estimated Burden per Respondent: 16 hours.

Total Estimated Annual Burden: 73,136 hours.

X. Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The agencies have sought to present the proposed rule in a simple and straightforward manner, and invite comment on the use of plain language.

XI. OCC Unfunded Mandates Reform Act of 1995 Determinations

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532 *et seq.*) requires that an agency prepare a written 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 annually for inflation) in any one year. If a written statement is required, the UMRA (2 U.S.C. 1535) also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule and from those alternatives, either select the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule, or provide a statement with the rule explaining why such an option was not chosen.

Under this NPR, the changes to minimum capital requirements include a new common equity tier 1 capital ratio, a higher minimum tier 1 capital ratio, a supplementary leverage ratio for advanced approaches banks, new thresholds for prompt corrective action purposes, a new capital conservation buffer, and a new countercyclical capital buffer for advanced approaches banks. To estimate the impact of this NPR on bank capital needs, the OCC estimated the amount of capital banks will need to raise to meet the new minimum standards relative to the amount of capital they currently hold. To estimate new capital ratios and requirements, the OCC used currently available data from banks' quarterly Consolidated Report of Condition and Income (Call Reports) to approximate capital under the proposed rule. Most banks have raised their capital levels well above the existing minimum requirements and, after comparing existing levels with the proposed new requirements, the OCC has determined that its proposed rule will not result in expenditures by State, local, and Tribal governments, or by the private sector, of $100 million or more. Accordingly, the UMRA does not require that a written statement accompany this NPR.

Addendum 1: Summary of This NPR for Community Banking Organizations

Overview

The agencies are issuing a notice of proposed rulemaking (NPR, proposal, or proposed rule) to revise the general risk-based capital rules to incorporate certain revisions by the Basel Committee on Banking Supervision to the Basel capital framework (Basel III). The proposed rule would:

- Revise the definition of regulatory capital components and related calculations;
- Add a new regulatory capital component: common equity tier 1 capital;
- Increase the minimum tier 1 capital ratio requirement;
- Impose different limitations to qualifying minority interest in regulatory capital than those currently applied;
- Incorporate the new and revised regulatory capital requirements into the Prompt Corrective Action (PCA) capital categories;
- Implement a new capital conservation buffer framework that would limit payment of capital distributions and certain discretionary bonus payments to executive officers and key risk takers if the banking organization does not hold certain amounts of common equity tier 1 capital in addition to those needed to meet its minimum risk-based capital requirements; and
- Provide for a transition period for several aspects of the proposed rule, including a phase-out period for certain non-qualifying capital instruments, the new minimum capital ratio requirements, the capital conservation buffer, and the regulatory capital adjustments and deductions.

This addendum presents a summary of the proposed rule that is more relevant for smaller, non-complex banking organizations that are *not* subject to the market risk rule or the advanced approaches capital rule. The agencies intend for this addendum to act as a guide for these banking organizations, helping them to navigate the proposed rule and identify the changes most relevant to them. The addendum does not, however, by itself provide a complete understanding of the proposed rules and the agencies expect and encourage all institutions to review the proposed rule in its entirety.

1. Revisions to the Minimum Capital Requirements

The NPR proposes definitions of common equity tier 1 capital, additional tier 1 capital, and total capital. These proposed definitions would alter the existing definition of capital by imposing, among other requirements, additional constraints on including minority interests, mortgage servicing assets (MSAs), deferred tax assets (DTAs) and certain investments in unconsolidated financial institutions in regulatory capital. In addition, the NPR would require that most regulatory capital deductions be made from common equity tier 1 capital. The NPR would also require that most of a banking organization's accumulated other comprehensive income (AOCI) be included in regulatory capital.

Under the NPR, a banking organization would maintain the following minimum capital requirements:

(1) A ratio of common equity tier 1capital to total risk-weighted assets of 4.5 percent.

(2) A ratio of tier 1 capital to total risk-weighted assets of 6 percent.

(3) A ratio of total capital to total risk-weighted assets of 8 percent.

(4) A ratio of tier 1 capital to adjusted average total assets of 4 percent.[108]

The new minimum capital requirements would be implemented over a transition period, as outlined in the proposed rule. For a summary of the transition period, refer to section 7 of this Addendum. As noted in the NPR, banking organizations are generally expected, as a prudential matter, to operate well above these minimum regulatory ratios, with capital commensurate with the level and nature of the risks they hold.

2. Capital Conservation Buffer

In addition to these minimum capital requirements, the NPR would establish a capital conservation buffer. Specifically, banking organizations would need to hold common equity tier 1 capital in excess of their minimum risk-based capital ratios by at least 2.5 percent of risk-weighted assets in order to avoid limits on capital distributions (including dividend payments, discretionary payments on tier 1 instruments, and share buybacks) and certain discretionary bonus payments to executive officers, including heads of major business lines and similar employees.

Under the NPR, a banking organization's capital conservation buffer would be the smallest of the following ratios: a) its common equity tier 1 capital ratio (in percent) minus 4.5 percent; b) its tier 1 capital ratio (in percent) minus 6 percent;or c) its total capital ratio (in percent) minus 8 percent.

To the extent a banking organization's capital conservation buffer falls short of 2.5 percent of risk-weighted assets, the banking organization's maximum payout amount for capital distributions and discretionary bonus payments (calculated as the maximum payout ratio multiplied by the sum of eligible retained income, as defined in the NPR) would decline. The following table shows the maximum payout ratio, depending on the banking organization's capital conservation buffer.

TABLE 1—CAPITAL CONSERVATION BUFFER

Capital Conservation Buffer (as a percentage of risk-weighted assets)	Maximum payout ratio (as a percentage or eligible retained income)
Greater than 2.5 percent	No payout limitation applies.
Less than or equal to 2.5 percent and greater than 1.875 percent	60 percent.
Less than or equal to 1.875 percent and greater than 1.25 percent	40 percent.
Less than or equal to 1.25 percent and greater than 0.625 percent	20 percent.
Less than or equal to 0.625 percent	0 percent.

[108] Banking organizations should be aware that their leverage ratio requirements would be affected by the new definition of tier 1 capital under this proposal. See section 4 of this addendum on the definition of capital.

Eligible retained income for purposes of the proposed rule would mean a banking organization's net income for the four calendar quarters preceding the current calendar quarter, based on the banking organization's most recent quarterly regulatory reports, net of any capital distributions and associated tax effects not already reflected in net income.

Under the NPR, the maximum payout amount for the current calendar quarter would be equal to the banking organization's eligible retained income, multiplied by the applicable maximum payout ratio in Table 1.

The proposed rule would prohibit a banking organization from making capital distributions or certain discretionary bonus payments during the current calendar quarter if: (A) its eligible retained income is negative; *and* (B) its capital conservation buffer ratio is less than 2.5 percent as of the end of the previous quarter.

The NPR does not diminish the agencies' authority to place additional limitations on capital distributions.

3. Adjustments to Prompt Corrective Action (PCA) Thresholds

The NPR proposes to revise the PCA capital category thresholds to levels that reflect the new capital ratio requirements. The NPR also proposes to introduce the common equity tier 1 capital ratio as a PCA capital category threshold. In addition, the NPR proposes to revise the existing definition of tangible equity. Under the NPR, tangible equity would be defined as tier 1 capital (composed of common equity tier 1 and additional tier 1 capital) plus any outstanding perpetual preferred stock (including related surplus) that is not already included in tier 1 capital.

TABLE 2—PROPOSED PCA THRESHOLD REQUIREMENTS *

PCA capital category	Threshold ratios			
	Total risk-based capital ratio	Tier 1 risk-based capital ratio	Common equity tier 1 risk-based capital ratio	Tier 1 leverage ratio
Well capitalized	10%	8%	6.5%	5%
Adequately capitalized	8%	6%	4.5%	4%
Undercapitalized	<8%	<6%	<4.5%	<4%
Significantly undercapitalized	<6%	<4%	<3%	<3%
Critically undercapitalized	Tangible Equity/Total Assets </= 2%			

* Proposed effective date: January 1, 2015. This date coincides with the phasing in of the new minimum capital requirements, which would be implemented over a transition period.

4. Definition of Capital

The NPR proposes to revise the definition of capital to include the following regulatory capital components: common equity tier 1 capital, additional tier 1 capital, and tier 2 capital. These are summarized below (see summary table attached). Section 20 of the proposed rule describes the capital components and eligibility criteria for regulatory capital instruments. Section 20 also describes the criteria that each primary federal supervisor would consider when determining whether a capital instrument should be included in a specific regulatory capital component.

a. Common Equity Tier 1 Capital

The NPR defines common equity tier 1 capital as the sum of the common equity tier 1 elements, less applicable regulatory adjustments and deductions. Common equity tier 1 capital elements would include:

1. Common stock instruments (that satisfy specified criteria in the proposed rule) and related surplus (net of any treasury stock);
2. Retained earnings;
3. Accumulated other comprehensive income (AOCI); and
4. Common equity minority interest (as defined in the proposed rule) subject to the limitations outlined in section 21 of the proposed rule.

b. Additional Tier 1 Capital

The NPR would define additional tier 1 capital as the sum of additional tier 1 capital elements and related surplus, less applicable regulatory adjustments and deductions. Additional tier 1 capital elements would include:

1. Noncumulative perpetual preferred stock (that satisfy specified criteria in the proposed rule) and related surplus;
2. Tier 1 minority interest (as defined in the proposed rule), subject to limitations described in section 21 of the proposed rule, not included in the banking organization's common equity tier 1 capital; and
3. Instruments that currently qualify as tier 1 capital under the agencies' general risk-based capital rules and that were issued under the Small Business Job's Act of 2010, or, prior to October 4, 2010, under the Emergency Economic Stabilization Act of 2008.

c. Tier 2 Capital

The proposed rule would define tier 2 capital as the sum of tier 2 capital elements and related surplus, less regulatory adjustments and deductions. The tier 2 capital elements would include:

1. Subordinated debt and preferred stock (that satisfy specified criteria in the proposed rule). This will include most of the subordinated debt currently included in tier 2 capital according to the agencies' existing risk-based capital rules;
2. Total capital minority interest (as defined in the proposed rule), subject to the limitations described in section 21 of the proposed rule, and not included in the banking organization's tier 1 capital;
3. Allowance for loan and lease losses (ALLL) not exceeding 1.25 percent of the banking organization's total risk-weighted assets; and
4. Instruments that currently qualify as tier 2 capital under the agencies' general risk-based capital rules and that were issued under the Small Business Job's Act of 2010, or, prior to October 4, 2010, under the Emergency Economic Stabilization Act of 2008.

d. Minority Interest

The NPR proposes a calculation method that limits the amount of minority interest in a subsidiary that is not owned by the banking organization that may be included in regulatory capital.

Under the NPR, *common equity tier 1 minority interest* would mean any minority interest arising from the issuance of common shares by a fully consolidated subsidiary. Common equity tier 1 minority interest may be recognized in common equity tier 1 *only if both* of the following are true:

1. The instrument giving rise to the minority interest would, if issued by the banking organization itself, meet all of the criteria for common stock instruments.
2. The subsidiary is itself a depository institution.

If not recognized in common equity tier 1, the minority interest may be eligible for inclusion in additional tier 1 capital or tier 2 capital.

For a capital instrument that meets all of the criteria for common stock instruments, the amount of common equity minority interest includable in the banking organization's common equity tier 1 capital is equal to:

The common equity tier 1 minority interest of the subsidiary minus

(*The percentage of the subsidiary's common equity tier 1 capital that is not owned by the banking organization*)

multiplied by the difference between

(*common equity tier 1 capital of the subsidiary*

and the lower of:

- *7% of the risk weighted assets of the banking organization that relate to the subsidiary*, or

7% of the risk weighted assets of the subsidiary)

For *tier 1 minority interest,* the NPR proposes the same calculation method, but substitutes tier 1 capital in place of common equity tier 1 capital and 8.5 percent in place of 7 percent in the illustration above (and assuming the banking organization has a common equity tier 1 capital ratio of at least 7 percent). In the case of tier 1 minority interest, there is no requirement that the subsidiary be a depository institution. However, the NPR would require that any instrument giving rise to the minority interest must meet all of the criteria for either a common stock instrument or an additional tier 1 capital instrument.

For *total capital minority interest,* the NPR proposes an equivalent calculation method (by substituting total capital in place of common equity tier 1 capital and 10.5 percent in place of 7 percent in the illustration above; and assuming the banking organization has a common equity tier 1 capital ratio of at least 7 percent). In the case of total capital minority interest, there is no requirement that the subsidiary be a depository institution. However, the NPR would require that any instrument giving rise to the minority interest must meet all of the criteria for either a common stock instrument, an additional tier 1 capital instrument, or a tier 2 capital instrument.

e. Regulatory Capital Adjustments and Deductions

A. Regulatory Deductions From Common Equity Tier 1 Capital

The NPR would require that a banking organization deduct the following from the sum of its common equity tier 1 capital elements:

○ Goodwill and all other intangible assets (other than MSAs), net of any associated deferred tax liabilities (DTLs). Goodwill for purposes of this deduction includes any goodwill embedded in the valuation of a significant investment in the capital of an unconsolidated financial institution in the form of common stock.

○ DTAs that arise from operating loss and tax credit carryforwards net of any valuation allowance and net of DTLs (see section 22 of the proposed rule for the requirements on the netting of DTLs).

○ Any gain-on-sale associated with a securitization exposure.

○ Any defined benefit pension fund net asset[109], net of any associated deferred tax liability.[110] (The pension deduction does *not* apply to insured depository institutions that have their own defined benefit pension plan.)

B. Regulatory Adjustments to Common Equity Tier 1 Capital

The NPR would require that for the following items, a banking organization deduct any associated unrealized gain and add any associated unrealized loss to the sum of common equity tier 1 capital elements:

○ Unrealized gains and losses on cash flow hedges included in AOCI that relate to the hedging of items that are not recognized at fair value on the balance sheet.

○ Unrealized gains and losses that have resulted from changes in the fair value of liabilities that are due to changes in the banking organization's own credit risk.

C. Additional Deductions From Regulatory Capital

Under the NPR, a banking organization would be required to make the following deductions with respect to investments in its own capital instruments:

○ Deduct from common equity tier 1 elements investments in the banking organization's own common stock instruments (including any contractual obligation to purchase), whether held directly or indirectly.

○ Deduct from additional tier 1 capital elements, investments in (including any contractual obligation to purchase) the banking organization's own additional tier 1 capital instruments, whether held directly or indirectly.

○ Deduct from tier 2 capital elements, investments in (including any contractual obligation to purchase) the banking organization's own tier 2 capital instruments, whether held directly or indirectly.

D. Corresponding Deduction Approach

Under the NPR, a banking organization would use the corresponding deduction approach to calculate the required deductions from regulatory capital for:

○ Reciprocal cross-holdings;

○ Non-significant investments in the capital of unconsolidated financial institutions; and

○ Non-common stock significant investments in the capital of unconsolidated financial institutions.

Under the corresponding deduction approach, a banking organization would be required to make any such deductions from the same component of capital for which the underlying instrument would qualify if it were issued by the banking organization itself. In addition, if the banking organization does not have a sufficient amount of such component of capital to effect the deduction, the shortfall will be deducted from the next higher (that is, more subordinated) component of regulatory capital (for example, if the exposure may be deducted from additional tier 1 capital but the banking organization does not have sufficient additional tier 1 capital, it would take the deduction from common equity tier 1 capital). The NPR provides additional information regarding the corresponding deduction approach for those banking organizations with such holdings and investments.

Reciprocal crossholdings in the capital of financial institutions: The NPR would require a banking organization to deduct investments in the capital of other financial institutions it holds reciprocally.[111]

Non-significant investments in the capital of unconsolidated financial institutions[112]: The proposed rule would require a banking organization to deduct any non-significant investments in the capital of unconsolidated financial institutions that, in the aggregate, exceed 10 percent of the sum of the banking organization's common equity tier 1 capital elements less all deductions and other regulatory adjustments required under sections 22(a) through 22(c)(3) of the proposed rule (the 10 percent threshold for non-significant investments in unconsolidated financial institutions).

○ The amount to be deducted from a specific capital component is equal to (i) the amount of a banking organization's non-significant investments exceeding the 10 percent threshold for non-significant investments *multiplied* by (ii) the ratio of the non-significant investments in unconsolidated financial institutions in the form of such capital component to the amount of the banking organization's total non-significant investments in unconsolidated financial institutions.

○ The banking organization's non-significant investments in the capital of unconsolidated financial institutions not exceeding the 10 percent threshold for non-significant investments must be assigned the appropriate risk weight under the Standardized Approach NPR.

Significant investments in the capital of unconsolidated financial institutions that are not in the form of common stock: A banking organization must deduct its significant investments in the capital of unconsolidated financial institutions not in the form of common stock.

E. Threshold Deductions

The NPR would require a banking organization to deduct from common equity tier 1 capital elements each of the following assets (together, the threshold deduction items) that, individually, are above 10 percent of the sum of the banking organization's common equity tier 1 capital elements, less all required adjustments and deductions required under sections 22(a) through 22(c) of the proposed rule (the 10

[109] With prior approval of the primary federal supervisor, the banking organization may reduce the amount to be deducted by the amount of assets of the defined benefit pension fund to which it has unrestricted and unfettered access, provided that the banking organization includes such assets in its risk-weighted assets as if the banking organization held them directly. For this purpose, unrestricted and unfettered access means that the excess assets of the defined pension fund would be available to protect depositors or creditors of the banking organization in a receivership, insolvency, liquidation, or similar proceeding.

[110] The deferred tax liabilities for this deduction exclude those deferred tax liabilities that have already been netted against DTAs.

[111] An instrument is held reciprocally if the instrument is held pursuant to a formal or informal arrangement to swap, exchange, or otherwise intend to hold each other's capital instruments.

[112] With prior written approval of the primary federal supervisor, for the period of time stipulated by the primary federal supervisor, a banking organization would not be required to deduct exposures to the capital instruments of unconsolidated financial institutions if the investment is made in connection with the banking organization providing financial support to a financial institution in distress.

percent common equity deduction threshold):

○ DTAs arising from temporary differences that the banking organization could not realize through net operating loss carrybacks, net of any associated valuation allowance, and DTLs, subject to the following limitations:

▪ Only the DTAs and DTLs that relate to taxes levied by the same taxation authority and that are eligible for offsetting by that authority may be offset for purposes of this deduction.

▪ The DTLs offset against DTAs must exclude amounts that have already been netted against other items that are either fully deducted (such as goodwill) or subject to deduction (such as MSA).

○ MSAs, net of associated DTLs.

○ Significant investments in the capital of unconsolidated financial institutions in the form of common stock.

In addition, the aggregate amount of the threshold deduction items in this section cannot exceed 15 percent of the banking organization's common equity tier 1 capital net of all deductions (the 15 percent common equity deduction threshold). That is, the banking organization must deduct from common equity tier 1 capital elements, the amount of the threshold deduction items that are not deducted after the application of the 10 percent common equity deduction threshold, and that, in aggregate, exceed 17.65 percent of the sum of the banking organization's common equity tier 1 capital elements, less all required adjustments and deductions required under sections 22(a) through 22(c) of the proposed rule and less the threshold deduction items in full.

5. Changes in Risk-weighted Assets

The amounts of the threshold deduction items within the limits and not deducted, as described above, would be included in the risk-weighted assets of the banking organization and assigned a risk weight of 250 percent. In addition, certain exposures that are currently deducted under the general risk-based capital rules, for example certain credit enhancing interest-only strips, would receive a 1,250% risk weight.

6. Timeline and Transition Period

The NPR would provide for a multi-year implementation as summarized in the table below:

TABLE 3—PHASE-IN SCHEDULE

Year (as of Jan. 1)	2013 (percent)	2014 (percent)	2015 (percent)	2016 (percent)	2017 (percent)	2018 (percent)	2019 (percent)
Minimum common equity tier 1 ratio	3.5	4.0	4.5	4.5	4.5	4.5	4.5
Common equity tier 1 capital conservation buffer				0.625	1.25	1.875	2.50
Common equity tier 1 plus capital conservation buffer	3.5	4.0	4.5	5.125	5.75	6.375	7.0
Phase-in of deductions from common equity tier 1 (including threshold deduction items that are over the limits)		20	40	60	80	100	100
Minimum tier 1 capital	4.5	5.5	6.0	6.0	6.0	6.0	6.0
Minimum tier 1 capital plus capital conservation buffer				6.625	7.25	7.875	8.5
Minimum total capital	8.0	8.0	8.0	8.0	8.0	8.0	8.0
Minimum total capital plus conservation buffer	8.0	8.0	8.0	8.625	9.25	9.875	10.5

As provided in Basel III, capital instruments that no longer qualify as additional tier 1 or tier 2 capital will be phased out over a 10 year horizon beginning in 2013. However, trust preferred securities are phased out as required under the Dodd-Frank Act.

Attached to this Addendum I is a summary of the proposed revision to the components of capital introduced by the NPR.

Components and tiers	Explanation
(1) COMMON EQUITY TIER 1 CAPITAL:	
(a) + Qualifying common stock instruments	Instruments must meet all of the common equity tier 1 criteria (Note 1)
(b) + Retained earnings.	
(c) + AOCI	With the exception in Note 2 below, AOCI flows through to common equity tier 1 capital.
(d) + Qualifying common equity tier 1 minority interest	Subject to specific calculation method and limitation.
(e) − Regulatory deductions from common equity tier 1 capital	Deduct: Goodwill and intangible assets (other than MSAs); DTAs that arise from operating loss and tax credit carryforwards; any gain on sale from a securitization; investments in the banking organization's own common stock instruments.
(f) +/− Regulatory adjustments to common equity tier 1 capital	See explanation below (Note 2).
(g) − common equity tier 1 capital deductions per the corresponding deduction approach.	See section 4.e.D above.
(h) − Threshold deductions	Deduct amount of threshold items that are above the 10 and 15 percent common equity tier 1 thresholds. (See section 4.e. above).
= common equity tier 1 capital.	
(2) ADDITIONAL TIER 1 CAPITAL:	
(a) + additional tier 1 capital instruments	Instruments must meet all of the additional tier 1 criteria (Note 1).
(b) + Tier 1 minority interest that is not included in common equity tier 1 capital.	Subject to specific calculation and limitation.
(c) + Non-qualifying tier 1 capital instruments subject to transition phase-out and SBLF related instruments.	(Note 3)
(d) − Investments in a banking organization's own additional tier 1 capital instruments.	
(e) − Additional tier 1 capital deductions per the corresponding deduction approach.	See section 4.e.D above.
= Additional tier 1 capital.	
(3) TIER 2 CAPITAL:	
(a) + Tier 2 capital instruments	Instruments must meet all of the tier 2 criteria (Note 1).

Components and tiers	Explanation
(b) + Total capital minority interest that is not included in tier 1	Subject to specific calculation and limitation.
(c) + ALLL	Up to 1.25% of risk weighted assets.
(d) − Investments in a banking organization's own tier 2 capital instruments.	
(e) − Tier 2 capital deductions per the Corresponding Deduction Approach.	See section 4.e.D above.
(f) + Non-qualifying tier 2 capital instruments subject to transition phase-out and SBLF related instruments.	(Note 3)
= Tier 2 capital.	
TOTAL CAPITAL = common equity tier 1 + additional tier 1 + tier 2.	

Notes to Table:

Note 1: Includes surplus related to the instruments.

Note 2: *Regulatory adjustments:* A banking organization must deduct any unrealized gain and add any unrealized loss for cash flow hedges included in AOCI relating to hedging of items not fair valued on the balance sheet and for unrealized gains and losses that have resulted from changes in the fair value of liabilities that are due to changes in the banking organization's own credit risk.

Note 3: *Grandfathered SBLF related instruments:* These are instruments issued under the Small Business Lending Facility (SBLF); or prior October 4, 2010 under the Emergency Economic Stabilization Act of 2008. If the instrument qualified as tier 1 capital under rules at the time of issuance, it would count as additional tier 1 under this proposal. If the instrument qualified as tier 2 under the rules at that time, it would count as tier 2 under this proposal.

ATTACHMENT 2: COMPARISON OF CURRENT RULES VS. PROPOSAL

Minimum regulatory capital requirements

	Current minimum ratios	Proposed minimum ratios	Comments
Common equity tier 1 capital/ risk weighted assets.	N/A	4.5%	
Tier 1 capital/risk weighted assets.	4%	6%	
Total capital/risk weighted assets.	8%	8%	
Leverage ratio	≥4% (or ≥3%)	≥4%	Minimum required level will not vary depending on the supervisory rating.

Capital buffers

	Current treatment	Proposed treatment	Comment
Capital conservation buffer	N/A	Capital conservation buffer equivalent to 2.5% of risk-weighted assets; composed of common equity tier 1 capital.	Not holding the capital conservation buffer may result in restrictions on capital distributions and certain discretionary bonus payments.

Prompt corrective action

	Current PCA levels	Proposed PCA levels	Comment
Common equity tier 1 capital	N/A	Well capitalized: ≥6.5%; Adequately capitalized: ≥4.5%; Undercapitalized: <4.5%; Significantly undercapitalized: <3%.	Proposed adequately capitalized PCA level aligned to new minimum ratio.
Tier 1 capital	Well capitalized: ≥6%; Adequately capitalized: ≥4%; Undercapitalized <4%; Significantly undercapitalized: <3%.	Well capitalized: ≥8%; Adequately capitalized: ≥6%; Undercapitalized <6%; Significantly undercapitalized: <4%.	Proposed adequately capitalized PCA level aligned to new minimum ratio.
Total capital	Well capitalized: ≥10%; Adequately capitalized: ≥8%; Undercapitalized <8%; Significantly undercapitalized: <6%.	Well capitalized: ≥10%; Adequately capitalized: ≥8%; Undercapitalized <8%; Significantly undercapitalized: <6%.	
Leverage ratio	Well capitalized: ≥5%; Adequately capitalized: ≥4% (or ≥3%); Undercapitalized <4% (or <3%); Significantly undercapitalized: <3%.	Well capitalized: ≥5%; Adequately capitalized: ≥4%; Undercapitalized <4%; Significantly undercapitalized: <3%.	PCA adequately capitalized level will not vary depending on the supervisory rating.
Critically undercapitalized category.	*Tangible equity to total assets ratio ≤2.*	*Tangible equity to total assets ≤2.*	*Tangible equity under the proposal would be defined as tier 1 capital plus non-tier 1 perpetual preferred stock.*

ATTACHMENT 2: COMPARISON OF CURRENT RULES VS. PROPOSAL—CONTINUED

Regulatory capital components

	Current definition/instruments	Proposed definition/ instruments	Comments
Common equity tier 1 capital	No specific definition	Mostly retained earnings and common stock that meet specified eligibility criteria (plus limited amounts of minority interest in the form of common stock) less the majority of the regulatory deductions.	Common stock instruments traditionally issued by U.S. banking organizations expected generally to qualify as common equity tier 1 capital.
Additional tier 1 capital	No specific definition	Equity capital instruments that meet specified eligibility criteria (plus limited amounts of minority interest in the form of tier 1 capital instruments).	Non-cumulative perpetual preferred stock traditionally issued by U.S. banking organizations expected to generally qualify; trust preferred instruments traditionally issued by certain bank holding companies would not qualify.
Tier 2 capital	Certain capital instruments (*e.g.,* subordinated debt) and limited amounts of ALLL.	Capital instruments that meet specified eligibility criteria (*e.g.,* subordinated debt) and limited amounts of ALLL.	Traditional subordinated debt instruments are expected to remain tier 2 eligible; there is no specific limitation on the amount of tier 2 capital that can be included in total capital under the proposal.

Regulatory deductions and adjustments

	Current treatment	Proposed treatment	Comment
Regulatory deductions	Current deductions from regulatory capital include goodwill and other intangibles, DTAs (above certain levels), and MSAs (above certain levels).	Proposed deductions from common equity tier 1 capital include goodwill and other intangibles, DTAs (above certain levels), MSAs (above certain levels) and investments in unconsolidated financial institutions (above certain levels).	Vast majority of regulatory deductions are made at the common equity tier 1 capital level (as opposed to the tier 1 level); the proposed deductions for MSAs and DTAs in the proposed rule are significantly more stringent than the current deductions.
Regulatory adjustments	Current adjustments include the neutralization of unrealized gains and losses on available for sale debt securities for regulatory capital purposes.	Under the proposal, AOCI would generally flow through to regulatory capital.	Under the proposed treatment unrealized gains and losses on available for sale debt securities would not be neutralized for regulatory capital purposes.
MSAs, certain DTAs arising from temporary differences, and certain significant investments in the common stock of unconsolidated financial institutions.	MSAs and DTAs that are not deducted are subject to a 100 percent risk weight.	Items that are not deducted are subject to a 250 percent risk weight.	Under the proposal, these items are subject to deduction if they exceed certain specified common equity deduction thresholds.
The portion of a CEIO that does not constitute an after-tax-gain-on-sale.	Dollar-for-dollar capital requirement for amounts not deducted based on a concentration limit.	Subject to a 1250 percent risk weight.	

Text of Common Rule

PART [__] CAPITAL ADEQUACY OF [BANK]s

Sec.

Subpart A—General

Subpart B—Minimum Capital Requirements and Buffers

Subpart C—Definition of Capital

Subpart G—Transition Provisions

Subpart A—General Provisions

§ __.1 Purpose, applicability, and reservations of authority

(a) *Purpose.* This [PART] establishes minimum capital requirements and overall capital adequacy standards for [BANK]s. This [PART] includes methodologies for calculating minimum capital requirements, public disclosure requirements related to the capital requirements, and transition provisions for the application of this [PART].

(b) *Limitation of authority.* Nothing in this [PART] shall be read to limit the authority of the [AGENCY] to take action under other provisions of law, including action to address unsafe or unsound practices or conditions, deficient capital levels, or violations of law or regulation, under section 8 of the Federal Deposit Insurance Act.

(c) *Applicability.* (1) *Minimum capital requirements and overall capital adequacy standards.* Each [BANK] must calculate its minimum capital requirements and meet the overall capital adequacy standards in subpart B of this part.

(2) *Regulatory capital.* Each [BANK] must calculate its regulatory capital in accordance with subpart C.

(3) *Risk-weighted assets.* (i) Each [BANK] must use the methodologies in subpart D (and subpart F for a market risk [BANK]) to calculate standardized total risk-weighted assets.

(ii) Each advanced approaches [BANK] must use the methodologies in subpart E (and subpart F of this part for a market risk [BANK]) to calculate advanced approaches total risk-weighted assets.

(4) *Disclosures.* (i) A [BANK] with total consolidated assets of $50 billion or more that is not an advanced approaches [BANK] must make the public disclosures described in subpart D of this part.

(ii) Each market risk [BANK] must make the public disclosures described in subparts D and F of this part.

(iii) Each advanced approaches [BANK] must make the public disclosures described in subpart E of this part.

(d) *Reservation of authority.* (1) *Additional capital in the aggregate.* The [AGENCY] may require a [BANK] to hold an amount of regulatory capital greater than otherwise required under this part if the [AGENCY] determines that the [BANK]'s capital requirements under this part are not commensurate with the [BANK]'s credit, market, operational, or other risks.

(2) *Regulatory capital elements.* If the [AGENCY] determines that a particular common equity tier 1, additional tier 1, or tier 2 capital element has characteristics or terms that diminish its ability to absorb losses, or otherwise present safety and soundness concerns, the [AGENCY] may require the [BANK] to exclude all or a portion of such element from common equity tier 1 capital, additional tier 1 capital, or tier 2 capital, as appropriate.

(3) *Risk-weighted asset amounts.* If the [AGENCY] determines that the risk-weighted asset amount calculated under this part by the [BANK] for one or more exposures is not commensurate with the risks associated with those exposures, the [AGENCY] may require the [BANK] to assign a different risk-weighted asset amount to the exposure(s) or to deduct the amount of the exposure(s) from its regulatory capital.

(4) *Total leverage.* If the [AGENCY] determines that the leverage exposure amount, or the amount reflected in the [BANK]'s reported average consolidated assets, for an on- or off-balance sheet exposure calculated by a [BANK] under § __.10 is inappropriate for the exposure(s) or the circumstances of the [BANK], the [AGENCY] may require the [BANK] to adjust this exposure amount in the numerator and the denominator for purposes of the leverage ratio calculations.

(5) *Consolidation of certain exposures.* The [AGENCY] may determine that the risk-based capital treatment for an exposure or the treatment provided to an entity that is not consolidated on the [BANK]'s balance sheet is not commensurate with the risk of the exposure and the relationship of the [BANK] to the entity. Upon making this determination, the [AGENCY] may require the [BANK] to treat the entity as if it were consolidated on the balance sheet of the [BANK] for purposes of determining its regulatory capital requirements and calculate the regulatory capital ratios accordingly. The [AGENCY] will look to the substance of, and risk associated with, the transaction, as well as other relevant factors the [AGENCY] deems appropriate in determining whether to require such treatment.

(6) *Other reservation of authority.* With respect to any deduction or limitation required under this [PART], the [AGENCY] may require a different deduction or limitation, provided that such alternative deduction or limitation is commensurate with the [BANK]'s risk and consistent with safety and soundness.

(e) *Notice and response procedures.* In making a determination under this section, the [AGENCY] will apply notice and response procedures in the same manner as the notice and response procedures in 12 CFR 3.12, 12 CFR 167.3(d) (OCC); 12 CFR 263.202 (Board); 12 CFR 325.6(c), 12 CFR 390.463(d) (FDIC).

§ __.2 Definitions.

Additional tier 1 capital is defined in § __.20 of subpart C of this part.

Advanced approaches [BANK] means a [BANK] that is described in § __.100(b)(1) of subpart E of this part.

Advanced approaches total risk-weighted assets means:

(1) The sum of:

(i) Credit-risk-weighted assets;

(ii) Credit Valuation Adjustment (CVA) risk-weighted assets;

(iii) Risk-weighted assets for operational risk; and

(iv) For a market risk [BANK] only, advanced market risk-weighted assets; minus

(2) Excess eligible credit reserves not included in the [BANK]'s tier 2 capital.

Advanced market risk-weighted assets means the advanced measure for market risk calculated under § __.204 of subpart F of this part multiplied by 12.5.

Affiliate with respect to a company means any company that controls, is controlled by, or is under common control with, the company.

Allocated transfer risk reserves means reserves that have been established in accordance with section 905(a) of the International Lending Supervision Act, against certain assets whose value U.S. supervisory authorities have found to be significantly impaired by protracted transfer risk problems.

Allowances for loan and lease losses (ALLL) means reserves that have been established through a charge against earnings to absorb future losses on loans, lease financing receivables or other extensions of credit. ALLL excludes ''allocated transfer risk reserves.'' For purposes of this [PART], ALLL includes reserves that have been established through a charge against earnings to absorb future credit losses associated with off-balance sheet exposures.

Asset-backed commercial paper (ABCP) program means a program established primarily for the purpose of issuing commercial paper that is investment grade and backed by underlying exposures held in a bankruptcy-remote special purpose entity (SPE).

Asset-backed commercial paper (ABCP) program sponsor means a [BANK] that:

(1) Establishes an ABCP program;

(2) Approves the sellers permitted to participate in an ABCP program;

(3) Approves the exposures to be purchased by an ABCP program; or

(4) Administers the ABCP program by monitoring the underlying exposures, underwriting or otherwise arranging for the placement of debt or other obligations issued by the program, compiling monthly reports, or ensuring compliance with the program documents and with the program's credit and investment policy.

Bank holding company means a bank holding company as defined in section 2 of the Bank Holding Company Act.

Bank Holding Company Act means the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841).

Bankruptcy remote means, with respect to an entity or asset, that the entity or asset would be excluded from an insolvent entity's estate in receivership, insolvency, liquidation, or similar proceeding.

Capital distribution means:

(1) A reduction of tier 1 capital through the repurchase of a tier 1 capital instrument or by other means;

(2) A reduction of tier 2 capital through the repurchase, or redemption prior to maturity, of a tier 2 capital instrument or by other means;

(3) A dividend declaration on any tier 1 capital instrument;

(4) A dividend declaration or interest payment on any tier 2 capital instrument if such dividend declaration or interest payment may be temporarily or permanently suspended at the discretion of the [BANK]; or

(5) Any similar transaction that the [AGENCY] determines to be in substance a distribution of capital.

Carrying value means, with respect to an asset, the value of the asset on the balance sheet of the [BANK], determined in accordance with generally accepted accounting principles (GAAP).

Category 1 residential mortgage exposure means a residential mortgage exposure with the following characteristics:

(1) The duration of the mortgage exposure does not exceed 30 years;

(2) The terms of the mortgage exposure provide for regular periodic payments that do not:

(i) Result in an increase of the principal balance;

(ii) Allow the borrower to defer repayment of principal of the residential mortgage exposure; or

(iii) Result in a balloon payment;

(3) The standards used to underwrite the residential mortgage exposure:

(i) Took into account all of the borrower's obligations, including for mortgage obligations, principal, interest, taxes, insurance (including mortgage guarantee insurance), and assessments; and

(ii) Resulted in a conclusion that the borrower is able to repay the exposure using:

(A) The maximum interest rate that may apply during the first five years after the date of the closing of the residential mortgage exposure transaction; and

(B) The amount of the residential mortgage exposure is the maximum possible contractual exposure over the life of the mortgage as of the date of the closing of the transaction;

(4) The terms of the residential mortgage exposure allow the annual rate of interest to increase no more than two percentage points in any twelve-month period and no more than six percentage points over the life of the exposure;

(5) For a first-lien home equity line of credit (HELOC), the borrower must be qualified using the principal and interest payments based on the maximum contractual exposure under the terms of the HELOC;

(6) The determination of the borrower's ability to repay is based on documented, verified income;

(7) The residential mortgage exposure is not 90 days or more past due or on non-accrual status; and

(8) The residential mortgage exposure is

(i) Not a junior-lien residential mortgage exposure, and

(ii) If the residential mortgage exposure is a first-lien residential mortgage exposure held by a single banking organization and secured by first and junior lien(s) where no other party holds an intervening lien, each residential mortgage exposure must have the characteristics of a category 1 residential mortgage exposure as set forth in this definition. Notwithstanding paragraphs (1) through (8) of this definition, the [AGENCY] may determine that a residential mortgage exposure that is not prudently underwritten does not qualify as a category 1 residential mortgage exposure.

Category 2 residential mortgage exposure means a residential mortgage exposure that is not a Category 1 residential mortgage exposure.

Central counterparty (CCP) means a counterparty (for example, a clearing house) that facilitates trades between counterparties in one or more financial markets by either guaranteeing trades or novating contracts.

CFTC means the U.S. Commodity Futures Trading Commission.

Clean-up call means a contractual provision that permits an originating [BANK] or servicer to call securitization exposures before their stated maturity or call date.

Cleared transaction means an outstanding derivative contract or repo-style transaction that a [BANK] or clearing member has entered into with a central counterparty (that is, a transaction that a central counterparty has accepted). A cleared transaction includes:

(1) A transaction between a CCP and a [BANK] that is a clearing member of the CCP where the [BANK] enters into the transaction with the CCP for the [BANK]'s own account;

(2) A transaction between a CCP and a [BANK] that is a clearing member of the CCP where the [BANK] is acting as a financial intermediary on behalf of a clearing member client and the transaction offsets a transaction that satisfies the requirements of paragraph (3) of this definition.

(3) A transaction between a clearing member client [BANK] and a clearing member where the clearing member acts as a financial intermediary on behalf of the clearing member client and enters into an offsetting transaction with a CCP provided that:

(i) The offsetting transaction is identified by the CCP as a transaction for the clearing member client;

(ii) The collateral supporting the transaction is held in a manner that prevents the [BANK] from facing any loss due to the default, receivership, or insolvency of either the clearing member or the clearing member's other clients;

(iii) The [BANK] has conducted sufficient legal review to conclude with a well-founded basis (and maintains sufficient written documentation of that legal review) that in the event of a legal challenge (including one resulting from a default or receivership, insolvency, liquidation, or similar proceeding) the relevant court and administrative authorities would find the arrangements of paragraph (3)(ii) of this definition to be legal, valid, binding and enforceable under the law of the relevant jurisdictions; and

(iv) The offsetting transaction with a clearing member is transferable under the transaction documents or applicable laws in the relevant jurisdiction(s) to another clearing member should the clearing member default, become insolvent, or enter receivership, insolvency, liquidation, or similar proceeding.

(4) A transaction between a clearing member client and a CCP where a clearing member guarantees the performance of the clearing member client to the CCP and the transaction meets the requirements of paragraphs (3)(ii) and (iii) of this definition.

(5) A cleared transaction does not include the exposure of a [BANK] that is a clearing member to its clearing member client where the [BANK] is either acting as a financial intermediary and enters into an offsetting transaction with a CCP or where the [BANK] provides a guarantee to the CCP on the performance of the client.

Clearing member means a member of, or direct participant in, a CCP that is entitled to enter into transactions with the CCP.

Clearing member client means a party to a cleared transaction associated with a CCP in which a clearing member acts either as a financial intermediary with respect to the party or guarantees the performance of the party to the CCP.

Collateral agreement means a legal contract that specifies the time when, and circumstances under which, a counterparty is required to pledge collateral to a [BANK] for a single financial contract or for all financial contracts in a netting set and confers upon the [BANK] a perfected, first-priority security interest (notwithstanding the prior security interest of any custodial agent), or the legal equivalent thereof, in the collateral posted by the counterparty under the agreement. This security interest must provide the [BANK] with a right to close out the financial positions and liquidate the collateral upon an event of default of, or failure to perform by, the counterparty under the collateral agreement. A contract would not satisfy this requirement if the [BANK]'s exercise of rights under the agreement may be stayed or avoided under applicable law in the relevant jurisdictions, other than in receivership, conservatorship, resolution under the Federal Deposit Insurance Act, Title II of the Dodd-Frank Act, or under any similar insolvency law applicable to GSEs.

Commitment means any legally binding arrangement that obligates a [BANK] to extend credit or to purchase assets.

Commodity derivative contract means a commodity-linked swap, purchased commodity-linked option, forward commodity-linked contract, or any other instrument linked to commodities that gives rise to similar counterparty credit risks.

Common equity tier 1 capital is defined in § ____.20 of subpart C of this part.

Common equity tier 1 minority interest means the common equity tier 1 capital of a depository institution or foreign bank that is:

(1) A consolidated subsidiary of a [BANK]; and

(2) Not owned by the [BANK].

Company means a corporation, partnership, limited liability company, depository institution, business trust, special purpose entity, association, or similar organization.

Control. A person or company *controls* a company if it:

(1) Owns, controls, or holds with power to vote 25 percent or more of a class of voting securities of the company; or

(2) Consolidates the company for financial reporting purposes.

Corporate exposure means an exposure to a company that is not:

(1) An exposure to a sovereign, the Bank for International Settlements, the European Central Bank, the European Commission, the International Monetary Fund, a multi-lateral development bank (MDB), a depository institution, a foreign bank, a credit union, or a public sector entity (PSE);

(2) An exposure to a government-sponsored entity (GSE);

(3) A residential mortgage exposure;

(4) A pre-sold construction loan;

(5) A statutory multifamily mortgage;

(6) A high volatility commercial real estate (HVCRE) exposure;

(7) A cleared transaction;

(8) A default fund contribution;

(9) A securitization exposure;

(10) An equity exposure; or

(11) An unsettled transaction.

Country risk classification (CRC) with respect to a sovereign means the most recent consensus CRC published by the Organization for Economic Cooperation and Development (OECD) as of December 31st of the prior calendar year that provides a view of the likelihood that the sovereign will service its external debt.

Credit derivative means a financial contract executed under standard industry credit derivative documentation that allows one party (the protection purchaser) to transfer the credit risk of one or more exposures (reference exposure(s)) to another party (the protection provider) for a certain period of time.

Credit-enhancing interest-only strip (CEIO) means an on-balance sheet asset that, in form or in substance:

(1) Represents a contractual right to receive some or all of the interest and no more than a minimal amount of principal due on the underlying exposures of a securitization; and

(2) Exposes the holder of the CEIO to credit risk directly or indirectly associated with the underlying exposures that exceeds a pro rata share of the holder's claim on the underlying exposures, whether through subordination provisions or other credit-enhancement techniques.

Credit-enhancing representations and warranties means representations and warranties that are made or assumed in connection with a transfer of underlying exposures (including loan servicing assets) and that obligate a [BANK] to protect another party from losses arising from the credit risk of the underlying exposures. Credit enhancing representations and warranties include provisions to protect a party from losses resulting from the default or nonperformance of the counterparties of the underlying exposures or from an insufficiency in the value of the collateral backing the underlying exposures. Credit enhancing representations and warranties do not include warranties that permit the return of underlying exposures in instances of misrepresentation, fraud, or incomplete documentation.

Credit risk mitigant means collateral, a credit derivative, or a guarantee.

Credit-risk-weighted assets means 1.06 multiplied by the sum of:

(1) Total wholesale and retail risk-weighted assets;

(2) Risk-weighted assets for securitization exposures; and

(3) Risk-weighted assets for equity exposures.

Credit union means an insured credit union as defined under the Federal Credit Union Act (12 U.S.C. 1752).

Current exposure means, with respect to a netting set, the larger of zero or the market value of a transaction or portfolio of transactions within the netting set that would be lost upon default of the counterparty, assuming no recovery on the value of the transactions. Current exposure is also called replacement cost.

Custodian means a financial institution that has legal custody of collateral provided to a CCP.

Debt-to-assets ratio means the ratio calculated by dividing a public company's total liabilities by its equity market value (as defined herein) plus total liabilities as reported as of the end of the most recently reported calendar quarter.

Default fund contribution means the funds contributed or commitments made by a clearing member to a CCP's mutualized loss sharing arrangement.

Depository institution means a depository institution as defined in section 3 of the Federal Deposit Insurance Act.

Depository institution holding company means a bank holding company or savings and loan holding company.

Derivative contract 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, and any other instrument that poses similar counterparty credit risks. Derivative contracts also include unsettled securities, commodities, and foreign 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.

Discretionary bonus payment means a payment made to an executive officer of a [BANK], where:

(1) The [BANK] retains discretion as to whether to make, and the amount of, the payment until the payment is awarded to the executive officer;

(2) The amount paid is determined by the [BANK] without prior promise to, or agreement with, the executive officer; and

(3) The executive officer has no contractual right, whether express or implied, to the bonus payment.

Dodd-Frank Act means the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Pub. L. 111–203, 124 Stat. 1376).

Early amortization provision means a provision in the documentation governing a securitization that, when triggered, causes investors in the securitization exposures to be repaid before the original stated maturity of the securitization exposures, unless the provision:

(1) Is triggered solely by events not directly related to the performance of the underlying exposures or the originating [BANK] (such as material changes in tax laws or regulations); or

(2) Leaves investors fully exposed to future draws by borrowers on the underlying exposures even after the provision is triggered.

Effective notional amount means for an eligible guarantee or eligible credit derivative, the lesser of the contractual notional amount of the credit risk mitigant and the exposure amount of the hedged exposure, multiplied by the percentage coverage of the credit risk mitigant.

Eligible asset-backed commercial paper (ABCP) liquidity facility means a liquidity facility supporting ABCP, in form or in substance, that is subject to an asset quality test at the time of draw that precludes funding against assets that are 90 days or more past due or in default. Notwithstanding the preceding sentence, a liquidity facility is an eligible ABCP liquidity facility if the assets or exposures funded under the liquidity facility that do not meet the eligibility requirements are guaranteed by a sovereign that qualifies for a 20 percent risk weight or lower.

Eligible clean-up call means a clean-up call that:

(1) Is exercisable solely at the discretion of the originating [BANK] or servicer;

(2) Is not structured to avoid allocating losses to securitization exposures held by investors or otherwise structured to provide credit enhancement to the securitization; and

(3)(i) For a traditional securitization, is only exercisable when 10 percent or less of the principal amount of the underlying exposures or securitization exposures (determined as of the inception of the securitization) is outstanding; or

(ii) For a synthetic securitization, is only exercisable when 10 percent or less of the principal amount of the reference portfolio of underlying exposures (determined as of the inception of the securitization) is outstanding.

Eligible credit derivative means a credit derivative in the form of a credit default swap, nth-to-default swap, total return swap, or any other form of credit derivative approved by the [AGENCY], provided that:

(1) The contract meets the requirements of an eligible guarantee and has been confirmed by the protection purchaser and the protection provider;

(2) Any assignment of the contract has been confirmed by all relevant parties;

(3) If the credit derivative is a credit default swap or nth-to-default swap, the contract includes the following credit events:

(i) Failure to pay any amount due under the terms of the reference exposure, subject to any applicable minimal payment threshold that is consistent with standard market practice and with a grace period that is closely in line with the grace period of the reference exposure; and

(ii) Receivership, insolvency, liquidation, conservatorship or inability of the reference exposure issuer to pay its debts, or its failure or admission in writing of its inability generally to pay its debts as they become due, and similar events;

(4) The terms and conditions dictating the manner in which the contract is to be settled are incorporated into the contract;

(5) If the contract allows for cash settlement, the contract incorporates a robust valuation process to estimate loss reliably and specifies a reasonable period for obtaining post-credit event valuations of the reference exposure;

(6) If the contract requires the protection purchaser to transfer an exposure to the protection provider at settlement, the terms of at least one of the exposures that is permitted to be transferred under the contract provide that any required consent to transfer may not be unreasonably withheld;

(7) If the credit derivative is a credit default swap or nth-to-default swap, the contract clearly identifies the parties responsible for determining whether a credit event has occurred, specifies that this determination is not the sole responsibility of the protection provider, and gives the protection purchaser the right to notify the protection provider of the occurrence of a credit event; and

(8) If the credit derivative is a total return swap and the [BANK] records net payments received on the swap as net income, the [BANK] records offsetting deterioration in the value of the hedged exposure (either through reductions in fair value or by an addition to reserves).

Eligible credit reserves means all general allowances that have been established through a charge against earnings to absorb credit losses associated with on- or off-balance sheet wholesale and retail exposures, including the allowance for loan and lease losses (ALLL) associated with such exposures but excluding allocated transfer risk reserves established pursuant to 12 U.S.C. 3904 and other specific reserves created against recognized losses.

Eligible guarantee means a guarantee from an eligible guarantor that:

(1) Is written;

(2) Is either:

(i) Unconditional, or

(ii) A contingent obligation of the U.S. government or its agencies, the enforceability of which is dependent upon some affirmative action on the part of the beneficiary of the guarantee or a third party (for example, meeting servicing requirements);

(3) Covers all or a pro rata portion of all contractual payments of the obligated party on the reference exposure;

(4) Gives the beneficiary a direct claim against the protection provider;

(5) Is not unilaterally cancelable by the protection provider for reasons other than the breach of the contract by the beneficiary;

(6) Except for a guarantee by a sovereign, is legally enforceable against the protection provider in a jurisdiction where the protection provider has sufficient assets against which a judgment may be attached and enforced;

(7) Requires the protection provider to make payment to the beneficiary on the occurrence of a default (as defined in the guarantee) of the obligated party on the reference exposure in a timely manner without the beneficiary first having to take legal actions to pursue the obligor for payment;

(8) Does not increase the beneficiary's cost of credit protection on the

guarantee in response to deterioration in the credit quality of the reference exposure; and

(9) Is not provided by an affiliate of the [BANK], unless the affiliate is an insured depository institution, foreign bank, securities broker or dealer, or insurance company that:

(i) Does not control the [BANK]; and

(ii) Is subject to consolidated supervision and regulation comparable to that imposed on depository institutions, U.S. securities broker-dealers, or U.S. insurance companies (as the case may be).

Eligible guarantor means:

(1) A sovereign, the Bank for International Settlements, the International Monetary Fund, the European Central Bank, the European Commission, a Federal Home Loan Bank, Federal Agricultural Mortgage Corporation (Farmer Mac), a multilateral development bank (MDB), a depository institution, a bank holding company, a savings and loan holding company, a credit union, or a foreign bank; or

(2) An entity (other than a special purpose entity):

(i) That at the time the guarantee is issued or anytime thereafter, has issued and outstanding an unsecured debt security without credit enhancement that is investment grade;

(ii) Whose creditworthiness is not positively correlated with the credit risk of the exposures for which it has provided guarantees; and

(iii) That is not an insurance company engaged predominately in the business of providing credit protection (such as a monoline bond insurer or re-insurer).

Eligible margin loan means an extension of credit where:

(1) The extension of credit is collateralized exclusively by liquid and readily marketable debt or equity securities, or gold;

(2) The collateral is marked-to-market daily, and the transaction is subject to daily margin maintenance requirements;

(3) The extension of credit is conducted under an agreement that provides the [BANK] the right to accelerate and terminate the extension of credit and to liquidate or set-off collateral promptly upon an event of default (including upon an event of receivership, insolvency, liquidation, conservatorship, or similar proceeding) of the counterparty, provided that, in any such case, any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions; [1] and

(4) The [BANK] has conducted sufficient legal review to conclude with a well-founded basis (and maintains sufficient written documentation of that legal review) that the agreement meets the requirements of paragraph (3) of this definition and is legal, valid, binding, and enforceable under applicable law in the relevant jurisdictions, other than in receivership, conservatorship, resolution under the Federal Deposit Insurance Act, Title II of the Dodd-Frank Act, or under any similar insolvency law applicable to GSEs.

Eligible servicer cash advance facility means a servicer cash advance facility in which:

(1) The servicer is entitled to full reimbursement of advances, except that a servicer may be obligated to make non-reimbursable advances for a particular underlying exposure if any such advance is contractually limited to an insignificant amount of the outstanding principal balance of that exposure;

(2) The servicer's right to reimbursement is senior in right of payment to all other claims on the cash flows from the underlying exposures of the securitization; and

(3) The servicer has no legal obligation to, and does not make advances to the securitization if the servicer concludes the advances are unlikely to be repaid.

Equity derivative contract means an equity-linked swap, purchased equity-linked option, forward equity-linked contract, or any other instrument linked to equities that gives rise to similar counterparty credit risks.

Equity exposure means:

(1) A security or instrument (whether voting or non-voting) that represents a direct or an indirect ownership interest in, and is a residual claim on, the assets and income of a company, unless:

(i) The issuing company is consolidated with the [BANK] under GAAP;

(ii) The [BANK] is required to deduct the ownership interest from tier 1 or tier 2 capital under this [PART];

(iii) The ownership interest incorporates a payment or other similar obligation on the part of the issuing company (such as an obligation to make periodic payments); or

(iv) The ownership interest is a securitization exposure;

(2) A security or instrument that is mandatorily convertible into a security or instrument described in paragraph (1) of this definition;

(3) An option or warrant that is exercisable for a security or instrument described in paragraph (1) of this definition; or

(4) Any other security or instrument (other than a securitization exposure) to the extent the return on the security or instrument is based on the performance of a security or instrument described in paragraph (1) of this definition.

ERISA means the Employee Retirement Income and Security Act of 1974 (29 U.S.C. 1002).

Exchange rate derivative contract means a cross-currency interest rate swap, forward foreign-exchange contract, currency option purchased, or any other instrument linked to exchange rates that gives rise to similar counterparty credit risks.

Executive officer means a person who holds the title or, without regard to title, salary, or compensation, performs the function of one or more of the following positions: president, chief executive officer, executive chairman, chief operating officer, chief financial officer, chief investment officer, chief legal officer, chief lending officer, chief risk officer, or head of a major business line, and other staff that the board of directors of the [BANK] deems to have equivalent responsibility.

Expected credit loss (ECL) means:

(1) For a wholesale exposure to a non-defaulted obligor or segment of non-defaulted retail exposures that is carried at fair value with gains and losses flowing through earnings or that is classified as held-for-sale and is carried at the lower of cost or fair value with losses flowing through earnings, zero.

(2) For all other wholesale exposures to non-defaulted obligors or segments of non-defaulted retail exposures, the product of the probability of default (PD) times the loss given default (LGD) times the exposure at default (EAD) for the exposure or segment.

(3) For a wholesale exposure to a defaulted obligor or segment of defaulted retail exposures, the [BANK]'s impairment estimate for allowance purposes for the exposure or segment.

(4) Total ECL is the sum of expected credit losses for all wholesale and retail exposures other than exposures for which the [BANK] has applied the double default treatment in § ____.135 of subpart E of this part.

Exposure amount means:

(1) For the on-balance sheet component of an exposure (other than an OTC derivative contract; a repo-style transaction or an eligible margin loan

[1] This requirement is met where all transactions under the agreement are (i) executed under U.S. law and (ii) constitute ''securities contracts'' under section 555 of the Bankruptcy Code (11 U.S.C. 555), qualified financial contracts under section 11(e)(8) of the Federal Deposit Insurance Act, or netting contracts between or among financial institutions under sections 401–407 of the Federal Deposit Insurance Corporation Improvement Act or the Federal Reserve Board's Regulation EE (12 CFR part 231).

for which the [BANK] determines the exposure amount under § ____.37 of subpart D of this part; cleared transaction; default fund contribution; or a securitization exposure), exposure amount means the [BANK]'s carrying value of the exposure.

(2) For the off-balance sheet component of an exposure (other than an OTC derivative contract; a repo-style transaction or an eligible margin loan for which the [BANK] calculates the exposure amount under § ____.37 of subpart D of this part; cleared transaction, default fund contribution or a securitization exposure), exposure amount means the notional amount of the off-balance sheet component multiplied by the appropriate credit conversion factor (CCF) in § ____.33 of subpart D of this part.

(3) If the exposure is an OTC derivative contract or derivative contract that is a cleared transaction, the exposure amount determined under § ____.34 of subpart D of this part.

(4) If the exposure is an eligible margin loan or repo-style transaction (including a cleared transaction) for which the [BANK] calculates the exposure amount as provided in § ____.37 of subpart D of this part, the exposure amount determined under § ____.37 of subpart D.

(5) If the exposure is a securitization exposure, the exposure amount determined under § ____.42 of subpart D of this part.

Federal Deposit Insurance Act means the Federal Deposit Insurance Act (12 U.S.C. 1813). *Federal Deposit Insurance Corporation Improvement Act* means the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4401).

Financial collateral means collateral:

(1) In the form of:

(i) Cash on deposit with the [BANK] (including cash held for the [BANK] by a third-party custodian or trustee);

(ii) Gold bullion;

(iii) Long-term debt securities that are not resecuritization exposures and that are investment grade;

(iv) Short-term debt instruments that are not resecuritization exposures and that are investment grade;

(v) Equity securities that are publicly-traded;

(vi) Convertible bonds that are publicly-traded; or

(vii) Money market fund shares and other mutual fund shares if a price for the shares is publicly quoted daily; and

(2) In which the [BANK] has a perfected, first-priority security interest or, outside of the United States, the legal equivalent thereof (with the exception of cash on deposit and notwithstanding the prior security interest of any custodial agent).

Financial institution means:

(1)(i) A bank holding company, savings and loan holding company, nonbank financial institution supervised by the Board under Title I of the Dodd-Frank Act, depository institution, foreign bank, credit union, insurance company, or securities firm;

(ii) A commodity pool as defined in section 1a(10) of the Commodity Exchange Act (7 U.S.C. 1a(10));

(iii) An entity that is a covered fund for purposes of section 13 of the Bank Holding Company Act (12 U.S.C. 1851(h)(2)) and regulations issued thereunder;

(iv) An employee benefit plan as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income and Security Act of 1974 (29 U.S.C. 1002) (other than an employee benefit plan established by [BANK] for the benefit of its employees or the employees of its affiliates);

(v) Any other company predominantly engaged in the following activities:

(A) Lending money, securities or other financial instruments, including servicing loans;

(B) Insuring, guaranteeing, indemnifying against loss, harm, damage, illness, disability, or death, or issuing annuities;

(C) Underwriting, dealing in, making a market in, or investing as principal in securities or other financial instruments;

(D) Asset management activities (not including investment or financial advisory activities); or

(E) Acting as a futures commission merchant.

(vi) Any entity not domiciled in the United States (or a political subdivision thereof) that would be covered by any of paragraphs (1)(i) through (v) of this definition if such entity were domiciled in the United States; or

(vii) Any other company that the [AGENCY] may determine is a financial institution based on the nature and scope of its activities.

(2) For the purposes of this definition, a company is ''predominantly engaged'' in an activity or activities if:

(i) 85 percent or more of the total consolidated annual gross revenues (as determined in accordance with applicable accounting standards) of the company in either of the two most recent calendar years were derived, directly or indirectly, by the company on a consolidated basis from the activities; or

(ii) 85 percent or more of the company's consolidated total assets (as determined in accordance with applicable accounting standards) as of the end of either of the two most recent calendar years were related to the activities.

(3) For the purpose of this [PART], ''financial institution'' does not include the following entities:

(i) GSEs;

(ii) Entities described in section 13(d)(1)(E) of the Bank Holding Company Act (12 U.S.C. 1851(d)(1)(E)) and regulations issued thereunder (exempted entities) and entities that are predominantly engaged in providing advisory and related services to exempted entities; and

(iii) Entities designated as Community Development Financial Institutions (CDFIs) under 12 U.S.C. 4701 *et seq.* and 12 CFR part 1805.

First-lien residential mortgage exposure means a residential mortgage exposure secured by a first lien or a residential mortgage exposure secured by first and junior lien(s) where no other party holds an intervening lien.

Foreign bank means a foreign bank as defined in § 211.2 of the Federal Reserve Board's Regulation K (12 CFR 211.2) (other than a depository institution).

Forward agreement means a legally binding contractual obligation to purchase assets with certain drawdown at a specified future date, not including commitments to make residential mortgage loans or forward foreign exchange contracts.

GAAP means generally accepted accounting principles as used in the United States.

Gain-on-sale means an increase in the equity capital of a [BANK] (as reported on Schedule RC of the Call Report or Schedule HC of the FR Y–9C) resulting from a securitization (other than an increase in equity capital resulting from the [BANK]'s receipt of cash in connection with the securitization).

General obligation means a bond or similar obligation that is backed by the full faith and credit of a public sector entity (PSE).

Government-sponsored entity (GSE) means an entity established or chartered by the U.S. government to serve public purposes specified by the U.S. Congress but whose debt obligations are not explicitly guaranteed by the full faith and credit of the U.S. government.

Guarantee means a financial guarantee, letter of credit, insurance, or other similar financial instrument (other than a credit derivative) that allows one party (beneficiary) to transfer the credit risk of one or more specific exposures (reference exposure) to another party (protection provider).

High volatility commercial real estate (HVCRE) exposure means a credit facility that finances or has financed the acquisition, development, or construction (ADC) of real property, unless the facility finances:

(1) One- to four-family residential properties; or

(2) Commercial real estate projects in which:

(i) The loan-to-value ratio is less than or equal to the applicable maximum supervisory loan-to-value ratio in the [AGENCY]'s real estate lending standards at 12 CFR part 34, subpart D and 12 CFR part 160, subparts A and B (OCC); 12 CFR part 208, Appendix C (Board); 12 CFR part 365, subpart D and 12 CFR 390.264 and 390.265 (FDIC);

(ii) The borrower has contributed capital to the project in the form of cash or unencumbered readily marketable assets (or has paid development expenses out-of-pocket) of at least 15 percent of the real estate's appraised ''as completed'' value; and

(iii) The borrower contributed the amount of capital required by paragraph (2)(ii) of this definition before the [BANK] advances funds under the credit facility, and the capital contributed by the borrower, or internally generated by the project, is contractually required to remain in the project throughout the life of the project. The life of a project concludes only when the credit facility is converted to permanent financing or is sold or paid in full. Permanent financing may be provided by the [BANK] that provided the ADC facility as long as the permanent financing is subject to the [BANK]'s underwriting criteria for long-term mortgage loans.

Home country means the country where an entity is incorporated, chartered, or similarly established.

Interest rate derivative contract means a single-currency interest rate swap, basis swap, forward rate agreement, purchased interest rate option, when-issued securities, or any other instrument linked to interest rates that gives rise to similar counterparty credit risks.

International Lending Supervision Act means the International Lending Supervision Act of 1983 (12 U.S.C. 3907).

Investing bank means, with respect to a securitization, a [BANK] that assumes the credit risk of a securitization exposure (other than an originating [BANK] of the securitization). In the typical synthetic securitization, the investing [BANK] sells credit protection on a pool of underlying exposures to the originating [BANK].

Investment fund means a company:

(1) Where all or substantially all of the assets of the company are financial assets; and

(2) That has no material liabilities.

Investment grade means that the entity to which the [BANK] is exposed through a loan or security, or the reference entity with respect to a credit derivative, has adequate capacity to meet financial commitments for the projected life of the asset or exposure. Such an entity or reference entity has adequate capacity to meet financial commitments if the risk of its default is low and the full and timely repayment of principal and interest is expected.

Investment in the capital of an unconsolidated financial institution means a net long position in an instrument that is recognized as capital for regulatory purposes by the primary supervisor of an unconsolidated regulated financial institutions and in an instrument that is part of the GAAP equity of an unconsolidated unregulated financial institution, including direct, indirect, and synthetic exposures to capital instruments, excluding underwriting positions held by the [BANK] for five business days or less.[2] An indirect exposure results from the [BANK]'s investment in an unconsolidated entity that has an exposure to a capital instrument of a financial institution. A synthetic exposure results from the [BANK]'s investment in an instrument where the value of such instrument is linked to the value of a capital instrument of a financial institution. For purposes of this definition, the amount of the exposure resulting from the investment in the capital of an unconsolidated financial institution is the [BANK]'s loss on such exposure should the underlying capital instrument have a value of zero. In addition, for purposes of this definition:

(1) The net long position is the gross long position in the exposure to the capital of the financial institution (including covered positions under subpart F of this part) net of short positions in the same exposure where the maturity of the short position either matches the maturity of the long position or has a residual maturity of at least one year;

(2) Long and short positions in the same index without a maturity date are considered to have matching maturity. Gross long positions in investments in the capital instruments of unconsolidated financial institutions resulting from holdings of index securities may be netted against short positions in the same underlying index. However, short positions in indexes that are hedging long cash or synthetic positions can be decomposed to provide recognition of the hedge. More specifically, the portion of the index that is composed of the same underlying exposure that is being hedged may be used to offset the long position as long as both the exposure being hedged and the short position in the index are positions subject to the market risk rule, the positions are fair valued on the banking organization's balance sheet, and the hedge is deemed effective by the banking organization's internal control processes assessed by the primary supervisor of the banking organization; and

(3) Instead of looking through and monitoring its exact exposure to the capital of unconsolidated financial institutions included in an index security, a [BANK] may, with the prior approval of the [AGENCY], use a conservative estimate of the amount of its investment in the capital of unconsolidated financial institutions held through the index security.

Junior-lien residential mortgage exposure means a residential mortgage exposure that is not a first-lien residential mortgage exposure.

Main index means the Standard & Poor's 500 Index, the FTSE All-World Index, and any other index for which the [BANK] can demonstrate to the satisfaction of the [AGENCY] that the equities represented in the index have comparable liquidity, depth of market, and size of bid-ask spreads as equities in the Standard & Poor's 500 Index and FTSE All-World Index.

Market risk [BANK] means a [BANK] that is described in § ____.201(b) of subpart F of this part.

Money market fund means an investment fund that is subject to 17 CFR 270.2a–7 or any foreign equivalent thereof.

Mortgage servicing assets (MSAs) means the contractual rights owned by a [BANK] to service for a fee mortgage loans that are owned by others.

Multilateral development bank (MDB) means the International Bank for Reconstruction and Development, the Multilateral Investment Guarantee Agency, the International Finance Corporation, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the European Bank for Reconstruction and Development, the European Investment Bank, the European Investment Fund, the Nordic Investment Bank, the Caribbean Development Bank, the Islamic Development Bank, the Council of Europe Development Bank, and any

[2] If the [BANK] is an underwriter of a failed underwriting, the [BANK] can request approval from its primary federal supervisor to exclude underwriting positions related to such failed underwriting for a longer period of time.

other multilateral lending institution or regional development bank in which the U.S. government is a shareholder or contributing member or which the [AGENCY] determines poses comparable credit risk.

National Bank Act means the National Bank Act (12 U.S.C. 24).

Netting set means a group of transactions with a single counterparty that are subject to a qualifying master netting agreement or a qualifying cross-product master netting agreement. For purposes of calculating risk-based capital requirements using the internal models methodology in subpart E, a transaction—

(1) That is not subject to such a master netting agreement or

(2) Where the [BANK] has identified specific wrong-way risk is its own netting set.

Non-significant investment in the capital of an unconsolidated financial institution means an investment where the [BANK] owns 10 percent or less of the issued and outstanding common shares of the unconsolidated financial institution.

N^th-to-default credit derivative means a credit derivative that provides credit protection only for the nth-defaulting reference exposure in a group of reference exposures.

Operating entity means a company established to conduct business with clients with the intention of earning a profit in its own right.

Original maturity with respect to an off-balance sheet commitment means the length of time between the date a commitment is issued and:

(1) For a commitment that is not subject to extension or renewal, the stated expiration date of the commitment; or

(2) For a commitment that is subject to extension or renewal, the earliest date on which the [BANK] can, at its option, unconditionally cancel the commitment.

Originating [BANK], with respect to a securitization, means a [BANK] that:

(1) Directly or indirectly originated or securitized the underlying exposures included in the securitization; or

(2) Serves as an ABCP program sponsor to the securitization.

Over-the-counter (OTC) derivative contract means a derivative contract that is not a cleared transaction. An OTC derivative includes a transaction:

(1) Between a [BANK] that is a clearing member and a counterparty where the [BANK] is acting as a financial intermediary and enters into a cleared transaction with a CCP that offsets the transaction with the counterparty; or

(2) In which a [BANK] that is a clearing member provides a CCP a guarantee on the performance of the counterparty to the transaction.

Performance standby letter of credit (or performance bond) means an irrevocable obligation of a [BANK] to pay a third-party beneficiary when a customer (account party) fails to perform on any contractual nonfinancial or commercial obligation. To the extent permitted by law or regulation, performance standby letters of credit include arrangements backing, among other things, subcontractors' and suppliers' performance, labor and materials contracts, and construction bids.

Pre-sold construction loan means any one-to-four family residential construction loan to a builder that meets the requirements of section 618(a)(1) or (2) of the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991 and the following criteria:

(1) The loan is made in accordance with prudent underwriting standards;

(2) The purchaser is an individual(s) that intends to occupy the residence and is not a partnership, joint venture, trust, corporation, or any other entity (including an entity acting as a sole proprietorship) that is purchasing one or more of the residences for speculative purposes;

(3) The purchaser has entered into a legally binding written sales contract for the residence;

(4) The purchaser has not terminated the contract; however, if the purchaser terminates the sales contract the [BANK] must immediately apply a 100 percent risk weight to the loan and report the revised risk weight in [BANK]'s next quarterly [REGULATORY REPORT];

(5) The purchaser of the residence has a firm written commitment for permanent financing of the residence upon completion;

(6) The purchaser has made a substantial earnest money deposit of no less than 3 percent of the sales price, which is subject to forfeiture if the purchaser terminates the sales contract; provided that, the earnest money deposit shall not be subject to forfeiture by reason of breach or termination of the sales contract on the part of the builder;

(7) The earnest money deposit must be held in escrow by the [BANK] or an independent party in a fiduciary capacity, and the escrow agreement must provide that in the event of default the escrow funds shall be used to defray any cost incurred by [BANK] relating to any cancellation of the sales contract by the purchaser of the residence;

(8) The builder must incur at least the first 10 percent of the direct costs of construction of the residence (that is, actual costs of the land, labor, and material) before any drawdown is made under the loan;

(9) The loan may not exceed 80 percent of the sales price of the presold residence; and

(10) The loan is not more than 90 days past due, or on nonaccrual.

Private company means a company that is not a public company.

Private sector credit exposure means an exposure to a company or an individual that is included in credit risk-weighted assets and is not an exposure to a sovereign, the Bank for International Settlements, the European Central Bank, the European Commission, the International Monetary Fund, a MDB, a PSE, or a GSE.

Protection amount (P) means, with respect to an exposure hedged by an eligible guarantee or eligible credit derivative, the effective notional amount of the guarantee or credit derivative, reduced to reflect any currency mismatch, maturity mismatch, or lack of restructuring coverage (as provided in § ____.36 of subpart D of this part or § ____.134 of subpart E, as appropriate).

Public company means a company that has issued publicly-traded debt or equity.

Publicly-traded means traded on:

(1) Any exchange registered with the SEC as a national securities exchange under section 6 of the Securities Exchange Act; or

(2) Any non-U.S.-based securities exchange that:

(i) Is registered with, or approved by, a national securities regulatory authority; and

(ii) Provides a liquid, two-way market for the instrument in question.

Public sector entity (PSE) means a state, local authority, or other governmental subdivision below the sovereign level.

Qualifying central counterparty (QCCP) means a central counterparty that:

(1) Is a designated financial market utility (FMU) under Title VIII of the Dodd-Frank Act;

(2) If not located in the United States, is regulated and supervised in a manner equivalent to a designated FMU; or

(3) Meets the following standards:

(i) The central counterparty requires all parties to contracts cleared by the counterparty to be fully collateralized on a daily basis;

(ii) The [BANK] demonstrates to the satisfaction of the [AGENCY] that the central counterparty:

(A) Is in sound financial condition;

(B) Is subject to supervision by the Board, the CFTC, or the Securities Exchange Commission (SEC), or if the central counterparty is not located in the United States, is subject to effective oversight by a national supervisory authority in its home country; and

(C) Meets or exceeds:

(*1*) The risk-management standards for central counterparties set forth in regulations established by the Board, the CFTC, or the SEC under Title VII or Title VIII of the Dodd-Frank Act; or

(*2*) If the central counterparty is not located in the United States, similar risk-management standards established under the law of its home country that are consistent with international standards for central counterparty risk management as established by the relevant standard setting body of the Bank of International Settlements;

(4) Provides the [BANK] with the central counterparty's hypothetical capital requirement or the information necessary to calculate such hypothetical capital requirement, and other information the [BANK] is required to obtain under § ____.35(d)(3) of this part;

(5) Makes available to the [AGENCY] and the CCP's regulator the information described in paragraph (4) of this definition; and

(6) Has not otherwise been determined by the [AGENCY] to not be QCCP due to its financial condition, risk profile, failure to meet supervisory risk management standards, or other weaknesses or supervisory concerns that are inconsistent with the risk weight assigned to qualifying central counterparties under § ____.35 of subpart D of this part; and

(7) If a [BANK] determines that a CCP ceases to be a QCCP due to the failure of the CCP to satisfy one or more of the requirements set forth at paragraphs (1) through (6) of this definition, the [BANK] may continue to treat the CCP as a QCCP for up to three months following the determination. If the CCP fails to remedy the relevant deficiency within three months after the initial determination, or the CCP fails to satisfy the requirements set forth in paragraphs (1) through (6) of this definition continuously for a three month period after remedying the relevant deficiency, a [BANK] may not treat the CCP as a QCCP for the purposes of this [PART] until after the [BANK] has determined that the CCP has satisfied the requirements in paragraphs (1) through (6) of this definition for three continuous months.

Qualifying master netting agreement means any written, legally enforceable agreement provided that:

(1) The agreement creates a single legal obligation for all individual transactions covered by the agreement upon an event of default, including receivership, insolvency, liquidation, or similar proceeding, of the counterparty;

(2) The agreement provides the [BANK] the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default, including upon an event of receivership, insolvency, liquidation, or similar proceeding, of the counterparty, provided that, in any such case, any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than in receivership, conservatorship, resolution under the Federal Deposit Insurance Act, Title II of the Dodd-Frank Act, or under any similar insolvency law applicable to GSEs;

(3) The [BANK] has conducted sufficient legal review to conclude with a well-founded basis (and maintains sufficient written documentation of that legal review) that:

(i) The agreement meets the requirements of paragraph (2) of this definition; and

(ii) In the event of a legal challenge (including one resulting from default or from receivership, insolvency, liquidation, or similar proceeding) the relevant court and administrative authorities would find the agreement to be legal, valid, binding, and enforceable under the law of the relevant jurisdictions;

(4) The [BANK] establishes and maintains procedures to monitor possible changes in relevant law and to ensure that the agreement continues to satisfy the requirements of this definition; and

(5) The agreement does not contain a walkaway clause (that is, a provision that permits a non-defaulting counterparty to make a lower payment than it otherwise would make under the agreement, or no payment at all, to a defaulter or the estate of a defaulter, even if the defaulter or the estate of the defaulter is a net creditor under the agreement).

Regulated financial institution means a financial institution subject to consolidated supervision and regulation comparable to that imposed on the following U.S. financial institutions: depository institutions, depository institution holding companies, nonbank financial companies supervised by the Board, designated financial market utilities, securities broker-dealers, credit unions, or insurance companies.

Repo-style transaction means a repurchase or reverse repurchase transaction, or a securities borrowing or securities lending transaction, including a transaction in which the [BANK] acts as agent for a customer and indemnifies the customer against loss, provided that:

(1) The transaction is based solely on liquid and readily marketable securities, cash, or gold;

(2) The transaction is marked-to-market daily and subject to daily margin maintenance requirements;

(3)(i) The transaction is a ''securities contract'' or ''repurchase agreement'' under section 555 or 559, respectively, of the Bankruptcy Code (11 U.S.C. 555 or 559), a qualified financial contract under section 11(e)(8) of the Federal Deposit Insurance Act, or a netting contract between or among financial institutions under sections 401–407 of the Federal Deposit Insurance Corporation Improvement Act or the Federal Reserve Board's Regulation EE (12 CFR part 231); or

(ii) If the transaction does not meet the criteria set forth in paragraph (3)(i) of this definition, then either:

(A) The transaction is executed under an agreement that provides the [BANK] the right to accelerate, terminate, and close-out the transaction on a net basis and to liquidate or set-off collateral promptly upon an event of default (including upon an event of receivership, insolvency, liquidation, or similar proceeding) of the counterparty, provided that, in any such case, any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than in receivership, conservatorship, resolution under the Federal Deposit Insurance Act, Title II of the Dodd-Frank Act, or under any similar insolvency law applicable to GSEs; or

(B) The transaction is:

(*1*) Either overnight or unconditionally cancelable at any time by the [BANK]; and

(*2*) Executed under an agreement that provides the [BANK] the right to accelerate, terminate, and close-out the transaction on a net basis and to liquidate or set-off collateral promptly upon an event of counterparty default; and

(4) The [BANK] has conducted sufficient legal review to conclude with a well-founded basis (and maintains sufficient written documentation of that legal review) that the agreement meets the requirements of paragraph (3) of this definition and is legal, valid, binding, and enforceable under applicable law in the relevant jurisdictions.

Resecuritization means a securitization in which one or more of the underlying exposures is a securitization exposure.

Resecuritization exposure means:

(1) An on- or off-balance sheet exposure to a resecuritization;

(2) An exposure that directly or indirectly references a resecuritization exposure.

(3) An exposure to an asset-backed commercial paper program is not a resecuritization exposure if either:

(i) The program-wide credit enhancement does not meet the definition of a resecuritization exposure; or

(ii) The entity sponsoring the program fully supports the commercial paper through the provision of liquidity so that the commercial paper holders effectively are exposed to the default risk of the sponsor instead of the underlying exposures.

Residential mortgage exposure means an exposure (other than a securitization exposure, equity exposure, statutory multifamily mortgage, or presold construction loan) that is:

(1) An exposure that is primarily secured by a first or subsequent lien on one-to-four family residential property; or

(2)(i) An exposure with an original and outstanding amount of $1 million or less that is primarily secured by a first or subsequent lien on residential property that is not one-to-four family; and

(ii) For purposes of calculating capital requirements under subpart E, is managed as part of a segment of exposures with homogeneous risk characteristics and not on an individual-exposure basis.

Revenue obligation means a bond or similar obligation that is an obligation of a PSE, but which the PSE is committed to repay with revenues from the specific project financed rather than general tax funds.

Savings and loan holding company means a savings and loan holding company as defined in section 10 of the Home Owners' Loan Act (12 U.S.C. 1467a).

Securities and Exchange Commission (SEC) means the U.S. Securities and Exchange Commission.

Securities Exchange Act means the Securities Exchange Act of 1934 (15 U.S.C. 78).

Securitization exposure means:

(1) An on-balance sheet or off-balance sheet credit exposure (including credit-enhancing representations and warranties) that arises from a traditional securitization or synthetic securitization (including a resecuritization), or

(2) An exposure that directly or indirectly references a securitization exposure described in paragraph (1) of this definition.

Securitization special purpose entity (securitization SPE) means a corporation, trust, or other entity organized for the specific purpose of holding underlying exposures of a securitization, the activities of which are limited to those appropriate to accomplish this purpose, and the structure of which is intended to isolate the underlying exposures held by the entity from the credit risk of the seller of the underlying exposures to the entity.

Servicer cash advance facility means a facility under which the servicer of the underlying exposures of a securitization may advance cash to ensure an uninterrupted flow of payments to investors in the securitization, including advances made to cover foreclosure costs or other expenses to facilitate the timely collection of the underlying exposures.

Significant investment in the capital of unconsolidated financial institutions means an investment where the [BANK] owns more than 10 percent of the issued and outstanding common shares of the unconsolidated financial institution.

Small Business Act means the Small Business Act (15 U.S.C. 632).

Small Business Investment Act means the Small Business Investment Act of 1958 (15 U.S.C. 682).

Sovereign means a central government (including the U.S. government) or an agency, department, ministry, or central bank of a central government.

Sovereign default means noncompliance by a sovereign with its external debt service obligations or the inability or unwillingness of a sovereign government to service an existing loan according to its original terms, as evidenced by failure to pay principal and interest timely and fully, arrearages, or restructuring.

Sovereign exposure means:

(1) A direct exposure to a sovereign; or

(2) An exposure directly and unconditionally backed by the full faith and credit of a sovereign.

Specific wrong-way risk means wrong-way risk that arises when either:

(1) The counterparty and issuer of the collateral supporting the transaction; or

(2) The counterparty and the reference asset of the transaction, are affiliates or are the same entity.

Standardized market risk-weighted assets means the standardized measure for market risk calculated under § ____.204 of subpart F of this part multiplied by 12.5.

Standardized total risk-weighted assets means:

(1) The sum of:

(i) Total risk-weighted assets for general credit risk as calculated under § ____.31 of subpart D of this part;

(ii) Total risk-weighted assets for cleared transactions and default fund contributions as calculated under § ____.35 of subpart D of this part;

(iii) Total risk-weighted assets for unsettled transactions as calculated under § ____.38 of subpart D of this part;

(iv) Total risk-weighted assets for securitization exposures as calculated under § ____.42 of subpart D of this part;

(v) Total risk-weighted assets for equity exposures as calculated under § ____.52 and § ____.53 of subpart D of this part; and

(vi) For a market risk [BANK] only, standardized market risk-weighted assets; minus

(2) Any amount of the [BANK]'s allowance for loan and lease losses that is not included in tier 2 capital.

Statutory multifamily mortgage means a loan secured by a multifamily residential property that meets the requirements under section 618(b)(1) of the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991, and that meets the following criteria:

(1) The loan is made in accordance with prudent underwriting standards;

(2) The loan-to-value (LTV) ratio of the loan, calculated in accordance with § ____.32(g)(3) of subpart D of this part, does not exceed 80 percent (or 75 percent if the loan is based on an interest rate that changes over the term of the loan);

(3) All principal and interest payments on the loan must have been made on time for at least one year prior to applying a 50 percent risk weight to the loan, or in the case where an existing owner is refinancing a loan on the property, all principal and interest payments on the loan being refinanced must have been made on time for at least one year prior to applying a 50 percent risk weight to the loan;

(4) Amortization of principal and interest on the loan must occur over a period of not more than 30 years and the minimum original maturity for repayment of principal must not be less than 7 years;

(5) Annual net operating income (before debt service on the loan) generated by the property securing the loan during its most recent fiscal year must not be less than 120 percent of the loan's current annual debt service (or 115 percent of current annual debt service if the loan is based on an interest rate that changes over the term of the

loan) or, in the case of a cooperative or other not-for-profit housing project, the property must generate sufficient cash flow to provide comparable protection to the [BANK]; and

(6) The loan is not more than 90 days past due, or on nonaccrual.

Subsidiary means, with respect to a company, a company controlled by that company.

Synthetic securitization means a transaction in which:

(1) All or a portion of the credit risk of one or more underlying exposures is transferred to one or more third parties through the use of one or more credit derivatives or guarantees (other than a guarantee that transfers only the credit risk of an individual retail exposure);

(2) The credit risk associated with the underlying exposures has been separated into at least two tranches reflecting different levels of seniority;

(3) Performance of the securitization exposures depends upon the performance of the underlying exposures; and

(4) All or substantially all of the underlying exposures are financial exposures (such as loans, commitments, credit derivatives, guarantees, receivables, asset-backed securities, mortgage-backed securities, other debt securities, or equity securities).

Tier 1 capital means the sum of common equity tier 1 capital and additional tier 1 capital.

Tier 1 minority interest means the tier 1 capital of a consolidated subsidiary of a [BANK] that is not owned by the [BANK].

Tier 2 capital is defined in § ____.20 of subpart C of this part.

Total capital means the sum of tier 1 capital and tier 2 capital.

Total capital minority interest means the total capital of a consolidated subsidiary of a [BANK] that is not owned by the [BANK].

Total leverage exposure means the sum of the following:

(1) The balance sheet carrying value of all of the [BANK]'s on-balance sheet assets, *less* amounts deducted from tier 1 capital;

(2) The potential future exposure amount for each derivative contract to which the [BANK] is a counterparty (or each single-product netting set of such transactions) determined in accordance with § ____.34 of this part;

(3) 10 percent of the notional amount of unconditionally cancellable commitments made by the [BANK]; and

(4) The notional amount of all other off-balance sheet exposures of the [BANK] (excluding securities lending, securities borrowing, reverse repurchase transactions, derivatives and unconditionally cancellable commitments).

Traditional securitization means a transaction in which:

(1) All or a portion of the credit risk of one or more underlying exposures is transferred to one or more third parties other than through the use of credit derivatives or guarantees;

(2) The credit risk associated with the underlying exposures has been separated into at least two tranches reflecting different levels of seniority;

(3) Performance of the securitization exposures depends upon the performance of the underlying exposures;

(4) All or substantially all of the underlying exposures are financial exposures (such as loans, commitments, credit derivatives, guarantees, receivables, asset-backed securities, mortgage-backed securities, other debt securities, or equity securities);

(5) The underlying exposures are not owned by an operating company;

(6) The underlying exposures are not owned by a small business investment company described in section 302 of the Small Business Investment Act;

(7) The underlying exposures are not owned by a firm an investment in which qualifies as a community development investment under section 24 (Eleventh) of the National Bank Act;

(8) The [AGENCY] may determine that a transaction in which the underlying exposures are owned by an investment firm that exercises substantially unfettered control over the size and composition of its assets, liabilities, and off-balance sheet exposures is not a traditional securitization based on the transaction's leverage, risk profile, or economic substance;

(9) The [AGENCY] may deem a transaction that meets the definition of a traditional securitization, notwithstanding paragraph (5), (6), or (7) of this definition, to be a traditional securitization based on the transaction's leverage, risk profile, or economic substance; and

(10) The transaction is not:

(i) An investment fund;

(ii) A collective investment fund (as defined in 12 CFR 208.34 (Board), 12 CFR 9.18 (OCC), and 12 CFR 344.3 (FDIC));

(iii) A pension fund regulated under the ERISA or a foreign equivalent thereof; or

(iv) Regulated under the Investment Company Act of 1940 (15 U.S.C. 80a–1) or a foreign equivalent thereof.

Tranche means all securitization exposures associated with a securitization that have the same seniority level.

Two-way market means a market where there are independent bona fide offers to buy and sell so that a price reasonably related to the last sales price or current bona fide competitive bid and offer quotations can be determined within one day and settled at that price within a relatively short time frame conforming to trade custom.

Unconditionally cancelable means with respect to a commitment, that a [BANK] may, at any time, with or without cause, refuse to extend credit under the commitment (to the extent permitted under applicable law).

Underlying exposures means one or more exposures that have been securitized in a securitization transaction.

U.S. Government agency means an instrumentality of the U.S. Government whose obligations are fully and explicitly guaranteed as to the timely payment of principal and interest by the full faith and credit of the U.S. Government.

Value-at-Risk (VaR) means the estimate of the maximum amount that the value of one or more exposures could decline due to market price or rate movements during a fixed holding period within a stated confidence interval.

Wrong-way risk means the risk that arises when an exposure to a particular counterparty is positively correlated with the probability of default of such counterparty itself.

Subpart B—Capital Ratio Requirements and Buffers

§ ____.10 Minimum capital requirements.

(a) *Minimum capital requirements.* A [BANK] must maintain the following minimum capital ratios:

(1) A common equity tier 1 capital ratio of 4.5 percent.

(2) A tier 1 capital ratio of 6 percent.

(3) A total capital ratio of 8 percent.

(4) A leverage ratio of 4 percent.

(5) For advanced approaches [BANK]s, a supplementary leverage ratio of 3 percent.

(b) *Standardized capital ratio calculations.* All [BANK]s must calculate standardized capital ratios as follows:

(1) *Common equity tier 1 capital ratio.* A [BANK]'s common equity tier 1 capital ratio is the ratio of the [BANK]'s common equity tier 1 capital to standardized total risk-weighted assets.

(2) *Tier 1 capital ratio.* A [BANK]'s tier 1 capital ratio is the ratio of the [BANK]'s tier 1 capital to standardized total risk-weighted assets.

(3) *Total capital ratio.* A [BANK]'s total capital ratio is the ratio of the

[BANK]'s total capital to standardized total risk-weighted assets.

(4) *Leverage ratio.* A [BANK]'s leverage ratio is the ratio of the [BANK]'s tier 1 capital to the [BANK]'s average consolidated assets as reported on the [BANK]'s [REGULATORY REPORT] minus amounts deducted from tier 1 capital.

(c) *Advanced approaches capital ratio calculations.* (1) *Common equity tier 1 capital ratio.* An advanced approaches [BANK]'s common equity tier 1 capital ratio is the lower of:

(i) The ratio of the [BANK]'s common equity tier 1 capital to standardized total risk-weighted assets; and

(ii) The ratio of the [BANK]'s common equity tier 1 capital to advanced approaches total risk-weighted assets.

(2) *Tier 1 capital ratio.* An advanced approaches [BANK]'s tier 1 capital ratio is the lower of:

(i) The ratio of the [BANK]'s tier 1 capital to standardized total risk-weighted assets; and

(ii) The ratio of the [BANK]'s tier 1 capital to advanced approaches total risk-weighted assets.

(3) *Total capital ratio.* An advanced approaches [BANK]'s total capital ratio is the lower of:

(i) The ratio of the [BANK]'s total capital to standardized total risk-weighted assets; and

(ii) The ratio of the [BANK]'s advanced-approaches-adjusted total capital to advanced approaches total risk-weighted assets. A [BANK]'s advanced-approaches-adjusted total capital is the [BANK]'s total capital after being adjusted as follows:

(A) An advanced approaches [BANK] must deduct from its total capital any allowance for loan and lease losses included in its tier 2 capital in accordance with § ____.20(d)(3) of subpart C of this part; and

(B) An advanced approaches [BANK] must add to its total capital any eligible credit reserves that exceed the [BANK]'s total expected credit losses to the extent that the excess reserve amount does not exceed 0.6 percent of the [BANK]'s credit risk-weighted assets.

(4) *Supplementary leverage ratio.* An advanced approaches [BANK]'s supplementary leverage ratio is the simple arithmetic mean of the ratio of its tier 1 capital to total leverage exposure calculated as of the last day of each month in the reporting quarter.

(d) *Capital adequacy.* (1) Notwithstanding the minimum requirements in this [PART] a [BANK] must maintain capital commensurate with the level and nature of all risks to which the [BANK] is exposed. The supervisory evaluation of a [BANK]'s capital adequacy is based on an individual assessment of numerous factors, including those listed at 12 CFR 3.10 (for national banks), 12 CFR 167.3(c) (for Federal savings associations) and 12 CFR 208.4 (for state member banks).

(2) A [BANK] must have a process for assessing its overall capital adequacy in relation to its risk profile and a comprehensive strategy for maintaining an appropriate level of capital.

§ ____.11 Capital conservation buffer and countercyclical capital buffer amount.

(a) *Capital conservation buffer.* (1) *Composition of the capital conservation buffer.* The capital conservation buffer is composed solely of common equity tier 1 capital.

(2) *Definitions.* For purposes of this section, the following definitions apply:

(i) *Eligible retained income.* The eligible retained income of a [BANK] is the [BANK]'s net income for the four calendar quarters preceding the current calendar quarter, based on the [BANK]'s most recent quarterly [REGULATORY REPORT], net of any capital distributions and associated tax effects not already reflected in net income.[1]

(ii) *Maximum payout ratio.* The maximum payout ratio is the percentage of eligible retained income that a [BANK] can pay out in the form of capital distributions and discretionary bonus payments during the current calendar quarter. The maximum payout ratio is based on the [BANK]'s capital conservation buffer, calculated as of the last day of the previous calendar quarter, as set forth in Table 1.

(iii) *Maximum payout amount.* A [BANK]'s maximum payout amount for the current calendar quarter is equal to the [BANK]'s eligible retained income, multiplied by the applicable maximum payout ratio, as set forth in Table 1.

(3) *Calculation of capital conservation buffer.*[2] A [BANK]'s capital conservation buffer is equal to the lowest of the following ratios, calculated as of the last day of the previous calendar quarter based on the [BANK]'s most recent [REGULATORY REPORT]:

(i) The [BANK]'s common equity tier 1 capital ratio minus the [BANK]'s minimum common equity tier 1 capital ratio requirement under § ____.10 of this part;

(ii) The [BANK]'s tier 1 capital ratio minus the [BANK]'s minimum tier 1 capital ratio requirement under § ____.10 of this part; and

(iii) The [BANK]'s total capital ratio minus the [BANK]'s minimum total capital ratio requirement under § ____.10 of this part.

(iv) If the [BANK]'s common equity tier 1, tier 1 or total capital ratio is less than or equal to the [BANK]'s minimum common equity tier 1, tier 1 or total capital ratio requirement under § ____.10 of this part, respectively, the [BANK]'s capital conservation buffer is zero.

(4) *Limits on capital distributions and discretionary bonus payments.* (i) A [BANK] shall not make capital distributions or discretionary bonus payments or create an obligation to make such distributions or payments during the current calendar quarter that, in the aggregate, exceed the maximum payout amount.

(ii) A [BANK] with a capital conservation buffer that is greater than 2.5 percent plus 100 percent of its applicable countercyclical buffer, in accordance with paragraph (b) of this section, is not subject to a maximum payout amount under this section.

(iii) *Negative eligible retained income.* Except as provided in paragraph (a)(4)(iv), a [BANK] may not make capital distributions or discretionary bonus payments during the current calendar quarter if the [BANK]'s:

(A) Eligible retained income is negative; and

(B) Capital conservation buffer was less than 2.5 percent as of the end of the previous calendar quarter.

(iv) *Prior approval.* Notwithstanding the limitations in paragraphs (a)(4)(i) through (iii) of this section the [AGENCY] may permit a [BANK] to make a capital distribution or discretionary bonus payment upon a request of the [BANK], if the [AGENCY] determines that the capital distribution or discretionary bonus payment would not be contrary to the purposes of this section, or the safety and soundness of the [BANK]. In making such a determination, the [AGENCY] will consider the nature and extent of the request and the particular circumstances giving rise to the request.

[1] Net income, as reported in the [REGULATORY REPORT], reflects discretionary bonus payments and certain capital distributions that are expense items (and their associated tax effects).

[2] For purposes of the capital conservation buffer calculations, a [BANK] must use standardized total risk weighted assets if it is a standardized approach [BANK] and it must use advanced total risk weighted assets if it is an advanced approaches [BANK].

TABLE TO § ____.11—CALCULATION OF MAXIMUM PAYOUT AMOUNT

Capital conservation buffer (as a percentage of total risk-weighted assets)	Maximum payout ratio (as a percentage of eligible retained income)
Greater than 2.5 percent plus 100 percent of the [BANK]'s applicable countercyclical capital buffer amount.	No payout ratio limitation applies.
Less than or equal to 2.5 percent plus 100 percent of the [BANK]'s applicable countercyclical capital buffer amount, and greater than 1.875 percent plus 75 percent of the [BANK]'s applicable countercyclical capital buffer amount.	60 percent.
Less than or equal to 1.875 percent plus 75 percent of the [BANK]'s applicable countercyclical capital buffer amount, and greater than 1.25 percent plus 50 percent of the [BANK]'s applicable countercyclical capital buffer amount.	40 percent.
Less than or equal to 1.25 percent plus 50 percent of the [BANK]'s applicable countercyclical capital buffer amount, and greater than 0.625 percent plus 25 percent of the [BANK]'s applicable countercyclical capital buffer amount.	20 percent.
Less than or equal to 0.625 percent plus 25 percent of the [BANK]'s applicable countercyclical capital buffer amount.	0 percent.

(v) *Other limitations on capital distributions.* Additional limitations on capital distributions may apply to a [BANK] under 12 CFR 225.4; 12 CFR 225.8; and 12 CFR 263.202.

(b) *Countercyclical capital buffer amount.* (1) *General.* An advanced approaches [BANK] must apply, calculate, and maintain a countercyclical capital buffer amount in accordance with the following paragraphs.

(i) *Composition.* The countercyclical capital buffer amount is composed solely of common equity tier 1 capital.

(ii) *Amount.* An advanced approaches [BANK] has a countercyclical capital buffer amount determined by calculating the weighted average of the countercyclical capital buffer amounts established for the national jurisdictions where the [BANK]'s private sector credit exposures are located, as specified in paragraphs (b)(2) and (3) of this section.

(iii) *Weighting.* The weight assigned to a jurisdiction's countercyclical capital buffer amount is calculated by dividing the total risk-weighted assets for the [BANK]'s private sector credit exposures located in the jurisdiction by the total risk-weighted assets for all of the [BANK]'s private sector credit exposures.

(iv) *Location.* (A) Except as provided in paragraph (b)(1)(iv)(B) of this section, the location of a private sector credit exposure (other than a securitization exposure) is the national jurisdiction where the borrower is located (that is, where it is incorporated, chartered, or similarly established or, if the borrower is an individual, where the borrower resides).

(B) If, in accordance with subpart D or subpart E of this part, the [BANK] has assigned to a private sector credit exposure a risk weight associated with a protection provider on a guarantee or credit derivative, the location of the exposure is the national jurisdiction where the protection provider is located.

(C) The location of a securitization exposure is the location of the borrowers of underlying exposures in a single jurisdiction with the largest aggregate unpaid principal balance.

(2) *Countercyclical capital buffer amount for credit exposures in the United States.* (i) *Initial countercyclical buffer amount with respect to credit exposures in the United States.* The initial countercyclical capital buffer amount in the United States is zero.

(ii) *Adjustment of the countercyclical buffer amount.* The [AGENCY] will adjust the countercyclical capital buffer amount for credit exposures in the United States in accordance with applicable law.[3]

(iii) *Range of countercyclical buffer amount.* The [AGENCY] will adjust the countercyclical capital buffer amount for credit exposures in the United States between zero percent and 2.5 percent of total risk-weighted assets. Generally, a zero percent countercyclical capital buffer amount will reflect an assessment that economic and financial conditions are consistent with a period of little or no excessive ease in credit markets associated with no material increase in system-wide credit risk. A 2.5 percent countercyclical capital buffer amount will reflect an assessment that financial markets are experiencing a period of excessive ease in credit markets associated with a material increase in credit system-wide risk.

(iv) *Adjustment Determination.* The [AGENCY] will base its decision to adjust the countercyclical capital buffer amount under this section on a range of macroeconomic, financial, and supervisory information indicating an increase in systemic risk including, but not limited to, the ratio of credit to gross domestic product, a variety of asset prices, other factors indicative of relative credit and liquidity expansion or contraction, funding spreads, credit condition surveys, indices based on credit default swap spreads, options implied volatility, and measures of systemic risk.

(v) *Effective date of adjusted countercyclical capital buffer amount.* (A) *Increase adjustment.* A determination by the [AGENCY] under paragraph (b)(2)(ii) of this section to increase the countercyclical capital buffer amount will be effective 12 months from the date of announcement, unless the [AGENCY] establishes an earlier effective date and includes a statement articulating the reasons for the earlier effective date.

(B) *Decrease adjustment.* A determination by the [AGENCY] to decrease the established countercyclical capital buffer amount under paragraph (b)(2)(ii) of this section will be effective at the later of the day following announcement of the final determination or the earliest date permissible under applicable law or regulation.

(vi) *Twelve month sunset.* The countercyclical capital buffer amount will return to zero percent 12 months after the effective date of the adjusted countercyclical capital buffer amount announced, unless the [AGENCY] announces a decision to maintain the adjusted countercyclical capital buffer amount or adjust it again before the expiration of the 12-month period.

(3) *Countercyclical capital buffer amount for foreign jurisdictions.* The [AGENCY] will adjust the countercyclical capital buffer amount for private sector credit exposures to reflect decisions made by foreign jurisdictions consistent with due process requirements described in paragraph (b)(2) of this section.

[3] The [AGENCY] expects that any adjustment will be based on a determination made jointly by the Board, OCC, and FDIC.

Subpart C—Definition of Capital

§ ____.20 Capital components and eligibility criteria for regulatory capital instruments.

(a) *Regulatory capital components.* A [BANK]'s regulatory capital components are: (1) Common equity tier 1 capital;

(2) Additional tier 1 capital; and

(3) Tier 2 capital.

(b) *Common equity tier 1 capital.* Common equity tier 1 capital is the sum of the common equity tier 1 capital elements as set forth in paragraph (b) of this section, minus regulatory adjustments and deductions as set forth in § ____.22 of this part.[1] The common equity tier 1 capital elements are:

(1) Any common stock instruments (plus any related surplus) issued by the [BANK], net of treasury stock, that meet all the following criteria:[2]

(i) The instrument is paid-in, issued directly by the [BANK], and represents the most subordinated claim in a receivership, insolvency, liquidation, or similar proceeding of the [BANK].

(ii) The holder of the instrument is entitled to a claim on the residual assets of the [BANK] that is proportional with the holder's share of the [BANK]'s issued capital after all senior claims have been satisfied in a receivership, insolvency, liquidation, or similar proceeding.

(iii) The instrument has no maturity date, can only be redeemed via discretionary repurchases with the prior approval of the [AGENCY], and does not contain any term or feature that creates an incentive to redeem.

(iv) The [BANK] did not create at issuance of the instrument through any action or communication an expectation that it will buy back, cancel, or redeem the instrument, and the instrument does not include any term or feature that might give rise to such an expectation.

(v) Any cash dividend payments on the instrument are paid out of the [BANK]'s net income and retained earnings and are not subject to a limit imposed by the contractual terms governing the instrument.

(vi) The [BANK] has full discretion at all times to refrain from paying any dividends and making any other capital distributions on the instrument without triggering an event of default, a requirement to make a payment-in-kind, or an imposition of any other restrictions on the [BANK].

(vii) Dividend payments and any other capital distributions on the instrument may be paid only after all legal and contractual obligations of the [BANK] have been satisfied, including payments due on more senior claims.

(viii) The holders of the instrument bear losses as they occur equally, proportionately, and simultaneously with the holders of all other common stock instruments before any losses are borne by holders of claims on the [BANK] with greater priority in a receivership, insolvency, liquidation, or similar proceeding.

(ix) The paid-in amount is classified as equity under GAAP.

(x) The [BANK], or an entity that the [BANK] controls, did not purchase or directly or indirectly fund the purchase of the instrument.

(xi) The instrument is not secured, not covered by a guarantee of the [BANK] or of an affiliate of the [BANK], and is not subject to any other arrangement that legally or economically enhances the seniority of the instrument.

(xii) The instrument has been issued in accordance with applicable laws and regulations.

(xiii) The instrument is reported on the [BANK]'s regulatory financial statements separately from other capital instruments.

(2) Retained earnings.

(3) Accumulated other comprehensive income.

(4) Common equity tier 1 minority interest subject to the limitations in § ____.21(a) of this part.

(c) *Additional tier 1 capital.* Additional tier 1 capital is the sum of additional tier 1 capital elements and any related surplus, minus the regulatory adjustments and deductions in § ____.22 of this part. Additional tier 1 capital elements are:

(1) Instruments (plus any related surplus) that meet the following criteria:

(i) The instrument is issued and paid in.

(ii) The instrument is subordinated to depositors, general creditors, and subordinated debt holders of the [BANK] in a receivership, insolvency, liquidation, or similar proceeding.

(iii) The instrument is not secured, not covered by a guarantee of the [BANK] or of an affiliate of the [BANK], and not subject to any other arrangement that legally or economically enhances the seniority of the instrument.

(iv) The instrument has no maturity date and does not contain a dividend step-up or any other term or feature that creates an incentive to redeem.

(v) If callable by its terms, the instrument may be called by the [BANK] only after a minimum of five years following issuance, except that the terms of the instrument may allow it to be called earlier than five years upon the occurrence of a regulatory event that precludes the instrument from being included in additional tier 1 capital or a tax event. In addition:

(A) The [BANK] must receive prior approval from the [AGENCY] to exercise a call option on the instrument.

(B) The [BANK] does not create at issuance of the instrument, through any action or communication, an expectation that the call option will be exercised.

(C) Prior to exercising the call option, or immediately thereafter, the [BANK] must either:

(*1*) Replace the instrument to be called with an equal amount of instruments that meet the criteria under paragraph (b) or (c) of this section;[3] or

(*2*) Demonstrate to the satisfaction of the [AGENCY] that following redemption, the [BANK] will continue to hold capital commensurate with its risk.

(vi) Redemption or repurchase of the instrument requires prior approval from the [AGENCY].

(vii) The [BANK] has full discretion at all times to cancel dividends or other capital distributions on the instrument without triggering an event of default, a requirement to make a payment-in-kind, or an imposition of other restrictions on the [BANK] except in relation to any capital distributions to holders of common stock.

(viii) Any capital distributions on the instrument are paid out of the [BANK]'s net income and retained earnings.

(ix) The instrument does not have a credit-sensitive feature, such as a dividend rate that is reset periodically based in whole or in part on the [BANK]'s credit quality, but may have a dividend rate that is adjusted periodically independent of the [BANK]'s credit quality, in relation to general market interest rates or similar adjustments.

(x) The paid-in amount is classified as equity under GAAP.

(xi) The [BANK], or an entity that the [BANK] controls, did not purchase or directly or indirectly fund the purchase of the instrument.

(xii) The instrument does not have any features that would limit or discourage additional issuance of capital by the [BANK], such as

[1] Voting common stockholders' equity, which is the most desirable capital element from a supervisory standpoint, generally should be the dominant element within common equity tier 1 capital.

[2] Capital instruments issued by mutual banking organizations may qualify as common equity tier 1 capital provided that the instruments meet all of the criteria in this section.

[3] Replacement can be concurrent with redemption of existing additional tier 1 capital instruments.

provisions that require the [BANK] to compensate holders of the instrument if a new instrument is issued at a lower price during a specified time frame.

(xiii) If the instrument is not issued directly by the [BANK] or by a subsidiary of the [BANK] that is an operating entity, the only asset of the issuing entity is its investment in the capital of the [BANK], and proceeds must be immediately available without limitation to the [BANK] or to the [BANK]'s top-tier holding company in a form which meets or exceeds all of the other criteria for additional tier 1 capital instruments.[4]

(xiv) For an advanced approaches [BANK], the governing agreement, offering circular, or prospectus of an instrument issued after January 1, 2013 must disclose that the holders of the instrument may be fully subordinated to interests held by the U.S. government in the event that the [BANK] enters into a receivership, insolvency, liquidation, or similar proceeding.

(2) Tier 1 minority interest, subject to the limitations in § ____.21(b) of this part, that is not included in the [BANK]'s common equity tier 1 capital.

(3) Any and all instruments that qualified as tier 1 capital under the [AGENCY]'s general risk-based capital rules under 12 CFR part 3, appendix A, 12 CFR 167 (OCC); 12 CFR part 208, appendix A, 12 CFR part 225, appendix A (Board); and 12 CFR part 325, appendix A, 12 CFR part 390, subpart Z (FDIC) as then in effect, that were issued under the Small Business Jobs Act of 2010[5] or prior to October 4, 2010, under the Emergency Economic Stabilization Act of 2008.[6]

(d) *Tier 2 Capital.* Tier 2 capital is the sum of tier 2 capital elements and any related surplus, minus regulatory adjustments and deductions in § ____.22 of this part. Tier 2 capital elements are:

(1) Instruments (plus related surplus) that meet the following criteria:

(i) The instrument is issued and paid in.

(ii) The instrument is subordinated to depositors and general creditors of the [BANK].

(iii) The instrument is not secured, not covered by a guarantee of the [BANK] or of an affiliate of the [BANK], and not subject to any other arrangement that legally or economically enhances the seniority of the instrument in relation to more senior claims.

(iv) The instrument has a minimum original maturity of at least five years. At the beginning of each of the last five years of the life of the instrument, the amount that is eligible to be included in tier 2 capital is reduced by 20 percent of the original amount of the instrument (net of redemptions) and is excluded from regulatory capital when remaining maturity is less than one year. In addition, the instrument must not have any terms or features that require, or create significant incentives for, the [BANK] to redeem the instrument prior to maturity.

(v) The instrument, by its terms, may be called by the [BANK] only after a minimum of five years following issuance, except that the terms of the instrument may allow it to be called sooner upon the occurrence of an event that would preclude the instrument from being included in tier 2 capital, or a tax event. In addition:

(A) The [BANK] must receive the prior approval of the [AGENCY] to exercise a call option on the instrument.

(B) The [BANK] does not create at issuance, through action or communication, an expectation the call option will be exercised.

(C) Prior to exercising the call option, or immediately thereafter, the [BANK] must either:

(*1*) Replace any amount called with an equivalent amount of an instrument that meets the criteria for regulatory capital under this section,[7] or

(*2*) Demonstrate to the satisfaction of the [AGENCY] that following redemption, the [BANK] would continue to hold an amount of capital that is commensurate with its risk.

(vi) The holder of the instrument must have no contractual right to accelerate payment of principal or interest on the instrument, except in the event of a receivership, insolvency, liquidation, or similar proceeding of the [BANK].

(vii) The instrument has no credit-sensitive feature, such as a dividend or interest rate that is reset periodically based in whole or in part on the [BANK]'s credit standing, but may have a dividend rate that is adjusted periodically independent of the [BANK]'s credit standing, in relation to general market interest rates or similar adjustments.

(viii) The [BANK], or an entity that the [BANK] controls, has not purchased and has not directly or indirectly funded the purchase of the instrument.

(ix) If the instrument is not issued directly by the [BANK] or by a subsidiary of the [BANK] that is an operating entity, the only asset of the issuing entity is its investment in the capital of the [BANK], and proceeds must be immediately available without limitation to the [BANK] or the [BANK]'s top-tier holding company in a form that meets or exceeds all the other criteria for tier 2 capital instruments under this section.[8]

(x) Redemption of the instrument prior to maturity or repurchase requires the prior approval of the [AGENCY].

(xi) For an advanced approaches [BANK], the governing agreement, offering circular, or prospectus of an instrument issued after January 1, 2013 must disclose that the holders of the instrument may be fully subordinated to interests held by the U.S. government in the event that the [BANK] enters into a receivership, insolvency, liquidation, or similar proceeding.

(2) Total capital minority interest, subject to the limitations set forth in § ____.21(c) of this part, that is not included in the [BANK]'s tier 1 capital.

(3) Allowance for loan and lease losses (ALLL) up to 1.25 percent of the [BANK]'s standardized total risk-weighted assets not including any amount of the ALLL (and excluding in the case of a market risk [BANK], its standardized market risk-weighted assets).

(4) Any instrument that qualified as tier 2 capital under the [AGENCY]'s general risk-based capital rules under 12 CFR part 3, appendix A, 12 CFR 167 (OCC); 12 CFR part 208, appendix A, 12 CFR part 225, appendix A (Board); 12 CFR part 325, appendix A, 12 CFR part 390 (FDIC) as then in effect, that were issued under the Small Business Jobs Act of 2010 (Pub. L. 111–240; 124 Stat. 2504 (2010)) or prior to October 4, 2010, under the Emergency Economic Stabilization Act of 2008 (Pub. L. 110–343, 122 Stat. 3765 (2008)).

(e) [*AGENCY] approval of a capital element.* (1) Notwithstanding the criteria for regulatory capital instruments set forth in this section, the [AGENCY] may find that a capital element may be included in a [BANK]'s common equity tier 1 capital, additional tier 1 capital, or tier 2 capital on a permanent or temporary basis.

(2) A [BANK] must receive [AGENCY] prior approval to include a capital element (as listed in this section) in its common equity tier 1 capital, additional tier 1 capital, or tier 2 capital unless the element:

(i) Was included in a [BANK]'s tier 1 capital or tier 2 capital as of May 19,

[4] *De minimis* assets related to the operation of the issuing entity can be disregarded for purposes of this criterion.

[5] Public Law 111–240; 124 Stat. 2504 (2010).

[6] Public Law 110–343, 122 Stat. 3765 (2008).

[7] Replacement of tier 2 capital instruments can be concurrent with redemption of existing tier 2 capital instruments.

[8] *De minimis* assets related to the operation of the issuing entity can be disregarded for purposes of this criterion.

2010 in accordance with the [AGENCY]'s risk-based capital rules that were effective as of that date and the underlying instrument continues to be includable under the criteria set forth in this section; or

(ii) Is equivalent in terms of capital quality and ability to absorb credit losses with respect to all material terms to a regulatory capital element described in a decision made publicly available under paragraph (e)(3) of this section by the [AGENCY].

(3) When considering whether a [BANK] may include a regulatory capital element in its common equity tier 1 capital, additional tier 1 capital, or tier 2 capital, the [AGENCY] will consult with the other federal banking agencies.

(4) After determining that a regulatory capital element may be included in a [BANK]'s common equity tier 1 capital, additional tier 1 capital, or tier 2 capital, the [AGENCY] will make its decision publicly available, including a brief description of the material terms of the regulatory capital element and the rationale for the determination.

§ ____.21 Minority interest.

(a) *Common equity tier 1 minority interest*[9] *includable in the common equity tier 1 capital of the [BANK].* For each consolidated subsidiary of a [BANK], the amount of common equity tier 1 minority interest the [BANK] may include in common equity tier 1 capital is equal to:

(1) The common equity tier 1 minority interest of the subsidiary; minus

(2) The percentage of the subsidiary's common equity tier 1 capital that is not owned by the [BANK], multiplied by the difference between the common equity tier 1 capital of the subsidiary and the lower of:

(i) The amount of common equity tier 1 capital the subsidiary must hold to not be subject to restrictions on capital distributions and discretionary bonus payments under § ____.11 of subpart B of this part or equivalent regulations established by the subsidiary's home country supervisor, or

(ii)(A) The standardized total risk-weighted assets of the [BANK] that relate to the subsidiary multiplied by

(B) The common equity tier 1 capital ratio the subsidiary must maintain to not be subject to restrictions on capital distributions and discretionary bonus payments under § ____.11 of subpart B of this part or equivalent regulations established by the subsidiary's home country supervisor.

(b) *Tier 1 minority interest includable in the tier 1 capital of the [BANK].* For each consolidated subsidiary of the [BANK], the amount of tier 1 minority interest the [BANK] may include in tier 1 capital is equal to:

(1) The tier 1 minority interest of the subsidiary; minus

(2) The percentage of the subsidiary's tier 1 capital that is not owned by the [BANK] multiplied by the difference between the tier 1 capital of the subsidiary and the lower of:

(i) The amount of tier 1 capital the subsidiary must hold to not be subject to restrictions on capital distributions and discretionary bonus payments under § ____.11 of subpart B of this part or equivalent standards established by the subsidiary's home country supervisor, or

(ii)(A) The standardized total risk-weighted assets of the [BANK] that relate to the subsidiary multiplied by

(B) The tier 1 capital ratio the subsidiary must maintain to avoid restrictions on capital distributions and discretionary bonus under § ____.11 of subpart B of this part or equivalent standards established by the subsidiary's home country supervisor.

(c) *Total capital minority interest includable in the total capital of the [BANK].* For each consolidated subsidiary of the [BANK], the amount of total capital minority interest the [BANK] may include in total capital is equal to:

(1) The total capital minority interest of the subsidiary; minus

(2) The percentage of the subsidiary's total capital that is not owned by the [BANK] multiplied by the difference between the total capital of the subsidiary and the lower of:

(i) The amount of total capital the subsidiary must hold to not be subject to restrictions on capital distributions and discretionary bonus payments under § ____.11 of subpart B of this part or equivalent standards established by the subsidiary's home country supervisor, or

(ii)(A) The standardized total risk-weighted assets of the [BANK] that relate to the subsidiary multiplied by

(B) The total capital ratio the subsidiary must maintain to avoid restrictions on capital distributions and discretionary bonus payments under § ____.11 of subpart B of this part or equivalent standards established by the subsidiary's home country supervisor.

§ ____.22 Regulatory capital adjustments and deductions.

(a) *Regulatory capital deductions from common equity tier 1 capital.* A [BANK] must deduct the following items from the sum of its common equity tier 1 capital elements:

(1) Goodwill, net of associated deferred tax liabilities (DTLs), in accordance with paragraph (e) of this section, and goodwill embedded in the valuation of a significant investment in the capital of an unconsolidated financial institution in the form of common stock, in accordance with paragraph (d) of this section.

(2) Intangible assets, other than MSAs, net of associated DTLs, in accordance with paragraph (e) of this section.

(3) Deferred tax assets (DTAs) that arise from operating loss and tax credit carryforwards net of any related valuation allowances and net of DTLs, in accordance with paragraph (e) of this section.

(4) Any gain-on-sale associated with a securitization exposure.

(5) For a [BANK] that is not an insured depository institution, any defined benefit pension fund asset, net of any associated DTL, in accordance with paragraph (e) of this section. With the prior approval of the [AGENCY], the [BANK] may reduce the amount to be deducted by the amount of assets of the defined benefit pension fund to which it has unrestricted and unfettered access, provided that the [BANK] includes such assets in its risk-weighted assets as if the [BANK] held them directly.[10]

(6) For a [BANK] subject to subpart E of this [PART], the amount of expected credit loss that exceeds its eligible credit reserves.

(7) Financial subsidiaries:

(i) A [BANK] must deduct the aggregate amount of its outstanding equity investment, including retained earnings, in its financial subsidiaries (as defined in 12 CFR 5.39 (OCC); 12 CFR 208.77 (Board); and 12 CFR 362.17 (FDIC)) and may not consolidate the assets and liabilities of a financial subsidiary with those of the national bank.

(ii) No other deduction is required under paragraph (c) of this section for investments in the capital instruments of financial subsidiaries.

(b) *Regulatory adjustments to common equity tier 1 capital.* A [BANK] must make the following adjustments to

[9] For purposes of the minority interest calculations, if the consolidated subsidiary issuing the capital is not subject to the same minimum capital requirements or capital conservation buffer framework of the [BANK], the [BANK] must assume that the minimum capital requirements and capital conservation buffer framework of the [BANK] apply to the subsidiary.

[10] For this purpose, unrestricted and unfettered access means that the excess assets of the defined benefit pension fund would be available to protect depositors or creditors of the [BANK] in the event of receivership, insolvency, liquidation, or similar proceeding.

the sum of common equity tier 1 capital elements:

(1) Deduct any unrealized gain and add any unrealized loss on cash flow hedges included in accumulated other comprehensive income (AOCI), net of applicable tax effects, that relate to the hedging of items that are not recognized at fair value on the balance sheet.

(2) Deduct any unrealized gain and add any unrealized loss related to changes in the fair value of liabilities that are due to changes in the [BANK]'s own credit risk. Advanced approaches [BANK]s must deduct the credit spread premium over the risk free rate for derivatives that are liabilities.

(c) *Deductions from regulatory capital related to investments in capital instruments.* (1) Investments in the [BANK]'s own capital instruments.

(i) A [BANK] must deduct investments in (including any contractual obligation to purchase) its own common stock instruments, whether held directly or indirectly, from its common equity tier 1 capital elements to the extent such instruments are not excluded from regulatory capital under § ____.20(b)(1) of this part.

(ii) A [BANK] must deduct investments in (including any contractual obligation to purchase) its own additional tier 1 capital instruments, whether held directly or indirectly, from its additional tier 1 capital elements.

(iii) A [BANK] must deduct investments in (including any contractual obligation to purchase) its own tier 2 capital instruments, whether held directly or indirectly, from its tier 2 capital elements.

(iv) For any deduction required under this section, gross long positions may be deducted net of short positions in the same underlying instrument only if the short positions involve no counterparty risk.

(v) For any deduction required under this section, a [BANK] must look through any holdings of index securities to deduct investments in its own capital instruments. In addition:

(A) Gross long positions in investments in a [BANK]'s own regulatory capital instruments resulting from holdings of index securities may be netted against short positions in the same index;

(B) Short positions in index securities that are hedging long cash or synthetic positions can be decomposed to recognize the hedge; and

(C) The portion of the index that is composed of the same underlying exposure that is being hedged may be used to offset the long position if both the exposure being hedged and the short position in the index are covered positions under subpart F of this part, and the hedge is deemed effective by the banking organization's internal control processes.

(2) *Corresponding deduction approach.* For purposes of this subpart, the corresponding deduction approach is the methodology used for the deductions from regulatory capital related to reciprocal cross holdings, non-significant investments in the capital of unconsolidated financial institutions, and non-common stock significant investments in the capital of unconsolidated financial institutions. Under the corresponding deduction approach, a [BANK] must make any such deductions from the component of capital for which the underlying instrument would qualify if it were issued by the [BANK] itself. In addition:

(i) If the [BANK] does not have a sufficient amount of a specific component of capital to effect the required deduction, the shortfall must be deducted from the next higher (that is, more subordinated) component of regulatory capital.

(ii) If the investment is in the form of an instrument issued by a non-regulated financial institution, the [BANK] must treat the instrument as:

(A) A common equity tier 1 capital instrument if it is common stock or represents the most subordinated claim in liquidation of the financial institution; and

(B) An additional tier 1 capital instrument if it is subordinated to all creditors of the financial institution and is only senior in liquidation to common shareholders.

(iii) If the investment is in the form of an instrument issued by a regulated financial institution and the instrument does not meet the criteria for common equity tier 1, additional tier 1 or tier 2 capital instruments under § ____.20 of this part, the [BANK] must treat the instrument as:

(A) A common equity tier 1 capital instrument if it is common stock included in GAAP equity or represents the most subordinated claim in liquidation of the financial institution;

(B) An additional tier 1 capital instrument if it is included in GAAP equity, subordinated to all creditors of the financial institution, and senior in a receivership, insolvency, liquidation, or similar proceeding only to common shareholders; and

(C) A tier 2 capital instrument if it is not included in GAAP equity but considered regulatory capital by the primary regulator of the financial institution.

(3) *Reciprocal crossholdings in the capital of financial institutions.* A [BANK] must deduct investments in the capital of other financial institutions it holds reciprocally, where such reciprocal crossholdings result from a formal or informal arrangement to swap, exchange, or otherwise intend to hold each other's capital instruments, by applying the corresponding deduction approach.

(4) *Non-significant investments in the capital of unconsolidated financial institutions.* (i) A [BANK] must deduct its non-significant investments in the capital of unconsolidated financial institutions that, in the aggregate, exceed 10 percent of the sum of the [BANK]'s common equity tier 1 capital elements minus all deductions from and adjustments to common equity tier 1 capital elements required under paragraphs (a) through (c)(3) of this section (the 10 percent threshold for non-significant investments) by applying the corresponding deduction approach.[11]

(ii) The amount to be deducted under this section from a specific capital component is equal to:

(A) The amount of a [BANK]'s non-significant investments exceeding the 10 percent threshold for non-significant investments multiplied by

(B) The ratio of the non-significant investments in unconsolidated financial institutions in the form of such capital component to the amount of the [BANK]'s total non-significant investments in unconsolidated financial institutions.

(iii) Any non-significant investments in the capital of unconsolidated financial institutions that do not exceed the 10 percent threshold for non-significant investments under this section must be assigned the appropriate risk weight under subpart D, E, or F of this part, as applicable.

(5) *Significant investments in the capital of unconsolidated financial institutions that are not in the form of common stock.* The [BANK] must deduct its significant investments in the capital of unconsolidated financial institutions that are not in the form of common stock by applying the corresponding deduction approach.[12]

[11] With prior written approval of the [AGENCY], for the period of time stipulated by the [AGENCY], a [BANK] is not required to deduct exposures to the capital instruments of unconsolidated financial institutions pursuant to this section if the investment is made in connection with the [BANK] providing financial support to a financial institution in distress.

[12] With prior written approval of the [AGENCY], for the period of time stipulated by the [AGENCY], a [BANK] is not required to deduct exposures to the capital instruments of unconsolidated financial

(d) *Items subject to the 10 and 15 percent common equity tier 1 capital deduction thresholds.* (1) A [BANK] must deduct from common equity tier 1 capital elements the amount of each of the following items that, individually, exceeds 10 percent of the sum of the [BANK]'s common equity tier 1 capital elements, less adjustments to and deductions from common equity tier 1 capital required under paragraphs (a) through (c) of this section (the 10 percent common equity tier 1 capital deduction threshold): [13]

(i) DTAs arising from temporary differences that the [BANK] could not realize through net operating loss carrybacks, net of any related valuation allowances and net of DTLs, in accordance with paragraph (e) of this section.[14]

(ii) MSAs net of associated DTLs, in accordance with paragraph (e) of this section.

(iii) Significant investments in the capital of unconsolidated financial institutions in the form of common stock net of associated DTLs, in accordance with paragraph (e) of this section.[15]

(2) A [BANK] must deduct from common equity tier 1 capital elements the amount of the items listed in paragraph (d)(1) of this section that are not deducted as a result of the application of the 10 percent common equity tier 1 capital deduction threshold, and that, in aggregate, exceeds 17.65 percent of the sum of the [BANK]'s common equity tier 1 capital elements, minus adjustments to and deductions from common equity tier 1 capital required under paragraphs (a) through (c) of this section, minus the items listed in paragraph (d)(1) of this section (the 15 percent common equity tier 1 capital deduction threshold).[16]

(3) If the total amount of MSAs deducted under paragraphs (d)(1) and (2) of this section is less than 10 percent of the fair value of MSAs, a [BANK] must deduct an additional amount of MSAs equal to the difference between 10 percent of the fair value of MSAs and the amount of MSAs deducted under paragraphs (d)(1) and (2).

(4) The amount of the items in paragrapn (d)(1) of this section that is not deducted from common equity tier 1 capital pursuant to this section must be included in the risk-weighted assets of the [BANK] and assigned a 250 percent risk weight.

(e) *Netting of DTLs against assets subject to deduction.* (1) Except as described in paragraph (e)(3) of this section, netting of DTLs against assets that are subject to deduction under § ____.22 is permitted if the following conditions are met:

(i) The DTL is associated with the asset.

(ii) The DTL would be extinguished if the associated asset becomes impaired or is derecognized under GAAP.

(2) A DTL can only be netted against a single asset.

(3) The amount of DTAs that arise from operating loss and tax credit carryforwards, net of any related valuation allowances, and of DTAs arising from temporary differences that the [BANK] could not realize through net operating loss carrybacks, net of any related valuation allowances, may be netted against DTLs (that have not been netted against assets subject to deduction pursuant to paragraph (e)(1) of this section subject to the following conditions:

(i) Only the DTAs and DTLs that relate to taxes levied by the same taxation authority and that are eligible for offsetting by that authority may be offset for purposes of this deduction.

(ii) The amount of DTLs that the [BANK] nets against DTAs that arise from operating loss and tax credit carryforwards, net of any related valuation allowances, and against DTAs arising from temporary differences that the [BANK] could not realize through net operating loss carrybacks, net of any related valuation allowances, must be allocated in proportion to the amount of DTAs that arise from operating loss and tax credit carryforwards (net of any related valuation allowances, but before any offsetting of DTLs) and of DTAs arising from temporary differences that the [BANK] could not realize through net operating loss carrybacks (net of any related valuation allowances, but before any offsetting of DTLs), respectively.

(f) *Treatment of assets that are deducted.* A [BANK] need not include in risk-weighted assets any asset that is deducted from regulatory capital under this section.

(g) *Items subject to a 1250 percent risk weight.* A [BANK] must apply a 1250 percent risk weight to the portion of a CEIO that does not constitute an after-tax-gain-on-sale.

Subpart G—Transition Provisions

§ ____.300 Transitions.

(a) *Common equity tier 1 and tier 1 capital minimum ratios.* From January 1, 2013 through December 31, 2015, a [BANK] must calculate its capital ratios in accordance with this subpart and maintain at least the transition minimum capital ratios set forth in Table 1.

TABLE 1 TO § ____.300

Transition Minimum Common Equity Tier 1 and Tier 1 Capital Ratios

Transition period	Common equity tier 1 capital ratio	Tier 1 capital ratio
Calendar year 2013	3.5	4.5
Calendar year 2014	4.0	5.5
Calendar year 2015	4.5	6.0

institutions pursuant to this section if the investment is made in connection with the [BANK] providing financial support to a financial institution in distress.

[13] For purposes of calculating the 10 and 15 percent common equity tier 1 capital deduction thresholds, any goodwill embedded in the valuation of a significant investments in the capital of unconsolidated financial institutions in the form of common stock that is deducted under § ____.22(a)(1) can be excluded.

[14] A [BANK] is not required to deduct from the sum of its common equity tier 1 capital elements net DTAs arising from timing differences that the [BANK] could realize through net operating loss carrybacks. The [BANK] must risk weight these assets at 100 percent. Likewise, for a [BANK] that is a member of a consolidated group for tax purposes, the amount of DTAs that could be realized through net operating loss carrybacks may not exceed the amount that the [BANK] could reasonably expect to have refunded by its parent holding company.

[15] With the prior written approval of the [AGENCY], for the period of time stipulated by the [AGENCY], a [BANK] is not required to deduct exposures to the capital instruments of unconsolidated financial institutions pursuant to this section if the investment is made in connection with the [BANK] providing financial support to a financial institution in distress.

[16] For purposes of calculating the 15 percent common equity tier 1 capital deduction threshold, any goodwill that has already been deducted under § ____.22(a)(1) can be excluded from the amount of the significant investments in the capital of unconsolidated financial institutions in the form of common stock.

(b) *Capital conservation and countercyclical capital buffer.* From January 1, 2013 through December 31, 2018, a [BANK] is subject to limitations on capital distributions and discretionary bonus payments with respect to its capital conservation buffer and any applicable countercyclical capital buffer amount, as set forth in this section.

(1) From January 1, 2013 through December 31, 2015, a [BANK] is not subject to limits on capital distributions and discretionary bonus payments under § ____.11 of subpart B of this part notwithstanding the amount of its capital conservation buffer.

(2) From January 1, 2016 through December 31, 2018:

(i) A [BANK] that maintains a capital conservation buffer above 0.625 percent during calendar year 2016, above 1.25 percent during calendar year 2017, and above 1.875 percent during calendar year 2018 is not subject to limits on capital distributions and discretionary bonus payments under § ____.11 of subpart B.

(ii) A [BANK] that maintains a capital conservation buffer that is less than 0.625 percent during calendar year 2016, less than 1.25 percent during calendar year 2017, and less than 1.875 percent during calendar year 2018 cannot make capital distributions and discretionary bonus payments above the maximum payout amount (as defined under § ____.11 of subpart B of this part) as described in Table 2.

TABLE 2 TO § ____.300

Transition period	Capital conservation buffer (assuming a countercyclical capital buffer amount of zero)	Maximum payout ratio (as a percentage of eligible retained income)
Calendar year 2016	Greater than 0.625 percent	No payout ratio limitation applies under this section.
	Less than or equal to 0.625 percent, and greater than 0.469 percent.	60 percent.
	Less than or equal to 0.469 percent, and greater than 0.313 percent.	40 percent.
	Less than or equal to 0.313 percent, and greater than 0.156 percent.	20 percent.
	Less than or equal to 0.156 percent	0 percent.
Calendar year 2017	Greater than 1.25 percent	No payout ratio limitation applies under this section.
	Less than or equal to 1.25 percent, and greater than 0.938 percent.	60 percent.
	Less than or equal to 0.938 percent, and greater than 0.625 percent.	40 percent.
	Less than or equal to 0.625 percent, and greater than 0.313 percent.	20 percent.
	Less than or equal to 0.313 percent	0 percent.
Calendar year 2018	Greater than 1.875 percent	No payout ratio limitation applies under this section.
	Less than or equal to 1.875 percent, and greater than 1.406 percent.	60 percent.
	Less than or equal to 1.406 percent, and greater than 0.938 percent.	40 percent.
	Less than or equal to 0.938 percent, and greater than 0.469 percent.	20 percent.
	Less than or equal to 0.469 percent	0 percent.

(c) *Regulatory capital adjustments and deductions.* From January 1, 2013 through December 31, 2017, a [BANK] must make the capital adjustments and deductions in § ____.22 of subpart C of this part in accordance with the transition requirements in paragraph (c) of this part. Beginning on January 1, 2018, a [BANK] must make all regulatory capital adjustments and deductions in accordance with § ______.22 of subpart C of this part.

(1) *Transition deductions from common equity tier 1 capital.* From January 1, 2013 through December 31, 2017, a [BANK] must allocate the deductions required under § ____.22(a) of subpart C of this part from common equity tier 1 or tier 1 capital elements as described below.

(i) A [BANK] must deduct goodwill (§ ____.22(a)(1) of subpart C of this part), DTAs that arise from operating loss and tax credit carryforwards (§ ____.22(a)(3) of subpart C), gain-on-sale associated with a securitization exposure (§ ____.22(a)(4) of subpart C), defined benefit pension fund assets (§ ____.22(a)(5) of subpart C), and expected credit loss that exceeds eligible credit reserves (for [BANK]s subject to subpart E of this [PART]) (§ ____.22(a)(6) of subpart C), from common equity tier 1 and additional tier 1 capital in accordance with the percentages set forth in Table 3.

TABLE 3 TO § ____.300

Transition period	*Transition deductions under § ____.22(a)(1) of subpart C* of this part	*Transition deductions under § ____.22(a)(3)–(6) of subpart C* of this part	
	Percentage of the deductions from common equity tier 1 capital	Percentage of the deductions from common equity tier 1 capital	Percentage of the deductions from tier 1 capital
Calendar year 2013	100	0	100
Calendar year 2014	100	20	80
Calendar year 2015	100	40	60
Calendar year 2016	100	60	40
Calendar year 2017	100	80	20
Calendar year 2018, and thereafter	100	100	0

(ii) A [BANK] must deduct from common equity tier 1 capital any intangible assets other than goodwill and MSAs in accordance with the percentages set forth in Table 4.

(iii) A [BANK] must apply a 100 percent risk-weight to the aggregate amount of intangible assets other than goodwill and MSAs that are not required to be deducted from common equity tier 1 capital under this section.

TABLE 4 TO § ____.300

Transition period	*Transition deductions under § ____.22(a)(2) of subpart C—Percentage of the deductions from common equity tier 1 capital*
Calendar year 2013	0
Calendar year 2014	20
Calendar year 2015	40
Calendar year 2016	60
Calendar year 2017	80
Calendar year 2018 and thereafter	100

(2) *Transition adjustments to common equity tier 1 capital.* From January 1, 2013 through December 31, 2017, a [BANK] must allocate the regulatory adjustments related to changes in the fair value of liabilities due to changes in the [BANK]'s own credit risk (§ ____ 22(b)(2) of subpart C of this part) between common equity tier 1 capital and tier 1 capital in accordance with the percentages described in Table 5.

(i) If the aggregate amount of the adjustment is positive, the [BANK] must allocate the deduction between common equity tier 1 and tier 1 capital in accordance with Table 5.

(ii) If the aggregate amount of the adjustment is negative, the [BANK] must add back the adjustment to common equity tier 1 capital or to tier 1 capital, in accordance with Table 5.

TABLE 5 TO § ____.300

Transition period	*Transition adjustments under § ____.22(b)(2) of subpart C* of this part	
	Percentage of the adjustment applied to common equity tier 1 capital	Percentage of the adjustment applied to tier 1 capital
Calendar year 2013	0	100
Calendar year 2014	20	80
Calendar year 2015	40	60
Calendar year 2016	60	40
Calendar year 2017	80	20
Calendar year 2018, and thereafter	100	0

(3) *Transition adjustments to AOCI.* From January 1, 2013 through December 31, 2017, a [BANK] must adjust common equity tier 1 capital with respect to the aggregate amount of:

(i) Unrealized gains on AFS equity securities, plus

(ii) Net unrealized gains or losses on AFS debt securities, plus

(iii) Accumulated net unrealized gains and losses on defined benefit pension obligations, plus

(iv) Accumulated net unrealized gains or losses on cash flow hedges related to items that are reported on the balance sheet at fair value included in AOCI (the transition AOCI adjustment amount) as reported on the [BANK's] [REGULATORY REPORT] as follows:

(A) If the transition AOCI adjustment amount is positive, the appropriate amount must be deducted from common equity tier 1 capital in accordance with Table 6.

(B) If the transition AOCI adjustment amount is negative, the appropriate amount must be added back to common equity tier 1 capital in accordance with Table 6.

TABLE 6 TO § ____.300

Transition period	Percentage of the transition AOCI adjustment amount to be applied to common equity tier 1 capital
Calendar year 2013	100
Calendar year 2014	80
Calendar year 2015	60
Calendar year 2016	40
Calendar year 2017	20
Calendar year 2018 and thereafter	0

(iii) A [BANK] may include a certain amount of unrealized gains on AFS equity securities in tier 2 capital during the transition period in accordance with Table 7.

TABLE 7 TO § ____.300

Transition period	Percentage of unrealized gains on AFS equity securities that may be included in tier 2 capital
Calendar year 2013	45
Calendar year 2014	36
Calendar year 2015	27
Calendar year 2016	18
Calendar year 2017	9
Calendar year 2018 and thereafter	0

(4) *Additional deductions from regulatory capital.* (i) From January 1, 2013 through December 31, 2017, a [BANK] must use Table 8 to determine the amount of investments in capital instruments and the items subject to the 10 and 15 percent common equity tier 1 capital deduction thresholds (§ ____.22(d) of subpart C of this part) (that is, MSAs, DTAs arising from temporary differences that the [BANK] could not realize through net operating loss carrybacks, and significant investments in the capital of unconsolidated financial institutions in the form of common stock) that must be deducted from common equity tier 1.

(ii) From January 1, 2013 through December 31, 2017, a [BANK] must apply a 100 percent risk-weight to the aggregate amount of the items subject to the 10 and 15 percent common equity tier 1 capital deduction thresholds that are not deducted under this section. As set forth in § ____.22(d)(4) of subpart C of this part, beginning on January 1, 2018, a [BANK] must apply a 250 percent risk-weight to the aggregate amount of the items subject to the 10 and 15 percent common equity tier 1 capital deduction thresholds that are not deducted from common equity tier 1 capital.

TABLE 8 TO § ____. 300

Transition period	Transition deductions under § ____.22(c) and (d) of subpart C of this part—Percentage of the deductions from common equity tier 1 capital
Calendar year 2013	0
Calendar year 2014	20
Calendar year 2015	40
Calendar year 2016	60
Calendar year 2017	80
Calendar year 2018 and thereafter	100

(iii) For purposes of calculating the transition deductions in this section, from January 1, 2013 through December 31, 2017, a [BANK]'s 15 percent common equity tier 1 capital deduction threshold for MSAs, DTAs arising from temporary differences that the [BANK] could not realize through net operating loss carrybacks, and significant investments in the capital of unconsolidated financial institutions in the form of common stock is equal to 15 percent of the sum of the [BANK]'s common equity tier 1 elements, after deductions required under § ____.22(a) through (c) of subpart C of this part (transition 15 percent common equity tier 1 capital deduction threshold).

(iv) If the amount of MSAs the [BANK] deducts after the application of the appropriate thresholds is less than 10 percent of the fair value of the [BANK]'s MSAs, the [BANK] must deduct an additional amount of MSAs so that the total amount of MSAs deducted is at least 10 percent of the fair value of the [BANK]'s MSAs.

(v) Beginning on January 1, 2018, a [BANK] must calculate the 15 percent common equity tier 1 capital deduction threshold in accordance with § ____.22(d) of subpart C of this part.

(d) *Transition arrangements for capital instruments.* (1) A depository institution holding company with total consolidated assets greater than or equal to $15 billion as of December 31, 2009 (depository institution holding company of $15 billion or more) may include in capital the percentage indicated in Table 9 of the aggregate outstanding principal amount of debt or equity instruments issued before May 19, 2010, that do not meet the criteria in § ____.20 of subpart C of this part for additional tier 1 or tier 2 capital instruments (non-qualifying capital instruments), but that were included in tier 1 or tier 2 capital, respectively, as of May 19, 2010.

(i) The [BANK] must apply Table 9 separately to additional tier 1 and tier 2 non-qualifying capital instruments.

(ii) The amount of non-qualifying capital instruments that may not be included in additional tier 1 capital under this section may be included in tier 2 capital without limitation, provided the instrument meets the criteria for tier 2 capital under § ____.20(d) of subpart C of this part.

(iii) A depository institution holding company of $15 billion or more that acquires either a depository institution holding company with total consolidated assets of less than $15 billion as of December 31, 2009 (depository institution holding company under $15 billion) or a depository institution holding company that was a mutual holding company as of May 19, 2010, may include in regulatory capital non-qualifying capital instruments issued prior to May 19, 2010, by the acquired organization only to the extent provided in Table 9.

(iv) If a depository institution holding company under $15 billion acquires a depository institution holding company under $15 billion or a 2010 MHC and the resulting organization has total consolidated assets of $15 billion or more as reported on the resulting organization's FR Y–9C for the period in which the transaction occurred, the resulting organization may include in regulatory capital non-qualifying capital instruments issued prior to May 19, 2010 (2010 MHC) to the extent provided in Table 9.

TABLE 9 TO § ____. 300

Transition period (Calendar year)	Percentage of non-qualifying capital instruments included in additional tier 1 or tier 2 capital for depository institution holding companies of $15 billion or more
Calendar year 2013	75
Calendar year 2014	50
Calendar year 2015	25
Calendar year 2016 and thereafter	0

(2) Depository institution holding companies under $15 billion, depository institutions, and 2010 MHCs that are not subject to paragraph (d)(1)(iii) of this section may include in regulatory capital non-qualifying capital instruments issued prior to May 19, 2010 subject to the transition

arrangements described in paragraph (d)(2).

(i) Non-qualifying capital instruments issued before September 12, 2010, that were outstanding as of January 1, 2013 may be included in a [BANK]'s capital up to the percentage of the outstanding principal amount of such non-qualifying capital instruments as of January 1, 2013 in accordance with Table 10.

(ii) Table 10 applies separately to additional tier 1 and tier 2 non-qualifying capital instruments.

(iii) The amount of non-qualifying capital instruments that cannot be included in additional tier 1 capital under this section may be included in the tier 2 capital, provided the instruments meet the criteria for tier 2 capital instruments under § ____.20(d) of subpart C of this part.

TABLE 10 TO § ____. 300

Transition period (Calendar year)	*Percentage of non-qualifying capital instruments included in additional tier 1 or tier 2 capital for depository institution holding companies under $15 billion, depository institutions, and 2010 MHCs*
Calendar year 2013	90
Calendar year 2014	80
Calendar year 2015	70
Calendar year 2016	60
Calendar year 2017	50
Calendar year 2018	40
Calendar year 2019	30
Calendar year 2020	20
Calendar year 2021	10
Calendar year 2022 and thereafter	0

(3) *Transitional arrangements for minority interest.* (i) *Surplus minority interest.* From January 1, 2013 through December 31, 2018, a [BANK] may include in common equity tier 1 capital, tier 1 capital, or total capital the portion of the common equity tier 1, tier 1 and total capital minority interest outstanding as of January 1, 2013 that exceeds any common equity tier 1, tier 1 or total capital minority interest includable under section 21 (surplus minority interest), respectively, in accordance with Table 11.

(ii) *Non-qualifying minority interest.* From January 1, 2013 through December 31, 2018, a [BANK] may include in tier 1 capital or total capital the portion of the instruments issued by a consolidated subsidiary that qualified as tier 1 capital or total capital of the [BANK] as of December 31, 2012 but that do not qualify as tier 1 capital or total capital minority interest as of January 1, 2013 (non-qualifying minority interest) in accordance with Table 11.

TABLE 11 TO § ____. 300

Transition period	*Percentage of the amount of surplus or non-qualifying minority interest that can be included in regulatory capital during the transition period*
Calendar year 2013	100
Calendar year 2014	80
Calendar year 2015	60
Calendar year 2016	40
Calendar year 2017	20
Calendar year 2018 and thereafter	0

End of Common Rule

List of Subjects

12 CFR Part 3

Administrative practice and procedure, Capital, National banks, Reporting and recordkeeping requirements, Risk.

12 CFR Part 5

Administrative practice and procedure, National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 6

National banks.

12 CFR Part 165

Administrative practice and procedure, Savings associations.

12 CFR Part 167

Capital, Reporting and recordkeeping requirements, Risk, Savings associations.

12 CFR Part 208

Confidential business information, Crime, Currency, Federal Reserve System, Mortgages, reporting and recordkeeping requirements, Securities.

12 CFR Part 217

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

12 CFR Part 325

Administrative practice and procedure, Banks, banking, Capital Adequacy, Reporting and recordkeeping requirements, Savings associations, State non-member banks.

12 CFR Part 362

Administrative practice and procedure, Authority delegations (Government agencies), Bank deposit insurance, Banks, banking, Investments, Reporting and recordkeeping requirements.

The adoption of the final common rules by the agencies, as modified by the 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 and under the authority of 12 U.S.C. 93a and 5412(b)(2)(B), the Office of the Comptroller of the Currency proposes to amend part 3 of chapter I of title 12, Code of Federal Regulations as follows:

PART 3—CAPITAL ADEQUACY STANDARDS

1. The authority citation for part 3 is revised to read as follows:

Authority: 12 U.S.C. 93a, 161, 1462, 1462a, 1463, 1464, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, 3909, and 5412(b)(2)(B).

2a. Revise the heading of part 3 to read as set forth above.

Subpart A [Removed]

2b. Remove subpart A, consisting of §§ 3.1 through 3.4.

Subpart B [Removed]

2c. Remove subpart B, consisting of §§ 3.5 through 3.8.

Subparts C through E [Redesignated as Subparts H through J]

3. Redesignate subparts C through E as subparts H through J.

4. Add subparts A through C and G as set forth at the end of the common preamble.

§ 3.100 [Redesignated as § 3.600]

5a. Redesignate § 3.100 in newly redesignated subpart J as § 3.600.

Subpart K—Definition of Capital for Other Statutory Purposes

5b. Add subpart K, consisting of newly redesignated § 3.600, with the heading set forth above.

Appendices A, B, and C to Part 3 [Removed]

6. Remove appendices A through C.

Subparts A through C and G [Amended]

7. Subparts A through C and G, as set forth at the end of the common preamble, are amended as set follows:

i. Remove ''[AGENCY]'' and add ''OCC'' in its place, wherever it appears;

ii. Remove ''[BANK]'' and add ''national bank or Federal savings association'' in its place, wherever it appears;

iii. Remove ''[BANKS]'' and ''[BANK]s'' and add ''national banks and Federal savings associations'' in their places, wherever they appear;

iv. Remove ''[BANK]'s'' and ''[BANK'S]'' and add ''national bank's and Federal savings association's'' in their places, wherever they appear;

v. Remove ''[PART]'' and add ''Part 3'' in its place, wherever it appears; and

vi. Remove ''[REGULATORY REPORT]'' and add ''Call Report'' in its place, wherever it appears.

8. Section 3.2, as set forth at the end of the common preamble, is amended by adding the following definitions in alphabetical order:

§ 3.2 Definitions.

* * * * *

Core capital means Tier 1 capital, as calculated in accordance with § XX of subpart XX.

* * * * *

Federal savings association means an insured Federal savings association or an insured Federal savings bank chartered under section 5 of the Home Owners' Loan Act of 1933.

* * * * *

Tangible capital means the amount of core capital (Tier 1 capital), as calculated in accordance with subpart B of this part, plus the amount of outstanding perpetual preferred stock (including related surplus) not included in Tier 1 capital.

* * * * *

9. Section 3.10, as set forth at the end of the common preamble, is amended by adding paragraphs (a)(6), (b)(5), and (c)(5) to read as follows:

§ 3.10 Minimum Capital Requirements.

(a) * * *

(6) For Federal savings associations, a tangible capital ratio of 1.5 percent.

(b) * * *

(5) *Federal savings association tangible capital ratio.* A Federal savings association's tangible capital ratio is the ratio of the Federal savings association's core capital (Tier 1 capital) to total adjusted assets as calculated under subpart B of this part.

(c) * * *

(5) *Federal savings association tangible capital ratio.* A Federal savings association's tangible capital ratio is the ratio of the Federal savings association's core capital (Tier 1 capital) to total adjusted assets as calculated under subpart B of this part.

* * * * *

10. Section 3.22, as set forth at the end of the common preamble, is amended by adding paragraph (a)(8) to read as follows:

§ 3.22 Regulatory capital adjustments and deductions.

(a) * * *

(8)(i) A Federal savings association must deduct the aggregate amount of its outstanding investments, (both equity and debt) as well as retained earnings in subsidiaries that are not includable subsidiaries as defined in paragraph (a)(8)(iv) of this section (including those subsidiaries where the Federal savings association has a minority ownership interest) and may not consolidate the assets and liabilities of the subsidiary with those of the Federal savings association. Any such deductions shall be deducted from common equity tier 1 except as provided in paragraphs (a)(8)(ii) and (iii) of this section.

(ii) If a Federal savings association has any investments (both debt and equity) in one or more subsidiaries engaged in any activity that would not fall within the scope of activities in which includable subsidiaries as defined in paragraph (a)(8)(iv) of this section may engage, it must deduct such investments from assets and, thus, common equity tier 1 in accordance with paragraph (a)(8)(i) of this section. The Federal savings association must first deduct from assets and, thus, common equity tier 1 the amount by which any investments in such subsidiary(ies) exceed the amount of such investments held by the Federal savings association as of April 12, 1989. Next the Federal savings association must deduct from assets and, thus, common equity tier 1 the Federal savings association's investments in and extensions of credit to the subsidiary on the date as of which the savings association's capital is being determined.

(iii) If a Federal savings association holds a subsidiary (either directly or through a subsidiary) that is itself a domestic depository institution, the OCC may, in its sole discretion upon determining that the amount of Common Equity Tier 1 that would be required would be higher if the assets and liabilities of such subsidiary were consolidated with those of the parent Federal savings association than the amount that would be required if the parent Federal savings association's investment were deducted pursuant to paragraphs (a)(8)(i) and (ii) of this section, consolidate the assets and liabilities of that subsidiary with those of the parent Federal savings association in calculating the capital adequacy of the parent Federal savings association, regardless of whether the subsidiary would otherwise be an includable subsidiary as defined in paragraph (a)(8)(iv) of this section.

(iv) For purposes of this section, the term includable subsidiary means a subsidiary of a Federal savings association that is:

(A) Engaged solely in activities not impermissible for a national bank;

(B) Engaged in activities not permissible for a national bank, but only if acting solely as agent for its customers and such agency position is clearly documented in the Federal savings association's files;

(C) Engaged solely in mortgage-banking activities;

(D)(*1*) Itself an insured depository institution or a company the sole investment of which is an insured depository institution, and

(*2*) Was acquired by the parent Federal savings association prior to May 1, 1989; or

(E) A subsidiary of any Federal savings association existing as a Federal savings association on August 9, 1989 that

(*1*) Was chartered prior to October 15, 1982, as a savings bank or a cooperative bank under state law, or

(*2*) Acquired its principal assets from an association that was chartered prior to October 15, 1982, as a savings bank or a cooperative bank under state law.

* * * * *

Subpart H—Establishment of Minimum Capital Ratios for an Individual National Bank or Individual Federal Savings Association

11. Revise the heading of newly redesignated subpart H as set forth above.

§ 3.300 [Amended]

12. Amend § 3.300, as set forth at the end of the common preamble, by:

a. Removing the word ''bank'', wherever it appears, and adding in its place the phrase ''national bank or Federal savings association''; and

b. Removing ''§ 3.6'', wherever it appears, and adding in its place the phrase ''subpart B of this part''.

§ 3.301 [Amended]

13. Amend § 3.301, as set forth at the end of the common preamble, by removing the word ''bank'', wherever it appears, and adding in its place the phrase ''national bank or Federal savings association''.

§ 3.302 [Amended]

14. Amend § 3.302, as set forth at the end of the common preamble, by:

a. Removing the word ''bank'', wherever it appears, and adding in its place the phrase ''national bank or Federal savings association''; and

b. Removing the word ''bank's'', wherever it appears, and adding in its place the phrase ''national bank's or Federal savings association's''.

§ 3.303 [Amended]

15. Amend § 3.303, as set forth at the end of the common preamble, by:

a. Removing from paragraph (a)''§ 3.6'' and adding in its place ''subpart B of this part'';

b. Removing the word ''bank'', wherever it appears, and adding in its place the phrase ''national bank or Federal savings association'';

c. Removing the word ''bank's'', wherever it appears, and adding in its place the phrase ''national bank's or Federal savings association's'';

d. Removing the word ''Office'', wherever it appears, and adding in its place the word ''OCC'';

e. Removing the word ''Office's'', wherever it appears, and adding in its place the word ''OCC's''; and

§ 3.304 [Amended]

16. Amend § 3.304, as set forth at the end of the common preamble, by:

a. Removing the word ''bank'' and adding in its place the phrase ''national bank or Federal savings association''; and

b. Adding the phrase ''for national banks and 12 CFR 109.1 through 109.21 for Federal savings associations'' after ''19.21''.

§ 3.400 [Amended]

17. Section 3.400, as set forth at the end of the common preamble, is amended:

a. In the first sentence, by removing the word ''bank'', wherever it appears, and adding in its place the phrase ''national bank or Federal savings association'', and removing the phrase ''subpart C'' and adding in its place the phrase ''subpart H''; and

b. In the second sentence, by removing the phrase ''subpart E'' and adding in its place the phrase ''subpart J''; and

c. In the third sentence by adding the phrase ''or Federal savings association's'' after the word ''bank's'', and removing the phrase ''§ 3.6(a) or (b)'' and adding in its place ''subpart B of this part''.

§ 3.500 [Amended]

18. Amending § 3.500, as set forth at the end of the common preamble, by:

a. Removing the word ''bank'', wherever it appears, and adding in its place the phrase ''national bank or Federal savings association'';

b. Removing the word ''Office'', wherever it appears, and adding in its place the word ''OCC''; and

c. In the introductory text, removing the phrase ''subpart C'' and adding in its place the phrase ''subpart H''.

§ 3.501 [Amended]

19. Amending, as set forth at the end of the common preamble, § 3.501 by:

a. Removing the word ''bank'', and adding in its place the phrase ''national bank or Federal savings association''; and

b. Removing the word ''Office'', and adding in its place the word ''OCC''.

§ 3.502 [Amended]

20. Amending, as set forth at the end of the common preamble, § 3.502 by:

a. Removing the word ''bank'', and adding in its place the phrase ''national bank or Federal savings association''; and

b. Removing the word ''Office'', and adding in its place the word ''OCC''.

§ 3.503 [Amended]

21. Amending, as set forth at the end of the common preamble, § 3.503 by:

a. Removing the word ''bank's'', wherever it appears, and adding in its place the phrase ''national bank's or Federal savings association's''; and

b. Removing the word ''Office'', and adding in its place the word ''OCC''.

§ 3.504 [Amended]

22a. Amend, as set forth at the end of the common preamble, § 3.504 by:

a. Removing the word ''bank'', wherever it appears, and adding in its place the phrase ''national bank or Federal savings association'';

b. Removing the word ''bank's'', wherever it appears, and adding in its place the phrase ''national bank's or Federal savings association's''; and

c. Removing the word ''Office'', wherever it appears, and adding in its place the word ''OCC''.

§ 3.505 [Amended]

22b. Amend § 3.505, as set forth at the end of the common preamble, by:

a. Removing the word ''bank'', wherever it appears, and adding in its place the phrase ''national bank or Federal savings association'';

b. Removing the word ''bank's'', wherever it appears, and adding in its place the phrase ''national bank's or Federal savings association's''; and

c. Removing the word ''Office'', wherever it appears, and adding in its place the word ''OCC''.

§ 3.506 [Amended]

22c. Amend, as set forth at the end of the common preamble, § 3.506 by:

a. Removing the word ''bank'', wherever it appears, and adding in its place the phrase ''national bank or Federal savings association'';

b. Removing the word ''bank's'', wherever it appears, and adding in its place the phrase ''national bank's or Federal savings association's''; and

c. Removing the word ''Office'', wherever it appears, and adding in its place the word ''OCC''.

§ 3.600 [Amended]

23. Amend newly redesignated § 3.600:

a. In paragraphs (a) through (d), by removing the phrase ''national banking associations'', wherever it appears, and adding in its place the phrase ''national banks'';

b. By removing the word ''bank'', wherever it appears, and adding in its place the phrase ''national bank'';

c. In paragraph (a), by removing the word ''bank's'' and adding in its place the phrase ''national bank's'', and removing ''§ 3.2'' and adding in its place the phrase ''subparts A–J of this part''; and

d. In paragraph (e)(7), by removing the word ''bank-owned'' and adding in its place the word ''national bank-owned''.

PART 5—RULES, POLICIES, AND PROCEDURES FOR CORPORATE ACTIVITIES

24. The authority citation for part 5 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.,* 93a, 215a–2, 215a–3, 481, and section 5136A of the Revised Statutes (12 U.S.C. 24a).

20. Section 5.39 is amended by revising paragraph (h)(1) and republishing paragraph (h)(2) for reader reference to read as follows:

§ 5.39 Financial subsidiaries.

* * * * *

(h) * * *

(1) For purposes of determining regulatory capital the national bank may

not consolidate the assets and liabilities of a financial subsidiary with those of the bank and must deduct the aggregate amount of its outstanding equity investment, including retained earnings, in its financial subsidiaries from regulatory capital as provided by § 3.22(a)(7);

(2) Any published financial statement of the national bank shall, in addition to providing information prepared in accordance with generally accepted accounting principles, separately present financial information for the bank in the manner provided in paragraph (h)(1) of this section;

* * * * *

21. Part 6 is revised to read as follows:

PART 6—PROMPT CORRECTIVE ACTION

Subpart A—Capital Categories

Subpart B—Directives To Take Prompt Corrective Action

Authority: 12 U.S.C. 93a, 1831o, 5412(b)(2)(B).

§ 6.1 Authority, purpose, scope, other supervisory authority, and disclosure of capital categories.

(a) *Authority.* This part is issued by the Office of the Comptroller of the Currency (OCC) pursuant to section 38 (section 38) of the Federal Deposit Insurance Act (FDI Act) as added by section 131 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (Pub. L. 102–242, 105 Stat. 2236 (1991)) (12 U.S.C. 1831o).

(b) *Purpose.* Section 38 of the FDI Act establishes a framework of supervisory actions for insured depository institutions that are not adequately capitalized. The principal purpose of this subpart is to define, for insured national banks and insured Federal savings associations, the capital measures and capital levels, and for insured federal branches, comparable asset-based measures and levels, that are used for determining the supervisory actions authorized under section 38 of the FDI Act. This part 6 also establishes procedures for submission and review of capital restoration plans and for issuance and review of directives and orders pursuant to section 38.

(c) *Scope.* This subpart implements the provisions of section 38 of the FDI Act as they apply to insured national banks, insured federal branches, and insured Federal savings associations. Certain of these provisions also apply to officers, directors and employees of these insured institutions. Other provisions apply to any company that controls an insured national bank, insured Federal branch or insured Federal savings association and to the affiliates of an insured national bank, insured Federal branch, or insured Federal savings association.

(d) *Other supervisory authority.* Neither section 38 nor this part in any way limits the authority of the OCC under any other provision of law to take supervisory actions to address unsafe or unsound practices, deficient capital levels, violations of law, unsafe or unsound conditions, or other practices. Action under section 38 of the FDI Act and this part may be taken independently of, in conjunction with, or in addition to any other enforcement action available to the OCC, including issuance of cease and desist orders, capital directives, approval or denial of applications or notices, assessment of civil money penalties, or any other actions authorized by law.

(e) *Disclosure of capital categories.* The assignment of an insured national bank, insured federal branch, or insured Federal savings association under this subpart within a particular capital category is for purposes of implementing and applying the provisions of section 38. Unless permitted by the OCC or otherwise required by law, no national bank or Federal savings association may state in any advertisement or promotional material its capital category under this subpart or that the OCC or any other federal banking agency has assigned the national bank or Federal savings association to a particular capital category.

§ 6.2 Definitions.

For purposes of section 38 and this part, the definitions in part 3 of this chapter shall apply. In addition, except as modified in this section or unless the context otherwise requires, the terms used in this subpart have the same meanings as set forth in section 38 and section 3 of the FDI Act.

Advanced approaches national bank or advanced approaches Federal savings association means a national bank or Federal savings association that is subject to subpart E of part 3 of this chapter.

Common equity Tier 1 capital means common equity Tier 1 capital, as defined in accordance with the OCC's definition in § 3.2 of this chapter.

Common equity tier 1 risk-based capital ratio means the ratio of common equity tier 1 capital to total risk-weighted assets, as calculated in accordance with subpart B of part 3, as applicable.

Control. (1) *Control* has the same meaning assigned to it in section 2 of the Bank Holding Company Act (12 U.S.C. 1841), and the term controlled shall be construed consistently with the term control.

(2) *Exclusion for fiduciary ownership.* No insured depository institution or company controls another insured depository institution or company by virtue of its ownership or control of shares in a fiduciary capacity. Shares shall not be deemed to have been acquired in a fiduciary capacity if the acquiring insured depository institution or company has sole discretionary authority to exercise voting rights with respect thereto.

(3) *Exclusion for debts previously contracted.* No insured depository institution or company controls another insured depository institution or company by virtue of its ownership or control of shares acquired in securing or collecting a debt previously contracted in good faith, until two years after the date of acquisition. The two-year period may be extended at the discretion of the appropriate federal banking agency for up to three one-year periods.

Controlling person means any person having control of an insured depository institution and any company controlled by that person.

Federal savings association means an insured Federal savings association or an insured Federal savings bank chartered under section 5 of the Home Owners' Loan Act of 1933.

Leverage ratio means the ratio of Tier 1 capital to average total consolidated assets, as calculated in accordance with subpart B of part 3.

Management fee means any payment of money or provision of any other thing of value to a company or individual for the provision of management services or advice to the national bank or Federal savings association or related overhead expenses, including payments related to supervisory, executive, managerial, or policymaking functions, other than compensation to an individual in the individual's capacity as an officer or employee of the national bank or Federal savings association.

National bank means all insured national banks and all insured federal branches, except where otherwise provided in this subpart.

Supplementary leverage ratio means the ratio of Tier 1 capital to total leverage exposure, as calculated in accordance with subpart B of part 3.

Tangible equity means the amount of Tier 1 capital, as calculated in accordance with subpart B of part 3, plus the amount of outstanding perpetual preferred stock (including related surplus) not included in Tier 1 capital.

Tier 1 capital means the amount of Tier 1 capital as defined in subpart B of this chapter.

Tier 1 risk-based capital ratio means the ratio of Tier 1 capital to risk weighted assets, as calculated in accordance with subpart B of part 3.

Total assets means quarterly average total assets as reported in a national bank's or Federal savings association's Consolidated Reports of Condition and Income (Call Report), minus any deduction of assets as provided in the definition of tangible equity. The OCC reserves the right to require a national bank or Federal savings association to compute and maintain its capital ratios on the basis of actual, rather than average, total assets when computing tangible equity.

Total leverage exposure means the total leverage exposure, as calculated in accordance with subpart B of part 3.

Total risk-based capital ratio means the ratio of total capital to total risk-weighted assets, as calculated in accordance with subpart B of part 3.

Total risk-weighted assets means standardized total risk-weighted assets, and for an advanced approaches bank or advanced approaches Federal savings association also includes advanced approaches total risk-weighted assets, as defined in subpart B of part 3.

§ 6.3 Notice of capital category.

(a) *Effective date of determination of capital category.* A national bank or Federal savings association shall be deemed to be within a given capital category for purposes of section 38 of the FDI Act and this part as of the date the national bank or Federal savings association is notified of, or is deemed to have notice of, its capital category pursuant to paragraph (b) of this section.

(b) *Notice of capital category.* A national bank or Federal savings association shall be deemed to have been notified of its capital levels and its capital category as of the most recent date:

(1) A Consolidated Report of Condition and Income (Call Report) is required to be filed with the OCC;

(2) A final report of examination is delivered to the national bank or Federal savings association; or

(3) Written notice is provided by the OCC to the national bank or Federal savings association of its capital category for purposes of section 38 of the FDI Act and this part or that the national bank's or Federal savings association's capital category has changed as provided in paragraph (c) of this section or § 6.1 of this subpart and subpart M of part 19 of this chapter with respect to national banks and § 165.8 with respect to Federal savings associations.

(c) *Adjustments to reported capital levels and capital category.* (1) *Notice of adjustment by national bank or Federal savings association.* A national bank or Federal savings association shall provide the OCC with written notice that an adjustment to the national bank's or Federal savings association's capital category may have occurred no later than 15 calendar days following the date that any material event has occurred that would cause the national bank or Federal savings association to be placed in a lower capital category from the category assigned to the national bank or Federal savings association for purposes of section 38 and this part on the basis of the national bank's or Federal savings association's most recent Call Report or report of examination.

(2) *Determination to change capital category.* After receiving notice pursuant to paragraph (c)(1) of this section, the OCC shall determine whether to change the capital category of the national bank or Federal savings association and shall notify the national bank or Federal savings association of the OCC's determination.

§ 6.4 Capital measures and capital category definition.

(a) *Capital measures.* (1) *Capital measures applicable before January 1, 2015.* On or before December 31, 2014, for purposes of section 38 and this part, the relevant capital measures for all national banks and Federal savings associations are:

(i) Total Risk-Based Capital Measure: the total risk-based capital ratio;

(ii) Tier 1 Risk-Based Capital Measure: the tier 1 risk-based capital ratio; and

(iii) Leverage Measure: the leverage ratio.

(2) *Capital measures applicable on and after January 1, 2015.* On January 1, 2015 and thereafter, for purposes of section 38 and this part, the relevant capital measures are:

(i) Total Risk-Based Capital Measure: the total risk-based capital ratio;

(ii) Tier 1 Risk-Based Capital Measure: the tier 1 risk-based capital ratio;

(iii) Common Equity Tier 1 Capital Measure: the common equity tier 1 risk-based capital ratio; and

(iv) The Leverage Measure: (A) the leverage ratio, and (B) with respect to an advanced approaches national bank or advanced approaches Federal savings association, on January 1, 2018, and thereafter, the supplementary leverage ratio.

(b) *Capital categories applicable before January 1, 2015.* On or before December 31, 2014, for purposes of the provisions of section 38 and this part, a national bank or Federal savings association shall be deemed to be:

(1) ''Well capitalized'' if:

(i) Total Risk-Based Capital Measure: the national bank or Federal savings association has a total risk-based capital ratio of 10.0 percent or greater;

(ii) Tier 1 Risk-Based Capital Measure: the bank or Federal savings association has a tier 1 risk-based capital ratio of 6.0 percent or greater;

(iii) Leverage Measure: the national bank or Federal savings association has a leverage ratio of 5.0 percent or greater; and

(iv) The national bank or Federal savings association is not subject to any written agreement, order or capital directive, or prompt corrective action directive issued by the OCC pursuant to section 8 of the FDI Act, the International Lending Supervision Act of 1983 (12 U.S.C. 3907), the Home Owners' Loan Act (12 U.S.C. 1464(t)(6)(A)(ii)), or section 38 of the FDI Act, or any regulation thereunder, to meet and maintain a specific capital level for any capital measure.

(2) ''Adequately capitalized'' if:

(i) Total Risk-Based Capital Measure: the national bank or Federal savings association has a total risk-based capital ratio of 8.0 percent or greater;

(ii) Tier 1 Risk-Based Capital Measure: the national bank or Federal savings association has a tier 1 risk-based capital ratio of 4.0 percent or greater;

(iii) Leverage Measure:

(A) The national bank or Federal savings association has a leverage ratio of 4.0 percent or greater; or

(B) The national bank or Federal savings association has a leverage ratio of 3.0 percent or greater if the national bank or Federal savings association is rated composite 1 under the CAMELS rating system in the most recent examination of the national bank and or

Federal savings association is not experiencing or anticipating any significant growth; and

(iv) Does not meet the definition of a ''well capitalized'' national bank or Federal savings association.

(3) ''Undercapitalized'' if:

(i) Total Risk-Based Capital Measure: the national bank or Federal savings association has a total risk-based capital ratio of less than 8.0 percent; or

(ii) Tier 1 Risk-Based Capital Measure: the national bank or Federal savings association has a tier 1 risk-based capital ratio of less than 4.0 percent; or

(iii) Leverage Measure:

(A) Except as provided in paragraph (b)(2)(iii)(B) of this section, the national bank or Federal savings association has a leverage ratio of less than 4.0 percent; or

(iv) The national bank or Federal savings association has a leverage ratio of less than 3.0 percent, if the national bank or Federal savings association is rated composite 1 under the CAMELS rating system in the most recent examination of the national bank or Federal savings association and is not experiencing or anticipating significant growth.

(4) ''Significantly undercapitalized'' if:

(i) Total Risk-Based Capital Measure: the national bank or Federal savings association has a total risk-based capital ratio of less than 6.0 percent; or

(ii) Tier 1 Risk-Based Capital Measure: the national bank or Federal savings association has a tier 1 risk-based capital ratio of less than 3.0 percent; or

(iii) Leverage Measure: the national bank or Federal savings association has a leverage ratio of less than 3.0 percent.

(5) ''Critically undercapitalized'' if the national bank or Federal savings association has a ratio of tangible equity to total assets that is equal to or less than 2.0 percent.

(c) *Capital categories applicable on and after January 1, 2015.* On January 1, 2015, and thereafter, for purposes of the provisions of section 38 and this part, a national bank or Federal savings association shall be deemed to be:

(1) ''Well capitalized'' if:

(i) Total Risk-Based Capital Measure: the national bank or Federal savings association has a total risk-based capital ratio of 10.0 percent or greater;

(ii) Tier 1 Risk-Based Capital Measure: the national bank or Federal savings association has a tier 1 risk-based capital ratio of 8.0 percent or greater;

(iii) Common Equity Tier 1 Capital Measure: the national bank or Federal savings association has a common equity tier 1 risk-based capital ratio of 6.5 percent or greater;

(iv) Leverage Measure: the national bank or Federal savings association has a leverage ratio of 5.0 or greater; and

(iv) The national bank or Federal savings association is not subject to any written agreement, order or capital directive, or prompt corrective action directive issued by the OCC pursuant to section 8 of the FDI Act, the International Lending Supervision Act of 1983 (12 U.S.C. 3907), the Home Owners' Loan Act (12 U.S.C. 1464(t)(6)(A)(ii)), or section 38 of the FDI Act, or any regulation thereunder, to meet and maintain a specific capital level for any capital measure.

(2) ''Adequately capitalized'' if:

(i) Total Risk-Based Capital Measure: the national bank or Federal savings association has a total risk-based capital ratio of 8.0 percent or greater;

(ii) Tier 1 Risk-Based Capital Measure: the national bank or Federal savings association has a tier 1 risk-based capital ratio of 6.0 percent or greater;

(iii) Common Equity Tier 1 Capital Measure: the national bank or Federal savings association has a common equity tier 1 risk-based capital ratio of 4.5 percent or greater;

(iv) Leverage Measure:

(A) The national bank or Federal savings association has a leverage ratio of 4.0 percent or greater; and

(B) With respect to an advanced approaches national bank or advanced approaches Federal savings association, on January 1, 2018 and thereafter, the national bank or Federal savings association has a supplementary leverage ratio of 3.0 percent or greater; and

(v) The national bank or Federal savings association does not meet the definition of a ''well capitalized'' national bank or Federal savings association.

(3) ''Undercapitalized'' if:

(i) Total Risk-Based Capital Measure: the national bank or Federal savings association has a total risk-based capital ratio of less than 8.0 percent;

(ii) Tier 1 Risk-Based Capital Measure: the national bank or Federal savings association has a tier 1 risk-based capital ratio of less than 6.0 percent;

(iii) Common Equity Tier 1 Capital Measure: the national bank or Federal savings association has a common equity tier 1 risk-based capital ratio of less than 4.5 percent; or

(iv) Leverage Measure: (A) The national bank or Federal savings association has a leverage ratio of less than 4.0 percent; or

(B) With respect to an advanced approaches national bank or advanced approaches Federal savings association, on January 1, 2018, and thereafter, the national bank or Federal savings association has a supplementary leverage ratio of less than 3.0 percent.

(4) ''Significantly undercapitalized'' if:

(i) Total Risk-Based Capital Measure: the national bank or Federal savings association has a total risk-based capital ratio of less than 6.0 percent;

(ii) Tier 1 Risk-Based Capital Measure: the national bank or Federal savings association has a tier 1 risk-based capital ratio of less than 4.0 percent;

(iii) Common Equity Tier 1 Capital Measure: the national bank or Federal savings association has a common equity tier 1 risk-based capital ratio of less than 3.0 percent; or

(iv) Leverage Measure: the national bank or Federal savings association has a leverage ratio of less than 3.0 percent.

(5) ''Critically undercapitalized'' if the national bank or Federal savings association has a ratio of tangible equity to total assets that is equal to or less than 2.0 percent.

(d) *Capital categories for insured federal branches.* For purposes of the provisions of section 38 of the FDI Act and this part, an insured federal branch shall be deemed to be:

(1) *Well capitalized* if the insured federal branch:

(i) Maintains the pledge of assets required under 12 CFR 347.209; and

(ii) Maintains the eligible assets prescribed under 12 CFR 347.210 at 108 percent or more of the preceding quarter's average book value of the insured branch's third-party liabilities; and

(iii) Has not received written notification from:

(A) The OCC to increase its capital equivalency deposit pursuant to § 28.15 of this chapter, or to comply with asset maintenance requirements pursuant to § 28.20 of this chapter; or

(B) The FDIC to pledge additional assets pursuant to 12 CFR 346.209 or to maintain a higher ratio of eligible assets pursuant to 12 CFR 346.210.

(2) *Adequately capitalized* if the insured federal branch:

(i) Maintains the pledge of assets prescribed under 12 CFR 346.209; and

(ii) Maintains the eligible assets prescribed under 12 CFR 346.210 at 106 percent or more of the preceding quarter's average book value of the insured branch's third-party liabilities; and

(iii) Does not meet the definition of a well capitalized insured federal branch.

(3) *Undercapitalized* if the insured federal branch:

(i) Fails to maintain the pledge of assets required under 12 CFR 346.209; or

(ii) Fails to maintain the eligible assets prescribed under 12 CFR 346.210 at 106 percent or more of the preceding quarter's average book value of the insured branch's third-party liabilities.

(4) *Significantly undercapitalized* if it fails to maintain the eligible assets prescribed under 12 CFR 346.210 at 104 percent or more of the preceding quarter's average book value of the insured federal branch's third-party liabilities.

(5) *Critically undercapitalized* if it fails to maintain the eligible assets prescribed under 12 CFR 346.210 at 102 percent or more of the preceding quarter's average book value of the insured federal branch's third-party liabilities.

(e) *Reclassification based on supervisory criteria other than capital.* The OCC may reclassify a well capitalized national bank or Federal savings association as adequately capitalized and may require an adequately capitalized or an undercapitalized national bank or Federal savings association to comply with certain mandatory or discretionary supervisory actions as if the national bank or Federal savings association were in the next lower capital category (except that the OCC may not reclassify a significantly undercapitalized national bank or Federal savings association as critically undercapitalized) (each of these actions are hereinafter referred to generally as reclassifications) in the following circumstances:

(1) *Unsafe or unsound condition.* The OCC has determined, after notice and opportunity for hearing pursuant to subpart M of part 19 of this chapter with respect to national banks and § 165.8 with respect to Federal savings associations, that the national bank or Federal savings association is in unsafe or unsound condition; or

(2) *Unsafe or unsound practice.* The OCC has determined, after notice and opportunity for hearing pursuant to subpart M of part 19 of this chapter with respect to national banks and § 165.8 with respect to Federal savings associations, that in the most recent examination of the national bank or Federal savings association, the national bank or Federal savings association received, and has not corrected a less-than-satisfactory rating for any of the categories of asset quality, management, earnings, or liquidity.

§ 6.5 Capital restoration plan.

(a) *Schedule for filing plan.* (1) *In general.* A national bank or Federal savings association shall file a written capital restoration plan with the OCC within 45 days of the date that the national bank or Federal savings association receives notice or is deemed to have notice that the national bank or Federal savings association is undercapitalized, significantly undercapitalized, or critically undercapitalized, unless the OCC notifies the national bank or Federal savings association in writing that the plan is to be filed within a different period. An adequately capitalized national bank or Federal savings association that has been required pursuant to § 6.4 and subpart M of part 19 of this chapter with respect to national banks and § 165.8 with respect to Federal savings associations to comply with supervisory actions as if the national bank or Federal savings association were undercapitalized is not required to submit a capital restoration plan solely by virtue of the reclassification.

(2) *Additional capital restoration plans.* Notwithstanding paragraph (a)(1) of this section, a national bank or Federal savings association that has already submitted and is operating under a capital restoration plan approved under section 38 and this subpart is not required to submit an additional capital restoration plan based on a revised calculation of its capital measures or a reclassification of the institution under § 6.4 and subpart M of part 19 of this chapter with respect to national banks and §§ 6.4 and 165.8 with respect to Federal savings associations unless the OCC notifies the national bank or Federal savings association that it must submit a new or revised capital plan. A national bank or Federal savings association that is notified that it must submit a new or revised capital restoration plan shall file the plan in writing with the OCC within 45 days of receiving such notice, unless the OCC notifies the national bank or Federal savings association in writing that the plan must be filed within a different period.

(b) *Contents of plan.* All financial data submitted in connection with a capital restoration plan shall be prepared in accordance with the instructions provided on the Call Report, unless the OCC instructs otherwise. The capital restoration plan shall include all of the information required to be filed under section 38(e)(2) of the FDI Act. A national bank or Federal savings association that is required to submit a capital restoration plan as the result of a reclassification of the national bank or Federal savings association, pursuant to § 6.4 for both national banks and Federal savings associations and subpart M of part 19 of this chapter with respect to national banks and § 165.8 with respect to Federal savings associations, shall include a description of the steps the national bank or Federal savings association will take to correct the unsafe or unsound condition or practice. No plan shall be accepted unless it includes any performance guarantee described in section 38(e)(2)(C) of that Act by each company that controls the national bank or Federal savings association.

(c) *Review of capital restoration plans.* Within 60 days after receiving a capital restoration plan under this subpart, the OCC shall provide written notice to the national bank or Federal savings association of whether the plan has been approved. The OCC may extend the time within which notice regarding approval of a plan shall be provided.

(d) *Disapproval of capital restoration plan.* If a capital restoration plan is not approved by the OCC, the national bank or Federal savings association shall submit a revised capital restoration plan within the time specified by the OCC. Upon receiving notice that its capital restoration plan has not been approved, any undercapitalized national bank or Federal savings association (as defined in § 6.4) shall be subject to all of the provisions of section 38 and this part applicable to significantly undercapitalized institutions. These provisions shall be applicable until such time as a new or revised capital restoration plan submitted by the national bank or Federal savings association has been approved by the OCC.

(e) *Failure to submit a capital restoration plan.* A national bank or Federal savings association that is undercapitalized (as defined in § 6.4) and that fails to submit a written capital restoration plan within the period provided in this section shall, upon the expiration of that period, be subject to all of the provisions of section 38 and this part applicable to significantly undercapitalized national banks or Federal savings associations.

(f) *Failure to implement a capital restoration plan.* Any undercapitalized national bank or Federal savings association that fails, in any material respect, to implement a capital restoration plan shall be subject to all of the provisions of section 38 and this part applicable to significantly undercapitalized national banks or Federal savings associations.

(g) *Amendment of capital restoration plan.* A national bank or Federal savings association that has submitted an approved capital restoration plan may, after prior written notice to and approval by the OCC, amend the plan to reflect a change in circumstance. Until such time as a proposed amendment has been approved, the national bank or Federal savings association shall implement the capital restoration plan as approved prior to the proposed amendment.

(h) *Notice to FDIC.* Within 45 days of the effective date of OCC approval of a capital restoration plan, or any amendment to a capital restoration plan, the OCC shall provide a copy of the plan or amendment to the Federal Deposit Insurance Corporation.

(i) *Performance guarantee by companies that control a bank or Federal savings association.* (1) *Limitation on liability.*(i) *Amount limitation.* The aggregate liability under the guarantee provided under section 38 and this subpart for all companies that control a specific national bank or Federal savings association that is required to submit a capital restoration plan under this subpart shall be limited to the lesser of:

(A) An amount equal to 5.0 percent of the national bank's or Federal savings association's total assets at the time the national bank or Federal savings association was notified or deemed to have notice that the national bank or Federal savings association was undercapitalized; or

(B) The amount necessary to restore the relevant capital measures of the national bank or Federal savings association to the levels required for the national bank or Federal savings association to be classified as adequately capitalized, as those capital measures and levels are defined at the time that the national bank or Federal savings association initially fails to comply with a capital restoration plan under this subpart.

(ii) *Limit on duration.* The guarantee and limit of liability under section 38 and this subpart shall expire after the OCC notifies the national bank or Federal savings association that it has remained adequately capitalized for each of four consecutive calendar quarters. The expiration or fulfillment by a company of a guarantee of a capital restoration plan shall not limit the liability of the company under any guarantee required or provided in connection with any capital restoration plan filed by the same national bank or Federal savings association after expiration of the first guarantee.

(iii) *Collection on guarantee.* Each company that controls a given national bank or Federal savings association shall be jointly and severally liable for the guarantee for such national bank or Federal savings association as required under section 38 and this subpart, and the OCC may require payment of the full amount of that guarantee from any or all of the companies issuing the guarantee.

(2) *Failure to provide guarantee.* In the event that a national bank or Federal savings association that is controlled by any company submits a capital restoration plan that does not contain the guarantee required under section 38(e)(2) of the FDI Act, the national bank or Federal savings association shall, upon submission of the plan, be subject to the provisions of section 38 and this part that are applicable to national banks or Federal savings associations that have not submitted an acceptable capital restoration plan.

(3) *Failure to perform guarantee.* Failure by any company that controls a national bank or Federal savings association to perform fully its guarantee of any capital plan shall constitute a material failure to implement the plan for purposes of section 38(f) of the FDI Act. Upon such failure, the national bank or Federal savings association shall be subject to the provisions of section 38 and this part that are applicable to national banks or Federal savings associations that have failed in a material respect to implement a capital restoration plan.

(j) *Enforcement of capital restoration plan.* The failure of a national bank or Federal savings association to implement, in any material respect, a capital restoration plan required under section 38 and this section shall subject the national bank or Federal savings association to the assessment of civil money penalties pursuant to section 8(i)(2)(A) of the FDI Act.

§ 6.6 Mandatory and discretionary supervisory actions.

(a) *Mandatory supervisory actions.* (1) *Provisions applicable to all national banks and Federal savings associations.* All national banks and Federal savings associations are subject to the restrictions contained in section 38(d) of the FDI Act on payment of capital distributions and management fees.

(2) *Provisions applicable to undercapitalized, significantly undercapitalized, and critically undercapitalized national banks or Federal savings associations.* Immediately upon receiving notice or being deemed to have notice, as provided in § 6.3, that the national bank or Federal savings association is undercapitalized, significantly undercapitalized, or critically undercapitalized, the national bank or Federal savings association shall become subject to the provisions of section 38 of the FDI Act—

(i) Restricting payment of capital distributions and management fees (section 38(d));

(ii) Requiring that the OCC monitor the condition of the national bank or Federal savings association (section 38(e)(1));

(iii) Requiring submission of a capital restoration plan within the schedule established in this subpart (section 38(e)(2));

(iv) Restricting the growth of the national bank's or Federal savings association's assets (section 38(e)(3)); and

(v) Requiring prior approval of certain expansion proposals (section 38(e)(4)).

(3) *Additional provisions applicable to significantly undercapitalized, and critically undercapitalized national banks or Federal savings associations.* In addition to the provisions of section 38 of the FDI Act described in paragraph (a)(2) of this section, immediately upon receiving notice or being deemed to have notice, as provided in this subpart, that the national bank or Federal savings association is significantly undercapitalized, or critically undercapitalized or that the national bank or Federal savings association is subject to the provisions applicable to institutions that are significantly undercapitalized because it has failed to submit or implement, in any material respect, an acceptable capital restoration plan, the national bank or Federal savings association shall become subject to the provisions of section 38 of the FDI Act that restrict compensation paid to senior executive officers of the institution (section 38(f)(4)).

(4) *Additional provisions applicable to critically undercapitalized national banks or Federal savings associations.* In addition to the provisions of section 38 of the FDI Act described in paragraphs (a)(2) and (3) of this section, immediately upon receiving notice or being deemed to have notice, as provided in § 6.3, that the national bank or Federal savings association is critically undercapitalized, the national bank or Federal savings association shall become subject to the provisions of section 38 of the FDI Act—

(i) Restricting the activities of the national bank or Federal savings association (section 38 (h)(1)); and

(ii) Restricting payments on subordinated debt of the national bank or Federal savings association (section 38 (h)(2)).

(b) *Discretionary supervisory actions.* In taking any action under section 38 that is within the OCC's discretion to take in connection with a national bank or Federal savings association that is deemed to be undercapitalized, significantly undercapitalized, or critically undercapitalized, or has been reclassified as undercapitalized or significantly undercapitalized; an officer or director of such national bank or Federal savings association; or a company that controls such national bank or Federal savings association, the OCC shall follow the procedures for issuing directives under subpart B of this part for both national banks and Federal savings associations and subpart N of part 19 of this chapter with respect to national banks and subpart B and 12 CFR 165.9 with respect to Federal savings associations, unless otherwise provided in section 38 of the FDI Act or this part.

Subpart B—Directives to Take Prompt Corrective Action

§ 6.20 Scope.

The rules and procedures set forth in this subpart apply to insured national banks, insured federal branches, Federal savings associations, and senior executive officers and directors of national banks and Federal savings associations that are subject to the provisions of section 38 of the Federal Deposit Insurance Act (section 38) and subpart A of this part.

§ 6.21 Notice of intent to issue a directive.

(a) *Notice of intent to issue a directive.* (1) *In general.* The OCC shall provide an undercapitalized, significantly undercapitalized, or critically undercapitalized national bank or Federal savings association prior written notice of the OCC's intention to issue a directive requiring such national bank, Federal savings association, or company to take actions or to follow proscriptions described in section 38 that are within the OCC's discretion to require or impose under section 38 of the FDI Act, including section 38(e)(5), (f)(2), (f)(3), or (f)(5). The national bank or Federal savings association shall have such time to respond to a proposed directive as provided under § 6.22.

(2) *Immediate issuance of final directive.* If the OCC finds it necessary in order to carry out the purposes of section 38 of the FDI Act, the OCC may, without providing the notice prescribed in paragraph (a)(1) of this section, issue a directive requiring a national bank or Federal savings association immediately to take actions or to follow proscriptions described in section 38 that are within the OCC's discretion to require or impose under section 38 of the FDI Act, including section 38(e)(5), (f)(2), (f)(3), or (f)(5). A national bank or Federal savings association that is subject to such an immediately effective directive may submit a written appeal of the directive to the OCC. Such an appeal must be received by the OCC within 14 calendar days of the issuance of the directive, unless the OCC permits a longer period. The OCC shall consider any such appeal, if filed in a timely matter, within 60 days of receiving the appeal. During such period of review, the directive shall remain in effect unless the OCC, in its sole discretion, stays the effectiveness of the directive.

(b) *Contents of notice.* A notice of intention to issue a directive shall include:

(1) A statement of the national bank's or Federal savings association's capital measures and capital levels;

(2) A description of the restrictions, prohibitions or affirmative actions that the OCC proposes to impose or require;

(3) The proposed date when such restrictions or prohibitions would be effective or the proposed date for completion of such affirmative actions; and

(4) The date by which the national bank or Federal savings association subject to the directive may file with the OCC a written response to the notice.

§ 6.22 Response to notice.

(a) *Time for response.* A national bank or Federal savings association may file a written response to a notice of intent to issue a directive within the time period set by the OCC. The date shall be at least 14 calendar days from the date of the notice unless the OCC determines that a shorter period is appropriate in light of the financial condition of the national bank or Federal savings association or other relevant circumstances.

(b) *Content of response.* The response should include:

(1) An explanation why the action proposed by the OCC is not an appropriate exercise of discretion under section 38;

(2) Any recommended modification of the proposed directive; and

(3) Any other relevant information, mitigating circumstances, documentation, or other evidence in support of the position of the national bank or Federal savings association regarding the proposed directive.

(c) *Failure to file response.* Failure by a national bank or Federal savings association to file with the OCC, within the specified time period, a written response to a proposed directive shall constitute a waiver of the opportunity to respond and shall constitute consent to the issuance of the directive.

§ 6.23 Decision and issuance of a prompt corrective action directive.

(a) *OCC consideration of response.* After considering the response, the OCC may:

(1) Issue the directive as proposed or in modified form;

(2) Determine not to issue the directive and so notify the national bank or Federal savings association; or

(3) Seek additional information or clarification of the response from the national bank or Federal savings association, or any other relevant source.

(b) [Reserved]

§ 6.24 Request for modification or rescission of directive.

Any national bank or Federal savings association that is subject to a directive under this subpart may, upon a change in circumstances, request in writing that the OCC reconsider the terms of the directive, and may propose that the directive be rescinded or modified. Unless otherwise ordered by the OCC, the directive shall continue in place while such request is pending before the OCC.

§ 6.25 Enforcement of directive.

(a) *Judicial remedies.* Whenever a national bank or Federal savings association fails to comply with a directive issued under section 38, the OCC may seek enforcement of the directive in the appropriate United States district court pursuant to section 8(i)(1) of the FDI Act.

(b) *Administrative remedies.* Pursuant to section 8(i)(2)(A) of the FDI Act, the OCC may assess a civil money penalty against any national bank or Federal savings association that violates or otherwise fails to comply with any final directive issued under section 38 and against any institution-affiliated party who participates in such violation or noncompliance.

(c) *Other enforcement action.* In addition to the actions described in paragraphs (a) and (b) of this section, the OCC may seek enforcement of the provisions of section 38 or this part through any other judicial or administrative proceeding authorized by law.

PART 165—PROMPT CORRECTIVE ACTION

22. The authority citation for part 165 continues to read as follows:

Authority: 12 U.S.C. 1831o, 5412(b)(2)(B).

§ 165.1—165.7, 165.10 [Removed]

23. Sections 165.1—165.7 and 165.10 are removed.

§ 165.8 [Amended]

24. Section 165.8 is amended in paragraphs (a)(1)(i)(A) introductory text and (a)(1)(ii) by removing the phrases ''§ 165.4(c) of this part'' and ''§ 165.4(c)(1)'' respectively, and adding in their place the phrase ''12 CFR 6.4(d)''.

PART 167—[REMOVED]

25. Under the authority of 12 U.S.C. 93a and 5412(b)(2)(B), part 167 is removed.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the common preamble, parts 208 and 225 of chapter II of title 12 of the Code of Federal Regulations are proposed to be amended as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

26. The authority citation for part 208 is revised to read as follows:

Authority: 12 U.S.C. 24, 36, 92a, 93a, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1816, 1818, 1820(d)(9), 1833(j), 1828(o), 1831, 1831o, 1831p–1, 1831r–1, 1831w, 1831x, 1835a, 1882, 2901–2907, 3105, 3310, 3331–3351, 3905–3909, and 5371; 15 U.S.C. 78b, 78I(b), 78l(i), 780–4(c)(5), 78q, 78q–1, and 78w, 1681s, 1681w, 6801, and 6805; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106 and 4128.

Subpart A—General Membership and Branching Requirements

27. In § 208.2, revise paragraph (d) to read as follows:

§ 208.2 Definitions.

* * * * *

(d) *Capital stock and surplus* means, unless otherwise provided in this part, or by statute, tier 1 and tier 2 capital included in a member bank's risk-based capital (as defined in § 217.2 of Regulation Q) and the balance of a member bank's allowance for loan and lease losses not included in its tier 2 capital for calculation of risk-based capital, based on the bank's most recent Report of Condition and Income filed under 12 U.S.C. 324.

* * * * *

28. Revise § 208.4 to read as follows:

§ 208.4 Capital adequacy.

(a) *Adequacy.* A member bank's capital, calculated in accordance with Part 217, shall be at all times adequate in relation to the character and condition liabilities and other corporate responsibilities. If at any time, in light of all the circumstances, the bank's capital appears inadequate in relation to its assets, liabilities, and responsibilities, the bank shall increase the amount of its capital, within such period as the Board deems reasonable, to an amount which, in the judgment of the Board, shall be adequate.

(b) *Standards for evaluating capital adequacy.* Standards and measures, by which the Board evaluates the capital adequacy of member banks for risk-based capital purposes and for leverage measurement purposes, are located in part 217.

Subpart B—Investments and Loans

29. In § 208.23, revise paragraph (c) to read as follows:

§ 208.23 Agricultural loan loss amortization.

* * * * *

(c) *Accounting for amortization.* Any bank that is permitted to amortize losses in accordance with paragraph (b) of this section may restate its capital and other relevant accounts and account for future authorized deferrals and authorization in accordance with the instructions to the FFIEC Consolidated Reports of Condition and Income. Any resulting increase in the capital account shall be included in capital pursuant to part 217.

* * * * *

Subpart D—Prompt Corrective Action

30. The authority citation for subpart D continues to read as follows:

Authority: Subpart D of Regulation H (12 CFR part 208, Subpart D) is issued by the Board of Governors of the Federal Reserve System (Board) under section 38 (section 38) of the FDI Act as added by section 131 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (Pub. L. 102–242, 105 Stat. 2236 (1991)) (12 U.S.C. 1831o).

31. Revise § 208.41 to read as follows:

§ 208.41 Definitions for purposes of this subpart.

For purposes of this subpart, except as modified in this section or unless the context otherwise requires, the terms used have the same meanings as set forth in section 38 and section 3 of the FDI Act.

(a) *Advanced approaches bank* means a bank that is described in § 217.100(b)(1) of Regulation Q (12 CFR 217.100(b)(1)).

(b) *Bank* means an insured depository institution as defined in section 3 of the FDI Act (12 U.S.C. 1813).

(c) *Common equity tier 1 capital* means the amount of capital as defined in § 217.2 of Regulation Q (12 CFR 217.2).

(d) *Common equity tier 1 risk-based capital ratio* means the ratio of common equity tier 1 capital to total risk-weighted assets, as calculated in accordance with § 217.10(b)(1) or § 217.10(c)(1) of Regulation Q (12 CFR 217.10(b)(1), 12 CFR 217.10(c)(1)), as applicable.

(e) *Control*—(1) *Control* has the same meaning assigned to it in section 2 of the Bank Holding Company Act (12 U.S.C. 1841), and the term *controlled* shall be construed consistently with the term *control.*

(2) *Exclusion for fiduciary ownership.* No insured depository institution or company controls another insured depository institution or company by virtue of its ownership or control of shares in a fiduciary capacity. Shares shall not be deemed to have been acquired in a fiduciary capacity if the acquiring insured depository institution or company has sole discretionary authority to exercise voting rights with respect to the shares.

(3) *Exclusion for debts previously contracted.* No insured depository institution or company controls another insured depository institution or company by virtue of its ownership or control of shares acquired in securing or collecting a debt previously contracted in good faith, until two years after the date of acquisition. The two-year period may be extended at the discretion of the appropriate Federal banking agency for up to three one-year periods.

(f) *Controlling person* means any person having control of an insured depository institution and any company controlled by that person.

(g) *Leverage ratio* means the ratio of tier 1 capital to average total consolidated assets, as calculated in accordance with § 217.10 of Regulation Q (12 CFR 217.10).

(h) *Management fee* means any payment of money or provision of any other thing of value to a company or individual for the provision of management services or advice to the bank, or related overhead expenses, including payments related to supervisory, executive, managerial, or policy making functions, other than compensation to an individual in the individual's capacity as an officer or employee of the bank.

(i) *Supplementary leverage ratio* means the ratio of tier 1 capital to total leverage exposure, as calculated in accordance with § 217.10 of Regulation Q (12 CFR 217.10).

(j) *Tangible equity* means the amount of tier 1 capital, plus the amount of outstanding perpetual preferred stock (including related surplus) not included in tier 1 capital.

(k) *Tier 1 capital* means the amount of capital as defined in § 217.20 of Regulation Q (12 CFR 217.20).

(l) *Tier 1 risk-based capital ratio* means the ratio of tier 1 capital to total risk-weighted assets, as calculated in accordance with § 217.10(b)(2) or § 217.10(c)(2) of Regulation Q (12 CFR 217.10(b)(2), 12 CFR 217.10(c)(2)), as applicable.

(m) *Total assets* means quarterly average total assets as reported in a bank's Report of Condition and Income (Call Report), minus items deducted from tier 1 capital. At its discretion the Federal Reserve may calculate total assets using a bank's period-end assets rather than quarterly average assets.

(n) *Total leverage exposure* means the total leverage exposure, as calculated in accordance with § 217.11 of Regulation Q (12 CFR 217.11).

(o) *Total risk-based capital ratio* means the ratio of total capital to total risk-weighted assets, as calculated in accordance with § 217.10(b)(3) or § 217.10(c)(3) of Regulation Q (12 CFR 217.10(b)(3), 12 CFR 217.10(c)(3)), as applicable.

(p) *Total risk-weighted assets* means standardized total risk-weighted assets, and for an advanced approaches bank also includes advanced approaches total risk-weighted assets, as defined in § 217.2 of Regulation Q (12 CFR 217.2).

32. In § 208.43, revise paragraphs (a) and (b), redesignate paragraph (c) as paragraph (d), and add a new paragraph (c) to read as follows:

§ 208.43 Capital measures and capital category definitions.

(a) *Capital measures.* (1) Capital measures applicable before January 1, 2015. On or before December 31, 2014, for purposes of section 38 and this subpart, the relevant capital measures for all banks are:

(i) Total Risk-Based Capital Measure: The total risk-based capital ratio;

(ii) Tier 1 Risk-Based Capital Measure: The tier 1 risk-based capital ratio; and

(iii) Leverage Measure: The leverage ratio.

(2) Capital measures applicable on and after January 1, 2015. On January 1, 2015 and thereafter, for purposes of section 38 and this subpart, the relevant capital measures are:

(i) Total Risk-Based Capital Measure: The total risk-based capital ratio;

(ii) Tier 1 Risk-Based Capital Measure: The tier 1 risk-based capital ratio;

(iii) Common Equity Tier 1 Capital Measure: The common equity tier 1 risk-based capital ratio; and

(iv) Leverage Measure:

(A) The leverage ratio, and

(B) With respect to an advanced approaches bank, on January 1, 2018, and thereafter, the supplementary leverage ratio.

(b) *Capital categories applicable before January 1, 2015.* On or before December 31, 2014, for purposes of section 38 of the FDI Act and this subpart, a member bank is deemed to be:

(1) ''Well capitalized'' if:

(i) Total Risk-Based Capital Measure: The bank has a total risk-based capital ratio of 10.0 percent or greater;

(ii) Tier 1 Risk-Based Capital Measure: The bank has a tier 1 risk-based capital ratio of 6.0 percent or greater;

(iii) Leverage Measure: The bank has a leverage ratio of 5.0 percent or greater; and

(iv) The bank is not subject to any written agreement, order, capital directive, or prompt corrective action directive issued by the Board pursuant to section 8 of the FDI Act, the International Lending Supervision Act of 1983 (12 U.S.C. 3907), or section 38 of the FDI Act, or any regulation thereunder, to meet and maintain a specific capital level for any capital measure.

(2) ''Adequately capitalized'' if:

(i) Total Risk-Based Capital Measure: The bank has a total risk-based capital ratio of 8.0 percent or greater;

(ii) Tier 1 Risk-Based Capital Measure: The bank has a tier 1 risk-based capital ratio of 4.0 percent or greater;

(iii) Leverage Measure:

(A) The bank has a leverage ratio of 4.0 percent or greater; or

(B) The bank has a leverage ratio of 3.0 percent or greater if the bank is rated composite 1 under the CAMELS rating system in the most recent examination of the bank and is not experiencing or anticipating any significant growth; and

(iv) Does not meet the definition of a ''well capitalized'' bank.

(3) ''Undercapitalized'' if:

(i) Total Risk-Based Capital Measure: The bank has a total risk-based capital ratio of less than 8.0 percent; or

(ii) Tier 1 Risk-Based Capital Measure: The bank has a tier 1 risk-based capital ratio of less than 4.0 percent; or

(iii) Leverage Measure:

(A) Except as provided in paragraph (b)(2)(iii)(B) of this section, the bank has a leverage ratio of less than 4.0 percent; or

(B) The bank has a leverage ratio of less than 3.0 percent, if the bank is rated composite 1 under the CAMELS rating system in the most recent examination of the bank and is not experiencing or anticipating significant growth.

(4) ''Significantly undercapitalized'' if:

(i) Total Risk-Based Capital Measure: The bank has a total risk-based capital ratio of less than 6.0 percent; or

(ii) Tier 1 Risk-Based Capital Measure: The bank has a tier 1 risk-based capital ratio of less than 3.0 percent; or

(iii) Leverage Measure: The bank has a leverage ratio of less than 3.0 percent.

(5) ''Critically undercapitalized'' if the bank has a ratio of tangible equity to total assets that is equal to or less than 2.0 percent.

(c) *Capital categories applicable on and after January 1, 2015.* On January 1, 2015, and thereafter, for purposes of section 38 and this subpart, a member bank is deemed to be:

(1) ''Well capitalized'' if:

(i) Total Risk-Based Capital Measure: The bank has a total risk-based capital ratio of 10.0 percent or greater;

(ii) Tier 1 Risk-Based Capital Measure: The bank has a tier 1 risk-based capital ratio of 8.0 percent or greater;

(iii) Common Equity Tier 1 Capital Measure: The bank has a common equity tier 1 risk-based capital ratio of 6.5 percent or greater;

(iv) Leverage Measure: The bank has a leverage ratio of 5.0 or greater; and

(iv) The bank is not subject to any written agreement, order, capital directive, or prompt corrective action directive issued by the Board pursuant to section 8 of the FDI Act, the International Lending Supervision Act of 1983 (12 U.S.C. 3907), or section 38 of the FDI Act, or any regulation thereunder, to meet and maintain a specific capital level for any capital measure.

(2) ''Adequately capitalized'' if:

(i) Total Risk-Based Capital Measure: The bank has a total risk-based capital ratio of 8.0 percent or greater;

(ii) Tier 1 Risk-Based Capital Measure: The bank has a tier 1 risk-based capital ratio of 6.0 percent or greater;

(iii) Common Equity Tier 1 Capital Measure: The bank has a common equity tier 1 risk-based capital ratio of 4.5 percent or greater;

(iv) Leverage Measure:

(A) The bank has a leverage ratio of 4.0 percent or greater; and

(B) With respect to an advanced approaches bank, on January 1, 2018, and thereafter, the bank has a supplementary leverage ratio of 3.0 percent or greater; and

(v) The bank does not meet the definition of a ''well capitalized'' bank.

(3) ''Undercapitalized'' if:

(i) Total Risk-Based Capital Measure: The bank has a total risk-based capital ratio of less than 8.0 percent;

(ii) Tier 1 Risk-Based Capital Measure: The bank has a tier 1 risk-based capital ratio of less than 6.0 percent;

(iii) Common Equity Tier 1 Capital Measure: The bank has a common equity tier 1 risk-based capital ratio of less than 4.5 percent; or

(iv) Leverage Measure:

(A) The bank has a leverage ratio of less than 4.0 percent; or

(B) With respect to an advanced approaches bank, on January 1, 2018, and thereafter, the bank has a supplementary leverage ratio of less than 3.0 percent.

(4) ''Significantly undercapitalized'' if:

(i) Total Risk-Based Capital Measure: The bank has a total risk-based capital ratio of less than 6.0 percent;

(ii) Tier 1 Risk-Based Capital Measure: The bank has a tier 1 risk-based capital ratio of less than 4.0 percent;

(iii) Common Equity Tier 1 Capital Measure: The bank has a common equity tier 1 risk-based capital ratio of less than 3.0 percent; or

(iv) Leverage Measure: The bank has a leverage ratio of less than 3.0 percent.

(5) ''Critically undercapitalized'' if the bank has a ratio of tangible equity to total assets that is equal to or less than 2.0 percent.

* * * * *

Subpart G—Financial Subsidiaries of State Member Banks

33. In § 208.73, revise paragraph (a) introductory text to read as follows:

§ 208.73 What additional provisions are applicable to state member banks with financial subsidiaries?

(a) *Capital deduction required.* A state member bank that controls or holds an interest in a financial subsidiary must comply with the rules set forth in § 217.22(a)(7) of Regulation Q (12 CFR 217.22(a)(7)) in determining its compliance with applicable regulatory capital standards (including the well capitalized standard of § 208.71(a)(1)).

* * * * *

§ 208.77 [Amended]

34. In § 208.77, remove and reserve paragraph (c).

Appendix A to Part 208—[Amended]

35. Amend appendix A by removing ''appendix E to this part'' and add ''12 CFR part 217, subpart F'' in its place wherever it appears; and by removing ''appendix E of this part'' and adding in its place ''12 CFR part 217, subpart F'' in its place wherever it appears.

36. Effective January 1, 2015, appendix A to part 208 is removed and reserved.

Appendix B to Part 208—[Removed and Reserved]

37. Appendix B to part 208 is removed and reserved.

38. In Appendix C to part 208, Note 2 is revised to read as follows:

Appendix C to Part 208—Interagency Guidelines for Real Estate Lending Policies

* * * * *

[2] For the state member banks, the term ''total capital'' refers to that term as defined in subpart A of 12 CFR part 217. For insured state nonmember banks and state savings associations, ''total capital'' refers to that term defined in subpart A of 12 CFR part 324. For national banks and Federal savings associations, the term ''total capital'' refers to that term as defined in subpart A of 12 CFR part 3.

* * * * *

Appendix E to Part 208—[Removed and Reserved]

39. Appendix E to part 208 is removed and reserved.

Appendix F to Part 208—[Removed and Reserved]

40. Appendix F to part 208 is removed and reserved.

PART 217—CAPITAL ADEQUACY OF BANK HOLDING COMPANIES, SAVINGS AND LOAN HOLDING COMPANIES, AND STATE MEMBER BANKS (REGULATION Q)

41. The authority citation for part 217 shall read as follows:

Authority: 12 U.S.C. 248(a), 321–338a, 481–486, 1462a, 1467a, 1818, 1828, 1831n, 1831o, 1831p–l, 1831w, 1835, 1844(b), 1851, 3904, 3906–3909, 4808, 5365, 5371.

42. Part 217 is added as set forth at the end of the common preamble.

43. Part 217 is amended as set forth below:

i. Remove ''[AGENCY]'' and add ''Board'' in its place wherever it appears.

ii. Remove ''[BANK]'' and add ''Board-regulated institution'' in its place wherever it appears.

iii. Remove ''[PART]'' and add ''part'' wherever it appears.

44. In § 217.1, redesignate paragraphs (c)(1) through (c)(4) as paragraphs (c)(2) through (c)(5) respectively, add new paragraph (c)(1), and revise paragraph (e) to read as follows:

* * * * *

§ 217.1 Purpose, applicability, and reservations of authority.

* * * * *

(c)(1) *Scope.* This part applies on a consolidated basis to every Board-regulated institution that is:

(i) A state member bank;

(ii) A bank holding company domiciled in the United States that is not subject to 12 CFR part 225, Appendix C, provided that the Board may by order subject any bank holding company to this part, in whole or in part, based on the institution's size, level of complexity, risk profile, scope of operations, or financial condition; or

(iii) A savings and loan holding company domiciled in the United States.

* * * * *

(e) *Notice and response procedures.* In making a determination under this section, the Board will apply notice and response procedures in the same manner and to the same extent as the notice and response procedures in 12 CFR 263.202.

45. In § 217.2:

i. Add definitions of Board, Board-regulated institution, non-guaranteed separate account, policy loan, separate account, state bank, and state member bank or member bank;

ii. Add paragraphs (12) and (13) to the definition of corporate exposure, and

iii. Revise the definition of gain-on-sale, paragraph (2)(i) of the definition of high volatility commercial real estate (HVCRE) exposure, paragraph (4) of the definition of pre-sold construction loan, and paragraph (1) of the definition of total leverage exposure, to read as follows:

* * * * *

§ 217.2 Definitions.

* * * * *

Board means the Board of Governors of the Federal Reserve System.

Board-regulated institution means a state member bank, bank holding company, or savings and loan holding company.

* * * * *

Corporate exposure * * *

(12) A policy loan; or

(13) A separate account.

* * * * *

Gain-on-sale means an increase in the equity capital of a Board-regulated institution (as reported on Schedule RC of the Call Report, for a state member bank, or Schedule HC of the FR Y–9C, for a bank holding company or savings and loan holding company,[1] as applicable) resulting from a securitization (other than an increase in equity capital resulting from the [BANK]'s receipt of cash in connection with the securitization).

* * * * *

[1] Savings and loan holding companies that do not file the FR Y–9C should follow the instructions to the FR Y–9C.

High volatility commercial real estate (HVCRE) exposure * * *

(2) * * *

(i) The loan-to-value ratio is less than or equal to the applicable maximum supervisory loan-to-value ratio in the Board's real estate lending standards at 12 CFR part 208, Appendix C;

* * * * *

Non-guaranteed separate account means a separate account where the insurance company:

(1) Does not contractually guarantee either a minimum return or account value to the contract holder; and

(2) Is not required to hold reserves (in the general account) pursuant to its contractual obligations to a policyholder.

* * * * *

Policy loan means a loan by an insurance company to a policy holder pursuant to the provisions of an insurance contract that is secured by the cash surrender value or collateral assignment of the related policy or contract. A policy loan includes:

(1) A cash loan, including a loan resulting from early payment benefits or accelerated payment benefits, on an insurance contract when the terms of contract specify that the payment is a policy loan secured by the policy; and

(2) An automatic premium loan, which is a loan that is made in accordance with policy provisions which provide that delinquent premium payments are automatically paid from the cash value at the end of the established grace period for premium payments.

Pre-sold construction loan means * * *

(4) The purchaser has not terminated the contract; however, if the purchaser terminates the sales contract, the Board must immediately apply a 100 percent risk weight to the loan and report the revised risk weight in the next quarterly Call Report, for a state member bank, or the FR Y–9C, for a bank holding company or savings and loan holding company, as applicable,

* * * * *

Separate account means a legally segregated pool of assets owned and held by an insurance company and maintained separately from the insurance company's general account assets for the benefit of an individual contract holder. To be a separate account:

(1) The account must be legally recognized under applicable law;

(2) The assets in the account must be insulated from general liabilities of the insurance company under applicable law in the event of the company's insolvency;

(3) The insurance company must invest the funds within the account as directed by the contract holder in designated investment alternatives or in accordance with specific investment objectives or policies, and

(4) All investment gains and losses, net of contract fees and assessments, must be passed through to the contract holder, provided that the contract may specify conditions under which there may be a minimum guarantee but must not include contract terms that limit the maximum investment return available to the policyholder.

* * * * *

State bank means any bank incorporated by special law of any State, or organized under the general laws of any State, or of the United States, including a Morris Plan bank, or other incorporated banking institution engaged in a similar business.

State member bank or member bank means a state bank that is a member of the Federal Reserve System.

* * * * *

Total leverage exposure * * *

(1) The balance sheet carrying value of all of the Board-regulated institution's on-balance sheet assets, as reported on the Call Report, for a state member bank, or the FR Y–9C, for a bank holding company or savings and loan holding company,[2] as applicable, less amounts deducted from tier 1 capital under § 217.22;

* * * * *

46. In § 217.10, revise paragraph (b)(4) to read as follows:

§ 217.10 Minimum capital requirements.

* * * * *

(b) * * *

(4) *Leverage ratio.* A Board-regulated institution's leverage ratio is the ratio of the Board-regulated institution's tier 1 capital to its average consolidated assets as reported on the Call Report, for a state member bank, or FR Y–9C, for a bank holding company or savings and loan holding company [3], as applicable, less amounts deducted from tier 1 capital.

* * * * *

47. In § 217.11, revise paragraphs (a)(2)(i) and (a)(3) as follows

§ 217.11 Capital conservation buffer and countercyclical capital buffer amount.

* * * * *

(a) * * *

(2) *Definitions.* * * *

(i) *Eligible retained income.* The eligible retained income of a Board-regulated institution is the Board-regulated institution's net income for the four calendar quarters preceding the current calendar quarter, based on the Board-regulated institution's most recent quarterly Call Report, for a state member bank, or the FR Y–9C, for a bank holding company or savings and loan holding company, as applicable, net of any capital distributions and associated tax effects not already reflected in net income.[4]

* * * * *

(3) *Calculation of capital conservation buffer.* A Board-regulated institution's capital conservation buffer is equal to the lowest of the following ratios, calculated as of the last day of the previous calendar quarter based on the Board-regulated institution's most recent Call Report, for a state member bank, or the FR Y–9C, for a bank holding company or savings and loan holding company,[5] as applicable:

* * * * *

48. In § 217.22, revise paragraph (a)(7) and add paragraph (b)(3) to read as follows:

§ 217.22 Regulatory capital adjustments and deductions.

* * * * *

(a) * * *

(7) *Financial subsidiaries.* (i) A state member bank must deduct the aggregate amount of its outstanding equity investment, including retained earnings, in its financial subsidiaries (as defined in 12 CFR 208.77) and may not consolidate the assets and liabilities of a financial subsidiary with those of the state member bank.

(ii) No other deduction is required under § 217.22(c) for investments in the capital instruments of financial subsidiaries.

(b) * * *

(3) Regulatory capital requirement of insurance underwriting subsidiary. A bank holding company or savings and loan holding company must deduct an amount equal to the minimum regulatory capital requirement established by the regulator of any insurance underwriting subsidiary of the holding company. For U.S.-based

---

[2] Savings and loan holding companies that do not file the FR Y–9C should follow the instructions to the FR Y–9C.

[3] Savings and loan holding companies that do not file the FR Y–9C should follow the instructions to the FR Y–9C.

[4] Savings and loan holding companies that do not file FR Y–9C should follow the instructions to the FR Y–9C. Net income, as reported in the Call Report or the FR Y–9C, as applicable, reflects discretionary bonus payments and certain capital distributions that are expense items (and their associated tax effects).

[5] Savings and loan holding companies that do not file FR Y–9C should follow the instructions to the FR Y–9C.

insurance underwriting subsidiaries, this amount generally would be 200 percent of the subsidiary's Authorized Control Level as established by the appropriate state regulator of the insurance company. The bank holding company or savings and loan holding company must take the deduction 50 percent from tier 1 capital and 50 percent from tier 2 capital. If the amount deductible from tier 2 capital exceeds the Board regulated institution's tier 2 capital, the Board regulated institution must deduct the excess from tier 1 capital.

* * * * *

49. In § 217.300, revise paragraph (c)(3) introductory text and add new paragraph (e) to read as follows:

§ 217.300 Transitions.

* * * * *

(3) *Transition adjustments to AOCI.* From January 1, 2013 through December 31, 2017, a Board-regulated institution must adjust common equity tier 1 capital with respect to the aggregate amount of unrealized gains on AFS equity securities, plus net unrealized gains or losses on AFS debt securities, plus accumulated net unrealized gains and losses on defined benefit pension obligations, plus accumulated net unrealized gains or losses on cash flow hedges related to items that are reported on the balance sheet at fair value included in AOCI (the transition AOCI adjustment amount) as reported on the Board-regulated institution's most recent Call Report, for a state member bank, or the FR Y–9C, for a bank holding company or savings and loan holding company,[6] as applicable, as follows:

* * * * *

(e) Until July 21, 2015, this part will not apply to any bank holding company subsidiary of a foreign banking organization that is currently relying on Supervision and Regulation Letter SR 01–01 issued by the Board (as in effect on May 19, 2010).

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

42. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3310, 3331–3351, 3907, and 3909; 15 U.S.C. 1681s, 1681w, 6801 and 6805.

[6] Savings and loan holding companies that do not file FR Y–9C should follow the instructions to the FR Y–9C.

Subpart A—General Provisions

50. In § 225.1, on January 1, 2015, remove and reserve paragraphs (c)(12), (c)(13) and (c)(15) to read as follows:

§ 225.1 Authority, purpose, and scope.

* * * * *

(c) *Scope* * * *

(12) [Reserved]

* * * * *

(14) [Reserved]

(15) [Reserved]

* * * * *

51. In § 225.2, revise paragraphs (r)(1)(i) and (ii) to read as follows:

§ 225.2 Definitions.

* * * * *

(r) * * *

(1) * * *

(i) On a consolidated basis, the bank holding company maintains a total risk-based capital ratio of 10.0 percent or greater, as defined in 12 CFR 217.10;

(ii) On a consolidated basis, the bank holding company maintains a tier 1 risk-based capital ratio of 6.0 percent or greater, as defined in 12 CFR 217.10; and

* * * * *

52. In § 225.4, revise paragraph (b)(4)(ii) to read as follows:

§ 225.4 Corporate practices.

* * * * *

(b) * * *

(4) * * *

(ii) In determining whether a proposal constitutes an unsafe or unsound practice, the Board shall consider whether the bank holding company's financial condition, after giving effect to the proposed purchase or redemption, meets the financial standards applied by the Board under section 3 of the BHC Act, including 12 CFR part 217 and the Board's Policy Statement for Small Bank Holding Companies (appendix C of this part).

* * * * *

53. In § 225.8, revise paragraphs (c)(5) and (c)(7) through (c)(10) to read as follows:

§ 225.8 Capital planning.

* * * * *

(c) * * *

(5) *Minimum regulatory capital ratio* means any minimum regulatory capital ratio that the Federal Reserve may require of a bank holding company, by regulation or order, including any minimum capital ratio required under 12 CFR 217.10(a).

* * * * *

(7) *Tier 1 capital* has the same meaning as under 12 CFR 217.2.

(8) *Tier 1 common capital* means tier 1 capital less the non-common elements of tier 1 capital, including perpetual preferred stock and related surplus, minority interest in subsidiaries, trust preferred securities and mandatory convertible preferred securities.

(9) *Tier 1 common ratio* means the ratio of a bank holding company's tier 1 common capital to total risk-weighted assets. This definition will remain in effect until the Board adopts an alternative tier 1 common ratio definition as a minimum regulatory capital ratio.

(10) *Total risk-weighted assets* has the same meaning as under 12 CFR 217.2.

* * * * *

Subpart B—Acquisition of Bank Securities or Assets

54. In § 225.12, revise paragraph (d)(2)(iv) to read as follows:

§ 225.12 Transactions not requiring Board approval.

* * * * *

(d) * * *

(2) * * *

(iv) Both before and after the transaction, the acquiring bank holding company meets the requirements of 12 CFR part 217;

* * * * *

Subpart C—Nonbanking Activities and Acquisitions by Bank Holding Companies

55. In § 225.22, revise paragraph (d)(8)(v) to read as follows:

§ 225.22 Exempt nonbanking activities and acquisitions.

* * * * *

(d) * * *

(8) * * *

(v) The acquiring company, after giving effect to the transaction, meets the requirements of 12 CFR part 217, and the Board has not previously notified the acquiring company that it may not acquire assets under the exemption in this paragraph (d).

* * * * *

Subpart J—Merchant Banking Investments

56. In § 225.172, revise paragraph (b)(6)(i)(A) to read as follows:

§ 225.22 What are the holding periods permitted for merchant banking investments?

* * * * *

(b) * * *

(6) * * *

(i) * * *

(A) Higher than the maximum marginal tier 1 capital charge applicable under part 217 to merchant banking investments held by that financial holding company; and

* * * * *

Appendix A to Part 225—Capital Adequacy Guidelines for Bank Holding Companies: Risk-Based Measure

57. Amend appendix A to remove ''appendix E of this part'' and add ''12 CFR part 217, subpart F'' in its place wherever it appears.

58. On January 1, 2015, appendix A to part 225 is removed and reserved.

Appendix B to Part 225—Capital Adequacy Guidelines for Bank Holding Companies and State Member Banks: Leverage Measure

59. Appendix B to part 225 is removed and reserved.

Appendix D to Part 225—Capital Adequacy Guidelines for Bank Holding Companies: Tier 1 Leverage Measure

60. Appendix D to part 225 is removed and reserved.

Appendix E to Part 225—Capital Adequacy Guidelines for Bank Holding Companies: Market Risk Measure

61. Appendix E to part 225 is removed and reserved.

Appendix G to Part 225—Capital Adequacy Guidelines for Bank Holding Companies: Internal-Ratings-Based and Advanced Measurement Approaches

62. Appendix G to part 225 is removed and reserved.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the common preamble, the Federal Deposit Insurance Corporation amends chapter III of title 12 of the Code of Federal Regulations as follows:

PART 324—CAPITAL ADEQUACY

63. The authority citation for part 324 is added to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819 (Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 1835, 3907, 3909, 4808; 5371; 5412; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, 2355, as amended by Pub. L. 103–325, 108 Stat. 2160, 2233 (12 U.S.C. 1828 note); Pub. L. 102–242, 105 Stat. 2236, 2386, as amended by Pub. L. 102–550, 106 Stat. 3672, 4089 (12 U.S.C. 1828 note); Pub. L. 111–203, 124 Stat. 1376, 1887 (15 U.S.C. 78o–7 note).

64. Subparts A, B, C, and G of part 324 are added as set forth at the end of the common preamble.

65. Subparts A, B, C, and G of part 324 are amended as set forth below:

a. Remove ''[AGENCY]'' and add ''FDIC'' in its place, wherever it appears;

b. Remove ''[BANK]'' and add ''bank and state savings association'' in its place, wherever it appears in the phrase ''Each [BANK]'' or ''each [BANK]'';

c. Remove ''[BANK]'' and add ''bank or state savings association'' in its place, wherever it appears in the phrases ''A [BANK]'', ''a [BANK]'', ''The [BANK]'', or ''the [BANK]'';

d. Remove ''[BANKS]'' and add ''banks and state savings associations'' in its place, wherever it appears;

e. Remove ''[PART]'' and add ''Part 324'' in its place, wherever it appears;

f. Remove ''[AGENCY]'' and add ''FDIC'' in its place, wherever it appears; and

g. Remove ''[REGULATORY REPORT]'' and add ''Call Report'' in its place, wherever it appears.

66. New § 324.2 is amended by adding the following definitions in alphabetical order:

§ 324.2 Definitions.

* * * * *

Bank means an FDIC-insured, state-chartered commercial or savings bank that is not a member of the Federal Reserve System and for which the FDIC is the appropriate federal banking agency pursuant to section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

* * * * *

Core capital means Tier 1 capital, as defined in § 324.2 of subpart A of this part.

* * * * *

State savings association means a State savings association as defined in section 3(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(3)), the deposits of which are insured by the Corporation. It includes a building and loan, savings and loan, or homestead association, or a cooperative bank (other than a cooperative bank which is a State bank as defined in section 3(a)(2) of the Federal Deposit Insurance Act) organized and operating according to the laws of the State in which it is chartered or organized, or a corporation (other than a bank as defined in section 3(a)(1) of the Federal Deposit Insurance Act) that the Board of Directors of the Federal Deposit Insurance Corporation determine to be operating substantially in the same manner as a State savings association.

* * * * *

Tangible capital means the amount of core capital (Tier 1 capital), as defined in accordance with § 324.2 of subpart A of this part, plus the amount of outstanding perpetual preferred stock (including related surplus) not included in Tier 1 capital.

Tangible equity means the amount of Tier 1 capital, as calculated in accordance with § 324.2 of subpart A of this chapter, plus the amount of outstanding perpetual preferred stock (including related surplus) not included in Tier 1 capital.

* * * * *

67. New § 324.10 is amended by adding paragraphs (a)(6), (b)(5), and (c)(5) to read as follows:

§ 324.10 Minimum capital requirements.

(a) * * *

(6) For state savings associations, a tangible capital ratio of 1.5 percent.

(b) * * *

(5) *State savings association tangible capital ratio.* A state savings association's tangible capital ratio is the ratio of the state savings association's core capital (Tier 1 capital) to total adjusted assets as calculated under § 390.461.

(c) * * *

(5) *State savings association tangible capital ratio.* A state savings association's tangible capital ratio is the ratio of the state savings association's core capital (Tier 1 capital) to total adjusted assets as calculated under § 390.461.

* * * * *

68. New § 324.22 is amended to add new paragraph (a)(8), to read as follows:

§ 324.22 Regulatory capital adjustments and deductions.

(a) * * *

(8) (i) A state savings association must deduct the aggregate amount of its outstanding investments, (both equity and debt) as well as retained earnings in subsidiaries that are not includable subsidiaries as defined in paragraph 7(iv) of this section (including those subsidiaries where the state savings association has a minority ownership interest) and may not consolidate the assets and liabilities of the subsidiary with those of the state savings association. Any such deductions shall be deducted from common equity tier 1 capital, except as provided in paragraphs (a)(7)(ii) and (a)(7)(iii) of this section.

(ii) If a state savings association has any investments (both debt and equity) in one or more subsidiaries engaged in any activity that would not fall within the scope of activities in which includable subsidiaries as defined in paragraph 7(iv) of this section may engage, it must deduct such investments from assets and common equity tier 1 capital in accordance with paragraph (c)(7)(i) of this section. The state savings association must first deduct from assets and common equity tier 1 capital the amount by which any investments in such subsidiary(ies) exceed the amount of such investments held by the state savings association as of April 12, 1989. Next the state savings association must deduct from assets and common equity tier 1 the state savings association's investments in and extensions of credit to the subsidiary on the date as of which the state savings association's capital is being determined.

(iii) If a state savings association holds a subsidiary (either directly or through a subsidiary) that is itself a [insured] domestic depository institution, the FDIC may, in its sole discretion upon determining that the amount of common equity tier 1 capital that would be required would be higher if the assets and liabilities of such subsidiary were consolidated with those of the parent state savings association than the amount that would be required if the parent state savings association's investment were deducted pursuant to paragraphs (c)(6)(i) and (c)(6)(ii) of this section, consolidate the assets and liabilities of that subsidiary with those of the parent state savings association in calculating the capital adequacy of the parent state savings association, regardless of whether the subsidiary would otherwise be an includable subsidiary as defined in paragraph (c)(7)(iv) of this section.

(iv) For purposes of this section, the term includable subsidiary means a subsidiary of a state savings association that is:

(A) Engaged solely in activities that are permissible for a national bank;

(B) Engaged in activities not permissible for a national bank, but only if acting solely as agent for its customers and such agency position is clearly documented in the state savings association's files;

(C) Engaged solely in mortgage-banking activities;

(D)(*1*) Itself an insured depository institution or a company the sole investment of which is an insured depository institution, and

(*2*) Was acquired by the parent state savings association prior to May 1, 1989; or

(E) A subsidiary of any state savings association existing as a state savings association on August 9, 1989 that —

(*1*) Was chartered prior to October 15, 1982, as a savings bank or a cooperative bank under state law, or

(*2*) Acquired its principal assets from an association that was chartered prior to October 15, 1982, as a savings bank or a cooperative bank under state law.

* * * * *

69. Subpart H is added to part 324 to read as follows:

Subpart H—Prompt Corrective Action

Sec.

Subpart H—Prompt Corrective Action

§ 324.301 Authority, purpose, scope, other supervisory authority, and disclosure of capital categories.

(a) *Authority.* This subpart is issued by the FDIC pursuant to section 38 of the Federal Deposit Insurance Act (FDI Act), as added by section 131 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (Pub. L. 102–242, 105 Stat. 2236 (1991)) (12 U.S.C. 1831o).

(b) *Purpose.* Section 38 of the FDI Act establishes a framework of supervisory actions for insured depository institutions that are not adequately capitalized. The principal purpose of this subpart is to define, for FDIC-insured state-chartered nonmember banks and state-chartered savings associations, the capital measures and capital levels, and for insured branches of foreign banks, comparable asset-based measures and levels, that are used for determining the supervisory actions authorized under section 38 of the FDI Act. This subpart also establishes procedures for submission and review of capital restoration plans and for issuance and review of directives and orders pursuant to section 38 of the FDI Act.

(c) *Scope.* Until January 1, 2015, subpart B of part 325 of this chapter will continue to apply to FDIC-insured state-chartered nonmember banks and insured branches of foreign banks for which the FDIC is the appropriate Federal banking agency. Until January 1, 2015, subpart Y of part 390 of this chapter will continue to apply to state savings associations. As of January 1, 2015, this subpart implements the provisions of section 38 of the FDI Act as they apply to FDIC-insured state-chartered nonmember banks, state savings associations, and insured branches of foreign banks for which the FDIC is the appropriate Federal banking agency. Certain of these provisions also apply to officers, directors and employees of those insured institutions. In addition, certain provisions of this subpart apply to all insured depository institutions that are deemed critically undercapitalized.

(d) *Other supervisory authority.* Neither section 38 of the FDI Act nor this subpart in any way limits the authority of the FDIC under any other provision of law to take supervisory actions to address unsafe or unsound practices, deficient capital levels, violations of law, unsafe or unsound conditions, or other practices. Action under section 38 of the FDI Act and this subpart may be taken independently of, in conjunction with, or in addition to any other enforcement action available to the FDIC, including issuance of cease and desist orders, capital directives, approval or denial of applications or notices, assessment of civil money penalties, or any other actions authorized by law.

(e) *Disclosure of capital categories.* The assignment of a bank, a state savings association, or an insured branch under this subpart within a particular capital category is for purposes of implementing and applying the provisions of section 38 of the FDI Act. Unless permitted by the FDIC or otherwise required by law, no bank or state savings association may state in any advertisement or promotional material its capital category under this subpart or that the FDIC or any other federal banking agency has assigned the bank or state savings association to a particular capital category.

§ 324.302 Notice of capital category.

(a) *Effective date of determination of capital category.* A bank or state savings association shall be deemed to be within a given capital category for purposes of section 38 of the FDI Act and this subpart as of the date the bank or state savings association is notified of, or is deemed to have notice of, its capital category, pursuant to paragraph (b) of this section.

(b) *Notice of capital category.* A bank or state savings association shall be deemed to have been notified of its capital levels and its capital category as of the most recent date:

(1) A Consolidated Report of Condition and Income or Thrift Financial Report (Call Report) is required to be filed with the FDIC;

(2) A final report of examination is delivered to the bank or state savings association; or

(3) Written notice is provided by the FDIC to the bank or state savings association of its capital category for purposes of section 38 of the FDI Act and this subpart or that the bank's or

state savings association's capital category has changed as provided in § 324.303(d).

(c) *Adjustments to reported capital levels and capital category*—(1) *Notice of adjustment by bank or state savings association.* A bank or state savings association shall provide the appropriate FDIC regional director with written notice that an adjustment to the bank's or state savings association's capital category may have occurred no later than 15 calendar days following the date that any material event has occurred that would cause the bank or state savings association to be placed in a lower capital category from the category assigned to the bank or state savings association for purposes of section 38 of the FDI Act and this subpart on the basis of the bank's or state savings association's most recent Call Report or report of examination.

(2) *Determination by the FDIC to change capital category.* After receiving notice pursuant to paragraph (c)(1) of this section, the FDIC shall determine whether to change the capital category of the bank or state savings association and shall notify the bank or state savings association of the FDIC's determination.

§ 324.303 Capital measures and capital category definitions.

(a) *Capital measures.* For purposes of section 38 of the FDI Act and this subpart, the relevant capital measures shall be:

(1) The total risk-based capital ratio;

(2) The Tier 1 risk-based capital ratio; and

(3) The common equity tier 1 ratio;

(4) The leverage ratio;

(5) The tangible equity to total assets ratio; and

(6) Beginning on January 1, 2018, the supplementary leverage ratio calculated in accordance with § 324.11 of subpart B of this part for banks or state savings associations that are subject to subpart E of part 324.

(b) *Capital categories.* For purposes of section 38 of the FDI Act and this subpart, a bank or state savings association shall be deemed to be:

(1) ''Well capitalized'' if the bank or state savings association:

(i) Has a total risk-based capital ratio of 10.0 percent or greater; and

(ii) Has a Tier 1 risk-based capital ratio of 8.0 percent or greater; and

(iii) Has a common equity tier 1 capital ratio of 6.5 percent or greater; and

(iv) Has a leverage ratio of 5.0 percent or greater; and

(v) Is not subject to any written agreement, order, capital directive, or prompt corrective action directive issued by the FDIC pursuant to section 8 of the FDI Act (12 U.S.C. 1818), the International Lending Supervision Act of 1983 (12 U.S.C. 3907), or the Home Owners' Loan Act (12 U.S.C. 1464(t)(6)(A)(ii)), or section 38 of the FDI Act (12 U.S.C. 1831o), or any regulation thereunder, to meet and maintain a specific capital level for any capital measure.

(2) ''Adequately capitalized'' if the bank or state savings association:

(i) Has a total risk-based capital ratio of 8.0 percent or greater; and

(ii) Has a Tier 1 risk-based capital ratio of 6.0 percent or greater; and

(iii) Has a common equity tier 1 capital ratio of 4.5 percent or greater; and

(iv) Has a leverage ratio of 4.0 percent or greater; and

(v) Does not meet the definition of a well capitalized bank.

(vi) Beginning January 1, 2018, an advanced approaches bank or state savings association will be deemed to be ''adequately capitalized'' if the bank or state savings association satisfies paragraphs (b)(2)(i) through (v) of this section and has a supplementary leverage ratio of 3.0 percent or greater, as calculated in accordance with § 324.11 of subpart B of this part.

(3) ''Undercapitalized'' if the bank or state savings association:

(i) Has a total risk-based capital ratio that is less than 8.0 percent; or

(ii) Has a Tier 1 risk-based capital ratio that is less than 6.0 percent; or

(iii) Has a common equity tier 1 capital ratio that is less than 4.5 percent; or

(iv) Has a leverage ratio that is less than 4.0 percent.

(v) Beginning January 1, 2018, an advanced approaches bank or state savings association will be deemed to be ''undercapitalized'' if the bank or state savings association has a supplementary leverage ratio of less than 3.0 percent, as calculated in accordance with § 324.11 of subpart B of this part.

(4) ''Significantly undercapitalized'' if the bank or state savings association has:

(i) A total risk-based capital ratio that is less than 6.0 percent; or

(ii) A Tier 1 risk-based capital ratio that is less than 4.0 percent; or

(iii) A common equity tier 1 capital ratio that is less than 3.0 percent; or

(iv) A leverage ratio that is less than 3.0 percent.

(5) ''Critically undercapitalized'' if the insured depository institution has a ratio of tangible equity to total assets that is equal to or less than 2.0 percent.

(c) *Capital categories for insured branches of foreign banks.* For purposes of the provisions of section 38 of the FDI Act and this subpart, an insured branch of a foreign bank shall be deemed to be:

(1) ''Well capitalized'' if the insured branch:

(i) Maintains the pledge of assets required under § 347.209 of this chapter; and

(ii) Maintains the eligible assets prescribed under § 347.210 of this chapter at 108 percent or more of the preceding quarter's average book value of the insured branch's third-party liabilities; and

(iii) Has not received written notification from:

(A) The OCC to increase its capital equivalency deposit pursuant to 12 CFR 28.15(b), or to comply with asset maintenance requirements pursuant to 12 CFR 28.20; or

(B) The FDIC to pledge additional assets pursuant to § 347.209 of this chapter or to maintain a higher ratio of eligible assets pursuant to § 347.210 of this chapter.

(2) ''Adequately capitalized'' if the insured branch:

(i) Maintains the pledge of assets required under § 347.209 of this chapter; and

(ii) Maintains the eligible assets prescribed under § 347.210 of this chapter at 106 percent or more of the preceding quarter's average book value of the insured branch's third-party liabilities; and

(iii) Does not meet the definition of a well capitalized insured branch.

(3) ''Undercapitalized'' if the insured branch:

(i) Fails to maintain the pledge of assets required under § 347.209 of this chapter; or

(ii) Fails to maintain the eligible assets prescribed under § 347.210 of this chapter at 106 percent or more of the preceding quarter's average book value of the insured branch's third-party liabilities.

(4) ''Significantly undercapitalized'' if it fails to maintain the eligible assets prescribed under § 347.210 of this chapter at 104 percent or more of the preceding quarter's average book value of the insured branch's third-party liabilities.

(5) ''Critically undercapitalized'' if it fails to maintain the eligible assets prescribed under § 347.210 of this chapter at 102 percent or more of the preceding quarter's average book value of the insured branch's third-party liabilities.

(d) *Reclassifications based on supervisory criteria other than capital.* The FDIC may reclassify a well capitalized bank or state savings association as adequately capitalized and may require an adequately capitalized bank or state savings association or an undercapitalized bank or state savings association to comply with certain mandatory or discretionary supervisory actions as if the bank or state savings association were in the next lower capital category (except that the FDIC may not reclassify a significantly undercapitalized bank or state savings association as critically undercapitalized) (each of these actions are hereinafter referred to generally as ''reclassifications'') in the following circumstances:

(1) *Unsafe or unsound condition.* The FDIC has determined, after notice and opportunity for hearing pursuant to § 308.202(a) of this chapter, that the bank or state savings association is in unsafe or unsound condition; or

(2) *Unsafe or unsound practice.* The FDIC has determined, after notice and opportunity for hearing pursuant to § 308.202(a) of this chapter, that, in the most recent examination of the bank or state savings association, the bank or state savings association received and has not corrected a less-than-satisfactory rating for any of the categories of asset quality, management, earnings, or liquidity.

§ 324.304 Capital restoration plans.

(a) *Schedule for filing plan*—(1) *In general.* A bank or state savings association shall file a written capital restoration plan with the appropriate FDIC regional director within 45 days of the date that the bank or state savings association receives notice or is deemed to have notice that the bank or state savings association is undercapitalized, significantly undercapitalized, or critically undercapitalized, unless the FDIC notifies the bank or state savings association in writing that the plan is to be filed within a different period. An adequately capitalized bank or state savings association that has been required pursuant to § 324.303(d) of this subpart to comply with supervisory actions as if the bank or state savings association were undercapitalized is not required to submit a capital restoration plan solely by virtue of the reclassification.

(2) *Additional capital restoration plans.* Notwithstanding paragraph (a)(1) of this section, a bank or state savings association that has already submitted and is operating under a capital restoration plan approved under section 38 and this subpart is not required to submit an additional capital restoration plan based on a revised calculation of its capital measures or a reclassification of the institution under § 324.303 unless the FDIC notifies the bank or state savings association that it must submit a new or revised capital plan. A bank or state savings association that is notified that it must submit a new or revised capital restoration plan shall file the plan in writing with the appropriate FDIC regional director within 45 days of receiving such notice, unless the FDIC notifies the bank or state savings association in writing that the plan must be filed within a different period.

(b) *Contents of plan.* All financial data submitted in connection with a capital restoration plan shall be prepared in accordance with the instructions provided on the Call Report, unless the FDIC instructs otherwise. The capital restoration plan shall include all of the information required to be filed under section 38(e)(2) of the FDI Act. A bank or state savings association that is required to submit a capital restoration plan as a result of a reclassification of the bank or state savings association pursuant to § 324.303(d) of this subpart shall include a description of the steps the bank or state savings association will take to correct the unsafe or unsound condition or practice. No plan shall be accepted unless it includes any performance guarantee described in section 38(e)(2)(C) of the FDI Act by each company that controls the bank or state savings association.

(c) *Review of capital restoration plans.* Within 60 days after receiving a capital restoration plan under this subpart, the FDIC shall provide written notice to the bank or state savings association of whether the plan has been approved. The FDIC may extend the time within which notice regarding approval of a plan shall be provided.

(d) *Disapproval of capital plan.* If a capital restoration plan is not approved by the FDIC, the bank or state savings association shall submit a revised capital restoration plan within the time specified by the FDIC. Upon receiving notice that its capital restoration plan has not been approved, any undercapitalized bank or state savings association (as defined in § 324.303(b) of this subpart) shall be subject to all of the provisions of section 38 of the FDI Act and this subpart applicable to significantly undercapitalized institutions. These provisions shall be applicable until such time as a new or revised capital restoration plan submitted by the bank has been approved by the FDIC.

(e) *Failure to submit capital restoration plan.* A bank or state savings association that is undercapitalized (as defined in § 324.303(b) of this subpart) and that fails to submit a written capital restoration plan within the period provided in this section shall, upon the expiration of that period, be subject to all of the provisions of section 38 and this subpart applicable to significantly undercapitalized institutions.

(f) *Failure to implement capital restoration plan.* Any undercapitalized bank or state savings association that fails in any material respect to implement a capital restoration plan shall be subject to all of the provisions of section 38 of the FDI Act and this subpart applicable to significantly undercapitalized institutions.

(g) *Amendment of capital restoration plan.* A bank or state savings association that has filed an approved capital restoration plan may, after prior written notice to and approval by the FDIC, amend the plan to reflect a change in circumstance. Until such time as a proposed amendment has been approved, the bank or state savings association shall implement the capital restoration plan as approved prior to the proposed amendment.

(h) *Performance guarantee by companies that control a bank or state savings association*—(1) *Limitation on liability*—(i) *Amount limitation.* The aggregate liability under the guarantee provided under section 38 and this subpart for all companies that control a specific bank or state savings association that is required to submit a capital restoration plan under this subpart shall be limited to the lesser of:

(A) An amount equal to 5.0 percent of the bank or state savings association's total assets at the time the bank or state savings association was notified or deemed to have notice that the bank or state savings association was undercapitalized; or

(B) The amount necessary to restore the relevant capital measures of the bank or state savings association to the levels required for the bank or state savings association to be classified as adequately capitalized, as those capital measures and levels are defined at the time that the bank or state savings association initially fails to comply with a capital restoration plan under this subpart.

(ii) *Limit on duration.* The guarantee and limit of liability under section 38 of the FDI Act and this subpart shall expire after the FDIC notifies the bank or state savings association that it has remained adequately capitalized for each of four consecutive calendar quarters. The expiration or fulfillment by a company of a guarantee of a capital restoration plan shall not limit the liability of the company under any guarantee required or provided in connection with any capital restoration plan filed by the same bank or state savings association after expiration of the first guarantee.

(iii) *Collection on guarantee.* Each company that controls a given bank or state savings association shall be jointly and severally liable for the guarantee for such bank or state savings association as required under section 38 and this subpart, and the FDIC may require and collect payment of the full amount of that guarantee from any or all of the companies issuing the guarantee.

(2) *Failure to provide guarantee.* In the event that a bank or state savings association that is controlled by any company submits a capital restoration plan that does not contain the guarantee required under section 38(e)(2) of the FDI Act, the bank or state savings association shall, upon submission of the plan, be subject to the provisions of section 38 and this subpart that are applicable to banks and state savings associations that have not submitted an acceptable capital restoration plan.

(3) *Failure to perform guarantee.* Failure by any company that controls a bank or state savings association to perform fully its guarantee of any capital plan shall constitute a material failure to implement the plan for purposes of section 38(f) of the FDI Act. Upon such failure, the bank or state savings association shall be subject to the provisions of section 38 and this subpart that are applicable to banks and state savings associations that have failed in a material respect to implement a capital restoration plan.

§ 324.305 Mandatory and discretionary supervisory actions.

(a) *Mandatory supervisory actions*—(1) *Provisions applicable to all banks and state savings associations.* All banks and state savings associations are subject to the restrictions contained in section 38(d) of the FDI Act on payment of capital distributions and management fees.

(2) *Provisions applicable to undercapitalized, significantly undercapitalized, and critically undercapitalized banks and state savings associations.* Immediately upon receiving notice or being deemed to have notice, as provided in § 324.302 of this subpart, that the bank or state savings association is undercapitalized, significantly undercapitalized, or critically undercapitalized, the bank or state savings association shall become subject to the provisions of section 38 of the FDI Act:

(i) Restricting payment of capital distributions and management fees (section 38(d) of the FDI Act);

(ii) Requiring that the FDIC monitor the condition of the bank or state savings association (section 38(e)(1) of the FDI Act);

(iii) Requiring submission of a capital restoration plan within the schedule established in this subpart (section 38(e)(2) of the FDI Act);

(iv) Restricting the growth of the bank or state savings association's assets (section 38(e)(3) of the FDI Act); and

(v) Requiring prior approval of certain expansion proposals (section 38(e)(4) of the FDI Act).

(3) *Additional provisions applicable to significantly undercapitalized, and critically undercapitalized banks and state savings associations.* In addition to the provisions of section 38 of the FDI Act described in paragraph (a)(2) of this section, immediately upon receiving notice or being deemed to have notice, as provided in § 324.302 of this subpart, that the bank or state savings association is significantly undercapitalized, or critically undercapitalized, or that the bank or state savings association is subject to the provisions applicable to institutions that are significantly undercapitalized because the bank or state savings association failed to submit or implement in any material respect an acceptable capital restoration plan, the bank or state savings association shall become subject to the provisions of section 38 of the FDI Act that restrict compensation paid to senior executive officers of the institution (section 38(f)(4) of the FDI Act).

(4) *Additional provisions applicable to critically undercapitalized institutions.* (i) In addition to the provisions of section 38 of the FDI Act described in paragraphs (a)(2) and (a)(3) of this section, immediately upon receiving notice or being deemed to have notice, as provided in § 324.302 of this subpart, that the insured depository institution is critically undercapitalized, the institution is prohibited from doing any of the following without the FDIC's prior written approval:

(A) Entering into any material transaction other than in the usual course of business, including any investment, expansion, acquisition, sale of assets, or other similar action with respect to which the depository institution is required to provide notice to the appropriate Federal banking agency;

(B) Extending credit for any highly leveraged transaction;

(C) Amending the institution's charter or bylaws, except to the extent necessary to carry out any other requirement of any law, regulation, or order;

(D) Making any material change in accounting methods;

(E) Engaging in any covered transaction (as defined in section 23A(b) of the Federal Reserve Act (12 U.S.C. 371c(b)));

(F) Paying excessive compensation or bonuses;

(G) Paying interest on new or renewed liabilities at a rate that would increase the institution's weighted average cost of funds to a level significantly exceeding the prevailing rates of interest on insured deposits in the institution's normal market areas; and

(H) Making any principal or interest payment on subordinated debt beginning 60 days after becoming critically undercapitalized except that this restriction shall not apply, until July 15, 1996, with respect to any subordinated debt outstanding on July 15, 1991, and not extended or otherwise renegotiated after July 15, 1991.

(ii) In addition, the FDIC may further restrict the activities of any critically undercapitalized institution to carry out the purposes of section 38 of the FDI Act.

(5) Exception for certain savings associations. The restrictions in paragraph (a)(4) of this section shall not apply, before July 1, 1994, to any insured savings association if:

(i) The savings association had submitted a plan meeting the requirements of section 5(t)(6)(A)(ii) of the Home Owners' Loan Act (12 U.S.C. 1464(t)(6)(A)(ii)) prior to December 19, 1991;

(ii) The Director of Office of Thrift Supervision (OTS) had accepted the plan prior to December 19, 1991; and

(iii) The savings association remains in compliance with the plan or is operating under a written agreement with the appropriate federal banking agency.

(b) Discretionary supervisory actions. In taking any action under section 38 of the FDI Act that is within the FDIC's discretion to take in connection with:

(1) An insured depository institution that is deemed to be undercapitalized, significantly undercapitalized, or critically undercapitalized, or has been reclassified as undercapitalized, or significantly undercapitalized; or

(2) An officer or director of such institution, the FDIC shall follow the procedures for issuing directives under §§ 308.201 and 308.203 of this chapter, unless otherwise provided in section 38 of the FDI Act or this subpart.

PART 362—ACTIVITIES OF INSURED STATE BANKS AND INSURED SAVINGS ASSOCIATIONS

70. The authority citation for part 362 continues to read as follows:

Authority: 12 U.S.C. 1816, 1818, 1819(a)(Tenth), 1828(j), 1828(m), 1828a, 1831a, 1831e, 1831w, 1843(l).

71. Revise § 362.18(a)(3) to read as follows:

§ 362.18 Financial subsidiaries of insured state nonmember banks

(a) * * *

(3) The insured state nonmember bank will deduct the aggregate amount of its outstanding equity investment, including retained earnings, in all financial subsidiaries that engage in activities as principal pursuant to section 46(a) of the Federal Deposit Act (12 U.S.C. 1831w(a)), from the bank's total assets and tangible equity and deduct such investment from common equity tier 1 capital in accordance with 12 CFR part 324, subpart C.

* * * * *

Dated: June 11, 2012

Thomas J. Curry,

Comptroller of the Currency.

By order of the Board of Directors.

Dated at Washington, DC, this 12th day of June, 2012.

Robert E. Feldman,

Executive Secretary.

Federal Deposit Insurance Corporation.

By order of the Board of Governors of the Federal Reserve System, July 3, 2012.

Jennifer J. Johnson

Secretary of the Board.

[FR Doc. 2012–16757 Filed 8–10–12; 8:45 am]

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Part III

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Part 3

Federal Reserve System

12 CFR Part 217

Federal Deposit Insurance Corporation

12 CFR Part 324

Regulatory Capital Rules: Standardized Approach for Risk-Weighted Assets; Market Discipline and Disclosure Requirements; Proposed Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket ID OCC–2012–0009]

RIN 1557–AD46

FEDERAL RESERVE SYSTEM

12 CFR Part 217

[Regulations H, Q, and Y; Docket No. R–1442]

RIN 7100 AD 87

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 324

RIN 3064–AD96

Regulatory Capital Rules: Standardized Approach for Risk-Weighted Assets; Market Discipline and Disclosure Requirements

AGENCY: Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; and the Federal Deposit Insurance Corporation.

ACTION: Joint notice of proposed rulemaking.

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 seeking comment on three notices of proposed rulemaking (NPRs) that would revise and replace the agencies' current capital rules.

This NPR (Standardized Approach NPR) includes proposed changes to the agencies' general risk-based capital requirements for determining risk-weighted assets (that is, the calculation of the denominator of a banking organization's risk-based capital ratios). The proposed changes would revise and harmonize the agencies' rules for calculating risk-weighted assets to enhance risk-sensitivity and address weaknesses identified over recent years, including by incorporating certain international capital standards of the Basel Committee on Banking Supervision (BCBS) set forth in the standardized approach of the ''International Convergence of Capital Measurement and Capital Standards: A Revised Framework'' (Basel II), as revised by the BCBS between 2006 and 2009, and other proposals addressed in recent consultative papers of the BCBS.

In this NPR, the agencies also propose alternatives to credit ratings for calculating risk-weighted assets for certain assets, consistent with section 939A of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act). The revisions include methodologies for determining risk-weighted assets for residential mortgages, securitization exposures, and counterparty credit risk. The changes in the Standardized Approach NPR are proposed to take effect on January 1, 2015, with an option for early adoption. The Standardized Approach NPR also would introduce disclosure requirements that would apply to top-tier banking organizations domiciled in the United States with $50 billion or more in total assets, including disclosures related to regulatory capital instruments. In connection with the proposed changes to the agencies' capital rules in this NPR, the agencies are also seeking comment on the two related NPRs published elsewhere in today's **Federal Register.** The two related NPR's are discussed further in the **SUPPLEMENTARY INFORMATION.**

DATES: Comments must be submitted on or before October 22, 2012.

ADDRESSES: Comments should be directed to:

OCC: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by the Federal eRulemaking Portal or email, if possible. Please use the title ''Regulatory Capital Rules: Standardized Approach for Risk-weighted Assets; Market Discipline and Disclosure Requirements'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal—''regulations.gov'':* Go to *http://www.regulations.gov.* Click ''Advanced Search.'' Select ''Document Type'' of ''Proposed Rule,'' and in ''By Keyword or ID'' box, enter Docket ID ''OCC–2012–0009,''and click ''Search.'' If proposed rules for more than one agency are listed, in the ''Agency'' column, locate the notice of proposed rulemaking for the OCC. Comments can be filtered by Agency using the filtering tools on the left side of the screen. In the ''Actions'' column, click on ''Submit a Comment'' or ''Open Docket Folder'' to submit or view public comments and to view supporting and related materials for this rulemaking action.
- Click on the ''Help'' tab on the Regulations.gov home page to get information on using Regulations.gov, including instructions for submitting or viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.
- *Email: regs.comments@occ.treas.gov.*
- *Mail:* Office of the Comptroller of the Currency, 250 E Street SW., Mail Stop 2–3, Washington, DC 20219.
- *Fax:* (202) 874–5274.
- *Hand Delivery/Courier:* 250 E Street SW., Mail Stop 2–3, Washington, DC 20219.

Instructions: You must include ''OCC'' as the agency name and ''Docket ID OCC–2012–0009.'' In general, OCC will enter all comments received into the docket and publish them on the Regulations.gov Web site without change, including any business or personal information that you provide such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this notice by any of the following methods:

- *Viewing Comments Electronically:* Go to *http://www.regulations.gov.* Click ''Advanced search.'' Select ''Document Type'' of ''Public Submission'' and in ''By Keyword or ID'' box enter Docket ID ''OCC–2012–0009,'' and click ''Search.'' If comments from more than one agency are listed, the ''Agency'' column will indicate which comments were received by the OCC. Comments can be filtered by Agency using the filtering tools on the left side of the screen.
- *Viewing Comments Personally:* You may personally inspect and photocopy comments at the OCC, 250 E Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.
- *Docket:* You may also view or request available background documents and project summaries using the methods described above.

Board: When submitting comments, please consider submitting your comments by email or fax because paper mail in the Washington, DC area and at the Board may be subject to delay. You may submit comments, identified by

Docket No. R–1442; RIN No. 7100 AD 87, by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov*. Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov*. Include docket number in the subject line of the message.
- *Fax:* (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 Street NW., Washington, DC 20551) between 9 a.m. and 5 p.m. on weekdays.

FDIC: You may submit comments by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Agency Web site: http://www.FDIC.gov/regulations/laws/federal/propose.html.*
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivered/Courier:* The guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.
- *Email: comments@FDIC.gov*.
- *Instructions:* Comments submitted must include ''FDIC'' and ''RIN 3064–AD 96.'' Comments received will be posted without change to *http://www.FDIC.gov/regulations/laws/federal/propose.html*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT:

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Board: Anna Lee Hewko, Assistant Director, (202) 530–6260, Thomas Boemio, Manager, (202) 452–2982, or Constance M. Horsley, Manager, (202) 452–5239, Capital and Regulatory Policy, Division of Banking Supervision and Regulation; or Benjamin McDonough, Senior Counsel, (202) 452–2036, April C. Snyder, Senior Counsel, (202) 452–3099, or Christine Graham, Senior Attorney, (202) 452–3005, 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.

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SUPPLEMENTARY INFORMATION: 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 seeking comment on three notices of proposed rulemaking (NPRs) that would revise and replace the agencies' current capital rules.

This NPR (Standardized Approach NPR) includes proposed changes to the agencies' general risk-based capital requirements for determining risk-weighted assets (that is, the calculation of the denominator of a banking organization's risk-based capital ratios). The proposed changes would revise and harmonize the agencies' rules for calculating risk-weighted assets to enhance risk-sensitivity and address weaknesses identified over recent years, including by incorporating certain international capital standards of the Basel Committee on Banking Supervision (BCBS) set forth in the standardized approach of the ''International Convergence of Capital Measurement and Capital Standards: A Revised Framework'' (Basel II), as revised by the BCBS between 2006 and 2009, and other proposals addressed in recent consultative papers of the BCBS.

In this NPR, the agencies also propose alternatives to credit ratings for calculating risk-weighted assets for certain assets, consistent with section 939A of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act). The revisions include methodologies for determining risk-weighted assets for residential mortgages, securitization exposures, and counterparty credit risk. The changes in this Standardized Approach NPR are proposed to take effect on January 1, 2015, with an option for early adoption. The Standardized Approach NPR also would introduce disclosure requirements that would apply to top-tier banking organizations domiciled in the United States with $50 billion or more in total assets, including disclosures related to regulatory capital instruments.

In connection with the proposed changes to the agencies' capital rules in this NPR, the agencies are also seeking comment on the two related NPRs published elsewhere in today's **Federal Register**. In the notice titled ''Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III, Minimum Regulatory Capital Ratios, Capital Adequacy, Prompt Corrective Action, and Transition Provisions'' (Basel III NPR), the agencies are proposing to revise their minimum risk-based capital requirements and criteria for regulatory capital, as well as establish a capital conservation buffer framework, consistent with Basel III.

The proposals in this NPR and the Basel III NPR would apply to all banking organizations that are currently subject to minimum capital requirements (including national banks, state member banks, state nonmember banks, state and federal savings associations, and top-tier bank holding companies domiciled in the United States not subject to the Board's Small Bank Holding Company Policy Statement), as well as top-tier savings and loan holding companies domiciled in the United States (together, banking organizations).

In the notice titled ''Regulatory Capital Rules: Advanced Approaches Risk-Based Capital Rule; Market Risk Capital Rule,'' (Advanced Approaches and Market Risk NPR) the agencies are proposing to revise the advanced approaches risk-based capital rules, which are applicable only to the largest internationally active banking organizations, consistent with Basel III and other changes to the BCBS's capital standards.

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[1] Sections marked with an asterisk generally would not apply to less complex banking organizations.

I. Introduction and Overview

The Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) (collectively, the agencies) are proposing comprehensive revisions to their regulatory capital framework through three concurrent notices of proposed rulemaking (NPRs). In this NPR (Standardized Approach NPR), the agencies are proposing to revise certain aspects of the general risk-based capital requirements that address the calculation of risk-weighted assets. The agencies believe the proposed changes included in this NPR would both enhance the overall risk-sensitivity of the calculation of a banking organization's total risk-weighted assets and be consistent with relevant provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).[2] Although many of the proposed changes included in this NPR are not specifically included in the Basel capital framework, the agencies believe that these proposed changes are generally consistent with the goals of the international framework.

This NPR contains a standardized approach for determining risk-weighted assets. This NPR would apply to all banking organizations currently subject to minimum capital requirements, including national banks, state member banks, state nonmember banks, state and federal savings associations, top-tier bank holding companies domiciled in the United States not subject to the Board's Small Bank Holding Company Policy Statement (12 CFR part 225, appendix C), as well as top-tier savings and loan holding companies domiciled in the United States (together, banking organizations).[3] The proposed effective date for the provisions of this NPR is January 1, 2015, with an option for early adoption.

In a separate NPR (Basel III NPR), the agencies are proposing to revise their capital regulations to incorporate agreements reached by the Basel Committee on Banking Supervision (BCBS) in ''Basel III: A Global Regulatory Framework for More Resilient Banks and Banking Systems'' (Basel III). The Basel III NPR would revise the definition of regulatory capital and minimum capital ratios, establish capital buffers, create a supplementary leverage ratio for advanced approach banking organizations, and revise the agencies' Prompt Corrective Action (PCA) regulations.

The agencies are proposing in a third NPR (Advanced Approaches and Market Risk NPR) to incorporate additional aspects of the Basel III framework into the advanced approaches risk-based capital rule (advanced approaches rule). Additionally, in the Advanced Approaches and Market Risk NPR, the Board proposes to apply the advanced approaches rule to savings and loan holding companies, and the Board, FDIC, and OCC propose to apply the market risk capital rule (market risk rule) to savings and loan holding companies and to state and federal

[2] Public Law 111–203, 124 Stat. 1376 (2010).

[3] Small bank holding companies would continue to be subject to the Small Bank Holding Company Policy Statement. The proposed rule's application to all savings and loan holding companies (including small savings and loan holding companies) is consistent with the transfer of supervisory responsibilities to the Board and the requirements of section 171 of the Dodd-Frank Act. Section 171 of the Dodd-Frank Act by its terms does not apply to small bank holding companies, but there is no exemption from the requirements of section 171 for small savings and loan holding companies. *See* 12 U.S.C. 5371.

savings associations that meet the scope requirements of these rules, respectively. Thus, the Advanced Approaches and Market Risk NPR is applicable only to banking organizations that are or would be subject to the advanced approaches rule (advanced approaches banking organizations) or the market risk rule, and to savings and loan holding companies and state and federal savings associations that would be subject to the advanced approaches rule or market risk rule.

All banking organizations, including organizations subject to the advanced approaches rule, should review both the Basel III NPR and the Standardized Approach NPR. The requirements proposed in the Basel III NPR and the Standardized Approach NPR are proposed to become the ''generally applicable'' capital requirements for purposes of section 171 of the Dodd-Frank Act because they would be the capital requirements for insured depository institutions under section 38 of the Federal Deposit Insurance Act, without regard to asset size or foreign financial exposure.[4]

The agencies believe that it is important to publish all of the proposed capital rules at the same time so that banking organizations can evaluate the overall potential impact of the proposals on their operations. The proposals are divided into three separate NPRs to reflect the distinct objectives of each proposal, to allow interested parties to better understand the various aspects of the overall capital framework, including which aspects of the proposals would apply to which banking organizations, and to help interested parties better focus their comments on areas of particular interest. Additionally, the agencies believe that separating the proposed requirements into three NPRs makes it easier for banking organizations of all sizes to more easily understand which proposed changes are related to the agencies' objective to improve the quality and increase the quantity of capital and which are related to the agencies' objective to enhance the overall risk-sensitivity of the calculation of a banking organization's total risk-weighted assets. The agencies believe that the proposed changes contained in the three NPRs will result in capital requirements that will improve institutions' ability to withstand periods of economic stress and better reflect their risk profiles. The agencies have carefully considered the potential impact of the three NPRs on all banking organizations, including community banking organizations, and sought to minimize the potential burden of these changes wherever possible.

This NPR proposes new methodologies for determining risk-weighted assets in the agencies' general capital rules, incorporating elements of the Basel II standardized approach[5] as modified by the 2009 ''Enhancements to the Basel II Framework'' (2009 Enhancements)[6] and recent consultative papers published by the BCBS. This NPR also proposes alternative standards of creditworthiness consistent with section 939A of the Dodd-Frank Act.[7] The proposed revisions in this NPR include revisions to recognition of credit risk mitigation, including a greater recognition of financial collateral and a wider range of eligible guarantors. They also include risk weighting of equity exposures and past due loans, operational requirements for securitization exposures, more favorable capital treatment for derivatives and repo-style transactions cleared through central counterparties, and disclosure requirements that would apply to top-tier banking organizations with $50 billion or more in total assets that are not subject to the advanced approaches rule. In addition, the proposed risk weights for residential mortgage exposures in this NPR enhance risk-sensitivity for capital requirements associated with these exposures. Similarly, the proposals in this NPR would require a higher risk weighting for certain commercial real estate exposures that typically have higher credit risk. The agencies believe these proposals would more appropriately align capital requirements with these exposures and contribute to the resilience of both individual banking organizations and the banking system.

Some of the proposed changes in this NPR are not specifically included in the Basel capital framework. However, the agencies believe that these proposed changes are generally consistent with the goals of that framework. For example, the Basel capital framework seeks to enhance the risk-sensitivity of the international risk-based capital requirements by mapping capital requirements for certain exposures to credit ratings provided by credit rating agencies. Instead of mapping risk weights to credit ratings, the agencies are proposing alternative standards of creditworthiness to assign risk weights to certain exposures, including exposures to sovereigns, companies, and securitization exposures, in a manner consistent with section 939A of the Dodd-Frank Act.[8] These alternative creditworthiness standards and risk-based capital requirements have been designed to be consistent with safety and soundness while also exhibiting risk-sensitivity to the extent possible. Furthermore, these capital requirements are intended to be similar to those generated under the Basel framework.

Table 1 summarizes key proposed requirements in this NPR and illustrates how these changes compare to the agencies' general risk-based capital rules.[9] The remaining sections of this notice describe in detail each element of the proposal, how the proposal would differ from the current general risk-based capital rules, and examples for how a banking organization would calculate risk-weighted asset amounts.

[4] 12 U.S.C. 1831o; 12 CFR part 6, 12 CFR part 165 (OCC); 12 CFR 208.43 (Board), 12 CFR 325.105, 12 CFR 390.455 (FDIC).

[5] *See* BCBS, ''International Convergence of Capital Measurement and Capital Standards: A Revised Framework,'' (June 2006), available at *http://www.bis.org/publ/bcbs128.htm* (Basel II).

[6] *See* BCBS, ''Enhancements to the Basel II Framework,'' (July 2009), available at *http://www.bis.org/publ/bcbs157.htm*.

[7] Dodd-Frank Act, section 939A (15 U.S.C. 78o–7, note).

[8] Section 939A of the Dodd-Frank Act provides that not later than 1 year after the date of enactment, each Federal agency shall review: (1) Any regulation issued by such agency that requires the use of an assessment of the credit-worthiness of a security or money market instrument; and (2) any references to or requirements in such regulations regarding credit ratings. Section 939A further provides that each such agency ''shall modify any such regulations identified by the review * * * to remove any reference to or requirement of reliance on credit ratings and to substitute in such regulations such standard of credit-worthiness as each respective agency shall determine as appropriate for such regulations.'' *See* 15 U.S.C. 78o–7 note.

[9] Banking organizations should refer to the Basel III NPR to see a complete table of the key provisions of the proposal.

TABLE 1—KEY PROVISIONS OF THE PROPOSED REQUIREMENTS AS COMPARED TO THE GENERAL RISK-BASED CAPITAL RULES

Aspect of proposed requirements	Proposed treatment
Risk-weighted Assets	
Credit exposures to:	
U.S. government and its agencies	Unchanged.
U.S. government-sponsored entities.	
U.S. depository institutions and credit unions.	
U.S. public sector entities, such as states and municipalities (section 32 of subpart D).	
Credit exposures to:	
Foreign sovereigns	Introduces a more risk-sensitive treatment using the Country Risk Classification measure produced by the Organization for Economic Co-operation and Development.
Foreign banks	
Foreign public sector entities (section 32 of subpart D)	
Corporate exposures (section 32 of subpart D)	Assigns a 100 percent risk weight to corporate exposures, including exposures to securities firms.
Residential mortgage exposures (section 32 of subpart D).	Introduces a more risk-sensitive treatment based on several criteria, including certain loan characteristics and the loan-to-value-ratio of the exposure.
High volatility commercial real estate exposures (section 32 of subpart D).	Applies a 150 percent risk weight to certain credit facilities that finance the acquisition, development or construction of real property.
Past due exposures (section 32 of subpart D)	Applies a 150 percent risk weight to exposures that are not sovereign exposures or residential mortgage exposures and that are more than 90 days past due or on nonaccrual.
Securitization exposures (sections 41–45 of subpart D).	Maintains the gross-up approach for securitization exposures.
	Replaces the current ratings-based approach with a formula-based approach for determining a securitization exposure's risk weight based on the underlying assets and exposure's relative position in the securitization's structure.
Equity exposures (sections 51–53 of subpart D)	Introduces more risk-sensitive treatment for equity exposures.
Off-balance Sheet Items (section 33 of subpart D).	Revises the measure of the counterparty credit risk of repo-style transactions.
	Raises the credit conversion factor for most short-term commitments from zero percent to 20 percent.
Derivative Contracts (section 34 of subpart D)	Removes the 50 percent risk weight cap for derivative contracts.
Cleared Transactions (section 35 of subpart D)	Provides preferential capital requirements for cleared derivative and repo-style transactions (as compared to requirements for non-cleared transactions) with central counterparties that meet specified standards. Also requires that a clearing member of a central counterparty calculate a capital requirement for its default fund contributions to that central counterparty.
Credit Risk Mitigation (section 36 of subpart D)	Provides a more comprehensive recognition of collateral and guarantees.
Disclosure Requirements (sections 61–63 of subpart D).	Introduces qualitative and quantitative disclosure requirements, including regarding regulatory capital instruments, for banking organizations with total consolidated assets of $50 billion or more that are not subject to the separate advanced approaches disclosure requirements.

This NPR proposes that, beginning on January 1, 2015, a banking organization would be required to calculate risk-weighted assets using the methodologies described herein. Until then, the banking organization may calculate risk-weighted assets using the methodologies in the current general risk-based capital rules.

Some of the proposed requirements in this NPR are not applicable to smaller, less complex banking organizations. To assist these banking organizations in rapidly identifying the elements of these proposals that would apply to them, this NPR and the Basel III NPR provide, as addenda to the corresponding preambles, a summary of the proposed changes in those NPRs as they would generally apply to smaller, less complex banking organizations. This NPR also contains a second addendum to the preamble, which directs the reader to the definitions proposed under the Basel III NPR because they are applicable to the Standardized Approach NPR as well.

Question 1: The agencies seek comment on the advantages and disadvantages of the proposed standardized approach rule as it would apply to smaller and less complex banking organizations (community banking organizations). What specific changes, if any, to the rule would accomplish the agencies' goals of establishing improved risk-sensitivity and quality of capital in an appropriate manner? For example, in which areas might the proposed standardized approach for calculating risk-weighted assets include simpler approaches for community banking organizations or longer transition periods? Provide specific suggestions.

Question 2: The agencies also seek comment on the advantages and disadvantages of allowing certain community banking organizations to continue to calculate their risk-weighted assets based on the methodology in the current general risk-based capital rules, as modified to meet the new Basel III requirements and any changes required under U.S. law, and as incorporated into a comprehensive regulatory framework.

For example, under this type of alternative approach, community banking organizations would be subject to the proposed new PCA thresholds, a capital conservation buffer, and other Basel III revisions to the capital framework including the definition of capital, as well as any changes related to section 939A of the Dodd-Frank Act.

As modified with these revisions, community banking organizations would continue using most of the same risk weights as under the current general risk-based capital rules, including for commercial and residential mortgage exposures.

Under this approach, banking organizations other than community banking organizations would use the proposed standardized approach risk weights to calculate the denominator of the risk-based capital ratio. The agencies request comment on the criteria they should consider when determining which banking organizations, if any, should be permitted to continue to calculate their risk-weighted assets using the methodology in the current general risk-based capital rules (revised as described above). Which banking organizations, consistent with section 171 of the Dodd-Frank Act, should be required to use the standardized approach? [10] What factors should the agencies consider in making this determination?

II. Standardized Approach for Risk-weighted Assets

A. Calculation of Standardized Total Risk-weighted Assets

Similar to the current general risk-based capital rules, under the proposal, a banking organization would calculate its total risk-weighted assets by adding together its on- and off-balance sheet risk-weighted asset amounts and making any relevant adjustments to incorporate required capital deductions.[11] Banking organizations subject to the market risk rule would be required to supplement their total risk-weighted assets as provided by the market risk rule.[12] Risk-weighted asset amounts generally would be determined by assigning on-balance sheet assets to broad risk-weight categories according to the counterparty, or, if relevant, the guarantor or collateral. Similarly, risk-weighted asset amounts for off-balance sheet items would be calculated using a two-step process: (1) Multiplying the amount of the off-balance sheet exposure by a credit conversion factor (CCF) to determine a credit equivalent amount, and (2) assigning the credit equivalent amount to a relevant risk-weight category.

A banking organization would determine its standardized total risk-weighted assets by calculating the sum of: (1) Its risk-weighted assets for general credit risk, cleared transactions, default fund contributions, unsettled transactions, securitization exposures, and equity exposures, each as defined below, *plus* (ii) market risk-weighted assets, if applicable, *less* (iii) the banking organization's allowance for loan and lease losses (ALLL) that is not included in tier 2 capital (as described in section 20 of the proposal). The sections below describe in more detail how a banking organization would determine the risk-weighted asset amounts for its exposures.

B. Risk-weighted Assets for General Credit Risk

Under this NPR, total risk-weighted assets for general credit risk is the sum of the risk-weighted asset amounts as calculated under section 31(a) of the proposal. As proposed, general credit risk exposures would include a banking organization's on-balance sheet exposures, over-the-counter (OTC) derivative contracts, off-balance sheet commitments, trade and transaction-related contingencies, guarantees, repo-style transactions, financial standby letters of credit, forward agreements, or other similar transactions. General credit risk exposures would generally exclude unsettled transactions, cleared transactions, default fund contributions, securitization exposures, and equity exposures, each as the agencies propose to define. Section 32 describes the proposed risk weights that would apply to sovereign exposures; exposures to certain supranational entities and multilateral development banks (MDBs); exposures to government-sponsored entities (GSEs); exposures to depository institutions, foreign banks, and credit unions; exposures to public sector entities (PSEs); corporate exposures; residential mortgage exposures; pre-sold residential construction loans; statutory multifamily mortgages; high volatility commercial real estate (HVCRE) exposures; past due exposures; and other assets (including cash, gold bullion, certain mortgage servicing assets (MSAs) and deferred tax assets (DTAs)).

Generally, the exposure amount for the on-balance sheet component of an exposure is the banking organization's carrying value for the exposure as determined under generally accepted accounting principles (GAAP). The exposure amount for an off-balance sheet component of an exposure is typically determined by multiplying the notional amount of the off-balance sheet component by the appropriate CCF as determined under section 33. The exposure amount for an OTC derivative contract or cleared transaction that is a derivative would be determined under section 34 while exposure amounts for collateralized OTC derivative contracts, collateralized cleared transactions that are derivatives, repo-style transactions, and eligible margin loans would be determined under section 37 of the proposal.

1. Exposures to Sovereigns

The agencies propose to retain the current rules' risk weights for exposures to and claims directly and unconditionally guaranteed by the U. S. government or its agencies.[13] Accordingly, exposures to the U. S. government, its central bank, or a U.S. government agency and the portion of an exposure that is directly and unconditionally guaranteed by the U. S. government, the U.S. central bank, or a U.S. government agency would receive a zero percent risk weight.[14] Consistent with the current risk-based capital rules, the portion of a deposit insured by the FDIC or the National Credit Union Administration also may be assigned a zero percent risk weight. An exposure conditionally guaranteed by the U.S. government, its central bank, or a U.S. government agency would receive a 20 percent risk weight.[15]

[10] Section 171 of the Dodd-Frank Act provides that all banking organizations must be subject to minimum capital requirements that cannot be less than the ''generally applicable risk-based capital rules'' established by the appropriate federal banking agency to apply to insured depository institutions under section 38 of the Federal Deposit Insurance Act, regardless of total consolidated asset size or foreign financial exposure; which shall serve as a floor for any capital requirements the agency may require.

[11] *See generally* 12 CFR part 3, appendix A, section III; 12 CFR 167.6 (OCC); 12 CFR parts 208 and 225, appendix A, section III (Board); 12 CFR part 325, appendix A, sections II.C and II.D and 12 CFR 390.466 (FDIC).

[12] The proposed rules would incorporate the market risk rule into the integrated regulatory framework as subpart F. *See* the Advanced Approaches and Market Risk NPR for further discussion.

[13] A U.S. government agency would be defined in the proposal as an instrumentality of the U.S. government whose obligations are fully and explicitly guaranteed as to the timely payment of principal and interest by the full faith and credit of the U.S. government.

[14] Similar to the current general risk-based capital rules, a claim would not be considered unconditionally guaranteed by a central government if the validity of the guarantee is dependent upon some affirmative action by the holder or a third party. *See* 12 CFR part 3, appendix A, section 1(c)(11) and 12 CFR 167.6 (OCC); 12 CFR parts 208 and 225, appendix A, section III.C.1 (Board); 12 CFR part 325, appendix A, section II.C. (footnote 35) and 12 CFR 390.466 (FDIC).

[15] Loss-sharing agreements entered into by the FDIC with acquirers of assets from failed institutions are considered conditional guarantees for risk-based capital purposes due to contractual conditions that acquirers must meet. The guaranteed portion of assets subject to a loss-sharing agreement may be assigned a 20 percent risk weight. Because the structural arrangements for these agreements vary depending on the specific terms of each agreement, institutions should consult with their primary federal supervisor to

The agencies' general risk-based capital rules generally assign risk weights to direct exposures to sovereigns and exposures directly guaranteed by sovereigns based on whether the sovereign is a member of the Organization for Economic Co-operation and Development (OECD) and, as applicable, whether the exposure is unconditionally or conditionally guaranteed by the sovereign.[16]

Under the proposal, a sovereign would be defined as a central government (including the U.S. government) or an agency, department, ministry, or central bank of a central government. The risk weight for a sovereign exposure would be determined using OECD Country Risk Classifications (CRCs) (the CRC methodology).[17] The OECD's CRCs are an assessment of a country's credit risk, used to set interest rate charges for transactions covered by the OECD arrangement on export credits.

The agencies believe that use of CRCs in the proposal is permissible under section 939A of the Dodd-Frank Act and that section 939A was not intended to apply to assessments of creditworthiness of organizations such as the OECD. Section 939A is part of Subtitle C of Title IX of the Dodd-Frank Act, which, among other things, enhances regulation by the U.S. Securities and Exchange Commission (SEC) of credit rating agencies, including Nationally Recognized Statistical Rating Organizations (NRSROs) registered with the SEC. Section 939, in Subtitle C of Title IX, removes references to credit ratings and NRSROs from federal statutes. In the introductory ''findings'' section to Subtitle C, which is entitled ''Improvements to the Regulation of Credit Ratings Agencies,'' Congress characterized credit rating agencies as organizations that play a critical ''gatekeeper'' role in the debt markets and perform evaluative and analytical services on behalf of clients, and whose activities are fundamentally commercial in character.[18] Furthermore, the legislative history of section 939A focuses on the conflicts of interest of credit rating agencies in providing credit ratings to their clients, and the problem of government ''sanctioning'' of the credit rating agencies' credit ratings by having them incorporated into federal regulations. The OECD is not a commercial entity that produces credit assessments for fee-paying clients, nor does it provide the sort of evaluative and analytical services as credit rating agencies. Additionally, the agencies note that the use of the CRCs is limited in the proposal.

The CRC methodology, established in 1999, classifies countries into categories based on the application of two basic components: the country risk assessment model (CRAM), which is an econometric model that produces a quantitative assessment of country credit risk, and the qualitative assessment of the CRAM results, which integrates political risk and other risk factors not fully captured by the CRAM. The two components of the CRC methodology are combined and result in countries being classified into one of eight risk categories (0–7), with countries assigned to the zero category having the lowest possible risk assessment and countries assigned to the 7 category having the highest possible risk assessment.

The OECD regularly updates CRCs for more than 150 countries and makes the assessments publicly available on its Web site.[19] Accordingly, the agencies believe that the CRC approach should not represent undue burden to banking organizations. The use of the CRC methodology is consistent with the Basel II standardized approach, which, as an alternative to credit ratings, provides for risk weights to be assigned to sovereign exposures according to country risk scores provided by export credit agencies.

The agencies recognize that CRCs have certain limitations. Although the OECD has published a general description of the methodology for CRC determinations, the methodology is largely principles-based and does not provide details regarding the specific information and data considered to support a CRC. Additionally, while the OECD reviews qualitative factors for each sovereign on a monthly basis, quantitative financial and economic information used to assign CRCs is available only annually in some cases, and payment performance is updated quarterly. Also, OECD-member sovereigns that are defined to be ''high-income countries'' by the World Bank are assigned a CRC of zero, the most favorable classification.[20] Despite these limitations, the agencies consider CRCs to be a reasonable alternative to credit ratings for sovereign exposures and the proposed CRC methodology to be more granular and risk-sensitive than the current risk-weighting methodology based on OECD membership.

The agencies also propose to require a banking organization to apply a 150 percent risk weight to sovereign exposures immediately upon determining that an event of sovereign default has occurred or if an event of sovereign default has occurred during the previous five years. Sovereign default would be defined as a noncompliance by a sovereign with its external debt service obligations or the inability or unwillingness of a sovereign government to service an existing loan according to its original terms, as evidenced by failure to pay principal and interest timely and fully, arrearages, or restructuring. A default would include a voluntary or involuntary restructuring that results in a sovereign not servicing an existing obligation in accordance with the obligation's original terms.

The agencies are proposing to map risk weights to CRCs in a manner consistent with the Basel II standardized approach, which provides risk weights for foreign sovereigns based on country risk scores. The proposed risk weights for sovereign exposures are set forth in table 2.

TABLE 2—PROPOSED RISK WEIGHTS FOR SOVEREIGN EXPOSURES

	Risk weight (in percent)
Sovereign CRC:	
0–1	0
2	20
3	50
4–6	100
7	150
No CRC	100
Sovereign Default	150

If a banking supervisor in a sovereign jurisdiction allows banking organizations in that jurisdiction to apply a lower risk weight to an exposure to that sovereign than table 2 provides, a U.S. banking organization would be able to assign the lower risk weight to an exposure to that sovereign, provided

determine the appropriate risk-based capital treatment for specific loss-sharing agreements.

[16] 12 CFR part 3, appendix A, section 3 and 12 CFR 167.6 (OCC); 12 CFR parts 208 and 225, appendix A, section III.C.1 (Board); 12 CFR part 325, appendix A, section II.C and 12 CFR 390.466 (FDIC).

[17] For more information on the OECD country risk classification methodology, *see* OECD, ''Country Risk Classification,'' available at *http://www.oecd.org/document/49/0,3746,en_2649_34169_1901105_1_1_1_1,00.html.*

[18] *See* Dodd-Frank Act, section 931 (15 U.S.C. 78o–7 note).

[19] *See http://www.oecd.org/document/49/0,2340,en_2649_34171_1901105_1_1_1_1,00.html.*

[20] OECD, ''Premium and Related Conditions: Explanation of the Premium Rules of the Arrangement on Officially Supported Export Credits (the Knaepen Package),'' (July 6, 2004), available at *http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=TD/PG(2004)10/FINAL&docLanguage=En.*

the exposure is denominated in the sovereign's currency and the U.S. banking organization has at least an equivalent amount of liabilities in that foreign currency.

Question 3: The agencies solicit comment on the proposed methodology for risk weighting sovereign exposures. Are there other alternative methodologies for risk weighting sovereign exposures that would be more appropriate? Provide specific examples and supporting data.

2. Exposures to Certain Supranational Entities and Multilateral Development Banks

Under the general risk-based capital rules, exposures to certain supranational entities and multilateral development banks (MDB) receive a 20 percent risk weight. Consistent with the Basel framework's treatment of exposures to supranational entities, the agencies propose to apply a zero percent risk weight to exposures to the Bank for International Settlements, the European Central Bank, the European Commission, and the International Monetary Fund.

Similarly, the agencies propose to apply a zero percent risk weight to exposures to an MDB in accordance with the Basel framework. The proposal would define an MDB to include the International Bank for Reconstruction and Development, the Multilateral Investment Guarantee Agency, the International Finance Corporation, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the European Bank for Reconstruction and Development, the European Investment Bank, the European Investment Fund, the Nordic Investment Bank, the Caribbean Development Bank, the Islamic Development Bank, the Council of Europe Development Bank, and any other multilateral lending institution or regional development bank in which the U.S. government is a shareholder or contributing member or which the primary federal supervisor determines poses comparable credit risk.

The agencies believe this treatment is appropriate in light of the generally high-credit quality of MDBs, their strong shareholder support, and a shareholder structure comprised of a significant proportion of sovereign entities with strong creditworthiness. Exposures to regional development banks and multilateral lending institutions that are not covered under the definition of MDB generally would be treated as corporate exposures.

3. Exposures to Government-Sponsored Entities

The agencies are proposing to assign a 20 percent risk weight to exposures to GSEs that are not equity exposures and a 100 percent risk weight to preferred stock issued by a GSE. While this is consistent with the current treatment under the FDIC and Board's rules, it would represent a change to the OCC's general risk-based capital rules for national banks, which currently allow a banking organization to apply a 20 percent risk weight to GSE preferred stock.[21]

Although the GSEs currently are in the conservatorship of the Federal Housing Finance Agency and receive capital support from the U.S. Treasury, they remain privately-owned corporations, and their obligations do not have the explicit guarantee of the full faith and credit of the United States. The agencies have long held the view that obligations of the GSEs should not be accorded the same treatment as obligations that carry the explicit guarantee of the U.S. government. Therefore, the agencies propose to continue to apply a 20 percent risk weight to debt exposures to GSEs.

4. Exposures to Depository Institutions, Foreign Banks, and Credit Unions

The general risk-based capital rules assign a 20 percent risk weight to all exposures to U.S. depository institutions and foreign banks incorporated in an OECD country. Short-term exposures to foreign banks incorporated in a non-OECD country receive a 20 percent risk weight and long-term exposures to such entities receive a 100 percent risk weight. The Basel II standardized approach allows for risk weights for a claim on a bank to be one risk weight category higher than the risk weight assigned to the sovereign exposures of a bank's home country. As described below, the agencies' propose treatment for depository institutions, foreign banks, and credit unions that is consistent with this approach.

Under the proposal, exposures to U.S. depository institutions and credit unions would be assigned a 20 percent risk weight.[22] For exposures to foreign banks, the proposal would include risk weights based on the CRC applicable to the entity's home country, in accordance with table 3.[23] Specifically, an exposure to a foreign bank would receive a risk weight one category higher than the risk weight assigned to a direct exposure to the entity's home country, as illustrated in table 3. Exposures to a foreign bank in a country that does not have a CRC would receive a 100 percent risk weight. A banking organization would be required to assign a 150 percent risk weight to an exposure to a foreign bank immediately upon determining that an event of sovereign default has occurred in the bank's home country, or if an event of sovereign default has occurred in the foreign bank's home country during the previous five years.

TABLE 3—PROPOSED RISK WEIGHTS FOR EXPOSURES TO FOREIGN BANKS

	Risk weight (in percent)
Sovereign CRC:	
0–1	20
2	50
3	100
4–7	150
No CRC	100
Sovereign Default	150

Exposures to a depository institution or foreign bank that are includable in the regulatory capital of that entity would receive a risk weight of 100 percent, unless the exposure is (i) An equity exposure, (ii) a significant investment in the capital of an unconsolidated financial institution in the form of common stock under section 22 of the proposal, (iii) an exposure that is deducted from regulatory capital under section 22 of the proposal, or (iv) an exposure that is subject to the 150 percent risk weight under section 32 of the proposal.

In 2011, the BCBS revised certain aspects of the Basel capital framework to address potential adverse effects of the framework on trade finance in low income countries.[24] In particular, the

[21] 12 CFR part 3, appendix A section 3(a)(2)(vii), and 2 CFR part 167.6(a)(1)(ii)(F) (OCC); 12 CFR part 208, and 225, appendix A, section III.C.2.b (Board); 12 CFR part 325, appendix A, section II.C, and 12 CFR part 390.466(a)(1)(ii)(F) (FDIC). GSEs include the Federal Home Loan Mortgage Corporation (FHLMC), the Federal National Mortgage Association (FNMA), the Farm Credit System, and the Federal Home Loan Bank System.

[22] A depository institution is defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)(1)). Under this proposal, a credit union refers to an insured credit union as defined under the Federal Credit Union Act (12 U.S.C. 1752(7)).

[23] Foreign bank means a foreign bank as defined in section 211.2 of the Federal Reserve Board's Regulation K (12 CFR 211.2), that is not a depository institution. For purposes of this proposal, home country means the country where an entity is incorporated, chartered, or similarly established.

[24] *See* BCBS, ''Treatment of Trade Finance under the Basel Capital Framework,'' (October 2011), available at *http://www.bis.org/publ/bcbs205.pdf.* ''Low income country'' is a designation used by the World Bank to classify economies (*see* World Bank,

framework was revised to remove the sovereign floor for trade finance-related claims on banking organizations under the Basel II standardized approach.[25] The proposed requirements would incorporate this revision and permit a banking organization to assign a 20 percent risk weight to self-liquidating, trade-related contingent items that arise from the movement of goods and that have a maturity of three months or less.

The Basel capital framework treats exposures to securities firms that meet certain requirements like exposures to depository institutions. However, the agencies do not believe that the risk profile of these firms is sufficiently similar to depository institutions to justify that treatment. Accordingly, the agencies propose to require banking organizations to treat exposures to securities firms as corporate exposures, which parallels the treatment of bank holding companies and savings and loan holding companies, as described in section II.B.6 of this preamble.

5. Exposures to Public Sector Entities

The agencies' general risk-based capital rules assign a 20 percent risk weight to general obligations of states and other political subdivisions of OECD countries.[26] However, exposures that rely on repayment from specific projects (for example, revenue bonds) are assigned a risk weight of 50 percent. Other exposures to state and political subdivisions of OECD countries (including industrial revenue bonds) and exposures to political subdivisions of non-OECD countries receive a risk weight of 100 percent. The risk weights assigned to revenue obligations are higher than the risk weight assigned to general obligations because repayment of revenue obligations depends on specific projects, which present more risk relative to a general repayment obligation of a state or political subdivision of a sovereign.

The agencies are proposing to apply the same risk weights to exposures to U.S. states and municipalities as the general risk-based capital rules apply. Under the proposal, these political subdivisions would be included in the definition of public sector entity PSE. Consistent with both the current rules and the Basel capital framework, the agencies propose to define a PSE as a state, local authority, or other governmental subdivision below the level of a sovereign. This definition would not include government-owned commercial companies that engage in activities involving trade, commerce, or profit that are generally conducted or performed in the private sector.

Under the proposal, a banking organization would assign a 20 percent risk weight to a general obligation exposure to a PSE that is organized under the laws of the United States or any state or political subdivision thereof and a 50 percent risk weight to a revenue obligation exposure to such a PSE. A general obligation would be defined as a bond or similar obligation that is backed by the full faith and credit of a PSE. A revenue obligation would be defined as a bond or similar obligation that is an obligation of a PSE, but which the PSE is committed to repay with revenues from a specific project financed rather than general tax funds.

Similar to the Basel framework's use of home country risk weights to assign a risk weight to a PSE exposure, the agencies propose to require a banking organization to apply a risk weight to an exposure to a non-U.S. PSE based on (1) the CRC applicable to the PSE's home country and (2) whether the exposure is a general obligation or a revenue obligation, in accordance with table 4.

The risk weights assigned to revenue obligations would be higher than the risk weights assigned to a general obligation issued by the same PSE, as set forth in table 4. Similar to exposures to a foreign bank, exposures to a non-U.S. PSE in a country that does not have a CRC rating would receive a 100 percent risk weight. Exposures to a non-U.S. PSE in a country that has defaulted on any outstanding sovereign exposure or that has defaulted on any sovereign exposure during the previous five years would receive a 150 percent risk weight. Table 4 illustrates the proposed risk weights for exposures to non-U.S. PSEs.

TABLE 4—PROPOSED RISK WEIGHTS FOR EXPOSURES TO NON-U.S. PSE GENERAL OBLIGATIONS AND REVENUE OBLIGATIONS

[In percent]

	Risk weight for exposures to non-U.S. PSE general obligations	Risk weight for exposures to non-U.S. PSE revenue obligations
Sovereign CRC:		
0–1	20	50
2	50	100
3	100	100
4–7	150	150
No CRC	100	100
Sovereign Default	150	150

In certain cases, under the general risk-based capital rules, the agencies have allowed a banking organization to rely on the risk weight that a foreign banking supervisor allows to assign to PSEs in that supervisor's country. Consistent with that approach, the agencies propose to allow a banking organization to apply a risk weight to an exposure to a non-U.S. PSE according to the risk weight that the foreign banking organization supervisor allows to assign to it. In no event, however, may the risk weight for an exposure to a non-U.S. PSE be lower than the risk weight assigned to direct exposures to that PSE's home country.

Question 4: The agencies request comment on the proposed treatment of exposures to PSEs.

''How We Classify Countries,'' available at *http://data.worldbank.org/about/country-classifications*).

[25] The BCBS indicated that it removed the sovereign floor for such exposures to make access to trade finance instruments easier and less expensive for low income countries. Absent removal of the floor, the risk weight assigned to these exposures, where the issuing banking organization is incorporated in a low income country, typically would be 100 percent.

[26] Political subdivisions of the United States would include a state, county, city, town or other municipal corporation, a public authority, and generally any publicly owned entity that is an instrument of a state or municipal corporation.

6. Corporate Exposures

Under the agencies' general risk-based capital rules, credit exposures to companies that are not depository institutions or securitization vehicles generally are assigned to the 100 percent risk weight category. A 20 percent risk weight is assigned to claims on, or guaranteed by, a securities firm incorporated in an OECD country, that satisfy certain conditions.

The proposed requirements would be generally consistent with the general risk-based capital rules and require banking organizations to assign a 100 percent risk weight to all corporate exposures. The proposal would define a corporate exposure as an exposure to a company that is not an exposure to a sovereign, the Bank for International Settlements, the European Central Bank, the European Commission, the International Monetary Fund, an MDB, a depository institution, a foreign bank, or a credit union, a PSE, a GSE, a residential mortgage exposure, a pre-sold construction loan, a statutory multifamily mortgage, an HVCRE exposure, a cleared transaction, a default fund contribution, a securitization exposure, an equity exposure, or an unsettled transaction. In contrast to the agencies' general risk-based capital rules, securities firms would be subject to the same treatment as corporate exposures.

The agencies evaluated a number of alternatives to credit ratings to provide a more granular risk weight treatment for corporate exposures.[27] However, each of these alternatives was viewed as either having significant drawbacks, being too operationally complex, or as not being sufficiently developed to be proposed in this NPR.

7. Residential Mortgage Exposures

The general risk-based capital rules assign exposures secured by one-to-four family residential properties to either the 50 percent or the 100 percent risk-weight category. Exposures secured by a first lien on a one-to-four family residential property that meet certain prudential underwriting criteria and that are paying according to their terms generally receive a 50 percent risk weight.[28] The Basel II standardized approach similarly applies a broad treatment to residential mortgages, assigning a risk weight of 35 percent for most first-lien residential mortgage exposures that meet certain prudential criteria, such as the existence of a substantial margin of additional security over the amount of the loan.

During the recent market turmoil, the U.S. housing market experienced significant deterioration and unprecedented levels of mortgage loan defaults and home foreclosures. The causes for the significant increase in loan defaults and home foreclosures included inadequate underwriting standards; the proliferation of high-risk mortgage products, such as so-called pay-option adjustable rate mortgages, which provide for negative amortization and significant payment shock to the borrower; the practice of issuing mortgage loans to borrowers with unverified or undocumented income; and a precipitous decline in housing prices coupled with a rise in unemployment. Given the characteristics of the U.S. residential mortgage market and this recent experience, the agencies believe that a wider range of risk weights based on key risk factors is more appropriate for the U.S. residential mortgage market. Therefore, the agencies are proposing a risk-weight framework that is different from both the general risk-based capital rules and the Basel capital framework.

a. Categorization of Residential Mortgage Exposures; Loan-to-Value.

The proposed definition of a residential mortgage exposure would be an exposure that is primarily secured by a first or subsequent lien on one-to-four family residential property (and not a securitization exposure, equity exposure, statutory multifamily mortgage, or presold construction loan). The definition of residential mortgage exposure also would include an exposure that is primarily secured by a first or subsequent lien on residential property that is not one-to-four family if the original and outstanding amount of the exposure is $1 million or less. A first-lien residential mortgage exposure would be a residential mortgage exposure secured by a first lien or by first and junior lien(s) where no other party holds an intervening lien. A junior-lien residential mortgage exposure would be a residential mortgage exposure that is not a first-lien residential mortgage exposure.

The NPR would maintain the current risk-based capital treatment for residential mortgage exposures that are guaranteed by the U.S. government or its agency. Accordingly, residential mortgage exposures that are unconditionally guaranteed by the U.S. government or a U.S. agency would receive a zero percent risk weight, and residential mortgage exposures that are conditionally guaranteed by the U.S. government or a U.S. agency would receive a 20 percent risk weight.

Under the NPR, a banking organization would divide residential mortgage exposures that are not guaranteed by the U.S. government or one of its agencies into two categories. The agencies propose to apply relatively low risk weights for residential mortgage exposures that do not have product features associated with higher credit risk, and higher risk weights for nontraditional loans that present greater risk. As described further below, the risk weight assigned to a residential mortgage exposure will also depend on the loan's loan-to-value ratio.

The standards for category 1 residential mortgage exposures reflect those underwriting and product features that have demonstrated a lower risk of default both through supervisory experience and observations from the recent foreclosure crisis. Thus, the definition generally excludes mortgage products that include terms or other characteristics that the agencies have found to be indicative of higher risk. For example, the standards include consideration and documentation of a borrower's ability to repay, and would exclude certain higher risk product features, such as deferral of principal and balloon loans. Category 1 residential mortgages also would not include any junior lien mortgages. All residential mortgages that would not meet the definition of category 1 residential mortgage would be category 2 residential mortgages. See section 2 of the proposed rules for the definitions of ''category 1 residential mortgage'' in the related notice titled ''Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III, Minimum Regulatory Capital Ratios, Capital Adequacy, Transition Provisions, and Prompt Corrective Action.''

The agencies believe that the proposed divergence in risk weights for category 1 and category 2 residential mortgage exposures appropriately reflects differences in risk between mortgages in the two categories. Because category 2 residential mortgage exposures generally are of higher risk than category 1 residential mortgage exposures, the minimum proposed risk weight for a category 2 residential mortgage exposure is 100 percent.

Under the general risk-based capital rules, a banking organization must assign a minimum 100 percent risk weight to an exposure secured by a junior lien on residential property, unless the banking organization also

[27] *See,* for example, 76 FR 73526 (Nov. 29, 2011) and 76 FR 73777 (Nov. 29, 2011).

[28] *See* 12 CFR part 3, appendix A, section 3(c)(iii) and 12 CFR part 167.6(a)(1)(iii) (OCC); 12 CFR parts 208 and 225, appendix A, section III.C.3 (Board); 12 CFR part 325, appendix A, section II.C.3 and 12 CFR 390.461 (definition of ''qualifying mortgage loan'') (FDIC).

holds the first lien and there are no intervening liens. The agencies also propose to require a banking organization that holds both a first and junior lien on the same property to combine the exposures into one first-lien residential mortgage exposure for purposes of determining the loan-to-value (LTV) and risk weight for the combined exposure. However, a banking organization could only categorize the combined exposure as a category 1 residential mortgage exposure if the terms and characteristics of both mortgages meet all of the criteria for category 1 residential mortgage exposures. This requirement would ensure that no residential mortgage products associated with higher risk may be categorized as category 1 residential mortgage exposures.

Except as described in the preceding paragraph, under this NPR, a banking organization would classify all junior-lien residential mortgage exposures as category 2 residential mortgage exposures in light of the increased risk associated with junior liens demonstrated in the recent foreclosure crisis.

The proposed risk weighting would depend on not only the mortgage exposure's status as a category 1 or category 2 residential mortgage exposure, but also on the mortgage exposure's LTV ratio. The amount of equity a borrower has in a residential property is highly correlated with default risk, and the agencies believe that it is appropriate that LTV be an important component in assigning risk weights to residential mortgage exposures. However, the agencies stress that the use of LTV ratios to assign risk weights to residential mortgage exposures is not a substitute for, and does not otherwise release a banking organization from, its responsibility to have prudent loan underwriting and risk management practices consistent with the size, type, and risk of its mortgage business.[29]

The agencies are proposing in this NPR to require a banking organization to calculate the LTV ratios of a residential mortgage exposure as follows. The denominator of the LTV ratio, that is, the value of the property, would be equal to the lesser of the actual acquisition cost for the property (for a purchase transaction) or the estimate of a property's value at the origination of the loan or at the time of restructuring or modification. The estimate of value would be based on an appraisal or evaluation of the property in conformance with the agencies' appraisal regulations[30] and should conform to the ''Interagency Appraisal and Evaluation Guideline'' and the ''Real Estate Lending Guidelines.''[31] If a banking organization's first-lien residential mortgage exposure consists of both first and junior liens on a property, a banking organization would update the estimate of value at the origination of the junior-lien mortgage.

The loan amount for a first-lien residential mortgage exposure is the unpaid principal balance of the loan unless the first-lien residential mortgage exposure was a combination of a first and junior lien. In that case, the loan amount would be the sum of the unpaid principal balance of the first lien and the maximum contractual principal amount of the junior lien. The loan amount of a junior-lien residential mortgage exposure is the maximum contractual principal amount of the exposure, plus the maximum contractual principal amounts of all senior exposures secured by the same residential property on the date of origination of the junior-lien residential mortgage exposure.

As proposed, a banking organization would not calculate a separate risk-weighted asset amount for the funded and unfunded portions of a residential mortgage exposure. Instead, the proposal would require only the calculation of a single LTV ratio representing a combined funded and unfunded amount when calculating the LTV ratio. Thus, the loan amount of a first-lien residential mortgage exposure would equal the funded principal amount (or combined exposures provided there is no intervening lien) plus the exposure amount of any unfunded commitment (that is, the unfunded amount of the maximum contractual amount of any commitment multiplied by the appropriate CCF). The loan amount of a junior-lien residential mortgage exposure would equal the sum of: (1) The funded principal amount of the exposure, (2) the exposure amount of any undrawn commitment associated with the junior-lien exposure, and (3) the exposure amount of any senior exposure held by a third party on the date of origination of the junior-lien exposure. If a senior exposure held by a third party includes an undrawn commitment, such as a HELOC or a negative amortization feature, the loan amount for a junior-lien residential mortgage exposure would include the maximum contractual amount of that commitment.

The agencies believe that the LTV information should be readily available from the mortgage loan documents and thus should not present an issue for banking organizations in calculating the risk-based capital under the proposed requirements.

A banking organization would not be able to recognize private mortgage insurance (PMI) when calculating the LTV ratio of a residential mortgage exposure. The agencies believe that, due to the varying degree of financial strength of mortgage providers, it would not be prudent to recognize PMI for purposes of the general risk-based capital rules.

Question 5: The agencies solicit comments on all aspects of this NPR for determining the risk weights of residential mortgage loans, including the use of the LTV ratio to determine the risk-based capital treatment. What alternative criteria or approaches to categorizing mortgage loans would enable the agencies to appropriately and consistently differentiate among the levels of risk inherent in different mortgage exposures? For example, should all residential mortgages that meet the ''qualified mortgage'' criteria to be established for the purposes of the Truth in Lending Act pursuant to section 1412 of the Dodd-Frank Act be included in category 1? For category 1 residential mortgage exposures with interest rates that adjust or reset, would a proposed limit based directly on the amount the mortgage payment increases rather than on a change in interest rate be more appropriate? Why or why not? Does this proposal appropriately address loans with balloon payments and the risk of reverse mortgage loans? Why or why not? Provide detailed explanations and supporting data wherever possible.

Question 6: The agencies solicit comment on whether to allow banking organizations to recognize mortgage insurance for purposes of calculating the LTV ratio of a residential mortgage exposure under the standardized approach. What criteria could the agencies use to ensure that only financially sound PMI providers are recognized?

[29] *See,* for example, ''Interagency Guidance on Nontraditional Mortgage Product Risks,'' 71 FR 58609 (Oct. 4, 2006) and ''Statement on Subprime Mortgage Lending,'' 72 FR 37569 (July 10, 2007). In addition, there is ongoing implementation of certain aspects of the mortgage reform initiatives under various sections of the Dodd-Frank Act. For example, section 1141 of the Dodd-Frank Act amended the Truth in Lending Act to prohibit creditors from making mortgage loans without regard to a consumer's repayment ability. *See* 15 U.S.C. 1639c.

[30] 12 CFR part 34, subpart C (OCC); 12 CFR part 208, subpart E and 12 CFR part 225, subpart G (Board); 12 CFR part 323 and 12 CFR part 390, subpart X (FDIC).

[31] 12 CFR part 34, subpart D and 12 CFR part 160 (OCC); 12 CFR part 208, subpart E (Board); 12 CFR part 323 and 12 CFR 390.442 (FDIC).

b. Risk Weights for Residential Mortgage Exposures

As proposed, a banking organization would determine the risk weight for a residential mortgage exposure using table 5 based on the loan's LTV ratio and whether it is a category 1 or category 2 residential mortgage exposure.

TABLE 5—PROPOSED RISK WEIGHTS FOR RESIDENTIAL MORTGAGE EXPOSURES

Loan-to-value ratio (in percent)	Category 1 residential mortgage exposure (in percent)	Category 2 residential mortgage exposure (in percent)
Less than or equal to 60	35	100
Greater than 60 and less than or equal to 80	50	100
Greater than 80 and less than or equal to 90	75	150
Greater than 90	100	200

As an example risk weight calculation, a category 1 residential mortgage loan that has a loan amount of $100,000 and a property value of $125,000 at origination would result in an LTV of 80 percent and would be assigned a risk weight of 50 percent. If, at the time of restructuring the loan at a later date, the loan amount is $92,000 and the value of the property is determined to be $110,000, the LTV would be 84 percent and the applicable risk weight would be 75 percent.

c. Modified or Restructured Residential Mortgage Exposures

Under the current general risk-based capital rules, a residential mortgage may be assigned to the 50 percent risk weight category only if it is performing in accordance with its original terms or not restructured. The recent crises and ongoing problems in the housing market have demonstrated the profound negative effect foreclosures have on homeowners and their communities. Where practicable, modification or restructuring of a residential mortgage can be an effective means for a borrower to avoid default and foreclosure and for a banking organization to reduce risk of loss.

The agencies have recognized the importance of the prudent use of mortgage restructuring and modification in a banking organization's risk management and believe that restructuring or modification can reduce the risk of a residential mortgage exposure. Therefore, in this NPR, the agencies are not proposing to automatically raise the risk weight for a residential mortgage exposure if it is restructured or modified. Instead, under this NPR, a banking organization would categorize a modified or restructured residential mortgage exposure as a category 1 or category 2 residential mortgage exposure in accordance with the terms and characteristics of the exposure after the modification or restructuring.

Additionally, to ensure that the banking organization applies a risk weight to a restructured or modified mortgage that most accurately reflects its risk profile, a banking organization could only apply (1) a risk weight lower than 100 percent to a category 1 residential mortgage exposure or (2) a risk weight lower than 200 percent to a category 2 residential mortgage exposure if the banking organization updated the LTV ratio of the exposure at the time of the modification or restructuring.

In further recognition of the importance of residential mortgage modifications and restructuring, a residential mortgage exposure modified or restructured on a permanent or trial basis solely pursuant to the U.S. Treasury's Home Affordable Mortgage Program (HAMP) would not be restructured or modified under the proposed requirements and would receive the risk weight provided in table 5.

The agencies believe that treating mortgage loans modified pursuant to HAMP in this manner is appropriate in light of the special and unique incentive features of HAMP, and the fact that the program is offered by the U.S. government to achieve the public policy objective of promoting sustainable loan modifications for homeowners at risk of foreclosure in a way that balances the interests of borrowers, servicers, and lenders. The program includes specific debt-to-income ratio requirements, which should better ensure the borrower's ability to repay the modified loan, and it provides for the U.S. Treasury Department to match reductions in monthly payments dollar-for-dollar to reduce the borrower's front-end debt-to-income ratio.

Additionally, the program provides financial incentives for servicers and lenders to take actions to reduce the likelihood of defaults, as well as for servicers and borrowers designed to help borrowers remain current on modified loans. The structure and amount of these cash payments align the financial incentives of servicers, lenders, and borrowers to encourage and increase the likelihood of participating borrowers remaining current on their mortgages. Each of these incentives is important to the agencies' determination with respect to the appropriate regulatory capital treatment of mortgage loans modified under HAMP.

Question 7: The agencies request comment on whether loan modifications made pursuant to federal or state housing programs warrant specific provisions in the agencies' risk-based capital regulations at all, and if they do what criteria should be considered when determining the appropriate risk-based capital treatment for modified residential mortgages, given the risk characteristics of loans that require modification.

8. Pre-sold Construction Loans and Statutory Multifamily Mortgages

The general risk-based capital rules assign either a 50 percent or a 100 percent risk weight to certain one-to-four family residential pre-sold construction loans and to multifamily residential loans, consistent with the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991 (RTCRRI Act).[32] This NPR would maintain this general treatment while clarifying and

[32] The RTCRRI Act mandates that each agency provide in its capital regulations (i) a 50 percent risk weight for certain one-to-four-family residential pre-sold construction loans and multifamily residential loans that meet specific statutory criteria in the RTCRRI Act and any other underwriting criteria imposed by the agencies, and (ii) a 100 percent risk weight for one-to-four-family residential pre-sold construction loans for residences for which the purchase contract is cancelled. 12 U.S.C. 1831n, note.

updating the way the general risk-based capital rules define these exposures.

Under this NPR, a pre-sold construction loan would be subject to a 50 percent risk weight unless the purchase contract is cancelled. This NPR would define a pre-sold construction loan as any one-to-four family residential construction loan to a builder that meets the requirements of section 618(a)(1) or (2) of the RTCRRI Act and the agencies' existing regulations. A multifamily mortgage that does not meet the proposed definition of a statutory multifamily mortgage would be treated as a corporate exposure. The proposed definitions are in section 2 of the proposed rules in the related notice titled ''Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III, Minimum Regulatory Capital Ratios, Capital Adequacy, Transition Provisions, and Prompt Corrective Action.''

9. High Volatility Commercial Real Estate Exposures

In this NPR, the agencies are including a new risk-based capital treatment for certain commercial real estate exposures that currently receive a 100 percent risk weight under the general risk-based capital rules. Supervisory experience has demonstrated that certain acquisition, development, and construction (ADC) loans exposures present unique risks for which the agencies believe banking organizations should hold additional capital. Accordingly, the agencies propose to require banking organizations to assign a 150 percent risk weight to any High Volatility Commercial Real Estate Exposure (HVCRE). The proposal would define an HVCRE exposure to include any credit facility that finances or has financed the acquisition, development, or construction (ADC) of real property, unless the facility finances one- to four-family residential mortgage property, or commercial real estate projects that meet certain prudential criteria, including with respect to the LTV ratio and capital contributions or expense contributions of the borrower. See the definition of ''high volatility commercial real estate exposure'' in section 2 of the proposed rules in the related notice entitled ''Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III, Minimum Regulatory Capital Ratios, Capital Adequacy, Transition Provisions, and Prompt Corrective Action''.

A commercial real estate loan that is not an HVCRE exposure would be treated as a corporate exposure.

Question 8: The agencies solicit comment on the proposed treatment for HVCRE exposures.

10. Past Due Exposures

Under the general risk-based capital rules, the risk weight of a loan does not change if the loan becomes past due, with the exception of certain residential mortgage loans. The Basel II standardized approach provides risk weights ranging from 50 to 150 percent for loans that are more than 90 days past due to reflect the increased risk of loss. The agencies believe that a higher risk is appropriate for past due exposures to reflect the increased risk associated with such exposures

Accordingly, consistent with the Basel capital framework and to reflect impaired credit quality of such exposures, the agencies propose that a banking organization assign a risk weight of 150 percent to an exposure that is not guaranteed or not secured (and that is not a sovereign exposure or a residential mortgage exposure) if it is 90 days or more past due or on nonaccrual. A banking organization may assign a risk weight to the collateralized or guaranteed portion of the past due exposure if the collateral, guarantee, or credit derivative meets the proposed requirements for recognition described in sections 36 and 37.

Question 9: The agencies solicit comments on the proposed treatment of past due exposures.

11. Other Assets

In this NPR, the agencies propose to apply the following risk weights for exposures not otherwise assigned to a specific risk weight category, which are generally consistent with the risk weights in the general risk-based capital rules:

(1) A zero percent risk weight to cash owned and held in all of a banking organization's offices or in transit; gold bullion held in the banking organization's own vaults, or held in another depository institution's vaults on an allocated basis to the extent gold bullion assets are offset by gold bullion liabilities; and to exposures that arise from the settlement of cash transactions (such as equities, fixed income, spot foreign exchange and spot commodities) with a central counterparty where there is no assumption of ongoing counterparty credit risk by the central counterparty after settlement of the trade and associated default fund contributions;

(2) A 20 percent risk weight to cash items in the process of collection; and

(3) A 100 percent risk weight to all assets not specifically assigned a different risk weight under this NPR (other than exposures that would be deducted from tier 1 or tier 2 capital).

In addition, subject to proposed transition arrangements, a banking organization would assign:

(1) A 100 percent risk weight to DTAs arising from temporary differences that the banking organization could realize through net operating loss carrybacks; and

(2) A 250 percent risk weight to MSAs and DTAs arising from temporary differences that the banking organization could not realize through net operating loss carrybacks that are not deducted from common equity tier 1 capital pursuant to section 22(d) of the proposal.

The proposed requirements would provide limited flexibility to address situations where exposures of a depository institution holding company or nonbank financial company supervised by the Board, that are not exposures typically held by depository institutions, do not fit wholly within the terms of another risk-weight category. Under the proposal, such exposures could be assigned to the risk weight category applicable under the capital rules for bank holding companies, provided that (1) the depository institution holding company or nonbank financial company is not authorized to hold the asset under applicable law other than debt previously contracted or similar authority; and (2) the risks associated with the asset are substantially similar to the risks of assets that are otherwise assigned to a risk weight category of less than 100 percent under subpart D of the proposal.

C. Off-balance Sheet Items

Under this NPR, as under the general risk-based capital rules, a banking organization would calculate the exposure amount of an off-balance sheet item by multiplying the off-balance sheet component, which is usually the notional amount, by the applicable credit conversion factor (CCF). This treatment would be applied to off-balance sheet items, such as commitments, contingent items, guarantees, certain repo-style transactions, financial standby letters of credit, and forward agreements.

Also similar to the general risk-based capital rules, a banking organization would apply a zero percent CCF to the unused portion of commitments that are unconditionally cancelable by the banking organization. For purposes of this NPR, a commitment would mean any legally binding arrangement that obligates a banking organization to extend credit or to purchase assets.

Unconditionally cancelable would mean a commitment that a banking organization may, at any time, with or without cause, refuse to extend credit under the commitment (to the extent permitted under applicable law). In the case of a residential mortgage exposure that is a line of credit, a banking organization would be deemed able to unconditionally cancel the commitment if it can, at its option, prohibit additional extensions of credit, reduce the credit line, and terminate the commitment to the full extent permitted by applicable law. If a banking organization provides a commitment that is structured as a syndication, it would only be required to calculate the exposure amount for its pro rata share of the commitment.

The agencies propose to increase a CCF from zero percent to 20 percent for commitments with an original maturity of one year or less that are not unconditionally cancelable by a banking organization, as consistent with the Basel II standardized approach. The proposed requirements would maintain the 20 percent CCF for self-liquidating, trade-related contingent items that arise from the movement of goods with an original maturity of one year or less.

As under the general risk-based capital rules, a banking organization would apply a 50 percent CCF to commitments with an original maturity of more than one year that are not unconditionally cancelable by the banking organization; and to transaction-related contingent items, including performance bonds, bid bonds, warranties, and performance standby letters of credit.

Under this NPR, a banking organization would be required to apply a 100 percent CCF to off-balance sheet guarantees, repurchase agreements, securities lending or borrowing transactions, financial standby letters of credit; forward agreements, and other similar exposures. The off-balance sheet component of a repurchase agreement would equal the sum of the current market values of all positions the banking organization has sold subject to repurchase. The off-balance sheet component of a securities lending transaction would be the sum of the current market values of all positions the banking organization has lent under the transaction. For securities borrowing transactions, the off-balance sheet component would be the sum of the current market values of all non-cash positions the banking organization has posted as collateral under the transaction. In certain circumstances, a banking organization may instead determine the exposure amount of the transaction as described in section II.F.2 of this preamble and section 37 of the proposal.

The calculation of the off-balance sheet component for repurchase agreements, and securities lending and borrowing transactions described above represents a change to the general risk-based capital treatment for such transactions. Under the general risk-based capital rules, capital is required for any on-balance sheet exposure that arises from a repo-style transaction (that is, a repurchase agreement, reverse repurchase agreement, securities lending transaction, and securities borrowing transaction). For example, capital is required against the cash receivable that a banking organization generates when it borrows a security and posts cash collateral to obtain the security. However, a banking organization faces counterparty credit risk on a repo-style transaction, regardless of whether the transaction generates an on-balance sheet exposure. Therefore, in contrast to the general risk-based capital rules, this NPR would require a banking organization to hold risk-based capital against all repo-style transactions, regardless of whether they generate on-balance sheet exposures, as described in section 37 of the proposal.

Under the general risk-based capital rules, a banking organization is subject to a risk-based capital requirement when it provides credit-enhancing representations and warranties on assets sold or otherwise transferred to third parties as such positions are considered recourse arrangements.[33] However, the general risk-based capital rules do not impose a risk-based capital requirement on assets sold or transferred with representations and warranties that contain (1) Certain early default clauses, (2) certain premium refund clauses that cover assets guaranteed, in whole or in part, by the U.S. government, a U.S. government agency, or a U.S. GSE; or (3) warranties that permit the return of assets in instances of fraud, misrepresentation, or incomplete documentation.[34]

Under this NPR, if a banking organization provides a credit-enhancing representation or warranty on assets it sold or otherwise transferred to third parties, including in cases of early default clauses or premium-refund clauses, the banking organization would treat such an arrangement as an off-balance sheet guarantee and apply a 100 percent credit conversion factor (CCF) to the exposure amount. The agencies are proposing a different treatment than the one under the general risk-based capital rules because the agencies believe that a banking organization should hold capital for such exposures while credit-enhancing representations and warranties are in place.

Question 10: The agencies solicit comment on the proposed treatment of credit-enhancing representations and warranties.

The proposed risk-based capital treatment for off-balance sheet items is consistent with section 165(k) of the Dodd-Frank Act which provides that, in the case of a bank holding company with $50 billion or more in total consolidated assets the computation of capital for purposes of meeting capital requirements shall take into account any off-balance-sheet activities of the company.[35] The proposal complies with the requirements of section 165(k) of the Dodd-Frank Act by requiring a bank holding company to hold risk-based capital for its off-balance sheet exposures, as described in sections 31, 33, 34 and 35 of the proposal.

D. Over-the-counter Derivative Contracts

In this NPR, the agencies propose generally to retain the treatment of over-the-counter (OTC) derivatives provided under the general risk-based capital rules, which is similar to the current exposure method for determining the exposure amount for OTC derivative contracts contained in the Basel II standardized approach.[36] The proposed

[33] 12 CFR 3, appendix A, section 4(a)(11) and 12 CFR 167.6(b) (OCC); 12 CFR parts 208 and 225 appendix A, section III.B.3.a.xii (Board); 12 CFR part 325, appendix A, section II.B.5(a) and 12 CFR 390.466(b) (FDIC).

[34] 12 CFR part 3, appendix A, section 4(a)(8) and 12 CFR 167.6(b) (OCC); 12 CFR part 208, appendix A, section II.B.3.a.ii.1 and 12 CFR part 225, appendix A, section III.B.3.a.ii.(*1*) (Board); and 12 CFR part 325, appendix A, section II.B.5(a) and 12 CFR part 390.466(b) (FDIC).

[35] Section 165(k) of the Dodd-Frank Act (12 U.S.C. 5365(k)). This section defines an off-balance sheet activity as an existing liability of a company that is not currently a balance sheet liability, but may become one upon the happening of some future event. Such transactions may include direct credit substitutes in which a banking organization substitutes its own credit for a third party; irrevocable letters of credit; risk participations in bankers' acceptances; sale and repurchase agreements; asset sales with recourse against the seller; interest rate swaps; credit swaps; commodities contracts; forward contracts; securities contracts; and such other activities or transactions as the Board may define through a rulemaking.

[36] The general risk-based capital rules for savings associations regarding the calculation of credit equivalent amounts for derivative contracts differ from the rules for other banking organizations. (*See* 12 CFR 167(a)(2) (federal savings associations) and 12 CFR 390.466(a)(2) (state savings associations)). The savings association rules address only interest rate and foreign exchange rate contracts and include certain other differences. Accordingly, the description of the general risk-based capital rules in this preamble primarily reflects the rules applicable

revisions to the treatment of the OTC derivative contracts include an updated definition of an OTC derivative contract, a revised conversion factor matrix for calculating the potential future exposure (PFE), a revision of the criteria for recognizing the netting benefits of qualifying master netting agreements and of financial collateral, and the removal of the 50 percent risk weight limit for OTC derivative contracts.

Under the proposed requirements, as under the general risk-based capital rules, a banking organization would be required to hold risk-based capital for counterparty credit risk for OTC derivative contracts. As defined in this NPR, a derivative contract is 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. A derivative contract would include an interest rate, exchange rate, equity, or a commodity derivative contract, a credit derivative, and any other instrument that poses similar counterparty credit risks. Under the proposal, derivative contracts also would include unsettled securities, commodities, and foreign 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. This applies, for example, to mortgage-backed securities transactions that the GSEs conduct in the To-Be-Announced market.

An OTC derivative contract would not include a derivative contract that is a cleared transaction, which would be subject to a specific treatment as described in section II.E of this preamble. OTC derivative contracts would, however, include an exposure of a banking organization that is a clearing member to its clearing member client where the banking organization is either acting as a financial intermediary and enters into an offsetting transaction with a central counterparty (CCP) or where the banking organization provides a guarantee to the CCP on the performance of the client. These transactions may not be treated as cleared transactions because the banking organization remains exposed directly to the risk of the individual counterparty.

To determine the risk-weighted asset amount for an OTC derivative contract under the proposal, a banking organization would first determine its exposure amount for the contract and then apply to that amount a risk weight based on the counterparty, eligible guarantor, or recognized collateral.

For a single OTC derivative contract that is not subject to a qualifying master netting agreement (as defined further below in this section), the exposure amount would be the sum of (1) the banking organization's current credit exposure, which would be the greater of the mark-to-market value or zero, and (2) PFE, which would be calculated by multiplying the notional principal amount of the OTC derivative contract by the appropriate conversion factor, in accordance with table 6 below.

Under this NPR, the conversion factor matrix would be revised to include the additional categories of OTC derivative contracts as illustrated in table 6. For an OTC derivative contract that does not fall within one of the specified categories in table 6, the PFE would be calculated using the appropriate ''other'' conversion factor.

TABLE 6—CONVERSION FACTOR MATRIX FOR OTC DERIVATIVE CONTRACTS [37]

Remaining maturity [38]	Interest rate	Foreign exchange rate and gold	Credit (investment-grade reference asset) [39]	Credit (non-investment-grade reference asset)	Equity	Precious metals (except gold)	Other
One year or less	0.00	0.01	0.05	0.10	0.06	0.07	0.10
Greater than one year and less than or equal to five years	0.005	0.05	0.05	0.10	0.08	0.07	0.12
Greater than five years	0.015	0.075	0.05	0.10	0.10	0.08	0.15

For multiple OTC derivative contracts subject to a qualifying master netting agreement, the exposure amount would be calculated by adding the net current credit exposure and the adjusted sum of the PFE amounts for all OTC derivative contracts subject to the qualifying master netting agreement. The net current credit exposure would be the greater of zero and the net sum of all positive and negative mark-to-market values of the individual OTC derivative contracts subject to the qualifying master netting agreement. The adjusted sum of the PFE amounts would be calculated as described in section 34(a)(2)(ii) of the proposal.

Under the general risk-based capital rules, a banking organization must enter into a bilateral master netting agreement with its counterparty and obtain a written and well-reasoned legal opinion of the enforceability of the netting agreement for each of its netting agreements that cover OTC derivative contracts to recognize the netting benefit. Similarly, under this NPR, to recognize netting of multiple OTC derivative contracts, the contracts would be required to be subject to a qualifying master netting agreement; however, for most transactions, a banking organization may rely on sufficient legal review instead of an opinion on the enforceability of the netting agreement as described below. Under this NPR, a qualifying master netting agreement would be defined as any written, legally enforceable netting agreement, that creates a single legal obligation for all individual transactions covered by the agreement upon an event

to state and national banks and bank holding companies.

[37] For a derivative contract with multiple exchanges of principal, the conversion factor is multiplied by the number of remaining payments in the derivative contract.

[38] For a derivative contract that is structured such that on specified dates any outstanding exposure is settled and the terms are reset so that the market value of the contract is zero, the remaining maturity equals the time until the next reset date. For an interest rate derivative contract with a remaining maturity of greater than one year that meets these criteria, the minimum conversion factor is 0.005.

[39] A banking organization would use the column labeled ''Credit (investment-grade reference asset)'' for a credit derivative whose reference asset is an outstanding unsecured long-term debt security without credit enhancement that is investment grade. A banking organization would use the column labeled ''Credit (non-investment-grade reference asset)'' for all other credit derivatives.

of default (including receivership, insolvency, liquidation, or similar proceeding) provided that certain conditions are met. These conditions include requirements with respect to the banking organization's right to terminate the contract and lien date collateral and meeting certain standards with respect to legal review of the agreement to ensure it meets the criteria in the definition.

The legal review must be sufficient so that the banking organization may conclude with a well-founded basis that, among other things the contract would be found legal, binding, and enforceable under the law of the relevant jurisdiction and that the contract meets the other requirements of the definition. In some cases, the legal review requirement could be met by reasoned reliance on a commissioned legal opinion or an in-house counsel analysis. In other cases, for example, those involving certain new derivative transactions or derivative counterparties in jurisdictions where a banking organization has little experience, the banking organization would be expected to obtain an explicit, written legal opinion from external or internal legal counsel addressing the particular situation. See the definition of ''qualifying master netting agreement'' in section 2 of the proposed rules in the related notice titled ''Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III, Minimum Regulatory Capital Ratios, Capital Adequacy, Transition Provisions, and Prompt Corrective Action.''

If an OTC derivative contract is collateralized by financial collateral, a banking organization would first determine the exposure amount of the OTC derivative contract as described in this section. Next, to recognize the credit risk mitigation benefits of the financial collateral, a banking organization could use the simple approach for collateralized transactions as described in section 37(b) of the proposal. Alternatively, if the financial collateral is marked-to-market on a daily basis and subject to a daily margin maintenance requirement, a banking organization could adjust the exposure amount of the contract using the collateral haircut approach described in section 37(c) of the proposal.

Under this NPR, a banking organization would be required to treat an equity derivative contract as an equity exposure and compute its risk-weighted asset amount according to the proposed calculation requirements described in section 52 (unless the contract is a covered position under subpart F of the proposal). If the banking organization risk weights a contract under the Simple Risk-Weight Approach described in section 52, it may choose not to hold risk-based capital against the counterparty risk of the equity contract, so long as it does so for all such contracts. Where the OTC equity contracts are subject to a qualified master netting agreement, a banking organization would either include or exclude all of the contracts from any measure used to determine counterparty credit risk exposures. If the banking organization is treating an OTC equity derivative contract as a covered position under subpart F, it would calculate a risk-based capital requirement for counterparty credit risk of the contract under section 34.

Similarly, if a banking organization purchases a credit derivative that is recognized under section 36 of the proposal as a credit risk mitigant for an exposure that is not a covered position under subpart F of the proposal, it would not be required to compute a separate counterparty credit risk capital requirement for the credit derivative, provided it does so consistently for all such credit derivative contracts. Further, where these credit derivative contracts are subject to a qualifying master netting agreement, the banking organization would either include them all or exclude them all from any measure used to determine the counterparty credit risk exposure to all relevant counterparties for risk-based capital purposes.

In addition, if a banking organization provides protection through a credit derivative that is not a covered position under subpart F of the proposal, it would treat the credit derivative as an exposure to the underlying reference asset and compute a risk-weighted asset amount for the credit derivative under section 32 of the proposal. The banking organization would not be required to compute a counterparty credit risk capital requirement for the credit derivative, as long as it does so consistently and either includes all or excludes all such credit derivatives that are subject to a qualifying master netting contract from any measure used to determine counterparty credit risk exposure to all relevant counterparties for risk-based capital purposes.

Where the banking organization provides protection through a credit derivative treated as a covered position under subpart F of the proposal, it would compute a supplemental counterparty credit risk capital requirement using an amount determined under section 34 for OTC credit derivatives or section 35 for credit derivatives that are cleared transactions. In either case, the PFE of the protection provider would be capped at the net present value of the amount of unpaid premiums.

Under the general risk-based capital rules, the risk weight applied to an OTC derivative contract is limited to 50 percent even if the counterparty or guarantor would otherwise receive a higher risk weight. Under this NPR, the risk weight for OTC derivative transactions would not be subject to any specific ceiling, consistent with the Basel capital framework. The agencies believe that as the market for derivatives has developed, the types of counterparties acceptable to participants have expanded to include counterparties that merit a risk weight greater than 50 percent.

Question 11: The agencies solicit comment on the proposed risk-based capital treatment for OTC derivatives, including the definition of an OTC derivative and the removal of the 50 percent cap on risk weighting for OTC derivative contracts.

E. Cleared Transactions

1. Overview

The BCBS and the agencies support clearing derivative and repo-style transactions[40] through a central counterparty (CCP) wherever possible in order to promote transparency, multilateral netting, and robust risk management practices.[41]

In general, CCPs help improve the safety and soundness of the derivatives market through the multilateral netting of exposures, establishment and enforcement of collateral requirements, and promoting market transparency. Under Basel II, exposures to a CCP arising from cleared transactions, posted collateral, clearing deposits or guaranty funds could be assigned an exposure amount of zero. However, when developing Basel III, the BCBS recognized that as more transactions move to central clearing, the potential for risk concentration and systemic risk increases. To address these concerns, the BCBS has sought comment on a more risk-sensitive approach for determining a capital requirement for a banking organization's exposures to a

[40] *See* section II.F.2d of this preamble for a discussion of the proposed definition of a repo-style transaction.

[41] *See,* ''Capitalisation of Banking Organization Exposures to Central Counterparties'' (November 2011) (CCP consultative release), available at *http://www.bis.org/publ/bcbs206.pdf.* Once the CCP consultative release is finalized, the agencies expect to take into account the BCBS revisions and incorporate them into the agencies' capital rules through the regular rulemaking process, as appropriate.

CCP. In addition, to encourage CCPs to maintain strong risk management procedures, the BCBS sought comment on lower risk-based capital requirements for derivative and repo-style transaction exposures to CCPs that meet the standards established by the Committee on Payment and Settlement Systems (CPSS) and International Organization of Securities Commissions (IOSCO).[42]

Consistent with the proposals the Basel Committee has made on these issues and the IOSCO standards, the agencies are seeking comment on specific risk-based capital requirements for derivative and repo-style transactions that are cleared on CCPs designed to incentivize the use of CCPs, help reduce counterparty credit risk, and promote strong risk management of CCPs to mitigate their potential for systemic risk. In contrast to the general risk-based capital rules, which permit a banking organization to exclude certain derivative contracts traded on an exchange from the risk-based capital calculation, the agencies would require a banking organization to hold risk-based capital for an outstanding derivative contract or a repo-style transaction that has been entered into with all CCPs, including exchanges. Specifically, the proposal would define a cleared transaction as an outstanding derivative contract or repo-style transaction that a banking organization or clearing member has entered into with a central counterparty (that is, a transaction that a central counterparty has accepted).[43] Under the proposal, a banking organization would be required to hold risk-based capital for all of its cleared transactions, whether the banking organization acts as a clearing member (defined as a member of, or direct participant in, a CCP that is entitled to enter into transactions with the CCP) or a clearing member client (defined as a party to a cleared transaction associated with a CCP in which a clearing member acts either as a financial intermediary with respect to the party or guarantees the performance of the party to the CCP).

Derivative transactions that are not cleared transactions would be OTC derivative transactions. In addition, if a transaction submitted to a CCP is not accepted by a CCP because the terms of the transaction do not match or other operational issues were identified by the CCP, the transaction would not meet the definition of a cleared transaction and would be an OTC derivative transaction. If the counterparties to the transaction resolved the issues and resubmit the transaction, and if it is accepted, the transaction could then be a cleared transaction if it satisfies all the criteria described above.

Under the proposal, a cleared transaction would include a transaction between a CCP and a clearing member banking organization for the banking organization's own account. In addition, it would include a transaction between a CCP and a clearing member banking organization acting on behalf of its client, and a transaction between a client banking organization and a clearing member where the clearing member acts on behalf of the banking organization and enters into an offsetting transaction with a CCP. A cleared transaction also includes one between a clearing member client and a CCP where a clearing member banking organization guarantees the performance of the clearing member client to the CCP. Transactions must also satisfy additional criteria provided in the definition of CCP in the proposed rule text.

Under the proposal, a cleared transaction would not include an exposure of a banking organization that is a clearing member to its clearing member client where the banking organization is either acting as a financial intermediary and enters into an offsetting transaction with a CCP or where the banking organization provides a guarantee to the CCP on the performance of the client. Such a transaction would be treated as an OTC derivative transaction with the exposure amount calculated according to section 34 of the proposal. However, the agencies recognize that this treatment may create a disincentive for banking organizations to act as intermediaries and provide access to CCPs for clients. As a result, the agencies are considering approaches that could address this disincentive while at the same time appropriately reflect the risks of these transactions. For example, one approach would allow banking organizations that are clearing members to adjust the exposure amount calculated under section 34 downward by a certain percentage or, for advanced approaches banking organizations using the internal models method, to adjust the margin period of risk. The international discussions are ongoing on this issue and the agencies expect to revisit this issue once the Basel capital framework is revised. See also the definition of ''cleared transaction'' in section 2 of the proposed rules in the related notice titled ''Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III, Minimum Regulatory Capital Ratios, Capital Adequacy, Transition Provisions, and Prompt Corrective Action.''

Question 12: The agencies request comment on whether the proposal provides an appropriately risk-sensitive treatment of (1) a transaction between a banking organization that is a clearing member and its client and (2) a clearing member's guarantee of its client's transaction with a CCP by treating these exposures as OTC derivative contracts. The agencies also request comment on whether the adjustment of the exposure amount would address possible disincentives for banking organizations that are clearing members to facilitate the clearing of their clients' transactions. What other approaches should the agencies consider?

2. Risk-weighted Asset Amount for Clearing Member Clients and Clearing Members

As proposed in this NPR, to determine the risk-weighted asset amount for a cleared transaction, a clearing member client or a clearing member would multiply the trade exposure amount for the cleared transaction by the appropriate risk weight, determined as described below. The trade exposure amount would be calculated as follows:

(1) For a derivative contract that is a cleared transaction, the trade exposure amount would equal the exposure amount for the derivative contract, calculated using the current exposure methodology for OTC derivative contracts under section 34 of the proposal, plus the fair value of the collateral posted by the clearing member banking organization that is held by the CCP in a manner that is not bankruptcy remote;[44] and

(2) For a repo-style transaction that is a cleared transaction, the trade exposure amount would equal the exposure amount calculated under the collateral

[42] *See* CPSS, ''Recommendations for Central Counterparties'' (November 2004), available at *http://www.bis.org/publ/cpss64.pdf?noframes=1.*

[43] For example, the agencies expect that a transaction with a derivatives clearing organization (DCO) would meet the proposed criteria for a cleared transaction. A DCO is a clearinghouse, clearing association, clearing corporation, or similar entity that enables each party to an agreement, contract, or transaction to substitute, through novation or otherwise, the credit of the DCO for the credit of the parties; arranges or provides, on a multilateral basis, for the settlement or netting of obligations; or otherwise provides clearing services or arrangements that mutualize or transfer credit risk among participants. To qualify as a DCO, an entity must be registered with the U.S. Commodity Futures Trading Commission and comply with all relevant laws and procedures.

[44] Under this proposal, bankruptcy remote, with respect to entity or asset, would mean that the entity or asset would be excluded from an insolvent entity's estate in a receivership, insolvency, liquidation, or similar proceeding.

haircut approach (described in section 37(c) of the proposal) plus the fair value of the collateral posted by the clearing member client banking organization that is held by the CCP in a manner that is not bankruptcy remote.

The trade exposure amount would not include any collateral posted by a clearing member banking organization that is held by a custodian in a manner that is bankruptcy remote from the CCP or any collateral posted by a clearing member client that is held by a custodian in a manner that is bankruptcy remote from the CCP, clearing members and other counterparties of the clearing member. In addition to the capital requirement for the cleared transaction, the banking organization would remain subject to a capital requirement for any collateral provided to a CCP, a clearing member, or a custodian in connection with a cleared transaction in accordance with section 32.

Consistent with the Basel capital framework, the agencies propose that the risk weight for a cleared transaction depends on whether the CCP is a qualifying CCP (QCCP). As proposed, central counterparties that are designated financial market utilities (FMUs) and foreign entities regulated and supervised in a manner equivalent to designated FMUs would be QCCPs. In addition, a central counterparty could be a QCCP under the proposal if it was in sound financial condition and met certain standards that are consistent with BCBS expectations for QCCPs, as set forth in the proposed definition. See the definition of ''qualified central counterparty'' in section 2 of the proposed rules in the related notice titled ''Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III, Minimum Regulatory Capital Ratios, Capital Adequacy, Transition Provisions, and Prompt Corrective Action''.

Under the proposal, a clearing member banking organization would apply a 2 percent risk weight to its trade exposure amount with a QCCP. A banking organization that is a clearing member client would apply a 2 percent risk weight to the trade exposure amount only if:

(1) The collateral posted by the banking organization to the QCCP or clearing member is subject to an arrangement that prevents any losses to the clearing member due to the joint default or a concurrent insolvency, liquidation, or receivership proceeding of the clearing member and any other clearing member clients of the clearing member, and

(2) The clearing member client banking organization has conducted sufficient legal review to conclude with a well-founded basis (and maintains sufficient written documentation of that legal review) that in the event of a legal challenge (including one resulting from default or a liquidation, insolvency, or receivership proceeding) the relevant court and administrative authorities would find the arrangements to be legal, valid, binding, and enforceable under the law of the relevant jurisdiction.

The agencies believe that omnibus accounts (that is, accounts that are generally set up by clearing entities for non-clearing members) in the United States would satisfy these requirements because of the protections afforded client accounts under certain regulations of the SEC [45] and CFTC.[46] If the criteria above are not met, a banking organization that is clearing member client would apply a risk weight of 4 percent to the trade exposure amount.

For a cleared transaction with a CCP that is not a QCCP, a clearing member and a banking organization that is a clearing member client would risk weight the trade exposure amount to the CCP according to the treatment for the CCP under section 32 of the proposal. In addition, collateral posted by a clearing member banking organization that is held by a custodian in a manner that is bankruptcy remote from the CCP would not be subject to a capital requirement for counterparty credit risk. Collateral posted by a clearing member client that is held by a custodian in a manner that is bankruptcy remote from the CCP, clearing member, and other clearing member clients of the clearing member would not be subject to a capital requirement for counterparty credit risk.

3. Default Fund Contribution

One of the benefits of clearing a transaction through a CCP is the protection provided to the CCP clearing members by the margin requirements imposed by the CCP, as well as by the CCP members' default fund contributions, and the CCP's own capital and contribution to the default fund. Default funds make CCPs safer and are an important source of collateral in case of counterparty default. However, CCPs independently determine default fund contributions from members. The BCBS therefore has proposed to establish a risk-sensitive approach for risk weighting a banking organization's exposure to a default fund.

[45] *See* 15 U.S.C 78aaa–78lll and 17 CFR part 300.

[46] *See* 17 CFR part 190.

Consistent with the CCP consultative release, the agencies are proposing to require a banking organization that is a clearing member of a CCP to calculate the risk-weighted asset amount for its default fund contributions at least quarterly or more frequently if there is a material change, in the opinion of the banking organization or the primary federal supervisor, in the financial condition of the CCP. A default fund contribution would mean the funds contributed or commitments made by a clearing member to a CCP's mutualized loss-sharing arrangement.[47] Under this proposal, a banking organization would assign a 1,250 percent risk weight to its default fund contribution to a CCP that is not a QCCP.

As under the CCP consultative release, a banking organization would calculate a risk-weighted asset amount for its default fund contribution to a QCCP by using a three-step process. The first step is to calculate the QCCP's hypothetical capital requirement (K_{CCP}), unless the QCCP has already disclosed it. K_{CCP} is the capital that a QCCP would be required to hold if it were a banking organization, and it is calculated using the current exposure methodology for OTC derivatives and recognizing the risk-mitigating effects of collateral posted by and default fund contributions received from the QCCP clearing members.

As a first step, for purposes of calculating K_{CCP}, the agencies are proposing several modifications to the current exposure methodology to adjust for certain features that are unique to QCCPs. First, a clearing member would be permitted to offset its exposure to a QCCP with actual default fund contributions. Second, greater recognition of netting would be allowed when calculating K_{CCP}. Specifically, the formula used to calculate the adjusted sum of the PFE amounts in section 34 (the Anet formula) would be changed from $Anet = (0.4 \times Agross) + (0.6 \times NGR \times Agross)$ to $Anet = (0.3 \times Agross) + (0.7 \times NGR \times Agross)$.[48] Third, the risk weight of all clearing members would be set at 20 percent, except when a banking organization's primary federal supervisor has determined that a higher risk weight is appropriate based on the specific characteristics of the QCCP and

[47] Default funds are also known as clearing deposits or guaranty funds.

[48] NGR is defined as the net to gross ratio (that is, the ratio of the net current credit exposure to the gross current credit exposure). If a banking organization cannot calculate the NGR, the banking organization may use a value of 0.30 until March 31, 2013. If the CCP does not provide the NGR to the banking organization or data needed to calculate the NGR after that date, the CCP no longer meets the criteria for a QCCP.

its clearing members. Finally, for derivative contracts that are options, the PFE amount calculation would be adjusted by multiplying the notional principal amount of the derivative contract by the appropriate conversion factor and the absolute value of the option's delta (that is, the ratio of the change in the value of the derivative contract to the corresponding change in the price of the underlying asset).

In the second step, K_{CCP} is compared to the funded portion of the default fund of a QCCP and the total of all the clearing members' capital requirements (K_{cm}*) is calculated. If the total funded default fund of a QCCP is less than K_{CCP}, additional capital would be assessed against the shortfall because of the small size of the funded portion of the default fund relative to K_{CCP}. If the total funded default fund of a QCCP is greater than K_{CCP}, but the QCCP's own funded contributions to the default fund are less than K_{CCP} (so that the clearing members' default fund contributions are required to achieve K_{CCP}), the clearing members' default fund contributions up to K_{CCP} would be risk-weighted at 100 percent and a decreasing capital factor, between 0.16 percent and 1.6 percent, would be applied to the clearing members' funded default fund contributions above K_{CCP}. If the QCCP's own contribution to the default fund is greater than K_{CCP}, then only the decreasing capital factor would be applied to the clearing members' default fund contributions.

In the third step, the total of all the clearing members' capital requirements (K_{cm}*) is allocated back to each individual clearing member. This allocation is proportional to each clearing member's contribution to the default fund but adjusted to reflect the impact of two average-size clearing members defaulting as well as to account for the concentration of exposure among clearing members.

Question 13: The agencies are seeking comment on the proposed calculation of the risk-based capital for cleared transactions, including the proposed risk-based capital requirements for exposures to a QCCP. Are there specific types of exposures to certain QCCPs that would warrant an alternative risk-based capital approach? Please provide a detailed description of such transactions or exposures, the mechanics of the alternative risk-based approach, and the supporting rationale.

F. Credit Risk Mitigation

Banking organizations use a number of techniques to mitigate credit risks. For example, a banking organization may collateralize exposures with first-priority claims, cash or securities; a third party may guarantee a loan exposure; a banking organization may buy a credit derivative to offset an exposure's credit risk; or a banking organization may net exposures with a counterparty under a netting agreement. The general risk-based capital rules recognize these techniques to some extent. This section describes how a banking organization would recognize the risk-mitigation effects of guarantees, credit derivatives, and collateral for risk-based capital purposes under the proposal. Similar to the general risk-based capital rules, a banking organization that is not engaged in complex financial activities generally would be able to use a substitution approach to recognize the credit risk-mitigation effect of an eligible guarantee from an eligible guarantor and the simple approach to recognize the effect of collateral.

To recognize credit risk mitigants, all banking organizations should have operational procedures and risk management processes that ensure that all documentation used in collateralizing or guaranteeing a transaction is legal, valid, binding, and enforceable under applicable law in the relevant jurisdictions. A banking organization should conduct sufficient legal review to reach a well-founded conclusion that the documentation meets this standard as well as conduct additional reviews as necessary to ensure continuing enforceability.

Although the use of credit risk mitigants may reduce or transfer credit risk, it simultaneously may increase other risks, including operational, liquidity, or market risk. Accordingly, a banking organization should employ robust procedures and processes to control risks, including roll-off and concentration risks, and monitor the implications of using credit risk mitigants for the banking organization's overall credit risk profile.

1. Guarantees and Credit Derivatives

a. Eligibility Requirements

The general risk-based capital rules generally recognize third-party guarantees provided by central governments, GSEs, PSEs in the OECD countries, multilateral lending institutions and regional development banking organizations, U.S. depository institutions, foreign banks, and qualifying securities firms in OECD countries.[49] Consistent with the Basel capital framework, the agencies propose to recognize a wider range of eligible guarantors, including sovereigns, the Bank for International Settlements, the International Monetary Fund, the European Central Bank, the European Commission, Federal Home Loan Banks, Federal Agricultural Mortgage Corporation (Farmer Mac), MDBs, depository institutions, bank holding companies, savings and loan holding companies, credit unions, and foreign banks. Eligible guarantors would also include entities that are not special purpose entities that have issued and outstanding unsecured debt securities without credit enhancement that are investment grade and that meet certain other requirements.[50] See the definition of ''eligible guarantor'' in section 2 of the proposed rules in the related notice titled ''Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III, Minimum Regulatory Capital Ratios, Capital Adequacy, Transition Provisions, and Prompt Corrective Action.''

Under this NPR, guarantees and credit derivatives would be required to meet specific eligibility requirements to be recognized for credit risk mitigation purposes. Under the proposal an eligible guarantee would be defined as a guarantee from an eligible guarantor that is written and meets certain standards and conditions, including with respect to its enforceability. For example, an eligible guarantee must either be unconditional or a contingent obligation of the U.S. government or its agencies (the enforceability of which is dependent on some affirmative action on the part of the beneficiary of the guarantee or a third party, such as servicing requirements). See the definition of ''eligible guarantee'' in section 2 of the proposed rules in the related notice titled ''Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III, Minimum Regulatory Capital Ratios, Capital Adequacy, Transition Provisions, and Prompt Corrective Action.''

An eligible credit derivative would be defined as a credit derivative in the form of a credit default swap, nth-to-default swap, total return swap, or any other form of credit derivative approved by the primary federal supervisor,

[49] 12 CFR part 3, appendix A and 12 CFR 167.6 (OCC); 12 CFR parts 208 and 225, appendix A, section III.B.2 (Board); 12 CFR part 325, appendix A, section II.B.3 and 12 CFR 390.466 (FDIC).

[50] Under the proposal, an exposure would be, ''investment grade'' if the entity to which the banking organization is exposed through a loan or security, or the reference entity with respect to a credit derivative, has adequate capacity to meet financial commitments for the projected life of the asset or exposure. Such an entity or reference entity has adequate capacity to meet financial commitments if the risk of its default is low and the full and timely repayment of principal and interest is expected.

provided that the instrument meets the standards and conditions set forth in the proposed definition. See the definition of ''eligible credit derivative'' in section 2 of the proposed rules in the related notice titled ''Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III, Minimum Regulatory Capital Ratios, Capital Adequacy, Transition Provisions, and Prompt Corrective Action.''

Under this NPR, a banking organization would be permitted to recognize the credit risk mitigation benefits of an eligible credit derivative that hedges an exposure that is different from the credit derivative's reference exposure used for determining the derivative's cash settlement value, deliverable obligation, or occurrence of a credit event if (1) the reference exposure ranks *pari passu* with or is subordinated to the hedged exposure; and (2) the reference exposure and the hedged exposure are to the same legal entity, and legally enforceable cross-default or cross-acceleration clauses are in place to assure payments under the credit derivative are triggered when the issuer fails to pay under the terms of the hedged exposure.

When a banking organization has a group of hedged exposures with different residual maturities that are covered by a single eligible guarantee or eligible credit derivative, a banking organization would treat each hedged exposure as if it were fully covered by a separate eligible guarantee or eligible credit derivative.

b. Substitution Approach

Under the proposed substitution approach, if the protection amount (as defined below) of an eligible guarantee or eligible credit derivative is greater than or equal to the exposure amount of the hedged exposure, a banking organization would substitute the risk weight applicable to the guarantor or credit derivative protection provider for the risk weight assigned to the hedged exposure.

If the protection amount of the eligible guarantee or eligible credit derivative is less than the exposure amount of the hedged exposure, a banking organization would treat the hedged exposure as two separate exposures (protected and unprotected) to recognize the credit risk mitigation benefit of the guarantee or credit derivative. In such cases, a banking organization would calculate the risk-weighted asset amount for the protected exposure under section 36 (using a risk weight applicable to the guarantor or credit derivative protection provider and an exposure amount equal to the protection amount of the guarantee or credit derivative). The banking organization would calculate its risk-weighted asset amount for the unprotected exposure under section 36 of the proposal (using the risk weight assigned to the exposure and an exposure amount equal to the exposure amount of the original hedged exposure minus the protection amount of the guarantee or credit derivative).

The protection amount of an eligible guarantee or eligible credit derivative would mean the effective notional amount of the guarantee or credit derivative (reduced to reflect any currency mismatch, maturity mismatch, or lack of restructuring coverage, as described in this section below). The effective notional amount for an eligible guarantee or eligible credit derivative would be the lesser of the contractual notional amount of the credit risk mitigant and the exposure amount of the hedged exposure, multiplied by the percentage coverage of the credit risk mitigant. For example, the effective notional amount of a guarantee that covers, on a pro rata basis, 40 percent of any losses on a $100 bond would be $40.

The following sections addresses credit risk mitigants with maturity mismatches, lack of restructuring coverage, currency mismatches, and multiple credit risk mitigants. A banking organization that is not engaged in complex financial transactions is unlikely to have credit risk mitigant with a currency mismatch, maturity mismatch, or lack of restructuring coverage, or multiple credit risk mitigants. In such a case, a banking organization should refer to section II.F.2 below which describes the treatment of collateralized transactions.

c. Maturity Mismatch Haircut

Under the proposed requirements, a banking organization that recognizes an eligible guarantee or eligible credit derivative to adjust the effective notional amount of the credit risk mitigant to reflect any maturity mismatch between the hedged exposure and the credit risk mitigant. A maturity mismatch occurs when the residual maturity of a credit risk mitigant is less than that of the hedged exposure(s).[51]

[51] As noted above, when a banking organization has a group of hedged exposures with different residual maturities that are covered by a single eligible guarantee or eligible credit derivative, a banking organization would treat each hedged exposure as if it were fully covered by a separate eligible guarantee or eligible credit derivative. To determine whether any of the hedged exposures has a maturity mismatch with the eligible guarantee or credit derivative, the banking organization would assess whether the residual maturity of the eligible guarantee or eligible credit derivative is less than that of the hedged exposure.

The residual maturity of a hedged exposure would be the longest possible remaining time before the obligated party of the hedged exposure is scheduled to fulfil its obligation on the hedged exposure. A banking organization would be required to take into account any embedded options that may reduce the term of the credit risk mitigant so that the shortest possible residual maturity for the credit risk mitigant would be used to determine the potential maturity mismatch. If a call is at the discretion of the protection provider, the residual maturity of the credit risk mitigant would be at the first call date. If the call is at the discretion of the banking organization purchasing the protection, but the terms of the arrangement at origination of the credit risk mitigant contain a positive incentive for the banking organization to call the transaction before contractual maturity, the remaining time to the first call date would be the residual maturity of the credit risk mitigant. For example, if there is a step-up in the cost of credit protection in conjunction with a call feature or if the effective cost of protection increases over time even if credit quality remains the same or improves, the residual maturity of the credit risk mitigant would be the remaining time to the first call date. Under this NPR, a banking organization would be permitted to recognize a credit risk mitigant with a maturity mismatch only if its original maturity is greater than or equal to one year and the residual maturity is greater than three months.

Assuming that the credit risk mitigant may be recognized, a banking organization would be required to apply the following adjustment to reduce the effective notional amount of the credit risk mitigant: $P_m = E \times [(t-0.25)/(T-0.25)]$, where:

(1) P_m = effective notional amount of the credit risk mitigant, adjusted for maturity mismatch;
(2) E = effective notional amount of the credit risk mitigant;
(3) t = the lesser of T or residual maturity of the credit risk mitigant, expressed in years; and
(4) T = the lesser of five or the residual maturity of the hedged exposure, expressed in years.

d. Adjustment for Credit Derivatives Without Restructuring as a Credit Event

Under the proposal, a banking organization that seeks to recognize an eligible credit derivative that does not include a restructuring of the hedged exposure as a credit event under the derivative would have to reduce the effective notional amount of the credit derivative recognized for credit risk mitigation purposes by 40 percent. For purposes of the proposed credit risk mitigation framework, a restructuring would involve forgiveness or postponement of principal, interest, or fees that result in a credit loss event (that is, a charge-off, specific provision, or other similar debit to the profit and loss account). In these instances, the banking organization would be required to apply the following adjustment to reduce the effective notional amount of the credit derivative: Pr = Pm × 0.60, where:

(1) Pr = effective notional amount of the credit risk mitigant, adjusted for lack of a restructuring event (and maturity mismatch, if applicable); and
(2) Pm = effective notional amount of the credit risk mitigant (adjusted for maturity mismatch, if applicable).

e. Currency Mismatch Adjustment

Under this proposal, if a banking organization recognizes an eligible guarantee or eligible credit derivative that is denominated in a currency different from that in which the hedged exposure is denominated, the banking organization would apply the following formula to the effective notional amount of the guarantee or credit derivative: $P_C = Pr \times (1 - H_{FX})$, where:

(1) Pc = effective notional amount of the credit risk mitigant, adjusted for currency mismatch (and maturity mismatch and lack of restructuring event, if applicable);
(2) Pr = effective notional amount of the credit risk mitigant (adjusted for maturity mismatch and lack of restructuring event, if applicable); and
(3) H_{FX} = haircut appropriate for the currency mismatch between the credit risk mitigant and the hedged exposure.

A banking organization would be required to use a standard supervisory haircut of 8 percent for H_{FX} (based on a ten-business-day holding period and daily marking-to-market and remargining). Alternatively, a banking organization would be able to use internally estimated haircuts of H_{FX} based on a ten-business-day holding period and daily marking-to-market if the banking organization qualifies to use the own-estimates of haircuts in section 37(c)(4) of the proposal. In either case, the banking organization is required to scale the haircuts up using the square root of time formula if the banking organization revalues the guarantee or credit derivative less frequently than once every 10 business days. The applicable haircut (H_M) is calculated using the following square root of time formula:

$$H_M = 8\% \sqrt{\frac{T_M}{10}},$$

where T_M = equals the greater of 10 or the number of days between revaluation.

f. Multiple Credit Risk Mitigants

If multiple credit risk mitigants (for example, two eligible guarantees) cover a single exposure, the agencies propose to permit a banking organization disaggregate the exposure into portions covered by each credit risk mitigant (for example, the portion covered by each guarantee) and calculate separately a risk-based capital requirement for each portion, consistent with the Basel capital framework. In addition, when credit risk mitigants provided by a single protection provider have differing maturities, the mitigants should be subdivided into separate layers of protection.

2. Collateralized Transactions

a. Eligible Collateral

The general risk-based capital rules recognize limited types of collateral, such as cash on deposit; securities issued or guaranteed by central governments of the OECD countries; securities issued or guaranteed by the U.S. government or its agencies; and securities issued by certain multilateral development banks.[52] Given the fact that the general risk-based capital rules for collateral are restrictive and, in some cases, do not take into account market practices, the agencies propose to recognize the credit risk mitigating impact of an expanded range of financial collateral, consistent with the Basel capital framework.

As proposed, financial collateral would mean collateral in the form of: (1) Cash on deposit with the banking organization (including cash held for the banking organization by a third-party custodian or trustee); (2) gold bullion; (3) short- and long-term debt securities that are not resecuritization exposures and that are investment grade; (4) equity securities that are publicly-traded; (5) convertible bonds that are publicly-traded; or (6) money market fund shares and other mutual fund shares if a price for the shares is publicly quoted daily. With the exception of cash on deposit, the banking organization would also be required to have a perfected, first-priority security interest or, outside of the United States, the legal equivalent thereof, notwithstanding the prior security interest of any custodial agent. A banking organization would be permitted to recognize partial collateralization of an exposure.

Under this NPR, a banking organization would be able to recognize the risk-mitigating effects of financial collateral using the simple approach, described in section II.F.2(c) below, for any exposure where the collateral is subject to a collateral agreement for at least the life of the exposure; the collateral must be revalued at least every six months; and the collateral (other than gold) and the exposure must be denominated in the same currency. For repo-style transactions, eligible margin loans, collateralized derivative contracts, and single-product netting sets of such transactions, a banking organization could alternatively use the collateral haircut approach described in section II.F.2(d) below. A banking organization would be required to use the same approach for similar exposures or transactions.

b. Risk Management Guidance for Recognizing Collateral

Before a banking organization recognizes collateral for credit risk mitigation purposes, it should: (1) CONDUCt sufficient legal review to ensure, at the inception of the collateralized transaction and on an ongoing basis, that all documentation used in the transaction is binding on all parties and legally enforceable in all relevant jurisdictions; (2) consider the correlation between risk of the underlying direct exposure and collateral risk in the transaction; and (3) fully take into account the time and cost needed to realize the liquidation proceeds and the potential for a decline in collateral value over this time period.

A banking organization also should ensure that the legal mechanism under which the collateral is pledged or transferred ensures that the banking organization has the right to liquidate or take legal possession of the collateral in a timely manner in the event of the default, insolvency, or bankruptcy (or other defined credit event) of the counterparty and, where applicable, the custodian holding the collateral.

In addition, a banking organization should ensure that it (1) Has taken all steps necessary to fulfill any legal requirements to secure its interest in the collateral so that it has and maintains an enforceable security interest; (2) has set up clear and robust procedures to ensure observation of any legal conditions required for declaring the default of the borrower and prompt

[52] The agencies' rules for collateral transactions differ somewhat as described in the agencies' joint report to Congress. *See* ''Joint Report: Differences in Accounting and Capital Standards among the Federal Banking Agencies; Report to Congressional Committees,'' 75 FR 47900 (August 9, 2010).

liquidation of the collateral in the event of default; (3) has established procedures and practices for conservatively estimating, on a regular ongoing basis, the fair value of the collateral, taking into account factors that could affect that value (for example, the liquidity of the market for the collateral and obsolescence or deterioration of the collateral); and (4) has in place systems for promptly requesting and receiving additional collateral for transactions whose terms require maintenance of collateral values at specified thresholds.

c. Simple Approach

Under the proposed simple approach, which is similar to the general risk-based capital rules, the collateralized portion of the exposure would receive the risk weight applicable to the collateral. The collateral would be required to meet the definition of financial collateral, provided that a banking organization could recognize any collateral for a repo-style transaction that is included in the banking organization's Value-at-Risk (VaR)-based measure under the market risk capital rule. For repurchase agreements, reverse repurchase agreements, and securities lending and borrowing transactions, the collateral would be the instruments, gold, and cash that a banking organization has borrowed, purchased subject to resale, or taken as collateral from the counterparty under the transaction. As noted above, in all cases, (1) The terms of the collateral agreement would be required to be equal to or greater than the life of the exposure; (2) the banking organization would be required to revalue the collateral at least every six months; and (3) the collateral (other than gold) and the exposure would be required to be denominated in the same currency.

Generally, the risk weight assigned to the collateralized portion of the exposure would be no less than 20 percent. However, the collateralized portion of an exposure could be assigned a risk weight of less than 20 percent for the following exposures. OTC derivative contracts that are marked-to-market on a daily basis and subject to a daily margin maintenance agreement, which would receive (1) a zero percent risk weight to the extent that they are collateralized by cash on deposit, or (2) a 10 percent risk weight to the extent that the contracts are collateralized by an exposure to a sovereign or a PSE that qualifies for a zero percent risk weight under section 32 of the proposal. In addition, a banking organization may assign a zero percent risk weight to the collateralized portion of an exposure where the financial collateral is cash on deposit; or the financial collateral is an exposure to a sovereign that qualifies for a zero percent risk weight under section 32 of the proposal, and the banking organization has discounted the market value of the collateral by 20 percent.

d. Collateral Haircut Approach

The agencies would permit a banking organization to use a collateral haircut approach with supervisory haircuts or, with prior written approval of the primary federal supervisor, its own estimates of haircuts to recognize the risk-mitigating effect of financial collateral that secures an eligible margin loan, a repo-style transaction, collateralized derivative contract, or single-product netting set of such transactions, as well as any collateral that secures a repo-style transaction that is included in the banking organization's VaR-based measure under the market risk capital rule. A netting set would refer to a group of transactions with a single counterparty that are subject to a qualifying master netting agreement or a qualifying cross-product master netting agreement.

The proposal would define a repo-style transaction as a repurchase or reverse repurchase transaction, or a securities borrowing or securities lending transaction (including a transaction in which a banking organization acts as agent for a customer and indemnifies the customer against loss), provided that the transaction meets certain standards and conditions, including with respect to its legal status and the assets backing the transaction. For example, the transaction must be a ''securities contract,'' ''repurchase agreement'' under the Bankruptcy Code or a qualified financial contract under certain provisions of U.S. banking laws, as specified in the definition. In addition, the contract must meet certain enforceability standards and a legal review of the contract must be conducted. See the definition of ''repo-style transaction'' in section 2 of the proposed rules in the related notice titled ''Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III, Minimum Regulatory Capital Ratios, Capital Adequacy, Transition Provisions, and Prompt Corrective Action.'':

Under the proposal, an eligible margin loan would be defined as an extension of credit where certain standards and conditions are met, including with respect to collateral securing the loan and events of default in the agreements governing the loan. See the definition of ''eligible margin loan'' in section 2 of the proposed rules in the related notice titled ''Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III, Minimum Regulatory Capital Ratios, Capital Adequacy, Transition Provisions, and Prompt Corrective Action.''

Under the collateral haircut approach, a banking organization would determine the exposure amount using standard supervisory haircuts or its own estimates of haircuts and risk weight the exposure amount according to the counterparty or guarantor if applicable. A banking organization would set the exposure amount for an eligible margin loan, repo-style transaction, collateralized derivative contract, or a netting set of such transactions equal to the greater of zero and the sum of the following three quantities:

(1) The value of the exposure less the value of the collateral. For eligible margin loans, repo-style transactions and netting sets thereof, the value of the exposure is the sum of the current market values of all instruments, gold, and cash the banking organization has lent, sold subject to repurchase, or posted as collateral to the counterparty under the transaction or netting set. For collateralized OTC derivative contracts and netting sets thereof, the value of the exposure is the exposure amount that is calculated under section 34 of the proposal. The value of the collateral would equal the sum of the current market values of all instruments, gold and cash the banking organization has borrowed, purchased subject to resale, or taken as collateral from the counterparty under the transaction or netting set;

(2) The absolute value of the net position in a given instrument or in gold (where the net position in a given instrument or in gold equals the sum of the current market values of the instrument or gold the banking organization has lent, sold subject to repurchase, or posted as collateral to the counterparty minus the sum of the current market values of that same instrument or gold that the banking organization has borrowed, purchased subject to resale, or taken as collateral from the counterparty) multiplied by the market price volatility haircut appropriate to the instrument or gold; and

(3) The absolute values of the net position of instruments and cash in a currency that is different from the settlement currency (where the net position in a given currency equals the sum of the current market values of any instruments or cash in the currency the banking organization has lent, sold

subject to repurchase, or posted as collateral to the counterparty minus the sum of the current market values of any instruments or cash in the currency the banking organization has borrowed, purchased subject to resale, or taken as collateral from the counterparty) multiplied by the haircut appropriate to the currency mismatch.

For purposes of the collateral haircut approach, a given instrument would include, for example, all securities with a single Committee on Uniform Securities Identification Procedures (CUSIP) number and would not include securities with different CUSIP numbers, even if issued by the same issuer with the same maturity date.

e. Standard Supervisory Haircuts

Under this NPR, a banking organization would use an 8 percent haircut for each currency mismatch and would use the market price volatility haircut appropriate to each security as provided in table 7. The market price volatility haircuts are based on the ten-business-day holding period for eligible margin loans and derivative contracts and may be multiplied by the square root of ½ (which equals 0.707107) to convert the standard supervisory haircuts to the five-business-day minimum holding period for repo-style transactions.

TABLE 7—STANDARD SUPERVISORY MARKET PRICE VOLATILITY HAIRCUTS [1]

Residual maturity	Haircut (in percents) assigned based on:						Investment grade securitization exposures (in percent)
	Sovereign issuers risk weight under § ____.32 [2]			Non-sovereign issuers risk weight under § ____.32			
	Zero %	20% or 50%	100%	20%	50%	100%	
Less than or equal to 1 year	0.5	1.0	15.0	1.0	2.0	25.0	4.0
Greater than 1 year and less than or equal to 5 years	2.0	3.0	15.0	4.0	6.0	25.0	12.0
Greater than 5 years	4.0	6.0	15.0	8.0	12.0	25.0	24.0
Main index equities (including convertible bonds) and gold				15.0			
Other publicly-traded equities (including convertible bonds)				25.0			
Mutual funds				Highest haircut applicable to any security in which the fund can invest.			
Cash collateral held				Zero.			

[1] The market price volatility haircuts in Table 2 are based on a 10 business-day holding period.
[2] Includes a foreign PSE that receives a zero percent risk weight.

For example, if a banking organization has extended an eligible margin loan of $100 that is collateralized by five-year U.S. Treasury notes with a market value of $100, the value of the exposure less the value of the collateral would be zero, and the net position in the security ($100) times the supervisory haircut (.02) would be $2. There is no currency mismatch. Therefore, the exposure amount would be $0 + $2 = $2.

During the financial crisis, many financial institutions experienced significant delays in settling or closing out collateralized transactions, such as repo-style transactions and collateralized OTC derivatives. The assumed holding period for collateral in the collateral haircut approach under Basel II proved to be inadequate for certain transactions and netting sets and did not reflect the difficulties and delays that institutions had when settling or liquidating collateral during a period of financial stress.

Accordingly, consistent with the revised Basel capital framework, for netting sets where: (1) The number of trades exceeds 5,000 at any time during the quarter; (2) one or more trades involves illiquid collateral posted by the counterparty; or (3) the netting set includes any OTC derivatives that cannot be easily replaced, this NPR would require a banking organization to assume a holding period of 20 business days for the collateral under the collateral haircut approach. When determining whether collateral is illiquid or an OTC derivative cannot be easily replaced for these purposes, a banking organization should assess whether, during a period of stressed market conditions, it could obtain multiple price quotes within two days or less for the collateral or OTC derivative that would not move the market or represent a market discount (in the case of collateral) or a premium (in the case of an OTC derivative).

If over the two previous quarters more than two margin disputes on a netting set have occurred that lasted longer than the holding period, then the banking organization would use a holding period for that netting set that is at least two times the minimum holding period that would otherwise be used for that netting set. Margin disputes may occur when the banking organization and its counterparty do not agree on the value of collateral or on the eligibility of the collateral provided. Margin disputes also can occur when the banking organization and its counterparty disagree on the amount of margin that is required, which could result from differences in the valuation of a transaction, or from errors in the calculation of the net exposure of a portfolio, for instance, if a transaction is incorrectly included or excluded from the portfolio. In this NPR, the agencies propose to incorporate these adjustments to the holding period in the collateral haircut approach. However, consistent with the Basel capital framework, a banking organization would not be required to adjust the holding period upward for cleared transactions.

f. Own Estimates of Haircuts

In this NPR, the agencies are proposing to allow banking organizations to calculate market price volatility and foreign exchange volatility using own internal estimates with prior written approval of the banking organization's primary federal supervisor. The banking organization's primary federal supervisor would base approval to use internally estimated haircuts on the satisfaction of certain minimum qualitative and quantitative standards, including the requirements that a banking organization would: (1) Use a 99th percentile one-tailed confidence interval and a minimum five-business-day holding period for repo-style transactions and a minimum ten-business-day holding period for all other transactions; (2) adjust holding periods upward where and as appropriate to take into account the illiquidity of an instrument; (3) select a historical observation period that reflects a continuous 12-month period of significant financial stress appropriate to the banking organization's current portfolio; and (4) update its data sets and compute haircuts no less frequently than quarterly, as well as any time market prices change materially. A banking organization would estimate the volatilities of each exposure, the collateral, and foreign exchange rates and not take into account the correlations between them.

Under the proposed requirements, a banking organization would be required to have policies and procedures that describe how it determines the period of significant financial stress used to calculate the bank's own internal estimates, and to be able to provide empirical support for the period used. These policies and procedures would address (1) how the banking organization links the period of significant financial stress used to calculate the own internal estimates to the composition and directional bias of the banking organization's current portfolio; and (2) the banking organization's process for selecting, reviewing, and updating the period of significant financial stress used to calculate the own internal estimates and for monitoring the appropriateness of the 12-month period in light of the bank's current portfolio. The banking organization would be required to obtain the prior approval of its primary federal supervisor for these policies and procedures and notify its primary federal supervisor if the banking organization makes any material changes to them. A banking organization's primary federal supervisor may require it to use a different period of significant financial stress in the calculation of the banking organization's own internal estimates.

Under the proposal, a banking organization would be allowed to use internally estimated haircuts for categories of debt securities under certain conditions. The banking organization would be allowed to calculate internally estimated haircuts for categories of debt securities that are investment grade exposures. The haircut for a category of securities would have to be representative of the internal volatility estimates for securities in that category that the banking organization has lent, sold subject to repurchase, posted as collateral, borrowed, purchased subject to resale, or taken as collateral.

In determining relevant categories, the banking organization would, at a minimum, take into account (1) The type of issuer of the security; (2) the investment grade of the security; (3) the maturity of the security; and (4) the interest rate sensitivity of the security. A banking organization would calculate a separate internally estimated haircut for each individual non-investment grade debt security and for each individual equity security. In addition, a banking organization would estimate a separate currency mismatch haircut for its net position in each mismatched currency based on estimated volatilities for foreign exchange rates between the mismatched currency and the settlement currency where an exposure or collateral (whether in the form of cash or securities) is denominated in a currency that differs from the settlement currency.

g. Simple Value-at-risk

Under this NPR, a banking organization would not be permitted to use the simple value-at-risk (VaR) to calculate exposure amounts for eligible margin loans and repo-style transactions. However, the Basel standardized approach does incorporate the simple VaR approach for credit risk mitigants. Therefore, the agencies are considering whether to implement the simple VaR approach consistent with the requirements described below.

Under the simple VaR approach (which is not included in the NPR), with the prior written approval of its primary federal supervisor, a banking organization could be allowed to estimate the exposure amount for repo-style transactions and eligible margin loans subject to a single-product qualifying master netting agreement using a VaR model (simple VaR approach). Under the simple VaR approach, a banking organization's exposure amount for transactions subject to such a netting agreement would be equal to the value of the exposures minus the value of the collateral plus a VaR-based estimate of the PFE. The value of the exposures would be the sum of the current market values of all instruments, gold, and cash the banking organization has lent, sold subject to repurchase, or posted as collateral to a counterparty under the netting set. The value of the collateral would be the sum of the current market values of all instruments, gold, and cash the banking organization has borrowed, purchased subject to resale, or taken as collateral from a counterparty under the netting set. The VaR-based estimate of the PFE would be an estimate of the banking organization's maximum exposure on the netting set over a fixed time horizon with a high level of confidence.

To qualify for the simple VaR approach, a banking organization's VaR model would have to estimate the banking organization's 99th percentile, one-tailed confidence interval for an increase in the value of the exposures minus the value of the collateral ($\Sigma E - \Sigma C$) over a five-business-day holding period for repo-style transactions or over a ten-business-day holding period for eligible margin loans using a minimum one-year historical observation period of price data representing the instruments that the banking organization has lent, sold subject to repurchase, posted as collateral, borrowed, purchased subject to resale, or taken as collateral. The main ongoing qualification requirement for using a VaR model is that the banking organization would have to validate its VaR model by establishing and maintaining a rigorous and regular backtesting regime.

Question 14: The agencies solicit comments on whether banking organizations should be permitted to use the simple VaR to calculate exposure amounts for margin lending, and repo-style transactions.

h. Internal Models Methodology

The advanced approaches rule include an internal models methodology for the calculation of the exposure amount for the counterparty credit exposure for OTC derivatives, eligible margin loans, and repo-style transactions.[53] This methodology requires a risk model that captures counterparty credit risk and estimates the exposure amount at the level of a netting set. A banking organization may use the internal models methodology for OTC derivatives, eligible margin loans, and repo-style transactions. In the companion NPR, the agencies are proposing to permit a banking organization subject to the advanced approaches risk-based capital rules to use the internal models methodology to calculate the trade exposure amount for cleared transactions.[54]

[53] *See* 72 FR 69288, 69346 (December 7, 2007).

[54] The internal models methodology is fully discussed in the 2007 **Federal Register** notice of the advanced approaches rule, with specific references at: (1) 72 FR 69346–69349 and 69302–69321); (2) section 22(c) and other paragraphs in section 22 of the common rule text (at 72 FR 69413–69416; sections 22 (a)(2) and (3), (i), (j), and (k) (these sections establish the qualification requirements for the advanced systems in general and therefore would apply to the expected positive exposure modeling approach as part of the internal models methodology); (3) sections 32(c) and (d) of the common rule text (at 72 FR 69413–69416); (4) applicable definitions in section 2 of the common rule text (at 72 FR 69397–69405); and (5) applicable

Although the internal models methodology is not part of this proposal, the Basel standardized approach does incorporate an internal models methodology for credit risk mitigants. Therefore, the agencies are considering whether to implement the internal models methodology in a final rule consistent with the requirements in the advanced approaches rule as modified by the companion NPR.

Question 15: The agencies request comment on the appropriateness of including the internal models methodology for calculating exposure amounts for OTC derivatives, eligible margin loans, repo-style transactions and cleared transactions for all banking organizations. For purposes of reviewing the internal models methodology in the advanced approaches rule, commenters should substitute the term ''exposure amount'' for the term ''exposure at default'' and ''EAD'' each time these terms appear in the advanced approaches rule.)

G. Unsettled Transactions

In this NPR, the agencies propose to provide for a separate risk-based capital requirement for transactions involving securities, foreign exchange instruments, and commodities that have a risk of delayed settlement or delivery. The proposed capital requirement would not, however, apply to certain types of transactions, including: (1) Cleared transactions that are marked-to-market daily and subject to daily receipt and payment of variation margin; (2) repo-style transactions, including unsettled repo-style transactions; (3) one-way cash payments on OTC derivative contracts; or (4) transactions with a contractual settlement period that is longer than the normal settlement period (which the proposal defines as the lesser of the market standard for the particular instrument or five business days).[55] Under the proposal, in the case of a system-wide failure of a settlement, clearing system, or central counterparty, the banking organization's primary federal supervisor may waive risk-based capital requirements for unsettled and failed transactions until the situation is rectified.

This NPR proposes separate treatments for delivery-versus-payment (DvP) and payment-versus-payment (PvP) transactions with a normal settlement period, and non-DvP/non-PvP transactions with a normal settlement period. A DvP transaction would refer to a securities or commodities transaction in which the buyer is obligated to make payment only if the seller has made delivery of the securities or commodities and the seller is obligated to deliver the securities or commodities only if the buyer has made payment. A PvP transaction would mean a foreign exchange transaction in which each counterparty is obligated to make a final transfer of one or more currencies only if the other counterparty has made a final transfer of one or more currencies. A transaction would be considered to have a normal settlement period if the contractual settlement period for the transaction is equal to or less than the market standard for the instrument underlying the transaction and equal to or less than five business days.

A banking organization would be required to hold risk-based capital against a DvP or PvP transaction with a normal settlement period if the banking organization's counterparty has not made delivery or payment within five business days after the settlement date. The banking organization would determine its risk-weighted asset amount for such a transaction by multiplying the positive current exposure of the transaction for the banking organization by the appropriate risk weight in table 8. The positive current exposure from an unsettled transaction of a banking organization would be the difference between the transaction value at the agreed settlement price and the current market price of the transaction, if the difference results in a credit exposure of the banking organization to the counterparty.

TABLE 8—PROPOSED RISK WEIGHTS FOR UNSETTLED DVP AND PVP TRANSACTIONS

Number of business days after contractual settlement date	Risk weight to be applied to positive current exposure (in percent)
From 5 to 15	100.0
From 16 to 30	625.0
From 31 to 45	937.5
46 or more	1,250.0

A banking organization would hold risk-based capital against any non-DvP/non-PvP transaction with a normal settlement period if the banking organization delivered cash, securities, commodities, or currencies to its counterparty but has not received its corresponding deliverables by the end of the same business day. The banking organization would continue to hold risk-based capital against the transaction until it has received the corresponding deliverables. From the business day after the banking organization has made its delivery until five business days after the counterparty delivery is due, the banking organization would calculate the risk-weighted asset amount for the transaction by risk weighting the current market value of the deliverables owed to the banking organization, using the risk weight appropriate for an exposure to the counterparty in accordance with section 32. If a banking organization has not received its deliverables by the fifth business day after the counterparty delivery due date, the banking organization would assign a 1,250 percent risk weight to the current market value of the deliverables owed.

Question 16: Are there other transactions with a CCP that the agencies should consider excluding from the treatment for unsettled transactions? If so, what are the specific transaction types that should be excluded and why would exclusion be appropriate?

H. Risk-weighted Assets for Securitization Exposures

Under the general risk-based capital rules, a banking organization may use external ratings issued by NRSROs to assign risk weights to certain recourse obligations, residual interests, direct credit substitutes, and asset- and mortgage-backed securities. Such exposures to securitization transactions may also be subject to capital requirements that can result in effective risk weights of 1,250 percent, or a dollar-for-dollar capital requirement. A banking organization must deduct certain credit-enhancing interest-only strips (CEIOs) from tier 1 capital.[56] In this NPR, the agencies are updating the terminology of the securitization framework and proposing a broader definition of a securitization exposure to encompass a wider range of exposures with similar risk characteristics.

As noted in the introduction section of this preamble, the Basel capital framework has maintained the use and reliance on credit ratings in the

disclosure requirements in Tables 11.6 and 11.7 of the common rule text (at 72 FR 69443). In addition, the Advanced Approaches and Market Risk NPR proposes modifications to the internal models methodology.

[55] Such transactions would be treated as derivative contracts as provided in section 34 or section 35 of the proposal.

[56] *See* 12 CFR part 3, appendix A, section 4 and 12 CFR 167.12 (OCC); 12 CFR parts 208 and 225 appendix A, section III.B.3 (Board); 12 CFR part 325, appendix A section II.B.1 and 12 CFR 390.471 (FDIC). The agencies also have published a significant amount of supervisory guidance to assist banking organizations with the capital treatment of securitization exposures. In general, the agencies expect banking organizations to continue to use this guidance, most of which would remain applicable to the securitization framework proposed in this NPR.

securitization framework. In accordance with the Dodd-Frank Act requirement to remove references to and reliance on credit ratings, the agencies have developed alternative standards of creditworthiness for use in the securitization framework that, where possible and to the extent appropriate, have been designed to be similar to the requirements prescribed by the BCBS. These proposed alternative standards are also consistent with those incorporated into the market risk capital rules, under the agencies' final rule.[57]

1. Overview of the Securitization Framework and Definitions

The proposed securitization framework is designed to address the credit risk of exposures that involve the tranching of the credit risk of one or more underlying financial exposures. The agencies believe that requiring all or substantially all of the underlying exposures of a securitization be financial exposures creates an important boundary between the general credit risk framework and the securitization framework. Examples of financial exposures include loans, commitments, credit derivatives, guarantees, receivables, asset-backed securities, mortgage-backed securities, other debt securities, or equity securities. Based on their cash flow characteristics, for purposes of this proposal, the agencies also would consider asset classes such as lease residuals and entertainment royalties to be financial assets.

The securitization framework is designed to address the tranching of the credit risk of financial exposures and is not designed, for example, to apply to tranched credit exposures to commercial or industrial companies or nonfinancial assets. Accordingly, under this NPR, a specialized loan to finance the construction or acquisition of large-scale projects (for example, airports or power plants), objects (for example, ships, aircraft, or satellites), or commodities (for example, reserves, inventories, precious metals, oil, or natural gas) generally would not be a securitization exposure because the assets backing the loan typically are nonfinancial assets (the facility, object, or commodity being financed).

Proposed definition of securitization exposure would include on- or off-balance sheet credit exposure (including credit-enhancing representations and warranties) that arises from a traditional or synthetic securitization (including a resecuritization), or an exposure that directly or indirectly references a securitization exposure. A traditional securitization means a transaction in which credit risk has been transferred to one or more third parties, the credit risk associated with the underlying exposures has been separated into at least two tranches reflecting different levels of seniority, and certain other conditions are met, such as a measurement that all or substantially all of the underlying exposures are financial exposures. See the definition of ''traditional securitization'' in section 2 of the proposed rules in the related notice titled ''Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III, Minimum Regulatory Capital Ratios, Capital Adequacy, Transition Provisions, and Prompt Corrective Action.''

Paragraph (10) of the proposed definition would specifically exclude from the definition exposures to investment funds (as defined in the proposal) and collective investment and pension funds (as defined in relevant regulations and set forth in the proposed definition of ''traditional securitization''). These specific exemptions provided in paragraph (10) serve to narrow the potential scope of the securitization framework. Investment funds, collective investment funds, pension funds regulated under ERISA and their foreign equivalents, and transactions regulated under the Investment Company Act of 1940 and their foreign equivalents are exempted from the definition because these entities and transactions are tightly regulated and subject to strict leverage requirements. For purposes of this proposal, an investment fund is a company (1) where all or substantially all of the assets of the fund are financial assets; and (2) that has no material liabilities. In addition, the agencies believe that the capital requirements for an extension of credit to, or an equity holding in these transactions are more appropriately calculated under the rules for corporate and equity exposures, and that the securitization framework was not intended to apply to such transactions.

Under the proposal, an operating company would not fall under the definition of a traditional securitization (even if substantially all of its assets are financial exposures). For purposes of the proposed definition of a traditional securitization, operating companies generally would refer to companies that are set up to conduct business with clients with the intention of earning a profit in their own right and generally produce goods or provide services beyond the business of investing, reinvesting, holding, or trading in financial assets. Accordingly, an equity investment in an operating company, such as a banking organization, generally would be an equity exposure under the proposal. In addition, investment firms that generally do not produce goods or provide services beyond the business of investing, reinvesting, holding, or trading in financial assets, would not be operating companies for purposes of this proposal and would not qualify for this general exclusion from the definition of traditional securitization.

To address the treatment of investment firms, the primary federal supervisor of a banking organization, under paragraph (8) of the definition of traditional securitization, would have discretion to exclude from the definition of a traditional securitization those transactions in which the underlying exposures are owned by an investment firm that exercise substantially unfettered control over the size and composition of its assets, liabilities, and off-balance sheet exposures. The agencies would consider a number of factors in the exercise of this discretion, including the assessment of the transaction's leverage, risk profile, and economic substance. This supervisory exclusion would give the primary federal supervisor discretion to distinguish structured finance transactions, to which the securitization framework was designed to apply, from those of flexible investment firms such as certain hedge funds and private equity funds. Only investment firms that can easily change the size and composition of their capital structure, as well as the size and composition of their assets and off-balance sheet exposures, would be eligible for the exclusion from the definition of traditional securitization under this provision. The agencies do not consider managed collateralized debt obligation vehicles, structured investment vehicles, and similar structures, which allow considerable management discretion regarding asset composition but are subject to substantial restrictions regarding capital structure, to have substantially unfettered control. Thus, such transactions would meet the definition of traditional securitization.

The agencies are concerned that the line between securitization exposures and non-securitization exposures may be difficult to draw in some circumstances. In addition to the supervisory exclusion from the definition of traditional securitization described above, the primary federal supervisor may scope certain transactions into the securitization

[57] *See* ''Risk-Based Capital Guidelines: Market Risk,'' June 7, 2012 (**Federal Register** publication forthcoming).

framework if justified by the economics of the transaction. Similar to the analysis for excluding an investment firm from treatment as a traditional securitization, the agencies would consider the economic substance, leverage, and risk profile of transactions to ensure that the appropriate risk-based capital treatment. The agencies would consider a number of factors when assessing the economic substance of a transaction including, for example, the amount of equity in the structure, overall leverage (whether on- or off-balance sheet), whether redemption rights attach to the equity investor, and the ability of the junior tranches to absorb losses without interrupting contractual payments to more senior tranches.

Both the designation of exposures as securitization (or resecuritization) exposures and the calculation of risk-based capital requirements for securitization exposures would be guided by the economic substance of a transaction rather than its legal form. Provided there is a tranching of credit risk, securitization exposures could include, among other things, asset-backed and mortgage-backed securities, loans, lines of credit, liquidity facilities, financial standby letters of credit, credit derivatives and guarantees, loan servicing assets, servicer cash advance facilities, reserve accounts, credit-enhancing representations and warranties, and CEIOs. Securitization exposures also could include assets sold with retained tranches. Mortgage-backed pass-through securities (for example, those guaranteed by FHLMC or FNMA) do not meet the proposed definition of a securitization exposure because they do not involve a tranching of credit risk. Only those mortgage-backed securities that involve tranching of credit risk would be securitization exposures.

Under the proposal, a synthetic securitization would mean a transaction in which: (1) All or a portion of the credit risk of one or more underlying exposures is transferred to one or more third parties through the use of one or more credit derivatives or guarantees (other than a guarantee that transfers only the credit risk of an individual retail exposure); (2) the credit risk associated with the underlying exposures has been separated into at least two tranches reflecting different levels of seniority; (3) performance of the securitization exposures depends upon the performance of the underlying exposures; and (4) all or substantially all of the underlying exposures are financial exposures (such as loans, commitments, credit derivatives, guarantees, receivables, asset-backed securities, mortgage-backed securities, other debt securities, or equity securities).

Consistent with 2009 Enhancements, this NPR would define a resecuritization exposure as an on- or off-balance sheet exposure to a resecuritization; or an exposure that directly or indirectly references a resecuritization exposure. An exposure to an asset-backed commercial paper program (ABCP) would not be a resecuritization exposure if either: (1) The program-wide credit enhancement does not meet the definition of a resecuritization exposure; or (2) the entity sponsoring the program fully supports the commercial paper through the provision of liquidity so that the commercial paper holders effectively are exposed to the default risk of the sponsor instead of the underlying exposures. A resecuritization would mean a securitization in which one or more of the underlying exposures is a securitization exposure. If a transaction involves a traditional multi-seller ABCP, also discussed in more detail below, a banking organization would need to determine whether the transaction should be considered a resecuritization exposure. For example, assume that an ABCP conduit acquires securitization exposures where the underlying assets consist of wholesale loans and no securitization exposures. As is typically the case in multi-seller ABCP conduits, each seller provides first-loss protection by over-collateralizing the conduit to which it sells its loans. To ensure that the commercial paper issued by each conduit is highly-rated, a banking organization sponsor provides either a pool-specific liquidity facility or a program-wide credit enhancement such as a guarantee to cover a portion of the losses above the seller-provided protection.

The pool-specific liquidity facility generally would not be treated as a resecuritization exposure under this proposal because the pool-specific liquidity facility represents a tranche of a single asset pool (that is, the applicable pool of wholesale exposures), which contains no securitization exposures. However, a sponsor's program-wide credit enhancement that does not cover all losses above the seller-provided credit enhancement across the various pools generally would constitute tranching of risk of a pool of multiple assets containing at least one securitization exposure, and therefore would be treated as a resecuritization exposure.

In addition, if the conduit in this example funds itself entirely with a single class of commercial paper, then the commercial paper generally would not be considered a resecuritization exposure if either (1) the program-wide credit enhancement did not meet the proposed definition of a resecuritization exposure or (2) the commercial paper was fully supported by the sponsoring banking organization. When the sponsoring banking organization fully supports the commercial paper, the commercial paper holders effectively would be exposed to default risk of the sponsor instead of the underlying exposures, and the external rating of the commercial paper would be expected to be based primarily on the credit quality of the banking organization sponsor, thus ensuring that the commercial paper does not represent a tranched risk position.

2. Operational Requirements

a. Due Diligence Requirements

During the recent financial crisis, it became apparent that many banking organizations relied exclusively on NRSRO ratings and did not perform their own credit analysis of the securitization exposures. Accordingly, and consistent with the Basel capital framework, banking organizations would be required under the proposal to satisfy specific due diligence requirements for securitization exposures. Specifically, a banking organization would be required to demonstrate, to the satisfaction of its primary federal supervisor, a comprehensive understanding of the features of a securitization exposure that would materially affect the performance of the exposure. The banking organization's analysis would be required to be commensurate with the complexity of the exposure and the materiality of the exposure in relation to capital. If the banking organization is not able to demonstrate a comprehensive understanding of a securitization exposure to the satisfaction of its primary federal supervisor, the banking organization would be required to assign a risk weight of 1,250 percent to the exposure.

Under the proposal, to demonstrate a comprehensive understanding of a securitization exposure a banking organization would have to conduct and document an analysis of the risk characteristics of the exposure prior to acquisition and periodically thereafter. This analysis would consider:

(1) Structural features of the securitization that would materially impact the performance of the exposure, for example, the contractual cash flow waterfall, waterfall-related triggers, credit enhancements, liquidity

enhancements, market value triggers, the performance of organizations that service the position, and deal-specific definitions of default;

(2) Relevant information regarding the performance of the underlying credit exposure(s), for example, the percentage of loans 30, 60, and 90 days past due; default rates; prepayment rates; loans in foreclosure; property types; occupancy; average credit score or other measures of creditworthiness; average LTV ratio; and industry and geographic diversification data on the underlying exposure(s);

(3) Relevant market data of the securitization, for example, bid-ask spread, most recent sales price and historical price volatility, trading volume, implied market rating, and size, depth and concentration level of the market for the securitization; and

(4) For resecuritization exposures, performance information on the underlying securitization exposures, for example, the issuer name and credit quality, and the characteristics and performance of the exposures underlying the securitization exposures.

On an ongoing basis (no less frequently than quarterly), a banking organization would be required to evaluate, review, and update as appropriate the analysis required under section 41(c)(1) for each securitization exposure.

Question 17: What, if any, are specific challenges that are involved with meeting the proposed due diligence requirements and for what types of securitization exposures? How might the agencies address these challenges while ensuring that a banking organization conducts an appropriate level of due diligence commensurate with the risks of its exposures?

b. Operational Requirements for Traditional Securitizations

In a traditional securitization, an originating banking organization typically transfers a portion of the credit risk of exposures to third parties by selling them to a securitization special purpose entity (SPE) (as defined in the proposal).[58] Under this NPR, a banking organization would be an originating banking organization if it: (1) Directly or indirectly originated or securitized the underlying exposures included in the securitization; or (2) serves as an ABCP program sponsor to the securitization.

Under the proposal, a banking organization that transfers exposures it has originated or purchased to a securitization SPE or other third party in connection with a traditional securitization may exclude the underlying exposures from the calculation of risk-weighted assets only if each of the following conditions are met: (1) The exposures are not reported on the banking organization's consolidated balance sheet under GAAP; (2) the banking organization has transferred to one or more third parties credit risk associated with the underlying exposures; and (3) any clean-up calls relating to the securitization are eligible clean-up calls (as discussed below). An originating banking organization that meets these conditions would hold risk-based capital against any securitization exposures it retains in connection with the securitization. An originating banking organization that fails to meet these conditions would be required to hold risk-based capital against the transferred exposures as if they had not been securitized and would deduct from common equity tier 1 capital any after-tax gain-on-sale resulting from the transaction.

In addition, if a securitization includes one or more underlying exposures in which (1) the borrower is permitted to vary the drawn amount within an agreed limit under a line of credit, and (2) contains an early amortization provision, the originating banking organization would be required to hold risk-based capital against the transferred exposures as if they had not been securitized and deduct from common equity tier 1 capital any after-tax gain-on-sale resulting from the transaction.[59] The agencies believe that this treatment is appropriate given the lack of risk transference in securitizations that contain early amortization provisions.

c. Operational Requirements for Synthetic Securitizations

In general, the proposal's treatment of synthetic securitizations is similar to that of traditional securitizations. The operational requirements for synthetic securitizations, however, are more rigorous to ensure that the originating banking organization has truly transferred credit risk of the underlying exposures to one or more third parties.

For synthetic securitizations, an originating banking organization would recognize for risk-based capital purposes the use of a credit risk mitigant to hedge underlying exposures only if each of the conditions in the proposed definition of ''synthetic securitization'' is satisfied. These conditions include requirements with respect to the type and contractual governance of the credit risk mitigant used in the transaction. For example, the credit risk associated with the underlying exposures must be separated into at least two tranches reflecting different levels of seniority and all or substantially all of the underlying exposures are financial exposures. See the definition of ''synthetic securitization'' in section 2 of the proposed rules in the related notice titled ''Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III, Minimum Regulatory Capital Ratios, Capital Adequacy, Transition Provisions, and Prompt Corrective Action.''

Failure to meet these operational requirements for a synthetic securitization would prevent a banking organization from using the proposed securitization framework and would require the banking organization to hold risk-based capital against the underlying exposures as if they had not been synthetically securitized. A banking organization that provides credit protection to a synthetic securitization would use the securitization framework to compute risk-based capital requirements for its exposures to the synthetic securitization even if the originating banking organization failed to meet one or more of the operational requirements for a synthetic securitization.

[58] The proposal would define a securitization SPE as a corporation, trust, or other entity organized for the specific purpose of holding underlying exposures of a securitization, the activities of which are limited to those appropriate to accomplish this purpose, and the structure of which is intended to isolate the underlying exposures held by the entity from the credit risk of the seller of the underlying exposures to the entity.

[59] Many securitizations of revolving credit facilities (for example, credit card receivables) contain provisions that require the securitization to be wound down and investors to be repaid if the excess spread falls below a certain threshold. This decrease in excess spread may, in some cases, be caused by deterioration in the credit quality of the underlying exposures. An early amortization event can increase a banking organization's capital needs if new draws on the revolving credit facilities need to be financed by the banking organization using on-balance sheet sources of funding. The payment allocations used to distribute principal and finance charge collections during the amortization phase of these transactions also can expose a banking organization to a greater risk of loss than in other securitization transactions. The proposed rule would define early amortization as a provision in a securitization's governing documentation that, when triggered, causes investors in the securitization exposures to be repaid before the original stated maturity of the securitization exposure, unless the provision is solely triggered by events not related to the performance of the underlying exposures or the originating banking organization (such as material changes in tax laws or regulations).

d. Clean-Up Calls

To satisfy the operational requirements for securitizations and enable an originating banking organization to exclude the underlying exposures from the calculation of its risk-based capital requirements, any clean-up call associated with a securitization would need to be an eligible clean-up call. The proposal would define a clean-up call as a contractual provision that permits an originating banking organization or servicer to call securitization exposures before their stated maturity or call date. In the case of a traditional securitization, a clean-up call generally is accomplished by repurchasing the remaining securitization exposures once the amount of underlying exposures or outstanding securitization exposures falls below a specified level. In the case of a synthetic securitization, the clean-up call may take the form of a clause that extinguishes the credit protection once the amount of underlying exposures has fallen below a specified level.

Under the proposal, an eligible clean-up call would be a clean-up call that (1) Is exercisable solely at the discretion of the originating banking organization or servicer; (2) is not structured to avoid allocating losses to securitization exposures held by investors or otherwise structured to provide credit enhancement to the securitization (for example, to purchase non-performing underlying exposures); and (3) for a traditional securitization, is only exercisable when 10 percent or less of the principal amount of the underlying exposures or securitization exposures (determined as of the inception of the securitization) is outstanding; or, for a synthetic securitization, is only exercisable when 10 percent or less of the principal amount of the reference portfolio of underlying exposures (determined as of the inception of the securitization) is outstanding. Where a securitization SPE is structured as a master trust, a clean-up call with respect to a particular series or tranche issued by the master trust would meet criteria (3) of the definition of ''eligible clean-up call'' as long as the outstanding principal amount in that series was 10 percent or less of its original amount at the inception of the series.

3. Risk-weighted Asset Amounts for Securitization Exposures

Under the proposed securitization framework, a banking organization generally would calculate a risk-weighted asset amount for a securitization exposure by applying either (1) the simplified supervisory formula approach (SSFA), described in section II.H.4 of this preamble, or (2) for banking organizations that are not subject to the market risk rule, a gross-up approach similar to an approach provided under the general risk-based capital rules. A banking organization would be required to apply either the gross-up approach or the SSFA consistently across all of its securitization exposures. Alternatively, a banking organization may choose to apply a 1,250 percent risk weight to any of its securitization exposures. In addition, the proposal provides for alternative treatment of securitization exposures to ABCP liquidity facilities and certain gains-on-sales and CEIO exposures. The proposed requirements, similar to the general risk-based capital rules, would include exceptions for interest-only mortgage-backed securities, certain statutorily exempted assets, and certain derivatives as described below. In all cases, the minimum risk weight for securitization exposures would be 20 percent.

For synthetic securitizations, which typically employ credit derivatives, a banking organization would apply the securitization framework when calculating risk-based capital requirements. Under this NPR, a banking organization may use the securitization CRM rules to adjust the capital requirement under the securitization framework for an exposure to reflect the CRM technique used in the transaction.

a. Exposure Amount of a Securitization Exposure

Under this proposal, the exposure amount of an on-balance sheet securitization exposure that is not a repo-style transaction, eligible margin loan, OTC derivative contract or derivative that is a cleared transaction (other than a credit derivative) would be the banking organization's carrying value of the exposure. The exposure amount of an off-balance sheet securitization exposure that is not an eligible ABCP liquidity facility, a repo-style transaction, eligible margin loan, an OTC derivative contract, or a derivative that is a cleared transaction (other than a credit derivative) would be the notional amount of the exposure.

For purposes of calculating the exposure amount of off-balance sheet exposure to an ABCP securitization exposure, such as a liquidity facility, the notional amount may be reduced to the maximum potential amount that the banking organization could be required to fund given the ABCP program's current underlying assets (calculated without regard to the current credit quality of those assets). Thus, if $100 is the maximum amount that could be drawn given the current volume and current credit quality of the program's assets, but the maximum potential draw against these same assets could increase to as much as $200 under some scenarios if their credit quality were to deteriorate, then the exposure amount is $200. This NPR would define an ABCP program as a program established primarily for the purpose of issuing commercial paper that is investment grade and backed by underlying exposures held in a securitization SPE. An eligible ABCP liquidity facility would be defined as a liquidity facility supporting ABCP, in form or in substance, that is subject to an asset quality test at the time of draw that precludes funding against assets that are 90 days or more past due or in default. Notwithstanding these eligibility requirements, a liquidity facility would be an eligible ABCP liquidity facility if the assets or exposures funded under the liquidity facility that do not meet the eligibility requirements are guaranteed by a sovereign entity that qualifies for a 20 percent risk weight or lower.

The exposure amount of an eligible ABCP liquidity facility that is subject to the SSFA would be the notional amount of the exposure multiplied by a 100 percent CCF. The exposure amount of an eligible ABCP liquidity facility that is not subject to the SSFA would be the notional amount of the exposure multiplied by a 50 percent CCF. The proposed CCF for eligible ABCP liquidity facilities with an original maturity of less than one year is greater than the 10 percent CCF prescribed under the general risk-based capital rules.

The exposure amount of a securitization exposure that is a repo-style transaction, eligible margin loan, an OTC derivative or derivative that is a cleared transaction (other than a credit derivative) would be the exposure amount of the transaction as calculated in section 34 or section 37 as applicable.

b. Gains-On-Sale and Credit-Enhancing Interest-Only Strips

Under this NPR and the Basel III NPR, a banking organization would deduct from common equity tier 1 capital any after-tax gain-on-sale resulting from a securitization and would apply a 1,250 percent risk weight to the portion of a credit-enhancing interest-only strip (CEIO) that does not constitute an after-tax gain-on-sale. The agencies believe this treatment is appropriate given historical supervisory concerns with the subjectivity involved in valuations of gains-on-sale and CEIOs. Furthermore, although the treatments for gains-on-sale and CEIOs can increase an originating banking organization's risk-based capital requirement following a securitization, the agencies believe that such anomalies would be rare where a securitization transfers significant credit risk from the originating banking organization to third parties.

c. Exceptions Under the Securitization Framework

There are several exceptions to the general provisions in the securitization framework that parallel the general risk-based capital rules. First, a banking organization would be required to assign a risk weight of at least 100 percent to an interest-only mortgage-backed security. The agencies believe that a minimum risk weight of 100 percent is prudent in light of the uncertainty implied by the substantial price volatility of these securities. Second, as required by federal statute, a special set of rules would continue to apply to securitizations of small-business loans and leases on personal property transferred with retained contractual exposure by well-capitalized depository institutions.[60] Finally, under this NPR, if a securitization exposure is an OTC derivative contract or derivative contract that is a cleared transaction (other than a credit derivative) that has a first priority claim on the cash flows from the underlying exposures (notwithstanding amounts due under interest rate or currency derivative contracts, fees due, or other similar payments), a banking organization may choose to set the risk-weighted asset amount of the exposure equal to the amount of the exposure. This treatment would be subject to supervisory approval.

d. Overlapping Exposures

This NPR includes provisions to limit the double counting of risks in situations involving overlapping securitization exposures. If a banking organization has multiple securitization exposures that provide duplicative coverage to the underlying exposures of a securitization (such as when a banking organization provides a program-wide credit enhancement and multiple pool-specific liquidity facilities to an ABCP program), the banking organization would not be required to hold duplicative risk-based capital against the overlapping position. Instead, the banking organization would apply to the overlapping position the applicable risk-based capital treatment under the securitization framework that results in the highest risk-based capital requirement.

e. Servicer Cash Advances

A traditional securitization typically employs a servicing banking organization that, on a day-to-day basis, collects principal, interest, and other payments from the underlying exposures of the securitization and forwards such payments to the securitization SPE or to investors in the securitization. Servicing banking organizations often provide a facility to the securitization under which the servicing banking organization may advance cash to ensure an uninterrupted flow of payments to investors in the securitization, including advances made to cover foreclosure costs or other expenses to facilitate the timely collection of the underlying exposures. These servicer cash advance facilities are securitization exposures.

A banking organization would either apply the SSFA or the gross-up approach, as described below, or a 1,250 percent risk weight to its exposure under the facility. The treatment of the undrawn portion of the facility would depend on whether the facility is an eligible servicer cash advance facility. An eligible servicer cash advance facility would be defined as a servicer cash advance facility in which: (1) The servicer is entitled to full reimbursement of advances, except that a servicer may be obligated to make non-reimbursable advances for a particular underlying exposure if any such advance is contractually limited to an insignificant amount of the outstanding principal balance of that exposure; (2) the servicer's right to reimbursement is senior in right of payment to all other claims on the cash flows from the underlying exposures of the securitization; and (3) the servicer has no legal obligation to, and does not make, advances to the securitization if the servicer concludes the advances are unlikely to be repaid.

Consistent with the general risk-based capital rules with respect to the treatment of residential mortgage servicer cash advances, a servicing banking organization would not be required to hold risk-based capital against the undrawn portion of an eligible servicer cash advance facility. A banking organization that provides a non-eligible servicer cash advance facility would determine its risk-based capital requirement for the notional amount of the undrawn portion of the facility in the same manner as the banking organization would determine its risk-based capital requirement for any other off-balance sheet securitization exposure.

f. Implicit Support

This NPR specifies consequence for a banking organization's risk-based capital requirements if the banking organization provides support to a securitization in excess of the banking organization's predetermined contractual obligation (implicit support). First, similar to the general risk-based capital rules, a banking organization that provides such implicit support would include in risk-weighted assets all of the underlying exposures associated with the securitization as if the exposures had not been securitized, and deduct from common equity tier 1 capital any after-tax gain-on-sale resulting from the securitization.[61] Second, the banking organization would disclose publicly (i) that it has provided implicit support to the securitization, and (ii) the risk-based capital impact to the banking organization of providing such implicit support. Under the proposed reservations of authority, the banking organization's primary federal supervisor also could require the banking organization to hold risk-based capital against all the underlying exposures associated with some or all the banking organization's other securitizations as if the exposures had not been securitized, and to deduct from common equity tier 1 capital any after-tax gain-on-sale resulting from such securitizations.

4. Simplified Supervisory Formula Approach

For purposes of this proposal, and consistent with the approach provided for assigning specific risk-weighting factors to securitization exposures under subpart F, the agencies have developed a simplified version of the advanced approaches supervisory formula approach (SFA to assign risk weights to securitization exposures.[62] This

[60] *See* 12 U.S.C. 1835. This provision places a cap on the risk-based capital requirement applicable to a well-capitalized depository institution that transfers small-business loans with recourse. This NPR does not expressly provide that the agencies may permit adequately capitalized banking organizations to use the small business recourse rule on a case-by-case basis because the agencies may make such a determination under the general reservation of authority in section 1 of the proposal.

[61] ''Interagency Guidance on Implicit Recourse in Asset Securitizations,'' (May 23, 2002). OCC Bulletin 2002–20; CEO Memo No. 162 (OCC); SR letter 02–15 (Board); and FIL–52–2002 (FDIC).

[62] When using the SFA, a banking organization must meet minimum requirements under the Basel internal ratings-based approach to estimate probability of default and loss given default for the underlying exposures. Under the agencies' current risk-based capital rules, the SFA is available only

approach is referred to as the simplified supervisory formula approach (SSFA. Banking organizations may choose to use the alternative gross-up approach described in section II.5 below, provided that it applies the gross-up approach to all of its securitization exposures.

Similar to the SFA under the advanced approaches rule, the proposed SSFA is a formula that starts with a baseline derived from the capital requirements that apply to all exposures underlying a securitization and then assigns risk weights based on the subordination level of an exposure. The proposed SSFA was designed to apply relatively higher capital requirements to the more risky junior tranches of a securitization that are the first to absorb losses, and relatively lower requirements to the most senior exposures.

The SSFA methodology begins with ''K_G'' the weighted-average risk weight of the underlying exposures, calculated using the risk-weighted asset amounts in the standardized approach of subpart D, as proposed in this NPR. In addition, the SSFA also uses the attachment and detachment points of the particular securitization positions, and the current amount of delinquencies within the underlying exposures of the securitization. In terms of enhancements, the agencies note that the relative seniority of the exposure, as well as all cash funded enhancements, are recognized as part of the SSFA calculation.

The SSFA as proposed would apply a 1,250 percent risk weight to securitization exposures that absorb losses up to the amount of capital that would be required for the underlying exposures under subpart D had those exposures been held directly by a banking organization. In addition, agencies are proposing a supervisory risk-weight floor or minimum risk-weight for a given securitization of 20 percent. The agencies believe that a 20 percent floor is reasonably prudent given recent performance of securitization structures during times of stress, and will maintain this floor in the final rule.

At the inception of a securitization, the SSFA as proposed would require more capital on a transaction-wide basis than would be required if the pool of assets had not been securitized. That is, if the banking organization held every tranche of a securitization, its overall capital charge would be greater than if the banking organization held the underlying assets in portfolio. The agencies believe this overall outcome is important in reducing the likelihood of regulatory capital arbitrage through securitizations.

To make the SSFA risk-sensitive and forward-looking, the agencies are proposing to adjust K_G based on delinquencies among the underlying assets of the securitization structure. Specifically, the parameter K_G is modified and the resulting adjusted parameter is labeled K_A. K_A is set equal to the weighted average of the K_G value and a fixed parameter equal to 0.5.

$$K_A = (1 - W) \cdot K_G + (W) \cdot 0.5$$

K_G would be the weighted-average total capital requirement of the underlying exposures, calculated using the standardized risk weighting methodologies in subpart D, as proposed in this NPR. The agencies believe it is important to calibrate risk weights for securitization exposures around the risk associated with the underlying assets of the securitization in this proposal, in order to reduce complexity and promote consistency between the different frameworks for calculating risk-weighted asset amounts in the standardized approach.

In the proposal, K_G is expressed as a decimal value between zero and 1 (that is, an average risk weight of 100 percent means that K_G would equal 0.08). The variable W would equal the ratio of the sum of the dollar amounts of any underlying exposures within the securitized pool that are "delinquent" to the ending balance, measured in dollars, of underlying exposures. "Delinquent" would be defined as the sum of exposures that are 90 days or more past due, subject to a bankruptcy or insolvency proceeding, in the process of foreclosure, held as real estate owned, or are in default.

The agencies believe that, with the delinquent exposure calibration parameter set equal to 0.5, the overall capital requirement would be sufficiently responsive and prudent to ensure sufficient capital for pools that demonstrate credit weakness. The entire specification of the SSFA in the final rule is as follows:

$$K_{SSFA} = \frac{e^{a \cdot u} - e^{a \cdot l}}{a(u - l)}.$$

to banking organizations that have been approved to use the advanced approaches.

K_{SSFA} is the risk based capital requirement for the securitization exposure and is a function of three variables, labeled a, u, and l. The constant e is the base of the natural logarithms (which equals 2.71828). The variables a, u, and l have the following definitions:

$$a = -\frac{1}{p \cdot K_A}$$

$$u = D - K_A$$

$$l = A - K_A$$

The values of A and D denote the attachment and detachment points, respectively, for the tranche. Specifically, A is the attachment point for the tranche that contains the securitization exposure and represents the threshold at which credit losses will first be allocated to the exposure. This input is the ratio, as expressed as a decimal value between zero and one, of the dollar amount of the securitization exposures that are subordinated to the tranche that contains the securitization exposure of the banking organization to the current dollar amount of all underlying exposures. D is the detachment point for the tranche that contains the securitization exposure and represents the threshold at which credit losses of principal allocated to the securitization exposure would result in a total loss of principal. This input, which is a decimal value between zero and one, equals the value of A plus the ratio of the dollar amount of the exposures and all pari passu exposures to the dollar amount of all underlying exposures. The SSFA specification is completed by the constant term p, which is set equal to 0.5 for securitization exposures that are not resecuritizations, or 1.5 for resecuritization exposures, and the variable K_A, which is described above. The risk weight for the exposure (expressed as a percent) is equal to K_{SSFA} times 1,250.

When D for a securitization exposure is less than or equal to K_A, the exposure must be assigned a risk weight of 1,250 percent. When A for a securitization exposure is greater than or equal to K_A, the risk weight of the exposure, expressed as a percent, would equal K_{SSFA} times 1,250. When A is less than K_A and D is greater than K_A, the applicable risk weight is a weighted average of 1,250 percent and 1,250 percent times K_{SSFA}. The risk weight would be set according to the following formula:

$$RW = \left[\left(\frac{K_A - A}{D - A}\right) \times 1{,}250\ percent\right] + \left[\left(\frac{D - K_A}{D - A}\right) \times 1{,}250\ percent \times K_{SSFA}\right]$$

For resecuritizations, the agencies expect banking organizations to use the SSFA to measure that asset's contribution to K_G. For example, consider a hypothetical securitization tranche that has an attachment point at 0.06 and a detachment point at 0.07. Then assume that 90 percent of the underlying pool of assets of the resecuritization were mortgage loans that qualified for a 50 percent risk weight and that the remaining 10 percent of the pool was a single tranche of a prior securitization (where those underlying mortgages also qualified for a 50 percent weight), thus qualifying this as a resecuritization. Next, assume that the attachment point A of the securitization that is the 10 percent share of the resecuritization is 0.06 and the detachment point D is 0.08. Finally, assume that there are zero delinquent exposures in both the securitization and resecuritization pools.

The value of K_G for the resecuritization exposure would equal the weighted average of the two distinct K_G values. For the mortgages that qualify for the 50 percent risk weight and represent 90 percent of the resecuritization, K_G equals 0.04 (i.e., 50 percent of the 8 percent risk-based capital standard).

$$K_{G,re-securitization} = (0.9 \cdot 0.04) + (0.1 \cdot K_{G,securitization})$$

To calculate the value of $K_{G,securitization}$ a banking organization would use the attachment and detachment points of 0.06 and 0.08, respectively. Applying those input parameters to the SSFA (together with p = 0.5 and K_G = 0.04) results in a $K_{G,securitization}$ equal to 0.2325.

Substituting this value into the equation yields:

$$K_{G,re-securitization} = (0.9 \cdot 0.04) + (0.1 \cdot 0.2325) = 0.05925$$

This value of 0.05925 for $K_{G,re-securitization}$, would then be used in the calculation of the risk-based capital requirement for the tranche of the resecuritization (where $A = 0.06$, $B = 0.07$, and $p = 1.5$). The result is a risk weight of 1,172 percent for the tranche that runs from 0.06 to 0.07. Given that the attachment point is very close to the value of $K_{G,re-securitization}$, the capital charge is nearly equal to the maximum risk weight of 1,250 percent.

5. Gross-up Approach

As an alternative to the SSFA, banking organizations that are not subject to subpart F may assign risk-based capital requirements to securitization exposures by implementing a gross-up approach described in section 43 of the proposal, which is similar to an approach provided under the general risk-based capital rules. If the banking organization chooses to apply the gross-up approach, it would be required to apply this approach to all of its securitization exposures, except as otherwise provided for certain securitization exposures under sections 44 and 45 of the proposal.

The gross-up approach assigns risk-based capital requirements based on the full amount of the credit-enhanced assets for which the banking organization directly or indirectly assumes credit risk. To calculate risk-weighted assets under the gross-up approach, a banking organization would determine four inputs: the pro rata share, the exposure amount, the enhanced amount, and the applicable risk weight. The pro rata share is the par value of the banking organization's exposure as a percentage of the par value of the tranche in which the securitization exposure resides. The enhanced amount is the value of all the tranches that are more senior to the tranche in which the exposure resides. The applicable risk weight is the weighted-average risk weight of the underlying exposures in the securitization pool as calculated under subpart D.

Under the gross-up approach, a banking organization would be required to calculate the credit equivalent amount, which equals the sum of the exposure of the banking organization's securitization exposure and the pro rata share multiplied by the enhanced amount. To calculate risk-weighted assets for a securitization exposure under the gross-up approach, a banking organization would be required to assign the applicable risk weight to the gross-up credit equivalent amount. As noted above, in all cases, the minimum risk weight for securitization exposures would be 20 percent.

Question 18: The agencies solicit commenters' views on the proposed gross-up approach.

6. Alternative Treatments for Certain Types of Securitization Exposures

Under the NPR, a banking organization generally would assign a 1,250 percent risk weight to all securitization exposures to which the banking organization does not apply the SSFA or the gross-up approach. However, the NPR provides alternative treatments for certain types of securitization exposures described below, provided that the banking organization knows the composition of the underlying exposures at all times:

a. Eligible ABCP Liquidity Facilities

In this NPR, consistent with the Basel capital framework, a banking organization would be permitted to determine the exposure amount of an eligible asset-backed commercial paper (ABCP) liquidity facility by multiplying the exposure amount by the highest risk weight applicable to any of the individual underlying exposures covered by the facility. The proposal would define an eligible ABCP liquidity facility to mean a liquidity facility supporting ABCP, in form or in substance, that is subject to an asset quality test at the time of draw that precludes funding against assets that are 90 days or more past due or in default. Notwithstanding the preceding sentence, a liquidity facility is an eligible ABCP liquidity facility if the assets or exposures funded under the liquidity facility that do not meet the eligibility requirements are guaranteed by a sovereign that qualifies for a 20 percent risk weight or lower.

b. A Securitization Exposures in a Second Loss Position or Better to an ABCP Program

Under the proposal, a banking organization may determine the risk-weighted asset amount of a securitization exposure that is in a second loss position or better to an ABCP program by multiplying the exposure amount by the higher of 100 percent and the highest risk weight applicable to any of the individual underlying exposures of the ABCP program,[63] provided the exposure meets the following criteria:

(1) The exposure is not a first priority securitization exposure or an eligible ABCP liquidity facility;

(2) The exposure is economically in a second loss position or better, and the first loss position provides significant credit protection to the second loss position;

(3) The exposure qualifies as investment grade; and

(4) The banking organization holding the exposure does not retain or provide protection for the first-loss position.

The agencies believe that this approach, which is consistent with the Basel capital framework, appropriately and conservatively assesses the credit risk of non-first-loss exposures to ABCP programs.

[63] The proposal would define an ABCP program as a program that primarily issues commercial paper that is investment grade and backed by underlying exposures held in a bankruptcy-remote manner.

7. Credit Risk Mitigation for Securitization Exposures

As proposed, the treatment of credit risk mitigation for securitization exposures would differ slightly from the treatment for other exposures. In general, to recognize the risk mitigating effects of financial collateral or an eligible guarantee or an eligible credit derivative from an eligible guarantor, a banking organization would use the approaches for collateralized transactions under section 37 of the proposal, the substitution treatment for guarantees and credit derivatives described in section 36 of the proposal.

Under section 45 of the proposal, a banking organization would be permitted to recognize an eligible guarantee or eligible credit derivative only from an eligible guarantor. In addition, when an eligible guarantee or eligible credit derivative covers multiple hedged exposures that have different residual maturities, the banking organization would be required to use the longest residual maturity of any of the hedged exposures as the residual maturity of all the hedged exposures.

8. Nth-to-default Credit Derivatives

The agencies propose that the capital requirement for protection provided through an nth-to-default derivative be determined either by using the SSFA, or applying a 1,250 percent risk weight. A banking organization would determine its exposure in the nth-to-default credit derivative as the largest notional amount of all the underlying exposures.

When applying the SSFA, the attachment point (parameter A) is the ratio of the sum of the notional amounts of all underlying exposures that are subordinated to the banking organization's exposure to the total notional amount of all underlying exposures. In the case of a first-to-default credit derivative, there are no underlying exposures that are subordinated to the banking organization's exposure. In the case of a second-or-subsequent-to default credit derivative, the smallest (n-1) underlying exposure(s) are subordinated to the banking organization's exposure.

Under the SSFA, the detachment point (parameter D) is the sum of the attachment point and the ratio of the notional amount of the banking organization's exposure to the total notional amount of the underlying exposures. A banking organization that does not use the SSFA to calculate a risk weight for an nth-to-default credit derivative would assign a risk weight of 1,250 percent to the exposure.

For protection purchased through a first-to-default derivative, a banking organization that obtains credit protection on a group of underlying exposures through a first-to-default credit derivative that meets the rules of recognition for guarantees and credit derivatives under section 36(b) would determine its risk-based capital requirement for the underlying exposures as if the banking organization synthetically securitized the underlying exposure with the smallest risk-weighted asset amount and had obtained no credit risk mitigant on the other underlying exposures. A banking organization must calculate a risk-based capital requirement for counterparty credit risk according to section 34 for a first-to-default credit derivative that does not meet the rules of recognition of section 36(b).

For second-or-subsequent-to default credit derivatives, a banking organization that obtains credit protection on a group of underlying exposures through a nth-to-default credit derivative that meets the rules of recognition of section 36(b) (other than a first-to-default credit derivative) may recognize the credit risk mitigation benefits of the derivative only if the banking organization also has obtained credit protection on the same underlying exposures in the form of first-through-(n-1)-to-default credit derivatives; or if n-1 of the underlying exposures have already defaulted. If a banking organization satisfies these requirements, the banking organization would determine its risk-based capital requirement for the underlying exposures as if the banking organization had only synthetically securitized the underlying exposure with the smallest risk-weighted asset amount. For a nth-to-default credit derivative that does not meet the rules of recognition of section 36(b), a banking organization would calculate a risk-based capital requirement for counterparty credit risk according to the treatment of OTC derivatives under section 34.

I. Equity Exposures

1. Introduction

Under the general risk-based capital rules, a banking organization must deduct a portion of non-financial equity investments from tier 1 capital, based on the aggregate adjusted carrying value of all non-financial equity investments held directly or indirectly by the banking organization as a percentage of its tier 1 capital.[64] For those equity

[64] In contrast, the current rules for state and federal savings associations require the deduction of most equity securities from total capital. *See* 12 CFR part 167.5(c)(2)(ii) (federal savings

Continued

exposures that are not deducted, a banking organization generally must assign a 100 percent risk weight.

Consistent with the Basel capital framework, in this NPR, the agencies are proposing to require a banking organization to apply the simple risk-weight approach (SRWA) for equity exposures that are not exposures to an investment fund and apply certain look-through approaches to assign risk-weighted asset amounts to equity exposures to an investment fund. In some cases, such as equity exposures to the Federal Home Loan Bank, the treatment under the proposal would remain unchanged from the general risk-based capital rules. However, this NPR introduces changes to the treatment of equity exposures, which are consistent with the treatment for equity exposures under the advanced approaches rule, to improve risk sensitivity of the general risk-based capital requirements. For example, the proposal would differentiate between publicly-traded and non-publicly-traded equity exposures, while the general risk-based capital rules do not make such a distinction.

Under this NPR, the definition of equity exposure would include ownership interests that are residual claims on the assets and income of a company, unless the company is consolidated by the banking organization under GAAP, and options and warrants for securities or instruments that would be equity exposures. The definition would exclude securitization exposures. Additionally. certain other criteria would need to be met for an exposure to be an ''equity exposure,'' as set forth in the proposed definition. See the definition of ''equity exposure'' in section 2 of the proposed rules in the related notice titled ''Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III, Minimum Regulatory Capital Ratios, Capital Adequacy, Transition Provisions, and Prompt Corrective Action.''

2. Exposure Measurement

Under the proposal, a banking organization would be required to determine the adjusted carrying value for each equity exposure based on the approaches described below. For the on-balance sheet component of an equity exposure, the adjusted carrying value would be a banking organization's carrying value of the exposure. For a commitment to acquire an equity exposure that is unconditional, the adjusted carrying value would be the effective notional principal amount of the exposure multiplied by a 100 percent conversion factor. For a commitment to acquire an equity exposure that is conditional, the adjusted carrying value would be the effective notional principal amount of the commitment multiplied by (1) a 20 percent conversion factor, for a commitment with an original maturity of one year or less or (2) a 50 percent conversion factor, for a commitment with an original maturity of over one year. For the off-balance sheet component of an equity exposure that is not an equity commitment, the adjusted carrying value would be the effective notional principal amount of the exposure, the size of which is equivalent to a hypothetical on-balance sheet position in the underlying equity instrument that would evidence the same change in fair value (measured in dollars) for a given small change in the price of the underlying equity instrument, minus the adjusted carrying value of the on-balance sheet component of the exposure.

As described in the hedged transactions section below, exposure amounts may have different treatments in the case of hedged equity exposures. The agencies created the concept of the effective notional principal amount of the off-balance sheet portion of an equity exposure to provide a uniform method for banking organizations to measure the on-balance sheet equivalent of an off-balance sheet exposure. For example, if the value of a derivative contract referencing the common stock of company X changes the same amount as the value of 150 shares of common stock of company X, for a small change (for example, 1.0 percent) in the value of the common stock of company X, the effective notional principal amount of the derivative contract is the current value of 150 shares of common stock of company X, regardless of the number of shares the derivative contract references. The adjusted carrying value of the off-balance sheet component of the derivative is the current value of 150 shares of common stock of company X minus the adjusted carrying value of any on-balance sheet amount associated with the derivative.

3. Equity Exposure Risk Weights

Under the proposed SRWA, set forth in section 52 of the proposal, a banking organization would determine the risk-weighted asset amount for each equity exposure, other than an equity exposure to an investment fund, by multiplying the adjusted carrying value of the equity exposure, or the effective portion and ineffective portion of a hedge pair as described below, by the lowest applicable risk weight in table 9. A banking organization would determine the risk-weighted asset amount for an equity exposure to an investment fund under section 53 of the proposal. A banking organization would sum risk-weighted asset amounts for all of its equity exposures to calculate its aggregate risk-weighted asset amount for its equity exposures. The proposed SRWA is summarized in table 9 and described in more detail below:

TABLE 9—SIMPLE RISK-WEIGHT APPROACH (SRWA)

Risk weight (in percent)	Equity exposure
0	An equity exposure to a sovereign, the Bank for International Settlements, the European Central Bank, the European Commission, the International Monetary Fund, an MDB, and any other entity whose credit exposures receive a zero percent risk weight under section 32 of the proposal.
20	An equity exposure to a PSE, Federal Home Loan Bank or the Federal Agricultural Mortgage Corporation (Farmer Mac).
100	• Community development equity exposures [65] • The effective portion of a hedge pair • Non-significant equity exposures to the extent that the aggregate adjusted carrying value of the exposures does not exceed 10 percent of tier 1 capital plus tier 2 capital
250	A significant investment in the capital of an unconsolidated financial institution that is not deducted under section 22 of the proposal.

associations) and 12 CFR 390.465(c)(2)(ii) (state savings associations).

TABLE 9—SIMPLE RISK-WEIGHT APPROACH (SRWA)—Continued

Risk weight (in percent)	Equity exposure
300	A publicly-traded equity exposure (other than an equity exposure that receives a 600 percent risk weight and including the ineffective portion of a hedge pair).
400	An equity exposure that is not publicly-traded (other than an equity exposure that receives a 600 percent risk weight).
600	An equity exposure to an investment firm that (i) would meet the definition of a traditional securitization were it not for the primary federal supervisor's application of paragraph (8) of that definition and (ii) has greater than immaterial leverage.

Under the proposal, equity exposures to sovereign, supranational entities, MDBs, and PSEs would receive a risk weight of zero percent, 20 percent, or 100 percent, as described in section 52 of the proposal. Certain community development equity exposures, the effective portion of hedged pairs, and, up to certain limits, non-significant equity exposures would receive a 100 percent risk weight. In addition, a banking organization generally would assign a 250 percent risk weight to an equity exposure related to a significant investment in the capital of unconsolidated financial institutions that is not deducted under section 22; a 300 percent risk weight to a publicly-traded equity exposure; and a 400 percent risk weight to a non-publicly-traded equity exposure.

This proposal defines publicly-traded as traded on: (1) any exchange registered with the SEC as a national securities exchange under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f); or (2) any non-U.S.-based securities exchange that is registered with, or approved by, a national securities regulatory authority and that provides a liquid, two-way market for the instrument in question. A two-way market would refer to a market where there are independent bona fide offers to buy and sell so that a price reasonably related to the last sales price or current bona fide competitive bid and offer quotations can be determined within one day and settled at that price within a relatively short time frame conforming to trade custom.

The proposal would require banking organizations to assign a 600 percent risk weight to an equity exposure to an investment firm, provided that the investment firm (1) would meet the definition of a traditional securitization were it not for the primary federal supervisor's application of paragraph (8) of that definition and (2) has greater than immaterial leverage. As discussed in the securitizations section, the agencies would have discretion under this proposal to exclude from the definition of a traditional securitization those investment firms that exercise substantially unfettered control over the size and composition of their assets, liabilities, and off-balance sheet exposures. Equity exposures to investment firms that would otherwise be traditional securitizations were it not for the specific primary federal supervisor's exclusion are leveraged exposures to the underlying financial assets of the investment firm. The agencies believe that equity exposure to such firms with greater than immaterial leverage warrant a 600 percent risk weight under the SRWA, due to their particularly high risk. Moreover, the agencies believe that the 100 percent risk weight assigned to non-significant equity exposures is inappropriate for equity exposures to investment firms with greater than immaterial leverage.

4. Non-significant Equity Exposures

Under this NPR, a banking organization would be permitted to apply a 100 percent risk weight to certain equity exposures deemed non-significant. Non-significant equity exposures would mean an equity exposure to the extent that the aggregate adjusted carrying value of the exposures does not exceed 10 percent of the banking organization's total capital.[66]

To compute the aggregate adjusted carrying value of a banking organization's equity exposures for determining their non-significance, this proposal provides that the banking organization may exclude (1) Equity exposures that receive less than a 300 percent risk weight under the SRWA (other than equity exposures determined to be non-significant); (2) the equity exposure in a hedge pair with the smaller adjusted carrying value; and (3) a proportion of each equity exposure to an investment fund equal to the proportion of the assets of the investment fund that are not equity exposures or (4) exposures that qualify as community development equity exposures. If a banking organization does not know the actual holdings of the investment fund, the banking organization may calculate the proportion of the assets of the fund that are not equity exposures based on the terms of the prospectus, partnership agreement, or similar contract that defines the fund's permissible investments. If the sum of the investment limits for all exposure classes within the fund exceeds 100 percent, the banking organization would assume that the investment fund invests to the maximum extent possible in equity exposures.

To determine which of a banking organization's equity exposures qualify for a 100 percent risk weight based on non-significance, the banking organization first would include equity exposures to unconsolidated small business investment companies, or those held through consolidated small business investment companies described in section 302 of the Small Business Investment Act of 1958. Next, it would include publicly-traded equity exposures (including those held indirectly through investment funds), and then it would include non-publicly-traded equity exposures (including

[65] The proposed rule generally defines these exposures as exposures that would qualify as community development investments under 12 U.S.C. 24 (Eleventh), excluding equity exposures to an unconsolidated small business investment company and equity exposures held through a consolidated small business investment company described in section 302 of the Small Business Investment Act of 1958 (15 U.S.C. 682). For savings associations, community development investments would be defined to mean equity investments that are designed primarily to promote community welfare, including the welfare of low- and moderate-income communities or families, such as by providing services or jobs, and excluding equity exposures to an unconsolidated small business investment company and equity exposures held through a consolidated small business investment company described in section 302 of the Small Business Investment Act of 1958 (15 U.S.C. 682).

[66] The definition would exclude exposures to an investment firm that (1) would meet the definition of traditional securitization were it not for the primary federal supervisor's application of paragraph (8) of the definition of a traditional securitization and (2) has greater than immaterial leverage.

those held indirectly through investment funds).[67]

The treatment of non-significant equity exposures in this proposal is consistent with the advanced approaches rule. However, in light of significant volatility in equity values since publication of the advanced approaches rule in 2007, and the BCBS revisions to the Basel capital framework, the agencies are considering whether a more simple treatment of banking organizations' non-significant equity exposures is appropriate.

One alternative would assign a 100 percent risk weight to a banking organization's equity exposures to small business investment companies and to stock that a banking organization acquires in satisfaction of debts previously contracted (DPC), consistent with the proposed treatment of community development investments and the effective portion of hedge pairs. The full amount of a banking organization's equity exposure to a small business investment company and the full amount of its DPC equity exposures (together with community development investments and the effective portion of hedge pairs) would receive a 100 percent risk weight, not just the ''non-significant'' portion of such equity exposures.

If the agencies assign a 100 percent risk weight to equity exposures to a small business investment company and to DPC equity exposures, the agencies would consider what other types of equity exposures, if any, would continue to be exempt from the calculation of the ''non-significant'' amount of equity exposures for risk-based capital purposes and what capital treatment would be appropriate for such exposures. For example, the agencies could reduce the threshold for non-significant equity exposure calculation from 10 percent of tier 1 capital and tier 2 capital to 5 percent of tier 1 and tier 2 capital.

Question 19: The agencies solicit comment on an alternative proposal to simplify the risk-based capital treatment of banking organizations' non-significant equity exposures by assigning a 100 percent risk weight to equity exposures to small business investment companies and to DPC equity exposures, consistent with the treatment of community development investments and the effective portion of hedged pairs. What other types of equity exposures (excluding exposures to small business investment companies and equities taken for DPC) should be excluded from the non-significant equity exposure calculation under the alternative approach and what is the approximate amount of these exposures in relation to banking organizations' total capital? What would be an appropriate measure or level for determining whether equity exposures in the aggregate are ''non-significant'' for a banking organization?

5. Hedged Transactions

In this NPR, the agencies are proposing the following treatment for recognizing hedged equity exposures. For purposes of determining risk-weighted assets under the SRWA, a banking organization could identify hedge pairs. Hedge pairs would be defined as two equity exposures that form an effective hedge, as long as each equity exposure is publicly-traded or has a return that is primarily based on a publicly-traded equity exposure. Under the NPR, a banking organization may risk weight only the effective and ineffective portions of a hedge pair rather than the entire adjusted carrying value of each exposure that makes up the pair.

Two equity exposures form an effective hedge if the exposures either have the same remaining maturity or each has a remaining maturity of at least three months; the hedge relationship is formally documented in a prospective manner (that is, before the banking organization acquires at least one of the equity exposures); the documentation specifies the measure of effectiveness (E) the banking organization would use for the hedge relationship throughout the life of the transaction; and the hedge relationship has an E greater than or equal to 0.8. A banking organization would measure E at least quarterly and would use one of three measures of E described in the next section: the dollar-offset method, the variability-reduction method, or the regression method.

It is possible that only part of a banking organization's exposure to a particular equity instrument is part of a hedge pair. For example, assume a banking organization has equity exposure A with a $300 adjusted carrying value and chooses to hedge a portion of that exposure with equity exposure B with an adjusted carrying value of $100. Also assume that the combination of equity exposure B and $100 of the adjusted carrying value of equity exposure A form an effective hedge with an E of 0.8. In this situation, the banking organization would treat $100 of equity exposure A and $100 of equity exposure B as a hedge pair, and the remaining $200 of its equity exposure A as a separate, stand-alone equity position. The effective portion of a hedge pair would be calculated as E multiplied by the greater of the adjusted carrying values of the equity exposures forming the hedge pair. The ineffective portion of a hedge pair would be calculated as $(1-E)$ multiplied by the greater of the adjusted carrying values of the equity exposures forming the hedge pair. In the above example, the effective portion of the hedge pair would be $0.8 \times \$100 = \$80$, and the ineffective portion of the hedge pair would be $(1-0.8) \times \$100 = \$20$.

6. Measures of Hedge Effectiveness

As stated above, a banking organization could determine effectiveness using any one of three methods: the dollar-offset method, the variability-reduction method, or the regression method. Under the dollar-offset method, a banking organization would determine the ratio of the cumulative sum of the changes in value of one equity exposure to the cumulative sum of the changes in value of the other equity exposure, termed the ratio of value change (RVC). If the changes in the values of the two exposures perfectly offset each other, the RVC would be -1. If RVC is positive, implying that the values of the two equity exposures move in the same direction, the hedge is not effective and E equals 0. If RVC is negative and greater than or equal to -1 (that is, between zero and -1), then E would equal the absolute value of RVC. If RVC is negative and less than -1, then E would equal 2 plus RVC.

The variability-reduction method of measuring effectiveness compares changes in the value of the combined position of the two equity exposures in the hedge pair (labeled X in the equation below) to changes in the value of one exposure as though that one exposure were not hedged (labeled A). This measure of E expresses the time-series variability in X as a proportion of the variability of A. As the variability described by the numerator becomes small relative to the variability described by the denominator, the measure of effectiveness improves, but is bounded from above by a value of one. E would be computed as:

[67] *See* 15 U.S.C. 682.

$$E = 1 - \frac{\sum_{t=1}^{T} \left(X_t - X_{t-1} \right)^2}{\sum_{t=1}^{T} \left(A_t - A_{t-1} \right)^2},$$

where

$X_t = A_t - B_t$

$A_t =$ the value at time t of the one exposure in a hedge pair, and

$B_t =$ the value at time t of the other exposure in the hedge pair.

The value of t would range from zero to T, where T is the length of the observation period for the values of A and B, and is comprised of shorter values each labeled t.

The regression method of measuring effectiveness is based on a regression in which the change in value of one exposure in a hedge pair is the dependent variable and the change in value of the other exposure in the hedge pair is the independent variable. E would equal the coefficient of determination of this regression, which is the proportion of the variation in the dependent variable explained by variation in the independent variable. However, if the estimated regression coefficient is positive, then the value of E is zero. The closer the relationship between the values of the two exposures, the higher E would be.

7. Equity Exposures to Investment Funds

Under the general risk-based capital rules, exposures to investments funds are captured through one of two methods. These methods are similar to the alternative modified look-through approach and the simple modified look-through approach described below. The agencies propose an additional option in this NPR, the full look-through approach.

The agencies propose a separate treatment for equity exposures to an investment fund to ensure that banking organizations do not receive a punitive risk-based capital requirement for equity exposures to investment funds that hold only low-risk assets, and to prevent banking organizations from arbitraging the proposed risk-based capital requirements for certain high-risk exposures.

As proposed, a banking organization would determine the risk-weighted asset amount for equity exposures to investment funds using one of three approaches: the full look-through approach, the simple modified look-through approach, or the alternative modified look-through approach, unless the equity exposure to an investment fund is a community development equity exposure. Such community development equity exposures would be subject to a 100 percent risk weight. If an equity exposure to an investment fund is part of a hedge pair, a banking organization would use the ineffective portion of the hedge pair as the adjusted carrying value for the equity exposure to the investment fund. The risk-weighted asset amount of the effective portion of the hedge pair would be equal to its adjusted carrying value. A banking organization could choose which approach to apply for each equity exposure to an investment fund.

a. Full Look-through Approach

A banking organization may use the full look-through approach only if the banking organization is able to calculate a risk-weighted asset amount for each of the exposures held by the investment fund. Under the proposal, a banking organization would be required to calculate the risk-weighted asset amount for each of the exposures held by the investment fund (as calculated under subpart D of the proposal) as if the exposures were held directly by the banking organization. The banking organization's risk-weighted asset amount for the fund would be equal to the aggregate risk-weighted asset amount of the exposures held by the fund as if they were held directly by the banking organization multiplied by the banking organization's proportional ownership share of the fund.

b. Simple Modified Look-through Approach

Under the proposed simple modified look-through approach, a banking organization would set the risk-weighted asset amount for its equity exposure to an investment fund equal to the adjusted carrying value of the equity exposure multiplied by the highest risk weight assigned according to subpart D of the proposal that applies to any exposure the fund is permitted to hold under the prospectus, partnership agreement, or similar agreement that defines the fund's permissible investments. The banking organization may exclude derivative contracts held by the fund that are used for hedging, rather than for speculative purposes, and do not constitute a material portion of the fund's exposures.

c. Alternative Modified Look-through Approach

Under the proposed alternative modified look-through approach, a banking organization may assign the adjusted carrying value of an equity exposure to an investment fund on a pro rata basis to different risk weight categories under subpart D of the proposal based on the investment limits in the fund's prospectus, partnership agreement, or similar contract that defines the fund's permissible investments.

The risk-weighted asset amount for the banking organization's equity exposure to the investment fund would be equal to the sum of each portion of the adjusted carrying value assigned to an exposure type multiplied by the applicable risk weight. If the sum of the investment limits for all exposures within the fund exceeds 100 percent, the banking organization would assume that the fund invests to the maximum extent permitted under its investment limits in the exposure type with the highest applicable risk weight under the proposed requirements and continues to make investments in the order of the exposure category with the next highest risk weight until the maximum total investment level is reached. If more than one exposure category applies to an exposure, the banking organization would use the highest applicable risk weight. A banking organization may exclude derivative contracts held by the fund that are used for hedging, rather than for speculative purposes, and do not constitute a material portion of the fund's exposures.

III. Insurance-related Activities

The agencies propose to apply consolidated capital requirements to savings and loan holding companies, consistent with the transfer of supervisory responsibilities to the Board under Title III of the Dodd-Frank Act, as well as the requirements in section 171 of the Dodd-Frank Act. Savings and loan holding companies have not been subject to consolidated quantitative capital requirements prior to this proposal.

In the Notice of Intent published in April 2011 (2011 notice of intent), the Board discussed the possibility of applying to savings and loan holding companies the same consolidated risk-based and leverage capital requirements as those proposed for bank holding companies.[68] The Board requested comment on unique characteristics, risks, or specific activities of savings and loan holding companies that should be taken into consideration when developing consolidated capital requirements for these entities. The Board also sought specific comment on instruments that are currently included in savings and loan holding companies' regulatory capital that would be excluded or strictly limited under Basel III, as well as the appropriate transition provisions.

The Board received comment letters on the 2011 notice of intent as well as on other notices issued in 2011 pertaining to savings and loan companies.[69] In addition, Board staff met with a number of industry participants, regulators, and trade groups to further the discussion of relevant considerations. The main themes raised by commenters relevant to this proposal were the appropriateness of requiring savings and loan holding companies to apply ''bank-centric'' consolidated capital standards; the need to appropriately address certain instruments and assets unique to savings and loan holding companies; the need for appropriate transition periods; and the degree of regulatory burden (particularly for those savings and loan holding companies that are insurance companies that only prepare financial statements according to Statutory Accounting Principles).

A number of commenters suggested that the Board defer its oversight of savings and loan holding companies, in part or in whole, to functional regulators or impose the same capital standards required by insurance regulators. Other commenters suggested that certain savings and loan holding companies should be exempt from the Board's regulatory capital requirements in cases where depository institution activity constitutes only a small part of the consolidated organization's assets and revenues. The Board believes both of these approaches would be inconsistent with the requirements set out in section 171 of the Dodd-Frank Act. Further, the Board believes it is important to apply consolidated risk-based and leverage capital requirements to insurance-based holding companies because the insurance risk-based capital requirements are not imposed on a consolidated basis and are based on different considerations, such as solvency concerns, rather than broad categories of credit risk.

The Board considered all the comments received and believes that the proposed requirements for savings and loan holding companies appropriately take into consideration their unique characteristics, risks, and activities while ensuring compliance with the requirements of the Dodd-Frank Act. Further, a uniform approach for all holding companies would mitigate potential competitive equity issues, limit opportunities for regulatory arbitrage, and facilitate comparable treatment of similar risks.

In 2011, the agencies amended the general risk-based capital rules to provide that low-risk assets not held by depository institutions may receive the capital treatment applicable under the capital guidelines for bank holding companies under limited circumstances.[70] This provision provides appropriate capital requirements for certain low-risk exposures that generally are not held by depository institutions and brings the regulations applicable to bank holding companies into compliance with section 171 of the Dodd-Frank Act, which requires that bank holding companies be subject to capital requirements that are no less stringent than those applied to insured depository institutions. The agencies propose to continue this approach for purposes of this NPR.

The proposed requirements that are unique to savings and loan holding companies or bank holding companies are discussed below, including provisions pertaining to the determination of risk-weighted assets for nonbanking exposures unique to insurance underwriting activities (whether conducted by a bank holding company or savings and loan holding company).

Policy Loans

A policy loan would be defined as a loan to policyholders under the provisions of an insurance contract that are secured by the cash surrender value or collateral assignment of the related policy or contract. A policy loan would include: (1) A cash loan, including a loan resulting from early payment or accelerated payment benefits, on an insurance contract when the terms of contract specify that the payment is a policy loan secured by the policy; and (2) an automatic premium loan, which is a loan made in accordance with policy provisions which provide that delinquent premium payments are automatically paid from the cash value at the end of the established grace period for premium payments.

Under the proposal, a policy loan would be assigned a 20 percent risk. Such treatment is similar to the treatment of a cash-secured loan. The Board believes this treatment is appropriate in light of the fact that should a borrower default, the resulting loss to the insurance company is mitigated by the right to access the cash surrender value or collateral assignment of the related policy.

Separate Accounts

A separate account is a legally segregated pool of assets owned and held by an insurance company and maintained separately from its general account assets for the benefit of an individual contract holder, subject to certain conditions. To qualify as a separate account, the following conditions generally must be met: (1) The account must be legally recognized under applicable law; (2) the assets in the account must be insulated from general liabilities of the insurance company under applicable law and protected from the insurance company's general creditors in the event of the insurer's insolvency; (3) the insurance company must invest the funds within the account as directed by the contract holder in designated investment alternatives or in accordance with specific investment objectives or

[68] *See* 76 FR 22662 (April 22, 2011).

[69] *See,* for example, ''Agency Information Collection Activities Regarding Savings and Loan Holding Companies,'' available at *http://www.gpo.gov/fdsys/pkg/FR–2011-12-29/pdf/2011-33432.pdf*; ''Proposed Agency Information Collection Activities; Comment Request,'' available at *http://www.gpo.gov/fdsys/pkg/FR-2011-08-25/pdf/2011-21736.pdf.*

[70] *See* 76 FR 37620 (June 28, 2011).

policies; and (4) all investment performance, net of contract fees and assessments, must be passed through to the contract holder, provided that contracts may specify conditions under which there may be a minimum guarantee, but not a ceiling.

Under the general risk-based capital rules, assets held in separate accounts are assigned to risk-weight categories based on the risk weight of the underlying assets. However, the agencies propose to assign a zero percent risk weight to assets held in non-guaranteed separate accounts where all the losses are passed on to the contract holders. To qualify as a non-guaranteed separate account, the insurance company could not contractually guarantee a minimum return or account value to the contract holder, and the insurance company would not be required to hold reserves for these separate account assets pursuant to its contractual obligations on an associated policy. The proposal would maintain the current risk-weighting treatment for assets held in a separate account that does not qualify as a non-guaranteed separate account.

The agencies believe the proposed treatment for non-guaranteed separate account assets is appropriate, even though the proposed definition of non-guaranteed separate accounts is more restrictive than the one used by insurance regulators. The proposed criteria for non-guaranteed separate accounts are designed to ensure that a zero percent risk weight is applied only to the assets for which contract holders, and not an insurance company, would bear all the losses.

Question 20: The agencies request comment on how the proposed definition of a separate account interacts with state law. What are the significant differences and what is the nature of the implications of these differences?

Deferred Acquisition Costs and Value of Business Acquired

Deferred acquisition costs (DAC) represent certain costs incurred in the acquisition of a new contract or renewal insurance contract that are capitalized pursuant to GAAP. Value of business acquired (VOBA) refers to assets that reflect revenue streams from insurance policies purchased by an insurance company. The Board proposes to risk weight these assets at 100 percent, similar to other assets not specifically assigned a different risk weight under this NPR.

Surplus Notes

A surplus note is a financial instrument issued by an insurance company that is included in surplus for statutory accounting purposes as prescribed or permitted by state laws and regulations. A surplus note generally has the following features: (1) The applicable state insurance regulator approves in advance the form and content of the note; (2) the instrument is subordinated to policyholders, to claimant and beneficiary claims, and to all other classes of creditors other than surplus note holders; and (3) the applicable state insurance regulator is required to approve in advance any interest payments and principal repayments on the instrument.

The Board believes that surplus notes do not meet the proposal's eligibility criteria for tier 1 capital. In particular, surplus notes are not perpetual instruments but represent debt instruments that are treated as equity for insurance regulatory capital purposes. Surplus notes are long-term, unsecured obligations, subordinated to all senior debt holders and policy claims. The main equity characteristics of surplus notes are the loss absorbency feature and the need to obtain prior approval from insurance regulators before issuance.

Some commenters on the Board's savings and loan holding company-related proposals issued in 2011 recommended that all outstanding surplus note issuances should be grandfathered and considered eligible as additional tier 1 capital instruments. Other commenters believed the Basel III framework provided sufficient flexibility to include surplus notes in tier 1 capital given the BCBS's recognition that Basel III should accommodate the specific needs of non-joint stock companies, such as mutual and cooperatives, which are unable to issue common stock. The Board believes generally that including surplus notes in tier 1 capital would be inconsistent with the proposed eligibility criteria for regulatory capital instruments and with overall safety and soundness concerns because surplus notes generally do not reflect the required loss absorbency characteristics of tier 1 instruments under the proposal. A surplus note could be eligible for inclusion in tier 2 capital provided the note meets the proposed tier 2 capital eligibility criteria. The Board has sought to incorporate reasonable transition provisions in the first NPR for instruments that would no longer meet the eligibility criteria for tier 2 capital.

Additional Deductions—Insurance Underwriting Subsidiaries

Consistent with the current treatment under the advanced approaches rule, the Basel III NPR would require bank holding companies and savings and loan holding companies to consolidate and deduct the minimum regulatory capital requirement of insurance underwriting subsidiaries (generally 200 percent of the subsidiary's authorized control level as established by the appropriate state insurance regulator) from total capital to reflect the capital needed to cover insurance risks. The proposed deduction treatment recognizes that capital requirements imposed by the functional regulator to cover the various risks that insurance risk-based capital captures reflect capital needs at the particular subsidiary and that this capital is therefore not generally available to absorb losses in other parts of the organization. The deduction would be 50 percent from tier 1 capital and 50 percent from tier 2 capital.

Question 21: The agencies solicit comment on all aspects of the proposed treatment of insurance underwriting activities.

Question 22: What are the specific terms and features of capital instruments (including surplus notes) unique to insurance companies that diverge from current eligibility requirements under the proposal? Are there ways in which such terms and features might be modified in order to bring the instruments into compliance with the proposal?

Question 23: The agencies seek data on the amount and issuers of surplus notes currently outstanding. What proportion of insurance company capital is comprised of surplus notes?

IV. Market Discipline and Disclosure Requirements

A. Proposed Disclosure Requirements

The agencies have long supported meaningful public disclosure by banking organizations with the objective of improving market discipline and encouraging sound risk-management practices. As noted above, the BCBS introduced public disclosure requirements under Pillar 3 of Basel II, which is designed to complement the minimum capital requirements and the supervisory review process by encouraging market discipline through enhanced and meaningful public disclosure.[71] The BCBS introduced additional disclosure requirements in Basel III, which the agencies are

[71] The agencies incorporated the BCBS disclosure requirements into the advanced approaches rule in 2007. *See* 72 FR 69288, 69432 (December 7, 2007).

proposing to apply to banking organizations as discussed herein.[72]

The public disclosure requirements under this NPR would apply only to banking organizations representing the top consolidated level of the banking group with $50 billion or more in total consolidated assets that are not advanced approaches banking organizations making public disclosures pursuant to section 172 of the proposal.[73] The agencies note that the asset threshold of $50 billion is consistent with the threshold established by section 165 of the Dodd-Frank Act relating to enhanced supervision and prudential standards for certain banking organizations.[74] In addition, the agencies are trying to strike an appropriate balance between the market benefits of disclosure and the additional burden to a banking organization that provides disclosures. A banking organization may be able to fulfill some of the proposed disclosure requirements by relying on similar disclosures made in accordance with accounting standards or SEC mandates. In addition, a banking organization could use information provided in regulatory reports to fulfill the disclosure requirements. In these situations, a banking organization would be required to explain any material differences between the accounting or other disclosures and the disclosures required under this proposal.

A banking organization's exposure to risks and the techniques that it uses to identify, measure, monitor, and control those risks are important factors that market participants consider in their assessment of the banking organization. Accordingly, as proposed, a banking organization would have a formal disclosure policy approved by its board of directors that addresses the banking organization's approach for determining the disclosures it should make. The policy should address the associated internal controls, disclosure controls, and procedures. The board of directors and senior management would ensure the appropriate review of the disclosures and that effective internal controls, disclosure controls, and procedures are maintained. One or more senior officers of the banking organization must attest that the disclosures meet the requirements of this proposal.

A banking organization would decide the relevant disclosures based on a materiality concept. Information would be regarded as material if its 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.

B. Frequency of Disclosures

Consistent with the agencies' longstanding requirements for robust quarterly disclosures in regulatory reports, and considering the potential for rapid changes in risk profiles, this NPR would require that quantitative disclosures are made quarterly. However, qualitative disclosures that provide a general summary of a banking organization's risk-management objectives and policies, reporting system, and definitions may be disclosed annually, provided any significant changes are disclosed in the interim.

The proposal would require that the disclosures are timely. The agencies acknowledge that the timing of disclosures 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 and their implementing regulations by the SEC. For calendar quarters that do not correspond to fiscal year-end, the agencies would consider those disclosures that are made within 45 days as timely. In general, where a banking organization's fiscal year end coincides with the end of a calendar quarter, the agencies would consider 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 an institution's fiscal year-end does not coincide with the end of a calendar quarter, the primary federal supervisor would consider the timeliness of disclosures on a case-by-case basis. In some cases, management may determine that a significant change has occurred, such that the most recent reported amounts do not reflect the banking organization's capital adequacy and risk profile. In those cases, a banking organization would need to disclose the general nature of these changes and briefly describe how they are likely to affect public disclosures going forward. A banking organization would make these interim disclosures as soon as practicable after the determination that a significant change has occurred.

C. Location of Disclosures and Audit Requirements

The disclosures required by the proposal would have to be publicly available (for example, included on a public Web site) for each of the last three years or such shorter time period beginning when the proposal comes into effect. Except as discussed below, management would have some discretion to determine the appropriate medium and location of the disclosure. Furthermore, a banking organization would have flexibility in formatting its public disclosures.

The agencies encourage management to provide all of the required disclosures in one place on the entity's public Web site and the agencies anticipate that the public Web site address would be reported in a banking organization's regulatory report. Alternatively, banking organizations would be permitted to provide the disclosures in more than one place, as some of them may be included in public financial reports (for example, in Management's Discussion and Analysis included in SEC filings) or other regulatory reports. The agencies would encourage such banking organizations to provide a summary table on their public Web site that specifically indicates where all the disclosures may be found (for example, regulatory report schedules, page numbers in annual reports).

Disclosures of common equity tier 1, tier 1, and total capital ratios would be tested by external auditors as part of the financial statement audit. Disclosures that are not included in the footnotes to the audited financial statements are not subject to external audit reports for financial statements or internal control reports from management and the external auditor.

D. Proprietary and Confidential Information

The agencies believe that the proposed requirements strike an appropriate balance between the need for meaningful disclosure and the protection of proprietary and confidential information.[75] Accordingly,

[72] In December 2011, the BCBS proposed additional Pillar 3 disclosure requirements in a consultative paper titled ''Definition of Capital Disclosure Requirements,'' available at *http://www.bis.org/publ/bcbs212.pdf*. The agencies anticipate incorporating these disclosure requirements for banking organizations with more than $50 billion in total assets through a separate rulemaking once the BCBS finalizes these disclosure requirements.

[73] Advanced approaches banking organizations would be subject to the disclosure requirements described in the Advanced Approaches and Market Risk NPR.

[74] *See* section 165(a) of the Dodd-Frank Act (12 U.S.C. 5365(a)). The Dodd-Frank Act provides that the Board may, upon the recommendation of the Financial Stability Oversight Council, increase the $50 billion asset threshold for the application of the resolution plan, concentration limit, and credit exposure report requirements. *See* 12 U.S.C. 5365(a)(2)(B).

[75] Proprietary information encompasses information that, if shared with competitors, would

the agencies believe that banking organizations would be able to provide all of these disclosures without revealing proprietary and confidential information. Only in rare circumstances might disclosure of certain items of information required by the proposal compel a banking organization to reveal confidential and proprietary information. In these unusual situations, the agencies propose that if a banking organization believes that disclosure of specific commercial or financial information would compromise its position by making public information that is either proprietary or confidential in nature, the banking organization need not disclose those specific items. Instead, the banking organization must disclose more general information about the subject matter of the requirement, together with the fact that, and the reason why, the specific items of information have not been disclosed. This provision would apply only to those disclosures included in this NPR and does not apply to disclosure requirements imposed by accounting standards or other regulatory agencies.

Question 24: The agencies seek commenters' views on all of the elements of the proposed public disclosure requirements. In particular, the agencies seek views on specific disclosure requirements that are problematic, and why.

E. Specific Public Disclosure Requirements

The public disclosure requirements are designed to provide important information to market participants on the scope of application, capital, risk exposures, risk assessment processes, and, thus, the capital adequacy of the institution. The agencies note that the substantive content of the tables is the focus of the disclosure requirements, not the tables themselves. The table numbers below refer to the table numbers in the proposal.

A banking organization would make the disclosures described in tables 14.1 through 14.10. The banking organization would make these disclosures publicly available for each of the last three years or such shorter time period beginning when the proposed requirements come into effect.[76]

Table 14.1 disclosures, ''Scope of Application,'' would name the top corporate entity in the group to which subpart D of the proposal would apply; include a brief description of the differences in the basis for consolidating entities for accounting and regulatory purposes, as well as a description of any restrictions, or other major impediments, on transfer of funds or total capital within the group. These disclosures provide the basic context underlying regulatory capital calculations.

Table 14.2 disclosures, ''Capital Structure,'' would provide summary information on the terms and conditions of the main features of regulatory capital instruments, which would allow for an evaluation of the quality of the capital available to absorb losses within a banking organization. A banking organization also would disclose the total amount of common equity tier 1, tier 1 and total capital, with separate disclosures for deductions and adjustments to capital. The agencies expect that many of these disclosure requirements would be captured in revised regulatory reports.

Table 14.3 disclosures, ''Capital Adequacy,'' would provide information on a banking organization's approach for categorizing and risk-weighting its exposures, as well as the amount of total risk-weighted assets. The table would also include common equity tier 1, and tier 1 and total risk-based capital ratios for the top consolidated group; and for each depository institution subsidiary.

Table 14.4 disclosures, ''Capital Conservation Buffer,'' would require a banking organization to disclose the capital conservation buffer, the eligible retained income and any limitations on capital distributions and certain discretionary bonus payments, as applicable.

Tables 14.5, 14.6 and 14.7 disclosures, related to credit risk, counterparty credit risk and credit risk mitigation, respectively, would provide market participants with insight into different types and concentrations of credit risk to which a banking organization is exposed and the techniques it uses to measure, monitor, and mitigate those risks. These disclosures are intended to enable market participants to assess the credit risk exposures of the banking organization without revealing proprietary information.

Table 14.8 disclosures, ''Securitization,'' would provide information to market participants on the amount of credit risk transferred and retained by a banking organization through securitization transactions, the types of products securitized by the organization, the risks inherent in the organization's securitized assets, the organization's policies regarding credit risk mitigation, and the names of any entities that provide external credit assessments of a securitization. These disclosures would provide a better understanding of how securitization transactions impact the credit risk of a bank. For purposes of these disclosures, ''exposures securitized'' include underlying exposures originated by a banking organization, whether generated by the banking organization or purchased from third parties, and third-party exposures included in sponsored programs. Securitization transactions in which the originating banking organization does not retain any securitization exposure would be shown separately and would only be reported for the year of inception.

Table 14.9 disclosures, ''Equities Not Subject to Subpart F of the [proposal],'' would provide market participants with an understanding of the types of equity securities held by the banking organization and how they are valued. The table would also provide information on the capital allocated to different equity products and the amount of unrealized gains and losses.

Table 14.10 disclosures, ''Interest Rate Risk for Non-trading Activities,'' would require banking organization to provide certain quantitative and qualitative disclosures regarding the banking organization's management of interest rate risks.

V. List of Acronyms That Appear in the Proposal

ABCP Asset-Backed Commercial Paper
ABS Asset Backed Security
ADC Acquisition, Development, or Construction
AFS Available For Sale
ALLL Allowance for Loan and Lease Losses
AOCI Accumulated Other Comprehensive Income
BCBS Basel Committee on Banking Supervision
BHC Bank Holding Company
BIS Bank for International Settlements
CAMELS Capital adequacy, Asset quality, Management, Earnings, Liquidity, and Sensitivity to market risk
CCF Credit Conversion Factor
CCP Central Counterparty
CDC Community Development Corporation
CDFI Community Development Financial Institution
CDO Collateralized Debt Obligation
CDS Credit Default Swap
CDSind Index Credit Default Swap
CEIO Credit-Enhancing Interest-Only Strip
CF Conversion Factor
CFR Code of Federal Regulations
CFTC Commodity Futures Trading Commission
CMBS Commercial Mortgage Backed Security

render a banking organization's investment in these products/systems less valuable, and, hence, could undermine its competitive position. Information about customers is often confidential, in that it is provided under the terms of a legal agreement or counterparty relationship.

[76] Other public disclosure requirements would continue to apply, such as federal securities law, and regulatory reporting requirements for banking organizations.

CPSS Committee on Payment and Settlement Systems
CRC Country Risk Classifications
CRAM Country Risk Assessment Model
CRM Credit Risk Mitigation
CUSIP Committee on Uniform Securities Identification Procedures
DAC Deferred Acquisition Costs
DCO Derivatives Clearing Organizations
DFA Dodd-Frank Act
DI Depository Institution
DPC Debts Previously Contracted
DTA Deferred Tax Asset
DTL Deferred Tax Liability
DVA Debit Valuation Adjustment
DvP Delivery-versus-Payment
E Measure of Effectiveness
EAD Exposure at Default
ECL Expected Credit Loss
EE Expected Exposure
E.O. Executive Order
EPE Expected Positive Exposure
FASB Financial Accounting Standards Board
FDIC Federal Deposit Insurance Corporation
FFIEC Federal Financial Institutions Examination Council
FHLMC Federal Home Loan Mortgage Corporation
FMU Financial Market Utility
FNMA Federal National Mortgage Association
FR **Federal Register**
GAAP Generally Accepted Accounting Principles
GDP Gross Domestic Product
GLBA Gramm-Leach-Bliley Act
GSE Government-Sponsored Entity
HAMP Home Affordable Mortgage Program
HELOC Home Equity Line of Credit
HOLA Home Owners' Loan Act
HVCRE High-Volatility Commercial Real Estate
IAA Internal Assessment Approach
IFRS International Reporting Standards
IMM Internal Models Methodology
I/O Interest-Only
IOSCO International Organization of Securities Commissions
LTV Loan-to-Value Ratio
M Effective Maturity
MDB Multilateral Development Banks
MSA Mortgage Servicing Assets
NGR Net-to-Gross Ratio
NPR Notice of Proposed Rulemaking
NRSRO Nationally Recognized Statistical Rating Organization
OCC Office of the Comptroller of the Currency
OECD Organization for Economic Co-operation and Development
OIRA Office of Information and Regulatory Affairs
OMB Office of Management and Budget
OTC Over-the-Counter
OTTI Other Than Temporary Impairment
PCA Prompt Corrective Action
PCCR Purchased Credit Card Relationships
PFE Potential Future Exposure
PMI Private Mortgage Insurance
PSE Public Sector Entities
PvP Payment-versus-payment
QCCP Qualifying Central Counterparty
REIT Real Estate Investment Trust
RFA Regulatory Flexibility Act
RMBS Residential Mortgage Backed Security
RTCRRI Act Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991
RVC Ratio of Value Change
RWA Risk-Weighted Asset
SEC Securities and Exchange Commission
SFA Supervisory Formula Approach
SFT Securities Financing Transactions
SLHC Savings and Loan Holding Company
SPE Special Purpose Entity
SPV Special Purpose Vehicle
SR Supervision and Regulation Letter
SRWA Simple Risk-Weight Approach
SSFA Simplified Supervisory Formula Approach
UMRA Unfunded Mandates Reform Act of 1995
U.S. United States
U.S.C. United States Code
VaR Value-at-Risk
VOBA Value of Business Acquired

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA) requires an agency to provide an initial regulatory flexibility analysis with a proposed rule or to certify that the rule will not have a significant economic impact on a substantial number of small entities (defined for purposes of the RFA to include banking entities with assets less than or equal to $175 million) and publish its certification and a short, explanatory statement in the **Federal Register** along with the proposed rule.

The agencies are separately publishing initial regulatory flexibility analyses for the proposals as set forth in this NPR.

Board

A. Statement of the Objectives of the Proposal; Legal Basis

As discussed in the Supplementary Information above, the Board is proposing to revise its capital requirements to promote safe and sound banking practices, implement Basel III and other aspects of the Basel capital framework, and codify its capital requirements.

The proposals in this NPR and the Basel III NPR would implement provisions consistent with certain requirements of the Dodd-Frank Act because they would (1) revise regulatory capital requirements to remove all references to, and requirements of reliance on, credit ratings,[77] and (2) impose new or revised minimum capital requirements on certain depository institution holding companies.[78]

Additionally, under section 38(c)(1) of the Federal Deposit Insurance Act, the agencies may prescribe capital standards for depository institutions that they regulate.[79] In addition, among other authorities, the Board may establish capital requirements for state member banks under the Federal Reserve Act,[80] for state member banks and bank holding companies under the International Lending Supervision Act and Bank Holding Company Act,[81] and for savings and loan holding companies under the Home Owners Loan Act.[82]

B. Small Entities Potentially Affected by the Proposal

Under regulations issued by the Small Business Administration,[83] a small entity includes a depository institution, bank holding company, or savings and loan holding company with total assets of $175 million or less (a small banking organization). As of March 31, 2012 there were 373 small state member banks. As of December 31, 2011, there were approximately 128 small savings and loan holding companies and 2,385 small bank holding companies.[84]

The proposed requirements would not apply to small bank holding companies that are not engaged in significant nonbanking activities, do not conduct significant off-balance sheet activities, and do not have a material amount of debt or equity securities outstanding that are registered with the SEC. These small bank holding companies remain subject to the Board's Small Bank Holding Company Policy Statement (Policy Statement).[85]

Small state member banks and small savings and loan holding companies (covered small banking organizations) would be subject to the proposals in this NPR.

C. Impact on Covered Small Banking Organizations

The proposed requirements in the Basel III NPR and this NPR may impact covered small banking organizations in several ways, including both recordkeeping and compliance requirements. As explained in the Basel III NPR, the proposals therein would change the minimum capital ratios and

[77] *See* 15 U.S.C. 78o–7, note.

[78] *See* 12 U.S.C. 5371.

[79] *See* 12 U.S.C. 1831o(c).

[80] *See* 12 U.S.C. 321–338.

[81] *See* 12 U.S.C. 3907; 12 U.S.C. 1844.

[82] *See* 12 U.S.C. 1467a(g)(1).

[83] *See* 13 CFR 121.201.

[84] The December 31, 2011 data are the most recent available data on small savings and loan holding companies and small bank holding companies.

[85] *See* 12 CFR part 225, appendix C. Section 171 of the Dodd-Frank provides an exemption from its requirements for bank holding companies subject to the Policy Statement (as in effect on May 19, 2010). Section 171 does not provide a similar exemption for small savings and loan holding companies and they are therefore subject to the proposed rules. 12 U.S.C. 5371(b)(5)(C).

qualifying criteria for regulatory capital, including required deductions and adjustments. The proposals in this NPR would modify the risk weight treatment for some exposures.

Most small state member banks already hold capital in excess of the proposed minimum risk-based regulatory ratios. Therefore, the proposed requirements are not expected to significantly impact the capital structure of most covered small state member banks. Comparing the capital requirements proposed in this NPR and the Basel III NPR on a fully phased-in basis to minimum requirements of the current rules, the capital ratios of approximately 1–2 percent of small state member banks would fall below at least one of the proposed minimum risk-based capital requirements. Thus, the Board believes that the proposals in this NPR and the Basel III NPR would affect an insubstantial number of small state member banks.

Because the Board has not fully implemented reporting requirements for savings and loan holding companies, it is unable to determine the impact of the proposed requirements on small savings and loan holding companies. The Board seeks comment on the potential impact of the proposed requirements on small savings and loan holding companies.

Covered small banking organizations that would have to raise additional capital to comply with the requirements of the proposal may incur certain costs, including costs associated with issuance of regulatory capital instruments. The Board has sought to minimize the burden of raising additional capital by providing for transitional arrangements that phase-in the new capital requirements over several years, allowing banking organizations time to accumulate additional capital through retained earnings as well as raising capital in the market.

As discussed above, the proposed requirements would modify risk weights for exposures, as well as calculation of the leverage ratio. Accordingly, covered small banking organizations would be required to change their internal reporting processes to comply with these changes. These changes may require some additional personnel training and expenses related to new systems (or modification of existing systems) for calculating regulatory capital ratios.

Additionally, covered small banking organizations that hold certain exposures would be required to obtain additional information under the proposed rules in order to determine the applicable risk weights. Covered small banking organizations that hold exposures to sovereign entities other than the United States, foreign depository institutions, or foreign public sector entities would have to acquire Country Risk Classification ratings produced by the OECD to determine the applicable risk weights. Covered small banking organizations that hold residential mortgage exposures would need to have and maintain information about certain underwriting features of the mortgage as well as the LTV ratio in order to determine the applicable risk weight. Generally, covered small banking organizations that hold securitization exposures would need to obtain sufficient information about the underlying exposures to satisfy due diligence requirements and apply the simplified supervisory formula described above to calculate the appropriate risk weight, or be required to assign a 1,250 percent risk weight to the exposure.

Covered small banking organizations typically do not hold significant exposures to foreign entities or securitization exposures, and the Board expects any additional burden related to calculating risk weights for these exposures, or holding capital against these exposures, would be modest. Some covered small banking organizations may hold significant residential mortgage exposures. However, if the small banking organization originated the exposure, it should have sufficient information to determine the applicable risk weight under the proposal. If the small banking organization acquired the exposure from another institution, the information it would need to determine the applicable risk weight is consistent with information that it should normally collect for portfolio monitoring purposes and internal risk management.

Covered small banking organizations would not be subject to the disclosure requirements in subpart D of the proposal. However, the Board expects to modify regulatory reporting requirements that apply to covered small banking organizations to reflect the changes made to the Board's capital requirements in the proposal. The Board expects to propose these changes to the relevant reporting forms in a separate notice.

For small savings and loan holding companies, the compliance burdens described above may be greater than for those of other covered small banking organizations. Small savings and loan holding companies previously were not subject to regulatory capital requirements and reporting requirements tied regulatory capital requirements. Small savings and loan holding companies may therefore need to invest additional resources in establishing internal systems (including purchasing software or hiring personnel) or raising capital to come into compliance with the proposed rules.

D. Transitional Arrangements To Ease Compliance Burden

For those covered small banking organizations that would not immediately meet the proposed minimum requirements, the NPR provides transitional arrangements for banking organizations to make adjustments and to come into compliance. Small covered banking organizations would be required to meet the proposed minimum capital ratio requirements beginning on January 1, 2013 thorough to December 31, 2014. On January 1, 2015, small covered banking organizations would be required to comply with the new Prompt Corrective Action capital ratio requirements proposed in the Basel III NPR. January 1, 2015 is also the proposed effective date for small covered companies to begin calculating risk-weighted assets according to the methodologies in this NPR.

E. Identification of Duplicative, Overlapping, or Conflicting Federal Rules

The Board is unaware of any duplicative, overlapping, or conflicting federal rules. As noted above, the Board anticipates issuing a separate proposal to implement reporting requirements that are tied to (but do not overlap or duplicate) the requirements of the proposed rules. The Board seeks comments and information regarding any such rules that are duplicative, overlapping, or otherwise in conflict with the proposed rules.

F. Discussion of Significant Alternatives

The Board has sought to incorporate flexibility into the proposals in this NPR and provide alternative treatments to lessen burden and complexity for smaller banking organizations wherever possible, consistent with safety and soundness and applicable law, including the Dodd-Frank Act. These alternatives and flexibility features include the following:

- Covered small banking organizations would not be subject to the enhanced disclosure requirements of the proposed rules.
- Covered small banking organizations could choose to apply the gross-up approach for securitization exposures rather than the SSFA.

The proposal also offers covered small banking organizations a choice between a simpler and more complex methods of risk weighting equity exposures to investment funds.

The Board welcomes comment on any significant alternatives to the proposed rules applicable to covered small banking organizations that would minimize their impact on those entities, as well as on all other aspects of its analysis. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

OCC

In accordance with section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA), the OCC is publishing this summary of its Initial Regulatory Flexibility Analysis (IRFA) for this NPR. The RFA requires an agency to publish in the **Federal Register** its IRFA or a summary of its IRFA at the time of the publication of its general notice of proposed rulemaking[86] or to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.[87] For its IRFA, the OCC analyzed the potential economic impact of this NPR on the small entities that it regulates.

The OCC welcomes comment on all aspects of the summary of its IRFA. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

A. Reasons Why the Proposed Rule is Being Considered by the Agencies; Statement of the Objectives of the Proposed Rule; and Legal Basis

As discussed in the Supplementary Information section above, the agencies are proposing to revise their capital requirements to promote safe and sound banking practices, implement Basel III, and harmonize capital requirements across charter type. This NPR also satisfies certain requirements under the Dodd-Frank Act by revising regulatory capital requirements to remove all references to, and requirements of reliance on, credit ratings. Federal law authorizes each of the agencies to prescribe capital standards for the banking organizations it regulates.[88]

B. Small Entities Affected by the Proposal

Under regulations issued by the Small Business Administration,[89] a small entity includes a depository institution or bank holding company with total assets of $175 million or less (a small banking organization). As of March 31, 2012, there were approximately 599 small national banks and 284 small federally chartered savings associations.

C. Projected Reporting, Recordkeeping, and Other Compliance Requirements

This NPR includes changes to the general risk-based capital requirements that address the calculation of risk-weighted assets and affect small banking organizations. The proposed rules in this NPR that would affect small banking organizations include:

1. Changing the denominator of the risk-based capital ratios by revising the asset risk weights;
2. Revising the treatment of counterparty credit risk;
3. Replacing references to credit ratings with alternative measures of creditworthiness;
4. Providing more comprehensive recognition of collateral and guarantees; and
5. Providing a more favorable capital treatment for transactions cleared through qualifying central counterparties.

These changes are designed to enhance the risk-sensitivity of the calculation of risk-weighted assets. Therefore, capital requirements may go down for some assets and up for others. For those assets with a higher risk weight under this NPR, however, that increase may be large in some instances, *e.g.,* requiring the equivalent of a dollar-for-dollar capital charge for some securitization exposures.

The Basel Committee on Banking Supervision has been conducting periodic reviews of the potential quantitative impact of the Basel III framework.[90] Although these reviews monitor the impact of implementing the Basel III framework rather than the proposed rule, the OCC is using estimates consistent with the Basel Committee's analysis, including a conservative estimate of a 20 percent increase in risk-weighted assets, to gauge the impact of this NPR on risk-weighted assets. Using this assumption, the OCC estimates that a total of 56 small national banks and federally chartered savings associations will need to raise additional capital to meet their regulatory minimums. The OCC estimates that this total projected shortfall will be $143 million and that the cost of lost tax benefits associated with increasing total capital by $143 million will be approximately $0.8 million per year. Averaged across the 56 affected institutions, the cost is approximately $14,000 per institution per year.

To comply with the proposed rules in this NPR, covered small banking organizations would be required to change their internal reporting processes. These changes would require some additional personnel training and expenses related to new systems (or modification of existing systems) for calculating regulatory capital ratios.

Additionally, covered small banking organizations that hold certain exposures would be required to obtain additional information under the proposed rules in order to determine the applicable risk weights. Covered small banking organizations that hold exposures to sovereign entities other than the United States, foreign depository institutions, or foreign public sector entities would have to acquire Country Risk Classification ratings produced by the OECD to determine the applicable risk weights. Covered small banking organizations that hold residential mortgage exposures would need to have and maintain information about certain underwriting features of the mortgage as well as the LTV ratio in order to determine the applicable risk weight. Generally, covered small banking organizations that hold securitization exposures would need to obtain sufficient information about the underlying exposures to satisfy due diligence requirements and apply either the simplified supervisory formula or the gross-up approach described in section ______.43 of this NPR to calculate the appropriate risk weight, or be required to assign a 1,250 percent risk weight to the exposure.

Covered small banking organizations typically do not hold significant exposures to foreign entities or securitization exposures, and the agencies expect any additional burden related to calculating risk weights for these exposures, or holding capital against these exposures, would be relatively modest. The OCC estimates that, for small national banks and federal savings associations, the cost of implementing the alternative measures of creditworthiness will be approximately $36,125 per institution.

Some covered small banking organizations may hold significant residential mortgage exposures.

[86] 5 U.S.C. 603(a).

[87] 5 U.S.C. 605(b).

[88] *See, e.g.,* 12 U.S.C. 1467a(g)(1); 12 U.S.C. 1831o(c)(1); 12 U.S.C. 1844; 12 U.S.C. 3907; and 12 U.S.C. 5371.

[89] *See* 13 CFR 121.201.

[90] *See,* "Update on Basel III Implementation Monitoring," Quantitative Impact Study Working Group, January 28, 2012.

However, if the small banking organization originated the exposure, it should have sufficient information to determine the applicable risk weight under the proposed rule. If the small banking organization acquired the exposure from another institution, the information it would need to determine the applicable risk weight is consistent with information that it should normally collect for portfolio monitoring purposes and internal risk management.

Covered small banking organizations would not be subject to the disclosure requirements in subpart D of the proposed rule. However, the agencies expect to modify regulatory reporting requirements that apply to covered small banking organizations to reflect the changes made to the agencies' capital requirements in the proposed rules. The agencies expect to propose these changes to the relevant reporting forms in a separate notice.

To determine if a proposed rule has a significant economic impact on small entities we compared the estimated annual cost with annual noninterest expense and annual salaries and employee benefits for each small entity. If the estimated annual cost was greater than or equal to 2.5 percent of total noninterest expense or 5 percent of annual salaries and employee benefits we classified the impact as significant. The OCC has concluded that the proposals included in this NPR would exceed this threshold for 500 small national banks and 253 small federally chartered private savings institutions. Accordingly, for the purposes of this IRFA, the OCC has concluded that the changes proposed in this NPR, when considered without regard to other changes to the capital requirements that the agencies simultaneously are proposing, would have a significant economic impact on a substantial number of small entities.

Additionally, as discussed in the Supplementary Information section above, the changes proposed in this NPR should be considered together with changes proposed in the separate Basel III NPR also published in today's **Federal Register**. The changes described in the Basel III NPR include changes to minimum capital requirements that would impact small national banks and federal savings associations. These include a more conservative definition of regulatory capital, a new common equity tier 1 capital ratio, a higher minimum tier 1 capital ratio, new thresholds for prompt corrective action purposes, and a new capital conservation buffer. To estimate the impact of the Basel III NPR on national banks' and federal savings' association capital needs, the OCC estimated the amount of capital the banks will need to raise to meet the new minimum standards relative to the amount of capital they currently hold. To estimate new capital ratios and requirements, the OCC used currently available data from banks' quarterly Consolidated Report of Condition and Income (Call Reports) to approximate capital under the proposed rule, which shows that most banks have raised their capital levels well above the existing minimum requirements. After comparing existing levels with the proposed new requirements, the OCC determined that 28 small institutions that it regulates would fall short of the proposed increased capital requirements. Together, those institutions would need to raise approximately $82 million in regulatory capital to meet the proposed minimum requirements set forth in the Basel III NPR. The OCC estimates that the cost of lost tax benefits associated with increasing total capital by $82 million will be approximately $0.5 million per year. Averaged across the 28 affected institutions, the cost attributed to the Basel III NPR is approximately $18,000 per institution per year. The OCC concluded for purposes of its IRFA for the Basel III NPR that the changes described in the Basel III NPR, when considered without regard to changes in this NPR, would not result in a significant economic impact on a substantial number of small entities. However, the OCC has concluded that the proposed changes in this NPR would result in a significant economic impact on a substantial number of small entities. Therefore, considered together, this NPR and the Basel III NPR would have a significant economic impact on a substantial number of small entities.

D. Identification of Duplicative, Overlapping, or Conflicting Federal Rules

The OCC is unaware of any duplicative, overlapping, or conflicting federal rules. As noted previously, the OCC anticipates issuing a separate proposal to implement reporting requirements that are tied to (but do not overlap or duplicate) the requirements of the proposed rules. The OCC seeks comments and information regarding any such federal rules that are duplicative, overlapping, or otherwise in conflict with the proposed rule.

E. Discussion of Significant Alternatives to the Proposed Rule

The agencies have sought to incorporate flexibility into the proposed rule and lessen burden and complexity for smaller banking organizations wherever possible, consistent with safety and soundness and applicable law, including the Dodd-Frank Act. The agencies are requesting comment on potential options for simplifying the rule and reducing burden, including whether to permit certain small banking organizations to continue using portions of the current general risk-based capital rules to calculate risk-weighted assets. Additionally, the agencies proposed the following alternatives and flexibility features:

- Covered small banking organizations are not subject to the enhanced disclosure requirements of the proposed rules.
- Covered small banking organizations would continue to apply a 100 percent risk weight to corporate exposures (as described in section ____.32 of this NPR).
- Covered small banking organizations may choose to apply the simpler gross-up method for securitization exposures rather than the Simplified Supervisory Formula Approach (SSFA) (as described in section ____.43 of this NPR).
- The proposed rule offers covered small banking organizations a choice between a simpler and more complex methods of risk weighting equity exposures to investment funds (as described in section ____.53 of this NPR).

The agencies welcome comment on any significant alternatives to the proposed rules applicable to covered small banking organizations that would minimize their impact on those entities.

VII. Paperwork Reduction Act

A. Request for Comment on Proposed Information Collection

In accordance with the requirements of the Paperwork Reduction Act (PRA) of 1995, 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 Office of Management and Budget (OMB) control number. The Agencies are requesting comment on a proposed information collection.

The information collection requirements contained in this joint notice of proposed rulemaking (NPRs) have been submitted by the OCC and FDIC to OMB for review under the PRA, under OMB Control Nos. 1557–0234 and 3064–0153. In accordance with the PRA (44 U.S.C. 3506; 5 CFR part 1320, Appendix A.1), the Board has reviewed the NPR under the authority delegated by OMB. The Board's OMB Control No. is 7100–0313. The requirements are found in §§ ____.35, ____.37, ____.41, ____.42, ____.62, and __.63.

The Agencies have published two other NPRs in this issue of the **Federal Register**. Please see the NPRs entitled ''Regulatory Capital Rules: Regulatory Capital, Minimum Regulatory Capital Ratios, Capital Adequacy, Transition Provisions'' and ''Regulatory Capital Rules: Advanced Approaches Risk-based Capital Rules; Market Risk Capital Rule.'' While the three NPRs together comprise an integrated capital framework, the PRA burden has been divided among the three NPRs and a PRA statement has been provided in each.

Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the Agencies' functions, including whether the information has practical utility;

(b) The accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

All comments will become a matter of public record.

Comments should be addressed to:

OCC: Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mail stop 1–5, Attention: 1557–0234, 250 E Street SW., Washington, DC 20219. In addition, comments may be sent by fax to 202–874–4448, or by electronic mail to *regs.comments@occ.treas.gov*. You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling 202–874–5043.

Board: You may submit comments, identified by R–14441255, by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov*. Follow the instructions for submitting comments on the *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm*.
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov*. Include docket number in the subject line of the message.
- *Fax:* 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 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.

FDIC: You may submit written comments, which should refer to RIN 3064–AD96 Standardized Approach for Risk-weighted Assets; Market Discipline and Disclosure Requirements 0153, by any of the following methods:

- *Agency Web Site: http://www.fdic.gov/regulations/laws/federal/propose.html*. Follow the instructions for submitting comments on the FDIC Web site.
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Email: Comments@FDIC.gov*.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, FDIC, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery/Courier:* Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Public Inspection: All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/propose/html* including any personal information provided. Comments may be inspected at the FDIC Public Information Center, Room 100, 801 17th Street NW., Washington, DC, between 9 a.m. and 4:30 p.m. on business days.

B. Proposed Information Collection

Title of Information Collection: Basel III, Part II.

Frequency of Response: On occasion and quarterly.

Affected Public:

OCC: National banks and federally chartered savings associations.

Board: State member banks, bank holding companies, and savings and loan holding companies.

FDIC: Insured state nonmember banks, state savings associations, and certain subsidiaries of these entities.

Estimated Burden: The burden estimates below exclude any regulatory reporting burden associated with changes to the Consolidated Reports of Income and Condition for banks (FFIEC 031 and FFIEC 0431; OMB Nos. 7100–0036, 3064–0052, 1557–0081), and the Financial Statements for Bank Holding Companies (FR Y–9; OMB No. 7100–0128), and the Capital Assessments and Stress Testing information collection (FR Y–14A/Q/M; OMB No. 7100–0341).

The agencies are still considering whether to revise these information collections or to implement a new information collection for the regulatory reporting requirements. In either case, a separate notice would be published for comment on the regulatory reporting requirements.

OCC

Estimated Number of Respondents: Independent national banks, 172; federally chartered savings banks, 603.

Estimated Burden per Respondent: One-time recordkeeping, 122 hours; ongoing recordkeeping, 20 hours; one-time disclosures, 226.25 hours; ongoing disclosures, 131.25 hours.

Total Estimated Annual Burden: 112,303.75 hours.

Board

Estimated Number of Respondents: SMBs, 831; BHCs, 933; SLHCs, 438.

Estimated Burden per Respondent: One-time recordkeeping, 122 hours; ongoing recordkeeping, 20 hours; one-time disclosures, 226.25 hours; ongoing disclosures, 131.25 hours.

Total Estimated Annual Burden: One-time recordkeeping and disclosures, 279,277.75 hours; ongoing recordkeeping and disclosures 68,715.

FDIC

Estimated Number of Respondents: 4,571.

Estimated Burden per Respondent: One-time recordkeeping, 122 hours; ongoing recordkeeping, 20 hours; one-time disclosures, 226.25 hours; ongoing disclosures, 131.25 hours.

Total Estimated Annual Burden: 652,087 hours (558,567 one-time recordkeeping and disclosures; 93,520 ongoing recordkeeping and disclosures).

Abstract:

The recordkeeping requirements are found in sections _.35, _.37, _ and .41. The disclosure requirements are found in sections _.42, _.62, and _.63. These recordkeeping and disclosure requirements are necessary for the agencies' assessment and monitoring of the risk-sensitivity of the calculation of a banking organization's total risk-weighted assets and for general safety and soundness purposes.

Section-by-section Analysis

Recordkeeping

Section _.35 sets forth requirements for cleared transactions. Section _.35(b)(3)(i)(A) would require for a cleared transaction with a qualified central counterparty (QCCP) that a client bank apply a risk weight of 2 percent, provided that the collateral posted by the bank to the QCCP is subject to certain arrangements and the client bank has conducted a sufficient legal review (and maintains sufficient written documentation of the legal review) to conclude with a well-founded basis that the arrangements, in the event of a legal challenge, would be found to be legal, valid, binding and enforceable under the law of the relevant jurisdictions. The agencies estimate that respondents would take on average 2 hours to reprogram and update systems with the requirements outlined in this section. In addition, the agencies estimate that, on a continuing basis, respondents would take on average 2 hours annually to maintain their internal systems.

Section _.37 addresses requirements for collateralized transactions. Section _.37(c)(4)(i)(E) would require that a bank have policies and procedures describing how it determines the period of significant financial stress used to calculate its own internal estimates for haircuts and be able to provide empirical support for the period used. The agencies estimate that respondents would take on average 80 hours (two business weeks) to reprogram and update systems with the requirements outlined in this section. In addition, the agencies estimate that, on a continuing basis, respondents would take on average 16 hours annually to maintain their internal systems.

Section _.41 addresses operational requirements for securitization exposures. Section _.41(b)(3) would allow for synthetic securitizations a bank's recognition, for risk-based capital purposes, of a credit risk mitigant to hedge underlying exposures if certain conditions are met, including the bank's having obtained a well-reasoned opinion from legal counsel that confirms the enforceability of the credit risk mitigant in all relevant jurisdictions. Section _.41(c)(2)(i) would require that a bank support a demonstration of its comprehensive understanding of a securitization exposure by conducting and documenting an analysis of the risk characteristics of each securitization exposure prior to its acquisition, taking into account a number of specified considerations. The agencies estimate that respondents would take on average 40 hours (one business week) to reprogram and update systems with the requirements outlined in this section. In addition, the agencies estimate that, on a continuing basis, respondents would take on average 2 hours annually to maintain their internal systems.

Disclosures

Section _.42 addresses risk-weighted assets for securitization exposures. Section _.42(e)(2) would require that a bank publicly disclose that is has provided implicit support to the securitization and the risk-based capital impact to the bank of providing such implicit support.

Section _.62 sets forth disclosure requirements related to a bank's capital requirements. Section _.62(a) specifies a quarterly frequency for the disclosure of information in the applicable tables set out in section 63 and, if a significant change occurs, such that the most recent reported amounts are no longer reflective of the bank's capital adequacy and risk profile, section _.62(a) also would require the bank to disclose as soon as practicable thereafter, a brief discussion of the change and its likely impact. Section 62(a) would allow for annual disclosure of qualitative information that typically does not change each quarter, provided that any significant changes are disclosed in the interim. Section _.62(b) would require that a bank have a formal disclosure policy approved by the board of directors that addresses its approach for determining the disclosures it makes. The policy would be required to address the associated internal controls and disclosure controls and procedures. Section 62(c) would require a bank with total consolidated assets of $50 billion or more that is not an advanced approaches bank, if it concludes that specific commercial or financial information required to be disclosed under section _.62 would be exempt from disclosure by the agency under the Freedom of Information Act (5 U.S.C. 552), to disclose more general information about the subject matter of the requirement and the reason the specific items of information have not been disclosed.

Section _.63 sets forth disclosure requirements for banks with total consolidated assets of $50 billion or more that are not advanced approaches banks. Section _.63(a) would require a bank to make the disclosures in Tables 14.1 through 14.10 and in section _.63(b) for each of the last three years beginning on the effective date of the rule. Section _.63(b) would require quarterly disclosure of a bank's common equity tier 1 capital, additional tier 1 capital, tier 2 capital, tier 1 and total capital ratios, including the regulatory capital elements and all the regulatory adjustments and deductions needed to calculate the numerator of such ratios; total risk-weighted assets, including the different regulatory adjustments and deductions needed to calculate total risk-weighted assets; regulatory capital ratios during any transition periods, including a description of all the regulatory capital elements and all regulatory adjustments and deductions needed to calculate the numerator and denominator of each capital ratio during any transition period; and a reconciliation of regulatory capital elements as they relate to its balance sheet in any audited consolidated financial statements. Table 14.1 sets forth scope of application qualitative and quantitative disclosure requirements; Table 14.2 sets forth capital structure qualitative and quantitative disclosure requirements; Table 14.3 sets forth capital adequacy qualitative and quantitative disclosure requirements; Table 14.4 sets forth capital conservation buffer qualitative and quantitative disclosure requirements; Table 14.5 sets forth general qualitative and quantitative disclosure requirements for credit risk; Table 14.6 sets forth general qualitative and quantitative disclosure requirements for counterparty credit risk-related exposures; Table 14.7 sets forth qualitative and quantitative disclosure requirements for credit risk mitigation; Table 14.8 sets forth qualitative and quantitative disclosure requirements for securitizations; Table 14.9 sets forth qualitative and quantitative disclosure requirements for equities not subject to Subpart F of the rule; and Table 14.10 sets forth qualitative and quantitative disclosure requirements for interest rate risk for non-trading activities.

The agencies estimate that respondents would take on average 226.25 hours to reprogram and update systems with the requirements outlined in these sections. In addition, the agencies estimate that, on a continuing basis, respondents would take on average 131.25 hours annually to maintain their internal systems.

VIII. Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The agencies invited comment on whether the proposed rule was written plainly and clearly or whether there were ways the agencies could make the rule easier to understand. The agencies received no comments on these matters and believe that the final rule is written plainly and clearly in conjunction with the agencies' risk-based capital rules.

IX. OCC Unfunded Mandates Reform Act of 1995 Determination

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532 *et seq.*) requires that an agency prepare a written 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 annually for inflation) in any one year. If a written statement is required, the UMRA (2 U.S.C. 1535) also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule and from those alternatives, either select the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule, or provide a statement with the rule explaining why such an option was not chosen.

Under this NPR, the OCC is proposing changes to their minimum capital requirements that address the calculation of risk-weighted assets. The proposed rule would:

1. Change denominator of the risk-based capital ratios by revising the methodologies for calculating risk weights;
2. Revise the treatment of counterparty credit risk;
3. Replace references to credit ratings with alternative measures of creditworthiness;
4. Provide more comprehensive recognition of collateral and guarantees;
5. Provide a more favorable capital treatment for transactions cleared through qualifying central counterparties; and
6. Introduce disclosure requirements for banking organizations with assets of $50 billion or more.

To estimate the impact of this NPR on national banks and federal savings associations, the OCC estimated the amount of capital banks will need to raise to meet the new minimum standards relative to the amount of capital they currently hold, as well as the compliance costs associated with establishing the infrastructure to determine correct risk weights using the new alternative measures of creditworthiness and the compliance costs associated with new disclosure requirements. The OCC has determined that its NPR will not result in expenditures by State, local, and Tribal governments, or by the private sector, of $100 million or more (adjusted annually for inflation). Accordingly, the UMRA does not require that a written statement accompany this NPR.

Addendum 1: Summary of this NPR for Community Banking Organizations Overview

The agencies are issuing a notice of proposed rulemaking (NPR, proposal, or proposed rule) to harmonize and address shortcomings in the measurement of risk-weighted assets that became apparent during the recent financial crisis, in part by implementing in the United States changes made by the Basel Committee on Banking Supervision (BCBS) to international regulatory capital standards and by implementing aspects of the Dodd-Frank Act. Among other things, the proposed rule would:

- Revise risk weights for residential mortgages based on loan-to-value ratios and certain product and underwriting features;
- Increase capital requirements for past-due loans, high volatility commercial real estate exposures, and certain short-term loan commitments;
- Expand the recognition of collateral and guarantors in determining risk-weighted assets;
- Remove references to credit ratings; and
- Establish due diligence requirements for securitization exposures.

This addendum presents a summary of the proposal in this NPR that is most relevant for smaller, less complex banking organizations that are not subject to the market risk capital rule or the advanced approaches capital rule, and that have under $50 billion in total assets. The agencies intend for this addendum to act as a guide for these banking organizations, helping them to navigate the proposed rule and identify the changes most relevant to them. The addendum does not, however, by itself provide a complete understanding of the proposed rules and the agencies expect and encourage all institutions to review the proposed rule in its entirety.

A. Zero Percent Risk-weighted Items

The following exposures would receive a zero percent risk weight under the proposal:

- Cash;
- Certain gold bullion;
- Direct and unconditional claims on the U.S. government, its central bank, or a U.S. government agency;
- Exposures unconditionally guaranteed by the U.S. government, its central bank, or a U.S. government agency;
- Claims on certain supranational entities (such as the International Monetary Fund) and certain multilateral development banking organizations; and
- Claims on and exposures unconditionally guaranteed by sovereign entities that meet certain criteria (as discussed below).

For more information, please refer to sections 32(a) and 37(b)(3)(iii) of the proposal. For exposures to foreign governments and their central banks, see section L below.

B. 20 Percent Risk Weighted Items

The following exposures would receive a twenty percent risk weight under the proposal:

- Cash items in the process of collection;
- Exposures conditionally guaranteed by the U.S. government, its central bank, or a U.S. government agency;
- Claims on government-sponsored entities (GSEs);
- Claims on U.S. depository institutions and National Credit Union Administration (NCUA)-insured credit unions;
- General obligation claims on, and claims guaranteed by the full faith and credit of state and local governments (and any other public sector entity, as defined in the proposal) in the United States; and
- Claims on and exposures guaranteed by foreign banks and public sector entities if the sovereign of incorporation of the foreign bank or public sector entity meets certain criteria (as described below).

A conditional guarantee is one that requires the satisfaction of certain conditions, for example servicing requirements.

For more information, please refer to sections 32(a) through 32(e), and section 32(l) of the proposal. For exposures to foreign banks and public sector entities, see section L below.

C. 50 Percent Risk-weighted Exposures

The following exposures would receive a 50 percent risk weight under the proposal:

- "Statutory" multifamily mortgage loans meeting certain criteria;
- Presold residential construction loans meeting certain criteria;
- Revenue bonds issued by state and local governments in the United States; and
- Claims on and exposures guaranteed by sovereign entities, foreign banks, and foreign public sector entities that meet certain criteria (as described below).

The criteria for multifamily loans and presold residential construction loans are generally the same as in the existing general risk-based capital rules. These criteria are required under federal law.[91] Consistent with the general risk-based capital rules and requirements of the statute, the proposal would assign a 100 percent risk weight to pre-sold construction loans where the contract is cancelled.

For more information, please refer to sections 32(e), 32(h), and 32(i) of the proposal. Also refer to section 2 of the proposal for relevant definitions:

—*Pre-sold construction loan.*
—*Revenue obligation.*
—*Statutory multifamily mortgage.*

[91] *See* sections 618(a)(1) or (2) and 618(b)(1) of the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991.

D. 1–4 Family Residential Mortgage Loans

Under the proposed rule, 1–4 family residential mortgages would be separated into two risk categories (''category 1 residential mortgage exposures'' and ''category 2 residential mortgage exposures'') based on certain product and underwriting characteristics. The proposed definition of category 1 residential mortgage exposures would generally include traditional, first-lien, prudently underwritten mortgage loans. The proposed definition of category 2 residential mortgage exposures would generally include junior-liens and non-traditional mortgage products.

The proposal would not recognize private mortgage insurance (PMI) for purposes of calculating the loan to value (LTV) ratio. Therefore, the LTV levels in the table below represent only the borrower's equity in the mortgaged property.

The table below shows the proposed risk weights for 1–4 family residential mortgage loans, based on the LTV ratio and risk category of the exposure:

LTV ratio (in percent)	Risk weight for category 1 residential mortgage exposures (percent)	Risk weight for category 2 residential mortgage exposures (percent)
Less than or equal to 60	35	100
Greater than 60 and less than or equal to 80	50	100
Greater than 80 and less than or equal to 90	75	150
Greater than 90	100	200

Definitions:

Category 1 residential mortgage exposure would mean a residential mortgage exposure with the following characteristics:

—The term of the mortgage loan does not exceed 30 years;
—The terms of the mortgage loan provide for regular periodic payments that do not:
○ Result in an increase of the principal balance;
○ Allow the borrower to defer repayment of principal of the residential mortgage exposure; or,
○ Result in a balloon payment;
—The standards used to underwrite the residential mortgage loan:
○ Took into account all of the borrower's obligations, including for mortgage obligations, principal, interest, taxes, insurance, and assessments; and
○ Resulted in a conclusion that the borrower is able to repay the loan using:
■ The maximum interest rate that may apply during the first five years after the date of the closing of the residential mortgage loan; and
■ The amount of the residential mortgage loan as of the date of the closing of the transaction;
—The terms of the residential mortgage loan allow the annual rate of interest to increase no more than two percentage points in any twelve-month period and no more than six percentage points over the life of the loan;
—For a first-lien home equity line of credit (HELOC), the borrower must be qualified using the principal and interest payments based on the maximum contractual exposure under the terms of the HELOC;
—The determination of the borrower's ability to repay is based on documented, verified income;
—The residential mortgage loan is not 90 days or more past due or on non-accrual status; and
—The residential mortgage loan is not a junior-lien residential mortgage exposure.

Category 2 residential mortgage exposure would mean a residential mortgage exposure that is not a Category 1 residential mortgage exposure and is not guaranteed by the U.S. government.

LTV ratio would equal the loan amount divided by the value of the property.

Loan Amount:

—For a first-lien residential mortgage, the loan amount would be the maximum contractual principal amount of the loan. For a traditional mortgage loan where the loan balance will not increase under the terms of the mortgage, the loan amount is the current loan balance. However, for a loan whose balance may increase under the terms of the mortgage, such as pay-option adjustable loan that can negatively amortize or for a HELOC, the loan amount is the maximum contractual principal amount of the loan.
—For a junior-lien mortgage, the loan amount would be the maximum contractual principal amount of the loan plus the maximum contractual principal amounts of all more senior loans secured by the same residential property on the date of origination of the junior-lien residential mortgage.

The *value* of the property is the lesser of the acquisition cost (for a purchase transaction) or the estimate of the property's value at the origination of the loan or the time of restructuring. The banking organization must base all estimates of a property's value on an appraisal or evaluation of the property that meets the requirements of the primary federal supervisor's appraisal regulations.[92]

If a banking organization holds a first mortgage and junior-lien mortgage on the same residential property and there is no intervening lien, the proposal treats the combined exposure as a single first-lien mortgage exposure.

If a banking organization holds two or more mortgage loans on the same residential property, and one of the loans is category 2, then the banking organization would be required to treat all of the loans on the property as category 2.

Additional Notes:

—1–4 family mortgage loans sold with recourse are converted to an on-balance sheet credit equivalent amount using a 100 percent conversion factor. There is no grace period, such as the 120-day exception under the current general risk-based capital rules.
—Restructured and modified mortgages would be assigned risk weights based on their LTVs and classification as category 1 or category 2 residential mortgage exposures based on the modified contractual terms. If the LTV is not updated at the time of modification or restructuring, a category 1 residential mortgage would receive a risk weight of 100 percent and a category 2 residential mortgage would receive a risk weight of 200 percent.
—Similar to the current capital rules, loans modified or restructured under the Treasury's Home Affordable Mortgage Program (HAMP) would not be considered modified or restructured for the purposes of the proposal.

For more information, please refer to section 32(g) of the proposal. Also refer to section 2 for relevant definitions:

—*Category 1 residential mortgage exposure*
—*Category 2 residential mortgage exposure*
—*First lien residential mortgage exposure*
—*Junior-lien residential mortgage*
—*Residential mortgage exposure*

E. Past Due Exposures

The proposal would assign a 150 percent risk weight to loans and other exposures that are 90 days or more past due. This applies to all exposure categories *except for* the following:

—1–4 family residential exposures (1–4 family loans over 90 days past due and are in Category 2 and would be risk weighted as described in section D).
—A sovereign exposure where the sovereign has experienced a sovereign default.

For more information, please refer to section 32(k) of the proposal.

F. High-Volatility Commercial Real Estate Loans (HVCRE)

The proposal would assign a 150 percent risk weight to HVCRE exposures. The

[92] The appraisal or evaluation must satisfy the requirements of 12 CFR part 34, subpart C, 12 CFR part 164 (OCC); 12 CFR part 208, subpart E (Board); 12 CFR part 323, 12 CFR 390.442 (FDIC).

proposal defines an HVCRE exposure as a credit facility that finances or has financed the acquisition, development, or construction (ADC) of real property, *unless* the facility finances:

—One- to four-family residential properties; or

—Commercial real estate projects in which:

○ The LTV ratio is less than or equal to the applicable maximum supervisory LTV ratio;

○ The borrower has contributed capital to the project in the form of cash or unencumbered readily marketable assets (or has paid development expenses out-of-pocket) of at least 15 percent of the real estate's appraised ''as completed'' value; and

○ The borrower contributed the amount of capital required by this definition before the banking organization advances funds under the credit facility, and the capital contributed by the borrower, or internally generated by the project, is contractually required to remain in the project throughout the life of the project. The life of a project concludes only when the credit facility is converted to permanent financing or is sold or paid in full. Permanent financing may be provided by the banking organization that provided the ADC facility as long as the permanent financing conforms with the banking organization's underwriting criteria for long-term mortgage loans.

For more information please refer to section 32 of the proposal. Also refer to section 2 for relevant definitions:

—High-volatility commercial real estate exposure (HVCRE)

G. Commercial Loans/Corporate Exposures

The proposal would assign a 100 percent risk weight to all corporate exposures. The definition of a corporate exposure would exclude exposures that are specifically covered elsewhere in the proposal, such as HVCRE, pre-sold residential construction loans, and statutory multifamily mortgages.

For more information please refer to section 32(f) of the proposal, and section 33 for off-balance sheet exposures.

H. Consumer Loans and Credit Cards

Under the proposed rule, consumer loans and credit cards would continue to receive a 100 percent risk weight. The proposal does not specifically list these assets, but they fall into the ''other assets'' category that would receive a 100 percent risk weight.

For more information, please refer to section 32(l) of the proposal.

I. Basel III Risk Weight Items

As described in the Basel III NPR, the amounts of the threshold deduction items (mortgage servicing assets, certain deferred tax assets, and investments in the common equity of financial institutions) that are not deducted would be assigned a risk weight of 250 percent. In addition, certain high-risk exposures such as credit-enhancing interest-only (CEIO) strips would receive 1,250 percent risk weight.

J. Other Assets and Exposures

Where the proposal does not assign a specific risk weight to an asset or exposure type, the applicable risk weight would be 100 percent. For example, premises, fixed assets, and other real estate owned receive a risk weight of 100 percent. Section 32(m) of the proposal for bank holding companies and savings and loan holding companies provides specific risk weights for certain insurance-related assets.

For more information, please refer to section 32(l) of the proposal.

K. Conversion Factors for Off-balance Sheet Items

Similar to the current rules, under the proposal, a banking organization would be required to calculate the exposure amount of an off-balance sheet exposure using the credit conversion factors (CCFs) below. The proposal increases the CCR for commitments with an original maturity of one year or less from zero percent to 20 percent.

—Zero percent CCF. A banking organization would apply a zero percent CCF to the unused portion of commitments that are unconditionally cancelable by the banking organization.

—20 percent CCF. A banking organization would apply a 20 percent CCF to:

○ Commitments with an original maturity of one year or less that are not unconditionally cancelable by the banking organization.

○ Self-liquidating, trade-related contingent items that arise from the movement of goods, with an original maturity of one year or less.

—50 percent CCF. A banking organization would apply a 50 percent CCF to:

○ Commitments with an original maturity of more than one year that are not unconditionally cancelable by the banking organization.

○ Transaction-related contingent items, including performance bonds, bid bonds, warranties, and performance standby letters of credit.

—100 percent CCF. A banking organization would apply a 100 percent CCF to the following off-balance-sheet items and other similar transactions:

○ Guarantees;

○ Repurchase agreements (the off-balance sheet component of which equals the sum of the current market values of all positions the banking organization has sold subject to repurchase);

○ Off-balance sheet securities lending transactions (the off-balance sheet component of which equals the sum of the current market values of all positions the banking organization has lent under the transaction);

○ Off-balance sheet securities borrowing transactions (the off-balance sheet component of which equals the sum of the current market values of all non-cash positions the banking organization has posted as collateral under the transaction);

○ Financial standby letters of credit; and

○ Forward agreements.

For more information please refer to section 33 of the proposal. Also refer to section 2 for the definition of unconditionally cancelable.

L. Over-the-Counter (OTC) Derivative Contracts

The proposal provides a method for determining the risk-based capital requirement for a derivative contract that is similar to the general risk-based capital rules. Under the proposed rule, the banking organization would determine the exposure amount and then assign a risk weight based on the counterparty or collateral. The exposure amount is the sum of current exposures plus potential future credit exposures (PFEs). In contrast to the general risk-based capital rules, which place a 50 percent risk weight cap on derivatives, the proposal does not include a risk weight cap and introduces specific credit conversion factors for credit derivatives.

The current credit exposure is the greater of zero or the mark-to-market value of the derivative contract.

The PFE is generally the notional amount of the derivative contract multiplied by a credit conversion factor for the type of derivative contract. The table below shows the credit conversion factors for derivative contracts:

CONVERSION FACTOR MATRIX FOR DERIVATIVE CONTRACTS [1]

Remaining maturity [2]	Interest rate (percent)	Foreign exchange rate and gold (percent)	Credit (investment-grade [3] reference asset) [4] (percent)	Credit (non-investment-grade reference asset) (percent)	Equity (percent)	Precious metals (except gold) (percent)	Other (percent)
One year or less	0.0	1.0	5.0	10.0	6.0	7.0	10.0
Greater than one year and less than or equal to five years	0.5	5.0	5.0	10.0	8.0	7.0	12.0

CONVERSION FACTOR MATRIX FOR DERIVATIVE CONTRACTS [1]—Continued

Remaining maturity [2]	Interest rate (percent)	Foreign exchange rate and gold (percent)	Credit (investment-grade [3] reference asset) [4] (percent)	Credit (non-investment-grade reference asset) (percent)	Equity (percent)	Precious metals (except gold) (percent)	Other (percent)
Greater than five years	1.5	7.5	5.0	10.0	10.0	8.0	15.0

[1] For a derivative contract with multiple exchanges of principal, the conversion factor is multiplied by the number of remaining payments in the derivative contract.

[2] For an OTC derivative contract that is structured such that on specified dates any outstanding exposure is settled and the terms are reset so that the market value of the contract is zero, the remaining maturity equals the time until the next reset date. For an interest rate derivative contract with a remaining maturity of greater than one year that meets these criteria, the minimum conversion factor is 0.005.

[3] As proposed, ''investment grade'' would mean that the entity to which the banking organization is exposed through a loan or security, or the reference entity with respect to a credit derivative, has adequate capacity to meet financial commitments for the projected life of the asset or exposure. Such an entity or reference entity has adequate capacity to meet financial commitments if the risk of its default is low and the full and timely repayment of principal and interest is expected.

[4] A [BANK] must use the column labeled ''Credit (investment-grade reference asset)'' for a credit derivative whose reference asset is an outstanding unsecured long-term debt security without credit enhancement that is investment grade. A [BANK] must use the column labeled ''Credit (non-investment-grade reference asset)'' for all other credit derivatives.

For more information please refer to section 34 of the proposal. Also refer to section 2 for relevant definitions:

—*Effective notional amount*
—*Eligible credit derivative*
—*Eligible derivative contract*
—*Exposure amount*
—*Interest rate derivative contract*

M. Securitization Exposures

Section 42 of the proposal introduces due diligence requirements for banking organizations that own, originate or purchase securitization exposures and introduces a new definition of securitization exposure. If a banking organization is unable to demonstrate to the satisfaction of its primary federal supervisor a comprehensive understanding of the features of a securitization exposure that would materially affect the performance of the exposure, the banking organization would be required to assign the securitization exposure a risk weight of 1,250 percent. The banking organization's analysis would be required to be commensurate with the complexity of the securitization exposure and the materiality of the exposure in relation to capital.

Note that mortgage-backed pass-through securities (for example, those guaranteed by Federal Home Loan Mortgage Corporation (FHLMC) or Federal National Mortgage Association (FNMA) do not meet the proposed definition of a securitization exposure because they do not involve a tranching of credit risk. Rather, only those mortgage-backed securities that involve tranching of credit risk would be securitization exposures. For securitization exposures guaranteed by the U.S. Government or GSEs, there are no changes relative to the existing treatment:

—The Government National Mortgage Association (Ginnie Mae) securities receive a zero percent risk weight to the extent they are unconditionally guaranteed.
—The Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) guaranteed securities receive a 20 percent risk weight.
—Fannie Mae and Freddie Mac non-credit enhancing interest-only (IO) securities receive a 100 percent risk weight.

The risk-based capital requirements for securitizations under the proposed rule would be as follows:

—A banking organization would deduct any after-tax gain-on-sale of a securitization. (This requirement would usually pertain to banking organizations that are securitizers rather than purchasers of securitization exposures);
—A banking organization would assign a 1,250 percent risk weight to a CEIO.
—A banking organization would assign a 100 percent risk weight to non-credit enhancing IO mortgage-backed securities.

For privately-issued mortgage securities and all other securitization exposures, a banking organization would be able choose among the following approaches, provided that the banking organization consistently applies such approach to all securitization exposures: [93]

—A banking organization may use the existing gross-up approach to risk weight all of its securitizations. Under the existing gross-up approach, senior securitization tranches are assigned the risk weight associated with the underlying exposures. A banking organization must hold capital for the senior tranche based on the risk weight of the underlying exposures. For subordinate securitization tranches, a banking organization must hold capital for the subordinate tranche, as well as all more senior tranches for which the subordinate tranche provides credit support.
—A banking organization may determine the risk weight for the securitization exposure using the simplified supervisory formula approach (SSFA) described in section 43 of the proposal. The SSFA formula would require a banking organization to apply a supervisory formula that requires various data inputs including the risk weight applicable to the underlying exposures; the attachment and detachment points of the securitization tranche, which is the relative position of the securitization position in the structure (subordination); and the current percentage of the underlying exposures that are 90 days or more past due, in default, or in foreclosure. Banking organizations considering the SSFA approach should carefully read and consider section 43 of the proposal.

Alternatively, a banking organization may apply a 1,250 percent risk weight to any of its securitization exposures.

For more information, please refer to sections 42–45 of the proposal. Also refer to section 2 for the following definitions:

—*Credit-enhancing interest-only strip*
—*Gain-on-sale*
—*Resecuritization*
—*Resecuritization exposure*
—*Securitization exposure*
—*Securitization special purpose entity (securitization SPE)*
—*Synthetic securitization*
—*Traditional securitization*
—*Underlying exposure*

N. Equity Exposures

Under section 52 of the proposal, a banking organization would apply a simple risk-weight approach (SRWA) to determine the risk weight for equity exposures that are not exposures to an investment fund. The following table indicates the risk weights that would apply to equity exposures under the SRWA:

[93] The ratings-based approach for externally-rated positions would no longer be available.

Risk weight (in percent)	Equity exposure
0	An equity exposure to a sovereign entity, the Bank for International Settlements, the European Central Bank, the European Commission, the International Monetary Fund, a MDB, and any other entity whose credit exposures receive a zero percent risk weight under section 32 of this proposed rule.
20	An equity exposure to a public sector entity, Federal Home Loan Bank or the Federal Agricultural Mortgage Corporation (Farmer Mac).
100	• Community development equity exposures.[94] • The effective portion of a hedge pair. • Non-significant equity exposures to the extent that the aggregate adjusted carrying value of the exposures does not exceed 10 percent of tier 1 capital plus tier 2 capital.
250	A significant investment in the capital of an unconsolidated financial institution that is not deducted under section 22.
300	A publicly-traded equity exposure (other than an equity exposure that receives a 600 percent risk weight and including the ineffective portion of a hedge pair).
400	An equity exposure that is not publicly-traded (other than an equity exposure that receives a 600 percent risk weight).
600	An equity exposure to a hedge fund or other investment firm that has greater than immaterial leverage.

For more information, please refer to sections 51 and 52 of the proposal, and any related definitions in section 2:

—Equity exposure
—Equity derivative contract

O. Equity Exposures to Investment Funds

The proposals described in this section would apply to equity exposures to investment funds such as mutual funds, but not to hedge funds or other leveraged investment funds (refer to section above). For exposures to investment funds other than community development exposures, a banking organization must use one of three risk-weighting approaches described below:

1. *Full look-through approach:*

For this two-step approach, a banking organization would be required to obtain information regarding the asset pool underlying the investment fund as of the date of the calculation, as well as the banking organization's proportional share of ownership in the fund. For the first step the banking organization would assign risk weights to the assets of the entire investment fund and calculates the sum of those risk-weighted assets. For the second step, the banking organization would multiply the sum of the fund's risk-weighted assets by the banking organization's proportional ownership in the fund.

2. *Simple modified look-through approach:*

Similar to the current capital rules, under this approach a banking organization would multiply the adjusted carrying value of its investment in the fund by the highest risk weight that applies to any exposure the fund is permitted to hold as described in the prospectus or fund documents.

3. *Alternative modified look-through approach:*

Similar to the current capital rules, under this approach a banking organization would assign the adjusted carrying value of an equity exposure to an investment fund on a pro rata basis to different risk-weight categories based on the investment limits described in the fund's prospectus. The banking organization's risk-weighted asset amount is the sum of each portion of the adjusted carrying value assigned to an exposure type multiplied by the applicable risk weight under section 32 of the proposal. For purposes of the calculation the banking organization must assume the fund is invested in assets with the highest risk weight permitted by its prospectus and to the maximum amounts permitted.

For community development exposures, a banking organization's risk-weighted asset amount is equal to its adjusted carrying value for the fund.

For more information please refer to section 53 of the proposal. Also refer to section 2 for relevant definitions:

—Adjusted carrying value
—Investment fund

P. Treatment of Guarantees

The proposal would allow a banking organization to substitute the risk weight of an eligible guarantor for the risk weight otherwise applicable to the guaranteed exposure. This treatment would apply only to *eligible guarantees* and *eligible credit derivatives,* and would provide certain adjustments for maturity mismatches, currency mismatches, and situations where restructuring is not treated as a credit event.

Under the proposal, eligible guarantors would include sovereign entities, certain supranational entities such as the International Monetary Fund, Federal Home Loan Banks, Farmer Mac, a multilateral development bank, a depository institution, a bank holding company, a savings and loan holding company, a foreign bank, or an entity that has investment-grade debt, whose creditworthiness is not positively correlated with the credit risk of the exposures for which it provides guarantees. Eligible guarantors *would not* include monoline insurers, re-insurers, or special purpose entities.

To be an *eligible guarantee,* the guarantee would be required to be from an *eligible guarantor* and must meet the requirements of the proposal, including that the guarantee must:

—Be written;
—Be either:
  ○ Unconditional, or
  ○ A contingent obligation of the U.S. government or its agencies, the enforceability of which to the beneficiary is dependent upon some affirmative action on the part of the beneficiary of the guarantee or a third party (for example, servicing requirements);
—Cover all or a pro rata portion of all contractual payments of the obligor on the reference exposure;
—Give the beneficiary a direct claim against the protection provider; and
—And meet other requirements of the rule.

For more information please refer to section 36 of the proposal. Also refer to section 2 for relevant definitions:

—Eligible guarantee
—Eligible guarantor

Q. Treatment of Collateralized Transactions

The proposal allows banking organizations to recognize the risk mitigating benefits of financial collateral in risk-weighted assets, and defines financial collateral to include:

—Cash on deposit at the bank or third-party custodian;
—Gold;
—Investment grade long-term securities (excluding resecuritizations);
—Investment grade short-term instruments (excluding resecuritizations);
—Publicly-traded equity securities;
—Publicly-traded convertible bonds; and,
—Money market mutual fund shares; and other mutual fund shares if a price is quoted daily.

[94] The proposed rule generally defines Community Development Exposures as exposures that would qualify as community development investments under 12 U.S.C. 24(Eleventh), excluding equity exposures to an unconsolidated small business investment company and equity exposures held through a consolidated small business investment company described in section 302 of the Small Business Investment Act of 1958 (15 U.S.C. 682). For savings associations, community development investments would be defined to mean equity investments that are designed primarily to promote community welfare, including the welfare of low- and moderate-income communities or families, such as by providing services or jobs, and excluding equity exposures to an unconsolidated small business investment company and equity exposures held through a consolidated small business investment company described in section 302 of the Small Business Investment Act of 1958 (15 U.S.C. 682).

In all cases the banking organization would be required to have a perfected, first priority interest in the financial collateral.

1. *Simple approach:* A banking organization may apply a risk weight to the portion of an exposure that is secured by the market value of financial collateral by using the risk weight of the collateral—subject to a risk weight floor of 20 percent. To apply the simple approach, the collateral must be subject to a collateral agreement for at least the life of the exposure; the collateral must be revalued at least every 6 months; and the collateral (other than gold) must be in the same currency. There would be a few limited exceptions to the 20 percent risk weight floor:

—A banking organization may assign a zero percent risk weight to the collateralized portion of an exposure where:
  ○ The financial collateral is cash on deposit; or
  ○ The financial collateral is an exposure to a sovereign that qualifies for a zero percent risk weight (including the United States) and the banking organization has discounted the market value of the collateral by 20 percent.

—A banking organization would be permitted to assign a zero percent risk weight to an exposure to an OTC derivative contract that is marked-to-market on a daily basis and subject to a daily margin maintenance requirement, to the extent the contract is collateralized by cash on deposit.

—A banking organization would be permitted to assign a 10 percent risk weight to an exposure to an OTC derivative contract that is marked-to-market on a daily basis and subject to a daily margin maintenance requirement, to the extent the contract is collateralized by U.S. government securities or an exposure to a sovereign that qualifies for a zero percent risk weight under the proposal.

2. *Collateral Haircut Approach:* For an eligible margin loan, a repo-style transaction, a collateralized derivative contract, or a single-product netting set of such transactions, a banking organization *may* instead decide to use the *collateral haircut approach* to recognize the credit risk mitigation benefits of eligible collateral by reducing the amount of the exposure to be risk weighted rather than by substituting the risk weight of the collateral. Banking organizations considering the collateral haircut approach should carefully read section 37 of the proposal. The collateral haircut approach takes into account the value of the banking organization's exposure, the value of the collateral, and haircuts to account for potential volatility in position values and foreign exchange rates. The haircuts may be determined using one of two methodologies.

A banking organization may use standard haircuts based on the table below and a standard foreign exchange rate haircut of 8 percent.

STANDARD SUPERVISORY MARKET PRICE VOLATILITY HAIRCUTS[1]

Residual maturity	Haircut (in percents) assigned based on:						Investment grade securitization exposures (in percent)
	Sovereign issuers risk weight under § ____.32[2]			Non-sovereign issuers risk weight under § ____.32			
	Zero %	20% or 50%	100%	20%	50%	100%	
Less than or equal to 1 year	0.5	1.0	15.0	1.0	2.0	25.0	4.0
Greater than 1 year and less than or equal to 5 years	2.0	3.0	15.0	4.0	6.0	25.0	12.0
Greater than 5 years	4.0	6.0	15.0	8.0	12.0	25.0	24.0
Main index equities (including convertible bonds) and gold	15.0						
Other publicly-traded equities (including convertible bonds)	25.0						
Mutual funds	Highest haircut applicable to any security in which the fund can invest.						
Cash collateral held	Zero.						

[1] The market price volatility haircuts in Table 2 are based on a 10 business-day holding period.
[2] Includes a foreign PSE that receives a zero percent risk weight.

Alternatively, a banking organization may, with supervisory approval, use own estimates of collateral haircuts when calculating the appropriate capital charge for an eligible margin loan, a repo-style transaction, or a collateralized derivative contract. Section 37 of the proposal provides the requirements for calculating own estimates, including the requirement that such estimates be determined based on a period of market stress appropriate for the collateral under this approach.

For more information, please refer to section 37 of the proposal. Also refer to section 2 for relevant definitions:

—*Financial collateral*
—*Repo-style transaction*

R. Treatment of Cleared Transactions

The proposal introduces a specific capital treatment for exposures to central counterparties (CCPs), including certain transactions conducted through clearing members by banking organizations that are not themselves clearing members of a CCP. Section 35 of the proposal describes the capital treatment of cleared transactions and of default fund exposures to CCPs, including more favorable capital treatment for cleared transactions through CCPs that meet certain criteria.

S. Unsettled Transactions

The proposal provides for a separate risk-based capital requirement for transactions involving securities, foreign exchange instruments, and commodities that have a risk of delayed settlement or delivery. The proposed capital requirement would not, however, apply to certain types of transactions, including cleared transactions that are marked-to-market daily and subject to daily receipt and payment of variation margin. The proposal contains separate treatments for delivery-versus-payment (DvP) and payment-versus-payment (PvP) transactions with a normal settlement period, and non-DvP/non-PvP transactions with a normal settlement period.

T. Foreign Exposures

Under the proposal a banking organization would risk weight an exposure to a foreign government, foreign public sector entity (PSE), and a foreign bank based on the Country Risk Classification (CRC) that is applicable to the foreign government, or the home country of the foreign PSE or foreign bank.

Country risk classification (CRC) for a sovereign means the CRC published by the Organization for Economic Co-operation and Development.

The risk weights for foreign sovereigns, foreign banks, and foreign PSEs are shown in the tables below:

RISK WEIGHTS FOR FOREIGN SOVEREIGN EXPOSURES

	Risk weight (in percent)
Sovereign CRC:	
0–1	0
2	20
3	50
4–6	100
7	150
No CRC	100
Sovereign Default	150

—A sovereign exposure would be assigned a 150 percent risk weight immediately upon determining that an event of sovereign default has occurred, or if an event of sovereign default has occurred during the previous five years.

RISK WEIGHTS FOR EXPOSURES TO FOREIGN BANKS

	Risk weight (in percent)
Sovereign CRC:	
0–1	20
2	50
3	100
4–7	150
No CRC	100
Sovereign Default	150

RISK WEIGHTS FOR FOREIGN PSE GENERAL OBLIGATIONS

	Risk weight (in percent)
Sovereign CRC:	
0–1	20
2	50
3	100
4–7	150
No CRC	100
Sovereign Default	150

RISK WEIGHTS FOR FOREIGN PSE REVENUE OBLIGATIONS

	Risk weight (in percent)
Sovereign CRC:	
0–1	50
2–3	100
4–7	150
No CRC	100
Sovereign Default	150

For more information, please refer to section 32(a), 32(d), and 32(e) of the proposal. Also refer to section 2 for relevant definitions:

—Home country
—Public sector entity (PSE)
—Sovereign
—Sovereign exposure

The following is a table summarizing the proposed changes to the general risk-based capital rules for risk weighting assets.

COMPARISON OF CURRENT RULES VS. PROPOSAL

Category	Current risk weight (in general)	Proposal	Comments
Risk Weights for On-Balance Sheet Exposures Under Current and Proposed Rules			
Cash	0%	0%	
Direct and unconditional claims on the U.S. Government, its agencies, and the Federal Reserve.	0%	0%	
Claims on certain supranational entities and multilateral development banks.	20%	0%	Claims on supranational entities include, for example, claims on the International Monetary Fund.
Cash items in the process of collection.	20%	20%	
Conditional claims on the U.S. government.	20%	20%	A conditional claim is one that requires the satisfaction of certain conditions, for example, servicing requirements.
Claims on government-sponsored entities (GSEs).	20%	20% on exposures other than equity exposures.	
	100% on GSE preferred stock (20% for national banks).		
Claims on U.S. depository institutions and National Credit Union Administration (NCUA)-insured credit unions.	20% 100% risk weight for an instrument included in the depository institution's regulatory capital	20% 100% risk weight for an instrument included in the depository institution's regulatory capital (unless that instrument is an equity exposure or is deducted—see Addendum 1)	Instruments included in the capital of the depository institution may be deducted (refer to Addendum 1 on the definition of capital) or treated under the equities section below.
Claims on U.S. public sector entities (PSEs).	20% for general obligations	20% for general obligations.	
	50% for revenue obligations	50% for revenue obligations.	
Industrial development bonds.	100%	100%.	
Claims on qualifying securities firms.	20% in general	100% See commercial loans and corporate exposures to financial companies section below.	Instruments included in the capital of the securities firm may be deducted (refer to Addendum 1 on the definition of capital) or treated under the equities section below.
1–4 family loans	50% if first lien, prudently underwritten, owner occupied or rented, current or <90 days past due; 100% otherwise.	*Category 1:* 35%, 50%, 75%,100% depending on LTV.	*Category 1* is defined to include first-lien mortgage products that meet certain underwriting characteristics.
		Category 2: 100%, 150%, 200% depending on LTV.	*Category 2* is defined to include junior-liens and mortgages that do not meet the category 1 criteria.

COMPARISON OF CURRENT RULES VS. PROPOSAL—Continued

Category	Current risk weight (in general)	Proposal	Comments
1–4 family loans modified under Home Affordable Mortgage Program (HAMP).	50% and 100% The banking organization must use the same risk weight assigned to the loan prior to the modification so long as the loan continues to meet other applicable prudential criteria.	35% to 200% The banking organization must determine whether the modified terms make the loan a Category 1 or a Category 2 mortgage.	Under the proposal (as under current rules) HAMP loans are not treated as restructured loans.
Loans to builders secured by 1–4 family properties presold under firm contracts.	50% if the loan meets all criteria in the regulation; 100% if the contract is cancelled; 100% for loans not meeting the criteria.	50% if the loan meets all criteria in the regulation; 100% if the contract is cancelled; 100% for loans not meeting the criteria.	
Loans on multifamily properties.	50% if the loan meets all the criteria in the regulation; 100% otherwise.	50% if the loan meets all the criteria in the regulation; 100% otherwise.	
Corporate exposures	100%	100% However, if the exposure is an instrument included in the capital of the financial company, deduction treatment may apply (see Appendix 1).	
High-volatility commercial real estate (HVCRE) loans.	100%	150%	The proposed treatment would apply to certain facilities that finance the acquisition, development or construction of real property other than 1–4 family residential property.
Consumer loans	100%	100%	This is not a specific category under the proposal. Therefore the default risk weight of 100% applies.
Past due exposures	Generally the risk weight does not change when the loan is past due; However, 1–4 family loans that are past due 90 days or more are 100% risk weight.	150% for the portion that is not guaranteed or secured (does not apply to sovereign exposures or 1–4 family residential mortgage exposures).	
Assets not assigned to a risk weight category, including fixed assets, premises, and other real estate owned.	100%	100%	
Claims on foreign governments and their central banks.	0% for direct and unconditional claims on Organization for Economic Co-operation and Development (OECD) governments; 20% for conditional claims on OECD governments; 100% for claims on non-OECD governments that entail some degree of transfer risk.	Risk weight depends on Country Risk Classification (CRC) applicable to the sovereign and ranges between 0% and 150%; 100% for sovereigns that do not have a CRC; 150% for a sovereign that has defaulted within the previous 5 years.	Under the current and proposed rules, a banking organization may apply a lower risk weight to an exposure denominated in the sovereign's own currency if the banking organization has at least an equivalent amount of liabilities in that currency.
Claims on foreign banks	20% for claims on banks in OECD countries; 20% for short-term claims on banks in non-OECD countries; 100% for long-term claims on banks in non-OECD countries.	Risk weight depends on home country's CRC rating and ranges between 20% and 50%; 100% for foreign bank whose home country does not have a CRC; 150% in the case of a sovereign default in the bank's home country; 100% for an instrument included in a bank's regulatory capital (unless that instrument is an equity exposure or is deducted (see Addendum 1)).	Under the proposed rule, instruments included in the capital of a foreign bank would be deducted (refer to Addendum 1 on the definition of capital) or treated under the equities section below.
Claims on foreign PSEs	20% for general obligations of states and political subdivisions of OECD countries; 50% for revenue obligations of states and political subdivisions of OECD countries; 100% for all obligations of states and political subdivisions of non-OECD countries.	Risk weight depends on the home country's CRC and ranges between 20% and 150% for general obligations; and between 50% and 150% for revenue obligations; 100% for exposures to a PSE in a home country that does not have a CRC; 150% for a PSE in a home country with a sovereign default.	

COMPARISON OF CURRENT RULES VS. PROPOSAL—Continued

Category	Current risk weight (in general)	Proposal	Comments
Mortgage backed security (MBS), asset backed security (ABS), and structured securities.	*Ratings Based Approach:* .... —20%: AAA&AA; —50%: A-rated —100%: BBB —200%: BB-rated [Securitizations with short-term ratings—20, 50, 100, and for unrated positions, where the banking organization determines the credit rating—100 or 200]; *Gross-up approach* the risk-weighted asset amount is calculated using the risk weight of the underlying assets amount of the position and the full amount of the assets supported by the position (that is, all of the more senior positions); Dollar for dollar capital for residual interests; Deduction for CEIO strips over concentration limit; 100% for stripped MBS (interest only (IOs) and [FULL TERM] (Pos)) that are not credit enhancing.	Deduction for the after-tax gain-on-sale of a securitization; 1,250% risk weight for a Credit-Enhancing Interest-Only Strip (CEIO); 100% for interest-only MBS that are not credit-enhancing; Banking organizations may elect to follow a gross up approach, similar to existing rules. *Simplified Supervisory Formula Approach (SSFA)*—the risk weight for a position is determined by a formula and is based on the risk weight applicable to the underlying exposures, the relative position of the securitization position in the structure (subordination), and measures of delinquency and loss on the securitized assets; 1250% otherwise.	
Unsettled transactions	Not addressed.	100%, 625%, 937.5%, and 1,250% for DvP or PvP transactions depending on the number of business days past the settlement date; 1,250% for non-DvP, non-PvP transactions more than 5 days past the settlement date. The proposed capital requirement for unsettled transactions would not apply to cleared transactions that are marked-to-market daily and subject to daily receipt and payment of variation margin.	DvP (delivery vs. payment) and PvP (payment vs. payment) are defined below.
Equity exposures	100% or incremental deduction approach for nonfinancial equity investments.	0% risk weight: equity exposures to a sovereign, certain supranational entities, or an MDB whose debt exposures are eligible for 0% risk weight; 20%: Equity exposures to a PSE, a FHLB, or Farmer Mac; 100%: Equity exposures to community development investments and small business investment companies and non-significant equity investments; 250%: Significant investments in the capital of unconsolidated financial institutions that are not deducted from capital pursuant to section 22; 300%: Most publicly-traded equity exposures; 400%: Equity exposures that are not publicly-traded; 600%: Equity exposures to certain investment funds.	MDB = multilateral development bank.

COMPARISON OF CURRENT RULES VS. PROPOSAL—Continued

Category	Current risk weight (in general)	Proposal	Comments
Equity exposures to investment funds.	There is a 20% risk weight floor on mutual fund holdings. General rule: Risk weight is the same as the highest risk weight investment the fund is permitted to hold. Option: A banking organization may assign risk weights pro rata according to the investment limits in the fund's prospectus.	*Full look-through:* Risk weight the assets of the fund (as if owned directly) *multiplied by* the banking organization's proportional ownership in the fund. *Simple modified look-through:* Multiply the banking organization's exposure by the risk weight of the highest risk weight asset in the fund. *Alternative modified look-through:* Assign risk weight on a pro rata basis based on the investment limits in the fund's prospectus. For community development exposures, risk-weighted asset amount = adjusted carrying value.	
Credit Conversion Factors Under the Current and Proposed Rules			
Conversion factors for off-balance sheet items.	0% for the unused portion of a commitment with an original maturity of one year or less, or which unconditionally cancellable at any time; 10% for unused portions of eligible Asset-Backed Commercial Paper (ABCP) liquidity facilities with an original maturity of one year or less; 20% for self-liquidating trade-related contingent items; 50% for the unused portion of a commitment with an original maturity of more than one year that are not unconditionally cancellable; 50% for transaction-related contingent items (performance bonds, bid bonds, warranties, and standby letters of credit); 100% for guarantees, repurchase agreements, securities lending and borrowing transactions, financial standby letters of credit, and forward agreements.	0% for the unused portion of a commitment that is unconditionally cancellable by the banking organization; 20% for the unused portion of a commitment with an original maturity of one year or less that is not unconditionally cancellable; 20% for self-liquidating, trade-related contingent items; 50% for the unused portion of a commitment over one year that are not unconditionally cancellable; 50% for transaction-related contingent items (performance bonds, bid bonds, warranties, and standby letters of credit); 100% for guarantees, repurchase agreements, securities lending and borrowing transactions, financial standby letters of credit, and forward agreements.	
Derivative contracts	Conversion to an on-balance sheet amount based on current exposure plus potential future exposure and a set of conversion factors. *50% risk weight cap.*	Conversion to an on-balance sheet amount based on current exposure plus potential future exposure and a set of conversion factors. *No risk weight cap.*	

COMPARISON OF CURRENT RULES VS. PROPOSAL—Continued

Category	Current risk weight (in general)	Proposal	Comments
Credit Risk Mitigation Under the Current and Proposed Rules			
Guarantees	Generally recognizes guarantees provided by central governments, GSEs, public sector entities (PSEs) in OECD countries, multilateral lending institutions, regional development banking organizations, U.S. depository institutions, foreign banks, and qualifying securities firms in OECD countries. Substitution approach that allows the banking organization to substitute the risk weight of the protection provider for the risk weight ordinarily assigned to the exposure.	Recognizes guarantees from eligible guarantors: sovereign entities, Bank for International Settlements (BIS), International Monetary Fund (IMF), European Central Bank (ECB), European Commission, Federal Home Loan Banks (FHLBs), Farmer Mac, a multilateral development bank, a depository institution, a bank holding company, a savings and loan holding company, a foreign bank, or an entity other than a special purpose entity (SPE) that has investment grade debt, whose creditworthiness is not positively correlated with the credit risk of the exposures for which it provides guarantees and is not a monoline insurer or re-insurer. Substitution treatment allows the banking organization to substitute the risk weight of the protection provider for the risk weight ordinarily assigned to the exposure. Applies only to eligible guarantees and eligible credit derivatives, and adjusts for maturity mismatches, currency mismatches, and where restructuring is not treated as a credit event.	Claims conditionally guaranteed by the U.S. government receive a risk weight of 20 percent under the standardized approach.
Collateralized transactions	Recognize only cash on deposit, securities issued or guaranteed by OECD countries, securities issued or guaranteed by the U.S. government or a U.S. government agency, and securities issued by certain multilateral development banks. Substitute risk weight of collateral for risk weight of exposure, sometimes with a 20% risk weight floor.	For financial collateral only, the proposal provides two approaches:. 1. *Simple approach:* A banking organization may apply a risk weight to the portion of an exposure that is secured by the market value of collateral by using the risk weight of the collateral—with a general risk weight floor of 20%. 2. *Collateral haircut approach* using standard supervisory haircuts or own estimates of haircuts for eligible margin loans, repo-style transactions, collateralized derivative contracts.	*Financial collateral:* cash on deposit at the banking organization (or 3rd party custodian); gold; investment grade securities (excluding resecuritizations); publicly-traded equity securities; publicly-traded convertible bonds; money market mutual fund shares; and other mutual fund shares if a price is quoted daily. In all cases the banking organization must have a perfected, 1st priority interest. For the simple approach there must be a collateral agreement for at least the life of the exposure; collateral must be revalued at least every 6 months; collateral other than gold must be in the same currency.

Addendum 2: Definitions used in the Proposal

Definitions of the terms used in this proposal can be found in Part [____] CAPITAL ADEQUACY OF [BANK]s, Subpart A-General, Text § ____.2 Definitions, of the related document entitled "*Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III, Minimum Regulatory Capital Ratios, Capital Adequacy, Transition Provisions, and Prompt Corrective Action*" immediately preceding this proposal and published elsewhere in today's **Federal Register**.

Text of Proposed Common Rule

PART CAPITAL ADEQUACY OF [BANK]s

Subpart D—Risk-Weighted Assets—Standardized Approach

Subpart D—Risk Weighted Assets—Standardized Approach

§ ____.30 Applicability.

(a) A market risk [BANK] must exclude from its calculation of risk-weighted assets under this subpart the risk-weighted asset amounts of all covered positions, as defined in subpart F of this part (except foreign exchange positions that are not trading positions, over-the-counter (OTC) derivative positions, cleared transactions, and unsettled transactions).

(b) On January 1, 2015, and thereafter, a [BANK] must calculate risk-weighted assets under subpart D of this part. On or before December 31, 2014, the [BANK] must calculate risk-weighted assets under either:

(i) The methodology described in the general risk-based capital rules under 12 CFR part 3, appendix A, 12 CFR part 167 (OCC); 12 CFR part 208, appendix A, 12 CFR part 225, appendix A (Board); 12 CFR part 325, appendix A, and 12 CFR part 390 (FDIC); or

(ii) Subpart D of this part.

(c) Notwithstanding paragraph (b) of this section, a [BANK] is subject to the transition provisions under § ____.300.

RISK-WEIGHTED ASSETS FOR GENERAL CREDIT RISK

§ ____.31 Mechanics for calculating risk-weighted assets for general credit risk.

(a) *General risk-weighting requirements.* A [BANK] must apply risk weights to its exposures as follows:

(1) A [BANK] must determine the exposure amount of each on-balance sheet exposure, each OTC derivative contract, and each off-balance sheet commitment, trade and transaction-related contingency, guarantee, repo-style transaction, financial standby letter of credit, forward agreement, or other similar transaction that is not:

(i) An unsettled transaction subject to § ____.38;

(ii) A cleared transaction subject to § ____.35;

(iii) A default fund contribution subject to § ____.35;

(iv) A securitization exposure subject to §§ ____.41 through ____.45; or

(v) An equity exposure (other than an equity OTC derivative contract) subject to §§ ____.51 through ____.53.

(2) The [BANK] must multiply each exposure amount by the risk weight appropriate to the exposure based on the exposure type or counterparty, eligible guarantor, or financial collateral to determine the risk-weighted asset amount for each exposure.

(b) Total risk-weighted assets for general credit risk equals the sum of the risk-weighted asset amounts calculated under this section.

§ ____.32 General risk weights.

(a) *Sovereign exposures.* (1) *Exposures to the U.S. government.* (i) Notwithstanding any other requirement in this subpart, a [BANK] must assign a zero percent risk weight to:

(A) An exposure to the U.S. government, its central bank, or a U.S. government agency; and

(B) The portion of an exposure that is directly and unconditionally guaranteed by the U.S. government, its central bank, or a U.S. government agency.[95]

(ii) A [BANK] must assign a 20 percent risk weight to the portion of an exposure that is conditionally guaranteed by the U.S. government, its central bank, or a U.S. government agency.

(2) *Other sovereign exposures.* A [BANK] must assign a risk weight to a sovereign exposure based on the Country Risk Classification (CRC) applicable to the sovereign in accordance with Table 1.

TABLE 1—RISK WEIGHTS FOR SOVEREIGN EXPOSURES

		Risk weight (in person)
Sovereign CRC	0–1	0
	2	20
	3	50
	4–6	100
	7	150
No CRC		100
Sovereign Default		150

(3) *Certain sovereign exposures.* Notwithstanding paragraph (a)(2) of this section, a [BANK] may assign to a sovereign exposure a risk weight that is lower than the applicable risk weight in Table 1 if:

(i) The exposure is denominated in the sovereign's currency;

(ii) The [BANK] has at least an equivalent amount of liabilities in that currency; and

(iii) The risk weight is not lower than the risk weight that the sovereign allows [BANK]s under its jurisdiction to assign to the same exposures to the sovereign.

(4) *Sovereign exposures with no CRC.* Except as provided in paragraph (a)(5) of this section, a [BANK] must assign a 100 percent risk weight to a sovereign exposure if the sovereign does not have a CRC assigned to it.

(5) *Sovereign default.* A [BANK] must assign a 150 percent risk weight to a

[95] Under this section, a [BANK] must assign a zero percent risk weight to a deposit, or the portion of a deposit, that is insured by the FDIC or National Credit Union Administration.

sovereign exposure immediately upon determining that an event of sovereign default has occurred, or if an event of sovereign default has occurred during the previous five years.

(b) *Certain supranational entities and Multilateral Development Banks (MDBs).* A [BANK] must assign a zero percent risk weight to an exposure to the Bank for International Settlements, the European Central Bank, the European Commission, the International Monetary Fund, or an MDB.

(c) *Exposures to government-sponsored entities (GSEs).* (1) A [BANK] must assign a 20 percent risk weight to an exposure to a GSE that is not an equity exposure.

(2) A [BANK] must assign a 100 percent risk weight to preferred stock issued by a GSE.

(d) *Exposures to depository institutions, foreign banks, and credit unions.* (1) *Exposures to U.S. depository institutions and credit unions.* A [BANK] must assign a 20 percent risk weight to an exposure to a depository institution or credit union that is organized under the laws of the United States or any state thereof, except as otherwise provided under paragraph (d)(3) of this section.

(2) *Exposures to foreign banks.* (i) Except as otherwise provided under paragraphs (d)(2)(ii) and (d)(3) of this section, a [BANK] must assign a risk weight to an exposure to a foreign bank using the CRC rating that corresponds to the foreign bank's home country in accordance with Table 2.

TABLE 2—RISK WEIGHTS FOR EXPOSURES TO FOREIGN BANKS

	Risk weight (in percent)
Sovereign CRC:	
0–1	20
2	50
3	100
4–7	150
No CRC	100
Sovereign Default	150

(ii) A [BANK] must assign a 100 percent risk weight to an exposure to a foreign bank whose home country does not have a CRC, with the exception of self-liquidating, trade-related contingent items that arise from the movement of goods, and that have a maturity of three months or less, which may be assigned a 20 percent risk weight.

(iii) A [BANK] must assign a 150 percent risk weight to an exposure to a foreign bank immediately upon determining that an event of sovereign default has occurred in the bank's home country, or if an event of sovereign default has occurred in the foreign bank's home country during the previous five years.

(3) A [BANK] must assign a 100 percent risk weight to an exposure to a financial institution that is includable in that financial institution's capital unless the exposure is:

(i) An equity exposure;

(ii) A significant investment in the capital of an unconsolidated financial institution in the form of common stock pursuant to § ____.22(d)(iii);

(iii) Is deducted from regulatory capital under § ____.22 of the proposal; and

(iv) Subject to a 150 percent risk weight under Table 2 of paragraph (d)(2) of this section.

(e) *Exposures to public sector entities (PSEs).* (1) *Exposures to U.S. PSEs.* (i) A [BANK] must assign a 20 percent risk weight to a general obligation exposure to a PSE that is organized under the laws of the United States or any state or political subdivision thereof.

(ii) A [BANK] must assign a 50 percent risk weight to a revenue obligation exposure to a PSE that is organized under the laws of the United States or any state or political subdivision thereof.

(2) *Exposures to foreign PSEs.* (i) Except as provided in paragraphs (e)(1) and (e)(3) of this section, a [BANK] must assign a risk weight to a general obligation exposure to a PSE based on the CRC that corresponds to the PSE's home country, as set forth in Table 3.

(ii) Except as provided in paragraphs (e)(1) and (e)(3) of this section, a [BANK] must assign a risk weight to a revenue obligation exposure to a PSE based on the CRC that corresponds to the PSE's home country, as set forth in Table 4.

(3) A [BANK] may assign a lower risk weight than would otherwise apply under Table 3 and 4 to an exposure to a foreign PSE if:

(i) The PSE's home country allows banks under its jurisdiction to assign a lower risk weight to such exposures; and

(ii) The risk weight is not lower than the risk weight that corresponds to the PSE's home country in accordance with Table 1.

TABLE 3—RISK WEIGHTS FOR NON-U.S. PSE GENERAL OBLIGATIONS

	Risk weight (in percent)
Sovereign CRC:	
0–1	20
2	50
3	100
4–7	150
No CRC	100
Sovereign Default	150

TABLE 4—RISK WEIGHTS FOR NON-U.S. PSE REVENUE OBLIGATIONS

	Risk weight (in percent)
Sovereign CRC:	
0–1	20
2–3	100
4–7	150
No CRC	100
Sovereign Default	150

(4) A [BANK] must assign a 100 percent risk weight to an exposure to a PSE whose home country does not have a CRC.

(5) A [BANK] must assign a 150 percent risk weight to a PSE exposure immediately upon determining that an event of sovereign default has occurred in a PSE's home country or if an event of sovereign default has occurred in the PSE's home country during the previous five years.

(f) *Corporate exposures.* A [BANK] must assign a 100 percent risk weight to all its corporate exposures.

(g) *Residential mortgage exposures.* (1) *General Requirement.* A [BANK] must assign to a residential mortgage exposure the applicable risk weight in Table 6, using the loan-to-value (LTV) ratio described in paragraph (g)(3) of this section.

(2) *Restructured or modified mortgages.* (i) If a residential mortgage exposure is restructured or modified, the [BANK] must classify the residential mortgage exposure as a category 1 residential mortgage exposure or category 2 residential mortgage exposure in accordance with the terms and characteristics of the exposure after the modification or restructuring.

(ii) A [BANK] may assign a risk weight lower than 100 percent to a category 1 residential mortgage exposure after the exposure has been modified or restructured only if:

(A) The residential mortgage exposure continues to meet category 1 criteria; and

(B) The [BANK] updates the LTV ratio at the time of restructuring, as provided under paragraph (g)(3) of this section.

(iii) A [BANK] may assign a risk weight lower than 200 percent to a category 2 residential mortgage exposure after the exposure has been modified or restructured only if the [BANK] updates the LTV ratio at the time of restructuring as provided under paragraphs (g)(3) of this section.

TABLE 6—RISK WEIGHTS FOR RESIDENTIAL MORTGAGE EXPOSURES

Loan-to-value ratio (in percent)	Category 1 residential mortgage exposure (in percent)	Category 2 residential mortgage exposure (in percent)
Less than or equal to 60	35	100
Greater than 60 and less than or equal to 80	50	100
Greater than 80 and less than or equal to 90	75	150
Greater than 90	100	200

(3) *LTV ratio calculation.* To determine the LTV ratio of a residential mortgage loan for the purpose of this section, a [BANK] must divide the loan amount by the value of the property, as described in this section. A [BANK] must assign a risk weight to the exposure according to its respective LTV ratio.

(i) *Loan amount for calculating the LTV ratio of a residential mortgage exposure.* (A) *First-lien residential mortgage exposure.* The loan amount of a first-lien residential mortgage exposure is the unpaid principal balance of the loan. If the first-lien residential mortgage exposure is a combination of a first and junior lien, the loan amount is the maximum contractual principal amount of the exposure.

(B) *Junior-lien residential mortgage exposure.* The loan amount of a junior-lien residential mortgage exposure is the maximum contractual principal amount of the exposure, plus the maximum contractual principal amounts of all senior exposures secured by the same residential property on the date of origination of the junior-lien residential mortgage exposure.

(ii) *Value.* (A) The value of the property is the lesser of the actual acquisition cost (for a purchase transaction) or the estimate of the property's value at the origination of the loan or at the time of restructuring or modification.

(B) A [BANK] must base all estimates of a property's value on an appraisal or evaluation of the property that satisfies 12 CFR part 34, subpart C, 12 CFR part 164 (OCC); 12 CFR part 208, subpart E (Board); 12 CFR part 323, 12 CFR 390.442 (FDIC).

(4) *Loans modified pursuant to the Home Affordable Mortgage Program.* A loan modified or restructured on a permanent or trial basis solely pursuant to the U.S. Treasury's Home Affordable Mortgage Program is not modified or restructured for purposes of this section.

(h) *Pre-sold residential construction loans.* A [BANK] must assign a 50 percent risk weight to a pre-sold construction loan unless the purchase contract is cancelled. A [BANK] must assign a 100 percent risk weight to such loan if the purchase contract is cancelled.

(i) *Statutory multifamily mortgages.* A [BANK] must assign a 50 percent risk weight to a statutory multifamily mortgage.

(j) *High-volatility commercial real estate (HVCRE) exposures.* A [BANK] must assign a 150 percent risk weight to an HVCRE exposure.

(k) *Past due exposures.* Except for a sovereign exposure or a residential mortgage exposure, if an exposure is 90 days or more past due or on nonaccrual:

(1) A [BANK] must assign a 150 percent risk weight to the portion of the exposure that is not guaranteed or that is unsecured.

(2) A [BANK] may assign a risk weight to the collateralized portion of a past due exposure based on the risk weight that applies under § ____.37 if the collateral meets the requirements of that section.

(3) A [BANK] may assign a risk weight to the guaranteed portion of a past due exposure based on the risk weight that applies under § ____.36 if the guarantee or credit derivative meets the requirements of that section.

(l) *Other assets.* (1) A [BANK] must assign a zero percent risk weight to cash owned and held in all offices of the [BANK] or in transit; to gold bullion held in the [BANK]'s own vaults or held in another depository institution's vaults on an allocated basis, to the extent the gold bullion assets are offset by gold bullion liabilities; and to exposures that arise from the settlement of cash transactions (such as equities, fixed income, spot FX and spot commodities) with a central counterparty where there is no assumption of ongoing counterparty credit risk by the central counterparty after settlement of the trade and associated default fund contributions.

(2) A [BANK] must assign a 20 percent risk weight to cash items in the process of collection.

(3) A [BANK] must assign a 100 percent risk weight to DTAs arising from temporary differences that the [BANK] could realize through net operating loss carrybacks.

(4) A [BANK] must assign a 250 percent risk weight to MSAs and DTAs arising from temporary differences that the [BANK] could not realize through net operating loss carrybacks that are not deducted from common equity tier 1 capital pursuant to § ____.22(d).

(5) A [BANK] must assign a 100 percent risk weight to all assets not specifically assigned a different risk weight under this subpart (other than exposures that are deducted from tier 1 or tier 2 capital).

(6) Notwithstanding the requirements of this section, a [BANK] may assign an asset that is not included in one of the categories provided in this section to the risk weight category applicable under the capital rules applicable to bank holding companies and savings and loan holding companies at 12 CFR part 217, provided that all of the following conditions apply:

(i) The [BANK] is not authorized to hold the asset under applicable law other than debt previously contracted or similar authority; and

(ii) The risks associated with the asset are substantially similar to the risks of assets that are otherwise assigned to a risk weight category of less than 100 percent under this subpart.

§ ____.33 Off-balance sheet exposures.

(a) *General.* (1) A [BANK] must calculate the exposure amount of an off-balance sheet exposure using the credit conversion factors (CCFs) in paragraph (b) of this section.

(2) Where a [BANK] commits to provide a commitment, the [BANK] may apply the lower of the two applicable CCFs.

(3) Where a [BANK] provides a commitment structured as a syndication or participation, the [BANK] is only

required to calculate the exposure amount for its pro rata share of the commitment.

(b) *Credit conversion factors.* (1) *Zero percent CCF.* A [BANK] must apply a zero percent CCF to the unused portion of commitments that are unconditionally cancelable by the [BANK].

(2) *20 percent CCF.* A [BANK] must apply a 20 percent CCF to:

(i) Commitments with an original maturity of one year or less that are not unconditionally cancelable by the [BANK].

(ii) Self-liquidating, trade-related contingent items that arise from the movement of goods, with an original maturity of one year or less.

(3) *50 percent CCF.* A [BANK] must apply a 50 percent CCF to:

(i) Commitments with an original maturity of more than one year that are not unconditionally cancelable by the [BANK].

(ii) Transaction-related contingent items, including performance bonds, bid bonds, warranties, and performance standby letters of credit.

(4) *100 percent CCF.* A [BANK] must apply a 100 percent CCF to the following off-balance-sheet items and other similar transactions:

(i) Guarantees;

(ii) Repurchase agreements (the off-balance sheet component of which equals the sum of the current market values of all positions the [BANK] has sold subject to repurchase);

(iii) Off-balance sheet securities lending transactions (the off-balance sheet component of which equals the sum of the current market values of all positions the [BANK] has lent under the transaction);

(iv) Off-balance sheet securities borrowing transactions (the off-balance sheet component of which equals the sum of the current market values of all non-cash positions the [BANK] has posted as collateral under the transaction);

(v) Financial standby letters of credit; and

(vi) Forward agreements.

§ ____.34 OTC derivative contracts.

(a) *Exposure amount.* (1) *Single OTC derivative contract.* Except as modified by paragraph (b) of this section, the exposure amount for a single OTC derivative contract that is not subject to a qualifying master netting agreement is equal to the sum of the [BANK]'s current credit exposure and potential future credit exposure (PFE) on the OTC derivative contract.

(i) *Current credit exposure.* The current credit exposure for a single OTC derivative contract is the greater of the mark-to-market value of the OTC derivative contract or zero.

(ii) *PFE.* (A) The PFE for a single OTC derivative contract, including an OTC derivative contract with a negative mark-to-market value, is calculated by multiplying the notional principal amount of the OTC derivative contract by the appropriate conversion factor in Table 7.

(B) For purposes of calculating either the PFE under this paragraph or the gross PFE under paragraph (a)(2) of this section for exchange rate contracts and other similar contracts in which the notional principal amount is equivalent to the cash flows, notional principal amount is the net receipts to each party falling due on each value date in each currency.

(C) For an OTC derivative contract that does not fall within one of the specified categories in Table 7, the PFE must be calculated using the appropriate ''other'' conversion factor.

(D) A [BANK] must use an OTC derivative contract's effective notional principal amount (that is, the apparent or stated notional principal amount multiplied by any multiplier in the OTC derivative contract) rather than the apparent or stated notional principal amount in calculating PFE.

(E) The PFE of the protection provider of a credit derivative is capped at the net present value of the amount of unpaid premiums.

TABLE 7—CONVERSION FACTOR MATRIX FOR DERIVATIVE CONTRACTS [1]

Remaining maturity [2]	Interest rate	Foreign exchange rate and gold	Credit (investment grade reference asset) [3]	Credit (non-investment-grade reference asset)	Equity	Precious metals (except gold)	Other
One year or less	0.00	0.01	0.05	0.10	0.06	0.07	0.10
Greater than one year and less than or equal to five years	0.005	0.05	0.05	0.10	0.08	0.07	0.12
Greater than five years	0.015	0.075	0.05	0.10	0.10	0.08	0.15

[1] For a derivative contract with multiple exchanges of principal, the conversion factor is multiplied by the number of remaining payments in the derivative contract.

[2] For an OTC derivative contract that is structured such that on specified dates any outstanding exposure is settled and the terms are reset so that the market value of the contract is zero, the remaining maturity equals the time until the next reset date. For an interest rate derivative contract with a remaining maturity of greater than one year that meets these criteria, the minimum conversion factor is 0.005.

[3] A [BANK] must use the column labeled ''Credit (investment-grade reference asset)'' for a credit derivative whose reference asset is an outstanding unsecured long-term debt security without credit enhancement that is investment grade. A [BANK] must use the column labeled ''Credit (non-investment-grade reference asset)'' for all other credit derivatives.

(2) *Multiple OTC derivative contracts subject to a qualifying master netting agreement.* Except as modified by paragraph (b) of this section, the exposure amount for multiple OTC derivative contracts subject to a qualifying master netting agreement is equal to the sum of the net current credit exposure and the adjusted sum of the PFE amounts for all OTC derivative contracts subject to the qualifying master netting agreement.

(i) *Net current credit exposure.* The net current credit exposure is the greater of the net sum of all positive and negative mark-to-market values of the individual OTC derivative contracts subject to the qualifying master netting agreement or zero.

(ii) *Adjusted sum of the PFE amounts.* The adjusted sum of the PFE amounts, Anet, is calculated as Anet = $(0.4\times Agross) + (0.6\times NGR\times Agross)$, where:

(A) Agross = the gross PFE (that is, the sum of the PFE amounts (as determined under paragraph (a)(1)(ii) of this section for each individual derivative contract subject to the qualifying master netting agreement); and

(B) Net-to-gross Ratio (NGR) = the net to gross ratio (that is, the ratio of the net current credit exposure to the gross current credit exposure). In calculating the NGR, the gross current credit exposure equals the sum of the positive current credit exposures (as determined under paragraph (a)(1)(i) of this section) of all individual derivative contracts subject to the qualifying master netting agreement).

(b) *Recognition of credit risk mitigation of collateralized OTC derivative contracts:* (1) A [BANK] may recognize the credit risk mitigation benefits of financial collateral that secures an OTC derivative contract or multiple OTC derivative contracts subject to a qualifying master netting agreement (netting set) by using the simple approach in § ____.37(b).

(2) As an alternative to the simple approach, a [BANK] may recognize the credit risk mitigation benefits of financial collateral that secures such a contract or netting set if the financial collateral is marked-to-market on a daily basis and subject to a daily margin maintenance requirement by applying a risk weight to the exposure as if it is uncollateralized and adjusting the exposure amount calculated under paragraph (a)(1)(i) or (ii) of this section using the collateral haircut approach in § ____.37(c). The [BANK] must substitute the exposure amount calculated under paragraph (a)(1)(i) or (ii) of this section for **Σ**E in the equation in § ____.37(c)(2).

(c) *Counterparty credit risk for OTC credit derivatives.* (1) *Protection purchasers.* A [BANK] that purchases an OTC credit derivative that is recognized under § ____.36 as a credit risk mitigant for an exposure that is not a covered position under subpart F is not required to compute a separate counterparty credit risk capital requirement under § ____.32 provided that the [BANK] does so consistently for all such credit derivatives. The [BANK] must either include all or exclude all such credit derivatives that are subject to a qualifying master netting agreement from any measure used to determine counterparty credit risk exposure to all relevant counterparties for risk-based capital purposes.

(2) *Protection providers.* (i) A [BANK] that is the protection provider under an OTC credit derivative must treat the OTC credit derivative as an exposure to the underlying reference asset. The [BANK] is not required to compute a counterparty credit risk capital requirement for the OTC credit derivative under § ____.32, provided that this treatment is applied consistently for all such OTC credit derivatives. The [BANK] must either include all or exclude all such OTC credit derivatives that are subject to a qualifying master netting agreement from any measure used to determine counterparty credit risk exposure.

(ii) The provisions of paragraph (c)(2) of this section apply to all relevant counterparties for risk-based capital purposes unless the [BANK] is treating the OTC credit derivative as a covered position under subpart F, in which case the [BANK] must compute a supplemental counterparty credit risk capital requirement under this section.

(d) *Counterparty credit risk for OTC equity derivatives.* (1) A [BANK] must treat an OTC equity derivative contract as an equity exposure and compute a risk-weighted asset amount for the OTC equity derivative contract under §§ ____.51 through ____.53 (unless the [BANK] is treating the contract as a covered position under subpart F).

(2) In addition, the [BANK] must also calculate a risk-based capital requirement for the counterparty credit risk of an OTC equity derivative contract under this section if the [BANK] is treating the contract as a covered position under subpart F.

(3) If the [BANK] risk weights the contract under the Simple Risk-Weight Approach (SRWA) in § ____.52, the [BANK] may choose not to hold risk-based capital against the counterparty credit risk of the OTC equity derivative contract, as long as it does so for all such contracts. Where the OTC equity derivative contracts are subject to a qualified master netting agreement, a [BANK] using the SRWA must either include all or exclude all of the contracts from any measure used to determine counterparty credit risk exposure.

§ ____. 35 Cleared transactions.

(a) *Requirements.* (1) A [BANK] that is a clearing member client must use the methodologies described in paragraph (b) of this section to calculate risk-weighted assets for a cleared transaction.

(2) A [BANK] that is a clearing member must use the methodologies described in paragraph (c) of this section to calculate its risk-weighted assets for cleared transactions and paragraph (d) of this section to calculate its risk-weighted assets for its default fund contribution to a CCP.

(b) *Clearing member client [BANK]s.* (1) *Risk-weighted assets for cleared transactions.* (i) To determine the risk-weighted asset amount for a cleared transaction, a [BANK] that is a clearing member client must multiply the trade exposure amount for the cleared transaction, calculated in accordance with paragraph (b)(2) of this section, by the risk weight appropriate for the cleared transaction, determined in accordance with paragraph (b)(3) of this section.

(ii) A clearing member client [BANK]'s total risk-weighted assets for cleared transactions is the sum of the risk-weighted asset amounts for all its cleared transactions.

(2) *Trade exposure amount.* (i) For a cleared transaction that is a derivative contract or netting set of derivative contracts, the trade exposure amount equals:

(A) The exposure amount for the derivative contract or netting set of derivative contracts, calculated using the methodology used to calculate exposure amount for OTC derivative contracts under § ____.34, plus

(B) The fair value of the collateral posted by the clearing member client [BANK] and held by the CCP or a clearing member in a manner that is not bankruptcy remote.

(ii) For a cleared transaction that is a repo-style transaction, the trade exposure amount equals:

(A) The exposure amount for the repo-style transaction calculated using the methodologies under § ____.37(c), plus

(B) The fair value of the collateral posted by the clearing member client and held by the CCP or a clearing member in a manner that is not bankruptcy remote.

(3) *Cleared transaction risk weights.* (i) For a cleared transaction with a QCCP, a clearing member client [BANK] must apply a risk weight of:

(A) 2 percent if the collateral posted by the [BANK] to the QCCP or clearing member is subject to an arrangement that prevents any losses to the clearing member client due to the joint default or a concurrent insolvency, liquidation, or receivership proceeding of the clearing member and any other clearing member clients of the clearing member; and the clearing member client [BANK] has conducted sufficient legal review to conclude with a well-founded basis (and maintains sufficient written documentation of that legal review) that in the event of a legal challenge (including one resulting from default or from liquidation, insolvency, or receivership proceeding) the relevant court and administrative authorities would find the arrangements to be legal, valid, binding and enforceable under the law of the relevant jurisdictions; or

(B) 4 percent in all other circumstances.

(ii) For a cleared transaction with a CCP that is not a QCCP, a clearing member client [BANK] must apply the risk weight appropriate for the CCP according to § ____.32.

(4) *Collateral.* (i) Notwithstanding any other requirements in this section, collateral posted by a clearing member client [BANK] that is held by a

custodian in a manner that is bankruptcy remote from the CCP, clearing member and other clearing member clients of the clearing member, is not subject to a capital requirement under this section.

(ii) A [BANK] must calculate a risk-weighted asset amount for any collateral provided to a CCP, clearing member or a custodian in connection with a cleared transaction in accordance with the requirements under § ____.32.

(c) *Clearing member [BANK]s.* (1) *Risk-weighted assets for cleared transactions.* (i) To determine the risk-weighted asset amount for a cleared transaction, a clearing member [BANK] must multiply the trade exposure amount for the cleared transaction, calculated in accordance with paragraph (c)(2) of this section, by the risk weight appropriate for the cleared transaction, determined in accordance with paragraph (c)(3) of this section.

(ii) A clearing member [BANK]'s total risk-weighted assets for cleared transactions is the sum of the risk-weighted asset amounts for all of its cleared transactions.

(2) *Trade exposure amount.* A clearing member [BANK] must calculate its trade exposure amount for a cleared transaction as follows:

(i) For a derivative contract that is a cleared transaction, the trade exposure amount equals:

(A) The exposure amount for the derivative contract, calculated using the methodology to calculate exposure amount for OTC derivative contracts under § ____.34, plus

(B) The fair value of the collateral posted by the clearing member [BANK] and held by the CCP in a manner that is not bankruptcy remote.

(ii) For a repo-style transaction that is a cleared transaction, trade exposure amount equals:

(A) The exposure amount for repo-style transactions calculated using methodologies under § ____.37(c), plus

(B) The fair value of the collateral posted by the clearing member [BANK] and held by the CCP in a manner that is not bankruptcy remote.

(3) *Cleared transaction risk weight.* (i) For a cleared transaction with a QCCP, a clearing member [BANK] must apply a risk weight of 2 percent.

(ii) For a cleared transaction with a CCP that is not a QCCP, a clearing member [BANK] must apply the risk weight appropriate for the CCP according to § ____.32.

(4) *Collateral.* (i) Notwithstanding any other requirement in this section, collateral posted by a clearing member [BANK] that is held by a custodian in a manner that is bankruptcy remote from the CCP is not subject to a capital requirement under this section.

(ii) A [BANK] must calculate a risk-weighted asset amount for any collateral provided to a CCP, clearing member or a custodian in connection with a cleared transaction in accordance with requirements under § ____.32.

(d) *Default fund contributions.* (1) *General requirement.* A clearing member [BANK] must determine the risk-weighted asset amount for a default fund contribution to a CCP at least quarterly, or more frequently if, in the opinion of the [BANK] or the [AGENCY], there is a material change in the financial condition of the CCP.

(2) *Risk-weighted asset amount for default fund contributions to non-qualifying CCPs.* A clearing member [BANK]'s risk-weighted asset amount for default fund contributions to CCPs that are not QCCPs equals the sum of such default fund contributions multiplied by 1,250 percent.

(3) *Risk-weighted asset amount for default fund contributions to QCCPs.* A clearing member [BANK]'s risk-weighted asset amount for default fund contributions to QCCPs equals the sum of its capital requirement, K_{CM} for each QCCP, as calculated under § ____.35(d)(3)(i), multiplied by 1,250 percent.

(i) The hypothetical capital requirement of a QCCP (K_{CCP}) equals:

$$K_{CCP} = \sum_{clearing\ member\ i} \max\left(EBRM_i - VM_i - IM_i - DF_i ; 0\right) \times RW \times 0.08$$

Where

(A) $EBRM_i$ = the exposure amount for each transaction cleared through the QCCP by clearing member i, calculated in accordance with § ____.34 for derivative transactions and § ____.37(c)(2) for repo-style transactions, provided that:

(*1*) For purposes of this section, in calculating the exposure amount the [BANK] may replace the formula provided in § ____.34 with the following: Anet = (0.3 x Agross) + (0.7 x NGR x Agross) or, if the [BANK] cannot calculate NGR, it may use a value of 0.30 until March 31, 2013; and

(*2*) For derivative contracts that are options, the PFE described in § ___.34(b)(2) must be adjusted by multiplying the notional principal amount of the derivative contract by the appropriate conversion factor in Table 7 and the absolute value of the option's delta, that is, the ratio of the change in the value of the derivative contract to the corresponding change in the price of the underlying asset.

(B) VM_i = any collateral posted by clearing member i to the QCCP that it is entitled to receive from the QCCP, but has not yet received, and any collateral that the QCCP is entitled to receive from clearing member i, but has not yet received;

(C) IM_i = the collateral posted as initial margin by clearing member i to the QCCP;

(D) DF_i = the funded portion of clearing member i's default fund contribution that will be applied to reduce the QCCP's loss upon a default by clearing member i; and

(E) RW = 20 percent, except when the [AGENCY] has determined that a higher risk weight is more appropriate based on the specific characteristics of the QCCP and its clearing members.

(ii) For a [BANK] that is a clearing member of a QCCP with a default fund supported by funded commitments, K_{CM} equals:

$$K_{CM_i} = \left((1+\beta) \cdot \frac{N}{N-2} \right) \cdot \frac{DF_i}{DF_{CM}} \cdot K^*_{CM}$$

$$K^*_{CM} = \begin{cases} c_2 \cdot \mu \cdot (K_{CCP} - DF') + c_2 \cdot DF'_{CM} & \text{if} \quad DF' < K_{CCP} \quad (i) \\ c_2 \cdot (K_{CCP} - DF_{CCP}) + c_1 \cdot (DF' - K_{CCP}) & \text{if} \quad DF_{CCP} < K_{CCP} \le DF' \quad (ii) \\ c_1 \cdot DF'_{CM} & \text{if} \quad K_{CCP} \le DF_{CCP} \quad (iii) \end{cases}$$

Where

(A) $\beta = \frac{A_{Net,1} + A_{Net,2}}{\sum_i A_{Net,i}}$

Subscripts 1 and 2 denote the clearing members with the two largest A_{Net} values. For purposes of this paragraph, for derivatives A_{Net} is defined in § ____.34(a)(2)(ii) and for repo-style transactions, A_{Net} means the exposure amount as defined in § ____.37(c)(2);

(B) N =the number of clearing members in the QCCP;

(C) DF_{CCP} = the QCCP's own funds and other financial resources that would be used to cover its losses before clearing members' default fund contributions are used to cover losses;

(D) DF_{CM} = funded default fund contributions from all clearing members and any other clearing member contributed financial resources that are available to absorb mutualized QCCP losses;

(E) $DF = DF_{CCP} + DF_{CM}$ (that is, the total funded default fund contribution);

(F) $\overline{DF_i}$ = average $\overline{DF_i}$ = the average funded default fund contribution from an individual clearing member;

(G) $DF'_{CM} = DF_{CM} - 2 \cdot \overline{DF_i} = \sum_i DF_i - 2 \cdot \overline{DF_i}$ (that is, the funded default fund contribution from surviving clearing members assuming that two average clearing members have defaulted and their default fund contributions and initial margins have been used to absorb the resulting losses);

(H) $DF' = DF_{CCP} + DF'_{CM} = DF - 2 \cdot \overline{DF_i}$ (that is, the total funded default fund contributions from the QCCP and the surviving clearing members that are available to mutualize losses, assuming that two average clearing members have defaulted);

(I) $c_1 = Max\left\{\frac{1.6\%}{(DF'/K_{CCP})^{0.3}};0.16\%\right\}$ (that is, a decreasing capital factor, between 0.16 percent and 1.6 percent, applied to the excess funded default funds provided by clearing members);

(J) c_2 = 100 percent; and

(K) μ= 1.2;

(iii) (A) For a [BANK] that is a clearing member of a QCCP with a default fund supported by unfunded commitments, K_{CM} equals:

$$K_{CM_i} = \frac{DF_i}{DF_{CM}} \cdot K^*_{CM}$$

Where

(1) DF_i = the [BANK]'s unfunded commitment to the default fund;

(2) DF_{CM} = the total of all clearing members' unfunded commitment to the default fund; and

(3) K^*_{CM} as defined in paragraph (d)(3)(ii) of this section.

(B) For a [BANK] that is a clearing member of a QCCP with a default fund supported by unfunded commitments and is unable to calculate K_{CM} using the methodology described in paragraph (d)(3)(iii) of this section, K_{CM} equals:

$$K_{CM_i} = \frac{IM_i}{IM_{CM}} \cdot K^*_{CM}$$

Where

(1) IM_i = the [BANK]'s initial margin posted to the QCCP;

(2) IM_{CM} = the total of initial margin posted to the QCCP; and

(3) K^*_{CM} as defined in paragraph (d)(3)(ii) of this section.

(4) *Total risk-weighted assets for default fund contributions.* Total risk-weighted assets for default fund contributions is the sum of a clearing member [BANK]'s risk-weighted assets for all of its default fund contributions to all CCPs of which the [BANK] is a clearing member.

§ ____.36 Guarantees and credit derivatives: substitution treatment.

(a) *Scope.* (1) *General.* A [BANK] may recognize the credit risk mitigation benefits of an eligible guarantee or eligible credit derivative by substituting the risk weight associated with the protection provider for the risk weight assigned to an exposure, as provided under this section.

(2) This section applies to exposures for which:

(i) Credit risk is fully covered by an eligible guarantee or eligible credit derivative; or

(ii) Credit risk is covered on a pro rata basis (that is, on a basis in which the [BANK] and the protection provider share losses proportionately) by an eligible guarantee or eligible credit derivative.

(3) Exposures on which there is a tranching of credit risk (reflecting at least two different levels of seniority) generally are securitization exposures subject to §§ ____.41 through ____.45.

(4) If multiple eligible guarantees or eligible credit derivatives cover a single exposure described in this section, a [BANK] may treat the hedged exposure as multiple separate exposures each covered by a single eligible guarantee or eligible credit derivative and may calculate a separate risk-weighted asset amount for each separate exposure as described in paragraph (c) of this section.

(5) If a single eligible guarantee or eligible credit derivative covers multiple hedged exposures described in paragraph (a)(2) of this section, a [BANK] must treat each hedged exposure as covered by a separate eligible guarantee or eligible credit derivative and must calculate a separate risk-weighted asset amount for each exposure as described in paragraph (c) of this section.

(b) *Rules of recognition.* (1) A [BANK] may only recognize the credit risk mitigation benefits of eligible guarantees and eligible credit derivatives.

(2) A [BANK] may only recognize the credit risk mitigation benefits of an eligible credit derivative to hedge an exposure that is different from the credit derivative's reference exposure used for determining the derivative's cash settlement value, deliverable obligation, or occurrence of a credit event if:

(i) The reference exposure ranks *pari passu* with, or is subordinated to, the hedged exposure; and

(ii) The reference exposure and the hedged exposure are to the same legal entity, and legally enforceable cross-default or cross-acceleration clauses are in place to ensure payments under the credit derivative are triggered when the obligated party of the hedged exposure fails to pay under the terms of the hedged exposure.

(c) *Substitution approach.* (1) *Full coverage.* If an eligible guarantee or eligible credit derivative meets the conditions in paragraphs (a) and (b) of this section and the protection amount (P) of the guarantee or credit derivative is greater than or equal to the exposure amount of the hedged exposure, a [BANK] may recognize the guarantee or credit derivative in determining the risk-weighted asset amount for the hedged exposure by substituting the risk weight applicable to the guarantor or credit derivative protection provider under § ____.32 for the risk weight assigned to the exposure.

(2) *Partial coverage.* If an eligible guarantee or eligible credit derivative meets the conditions in §§ ____.36(a) and ___.37(b) and the protection amount (P) of the guarantee or credit derivative is less than the exposure amount of the hedged exposure, the [BANK] must treat the hedged exposure as two separate exposures (protected and unprotected) in order to recognize the credit risk mitigation benefit of the guarantee or credit derivative.

(i) The [BANK] may calculate the risk-weighted asset amount for the protected exposure under § ____.32, where the applicable risk weight is the risk weight applicable to the guarantor or credit derivative protection provider. (ii) The [BANK] must calculate the risk-weighted asset amount for the unprotected exposure under § ____.32, where the applicable risk weight is that of the unprotected portion of the hedged exposure.

(ii) The treatment provided in this section is applicable when the credit risk of an exposure is covered on a partial pro rata basis and may be applicable when an adjustment is made to the effective notional amount of the guarantee or credit derivative under paragraphs (d), (e), or (f) of this section.

(d) *Maturity mismatch adjustment.* (1) A [BANK] that recognizes an eligible guarantee or eligible credit derivative in determining the risk-weighted asset amount for a hedged exposure must adjust the effective notional amount of the credit risk mitigant to reflect any maturity mismatch between the hedged exposure and the credit risk mitigant.

(2) A maturity mismatch occurs when the residual maturity of a credit risk mitigant is less than that of the hedged exposure(s).

(3) The residual maturity of a hedged exposure is the longest possible remaining time before the obligated party of the hedged exposure is scheduled to fulfil its obligation on the hedged exposure. If a credit risk mitigant has embedded options that may reduce its term, the [BANK] (protection purchaser) must use the shortest possible residual maturity for the credit risk mitigant. If a call is at the discretion of the protection provider, the residual maturity of the credit risk mitigant is at the first call date. If the call is at the discretion of the [BANK]

(protection purchaser), but the terms of the arrangement at origination of the credit risk mitigant contain a positive incentive for the [BANK] to call the transaction before contractual maturity, the remaining time to the first call date is the residual maturity of the credit risk mitigant.

(4) A credit risk mitigant with a maturity mismatch may be recognized only if its original maturity is greater than or equal to one year and its residual maturity is greater than three months.

(5) When a maturity mismatch exists, the [BANK] must apply the following adjustment to reduce the effective notional amount of the credit risk mitigant: $Pm = E \times (t - 0.25)/(T - 0.25)$, where:

(i) Pm = effective notional amount of the credit risk mitigant, adjusted for maturity mismatch;

(ii) E = effective notional amount of the credit risk mitigant;

(iii) t = the lesser of T or the residual maturity of the credit risk mitigant, expressed in years; and

(iv) T = the lesser of five or the residual maturity of the hedged exposure, expressed in years.

(e) *Adjustment for credit derivatives without restructuring as a credit event.* If a [BANK] recognizes an eligible credit derivative that does not include as a credit event a restructuring of the hedged exposure involving forgiveness or postponement of principal, interest, or fees that results in a credit loss event (that is, a charge-off, specific provision, or other similar debit to the profit and loss account), the [BANK] must apply the following adjustment to reduce the effective notional amount of the credit derivative: $Pr = Pm \times 0.60$, where:

(1) Pr = effective notional amount of the credit risk mitigant, adjusted for lack of restructuring event (and maturity mismatch, if applicable); and

(2) Pm = effective notional amount of the credit risk mitigant (adjusted for maturity mismatch, if applicable).

(f) *Currency mismatch adjustment.* (1) If a [BANK] recognizes an eligible guarantee or eligible credit derivative that is denominated in a currency different from that in which the hedged exposure is denominated, the [BANK] must apply the following formula to the effective notional amount of the guarantee or credit derivative: $Pc = Pr \times (1 - H_{FX})$, where:

(i) Pc = effective notional amount of the credit risk mitigant, adjusted for currency mismatch (and maturity mismatch and lack of restructuring event, if applicable);

(ii) Pr = effective notional amount of the credit risk mitigant (adjusted for maturity mismatch and lack of restructuring event, if applicable); and

(iii) H_{FX} = haircut appropriate for the currency mismatch between the credit risk mitigant and the hedged exposure.

(2) A [BANK] must set H_{FX} equal to eight percent unless it qualifies for the use of and uses its own internal estimates of foreign exchange volatility based on a ten-business-day holding period. A [BANK] qualifies for the use of its own internal estimates of foreign exchange volatility if it qualifies for the use of its own-estimates haircuts in § ____.37(c)(4).

(3) A [BANK] must adjust H_{FX} calculated in paragraph (f)(2) of this section upward if the [BANK] revalues the guarantee or credit derivative less frequently than once every 10 business days using the following square root of time formula:

$$H_M = 8\% \sqrt{\frac{T_M}{10}}$$, where T_M equals the greater of 10 or the number of days between revaluation.

§ ____.37 Collateralized transactions.

(a) *General.* (1) To recognize the risk-mitigating effects of financial collateral, a [BANK] may use:

(i) The simple approach in paragraph (b) of this section for any exposure.

(ii) The collateral haircut approach in paragraph (c) of this section for repo-style transactions, eligible margin loans, collateralized derivative contracts, and single-product netting sets of such transactions.

(2) A [BANK] may use any approach described in this section that is valid for a particular type of exposure or transaction; however, it must use the same approach for similar exposures or transactions.

(b) *The simple approach.* (1) *General requirements.* (i) A [BANK] may recognize the credit risk mitigation benefits of financial collateral that secures any exposure.

(ii) To qualify for the simple approach, the collateral must meet the following requirements:

(A) The collateral must be subject to a collateral agreement for at least the life of the exposure;

(B) The collateral must be revalued at least every six months; and

(C) The collateral (other than gold) and the exposure must be denominated in the same currency.

(2) *Risk weight substitution.* (i) A [BANK] may apply a risk weight to the portion of an exposure that is secured by the market value of collateral (that meets the requirements of paragraph (b)(1) of this section) based on the risk weight assigned to the collateral under § ____.32. For repurchase agreements, reverse repurchase agreements, and securities lending and borrowing transactions, the collateral is the instruments, gold, and cash the [BANK] has borrowed, purchased subject to resale, or taken as collateral from the counterparty under the transaction. Except as provided in paragraph (b)(3) of this section, the risk weight assigned to the collateralized portion of the exposure may not be less than 20 percent.

(ii) A [BANK] must apply a risk weight to the unsecured portion of the exposure based on the risk weight assigned to the exposure under this subpart.

(3) *Exceptions to the 20 percent risk-weight floor and other requirements.* Notwithstanding paragraph (b)(2)(i) of this section:

(i) A [BANK] may assign a zero percent risk weight to an exposure to an OTC derivative contract that is marked-to-market on a daily basis and subject to a daily margin maintenance requirement, to the extent the contract is collateralized by cash on deposit.

(ii) A [BANK] may assign a 10 percent risk weight to an exposure to an OTC derivative contract that is marked-to-market daily and subject to a daily margin maintenance requirement, to the extent that the contract is collateralized by an exposure to a sovereign that qualifies for a zero percent risk weight under § ____.32.

(iii) A [BANK] may assign a zero percent risk weight to the collateralized portion of an exposure where:

(A) The financial collateral is cash on deposit; or

(B) The financial collateral is an exposure to a sovereign that qualifies for a zero percent risk weight under § ____.32, and the [BANK] has discounted the market value of the collateral by 20 percent.

(c) *Collateral haircut approach.* (1) *General.* A [BANK] may recognize the credit risk mitigation benefits of financial collateral that secures an eligible margin loan, repo-style transaction, collateralized derivative contract, or single-product netting set of such transactions, and of any collateral that secures a repo-style transaction that is included in the [BANK]'s VaR-based measure under subpart F by using the collateral haircut approach in this section. A [BANK] may use the standard supervisory haircuts in paragraph (c)(3) of this section or, with prior written approval of the [AGENCY], its own estimates of haircuts according to paragraph (c)(4) of this section.

(2) *Exposure amount equation.* A [BANK] must determine the exposure amount for an eligible margin loan, repo-style transaction, collateralized derivative contract, or a single-product netting set of such transactions by setting the exposure amount equal to max {0, [(ΣE—ΣC) + Σ(Es x Hs) + Σ(Efx x Hfx)]}, where:

(i)(A) For eligible margin loans and repo-style transactions and netting sets thereof, ΣE equals the value of the exposure (the sum of the current market values of all instruments, gold, and cash the [BANK] has lent, sold subject to repurchase, or posted as collateral to the counterparty under the transaction (or netting set)); and

(B) For collateralized derivative contracts and netting sets thereof, ΣE equals the exposure amount of the OTC derivative contract (or netting set) calculated under §§ ____.34 (c) or (d).

(ii) ΣC equals the value of the collateral (the sum of the current market values of all instruments, gold and cash the [BANK] has borrowed, purchased subject to resale, or taken as collateral from the counterparty under the transaction (or netting set));

(iii) Es equals the absolute value of the net position in a given instrument or in gold (where the net position in the instrument or gold equals the sum of the current market values of the instrument or gold the [BANK] has lent, sold subject to repurchase, or posted as collateral to the counterparty minus the sum of the current market values of that same instrument or gold the [BANK] has borrowed, purchased subject to resale, or taken as collateral from the counterparty);

(iv) Hs equals the market price volatility haircut appropriate to the instrument or gold referenced in Es;

(v) Efx equals the absolute value of the net position of instruments and cash in a currency that is different from the settlement currency (where the net position in a given currency equals the sum of the current market values of any instruments or cash in the currency the [BANK] has lent, sold subject to repurchase, or posted as collateral to the counterparty minus the sum of the current market values of any instruments or cash in the currency the [BANK] has borrowed, purchased subject to resale, or taken as collateral from the counterparty); and

(vi) Hfx equals the haircut appropriate to the mismatch between the currency referenced in Efx and the settlement currency.

(3) *Standard supervisory haircuts.* (i) A [BANK] must use the haircuts for market price volatility (Hs) provided in Table 8, as adjusted in certain circumstances in accordance with the requirements of paragraphs (c)(3)(iii) and (iv) of this section:

TABLE 8—STANDARD SUPERVISORY MARKET PRICE VOLATILITY HAIRCUTS [1]

Residual maturity	Haircut (in percents) assigned based on:						Investment grade securitization exposures (in percent)
	Sovereign issuers risk weight under § ____.32 [2]			Non-sovereign issuers risk weight under § ____.32			
	Zero %	20% or 50%	100%	20%	50%	100%	
Less than or equal to 1 year	0.5	1.0	15.0	1.0	2.0	25.0	4.0
Greater than 1 year and less than or equal to 5 years	2.0	3.0	15.0	4.0	6.0	25.0	12.0
Greater than 5 years	4.0	6.0	15.0	8.0	12.0	25.0	24.0
Main index equities (including convertible bonds) and gold				15.0			
Other publicly-traded equities (including convertible bonds)				25.0			
Mutual funds				Highest haircut applicable to any security in which the fund can invest.			
Cash collateral held				Zero.			

[1] The market price volatility haircuts in Table 2 are based on a 10 business-day holding period.
[2] Includes a foreign PSE that receives a zero percent risk weight.

(ii) For currency mismatches, a [BANK] must use a haircut for foreign exchange rate volatility (Hfx) of 8.0 percent, as adjusted in certain circumstances under paragraphs (c)(3)(iii) and (iv) of this section.

(iii) For repo-style transactions, a [BANK] may multiply the standard supervisory haircuts provided in paragraphs (c)(3)(i) and (ii) of this section by the square root of ½ (which equals 0.707107).

(iv) If the number of trades in a netting set exceeds 5,000 at any time during a quarter, a [BANK] must adjust the supervisory haircuts provided in paragraphs (c)(3)(i) and (ii) of this section upward on the basis of a holding period of twenty business days for the following quarter except in the calculation of the exposure amount for purposes of § ___.35. If a netting set contains one or more trades involving illiquid collateral or an OTC derivative that cannot be easily replaced, a [BANK] must adjust the supervisory haircuts upward on the basis of a holding period of twenty business days. If over the two previous quarters more than two margin disputes on a netting set have occurred that lasted more than the holding period, then the [BANK] must adjust the supervisory haircuts upward for that netting set on the basis of a holding period that is at least two times the minimum holding period for that netting set. A [BANK] must adjust the standard supervisory haircuts upward using the following formula:

$$H_A = H_S\sqrt{\frac{T_M}{T_S}}\text{, where,}$$

(A) T_M equals a holding period of longer than 10 business days for eligible margin loans and derivative contracts or longer than 5 business days for repo-style transactions;
(B) H_S equals the standard supervisory haircut; and
(C) T_S equals 10 business days for eligible margin loans and derivative contracts or 5 business days for repo-style transactions.

(v) If the instrument a [BANK] has lent, sold subject to repurchase, or posted as collateral does not meet the definition of financial collateral, the [BANK] must use a 25.0 percent haircut for market price volatility (H_s).

(4) *Own internal estimates for haircuts.* With the prior written approval of the [AGENCY], a [BANK] may calculate haircuts (Hs and Hfx) using its own internal estimates of the volatilities of market prices and foreign exchange rates.

(i) To receive [AGENCY] approval to use its own internal estimates, a [BANK] must satisfy the following minimum standards:

(A) A [BANK] must use a 99th percentile one-tailed confidence interval.

(B) The minimum holding period for a repo-style transaction is five business days and for an eligible margin loan is ten business days except for transactions or netting sets for which paragraph (c)(4)(i)(C) of this section applies. When a [BANK] calculates an own-estimates haircut on a T_N-day holding period, which is different from the minimum holding period for the transaction type, the applicable haircut (H_M) is calculated using the following square root of time formula:

$$H_M = H_N\sqrt{\frac{T_M}{T_N}}\text{, where}$$

(1) T_M equals 5 for repo-style transactions and 10 for eligible margin loans;
(2) T_N equals the holding period used by the [BANK] to derive H_N; and
(3) H_N equals the haircut based on the holding period T_N.

(C) If the number of trades in a netting set exceeds 5,000 at any time during a quarter, a [BANK] must calculate the haircut using a minimum holding period of twenty business days for the following quarter except in the calculation of the exposure amount for purposes of § __.35. If a netting set contains one or more trades involving illiquid collateral or an OTC derivative that cannot be easily replaced, a [BANK] must calculate the haircut using a minimum holding period of twenty business days. If over the two previous quarters more than two margin disputes on a netting set have occurred that lasted more than the holding period, then the [BANK] must calculate the haircut for transactions in that netting set on the basis of a holding period that is at least two times the minimum holding period for that netting set.

(D) A [BANK] is required to calculate its own internal estimates with inputs calibrated to historical data from a continuous 12-month period that reflects a period of significant financial stress appropriate to the security or category of securities.

(E) A [BANK] must have policies and procedures that describe how it determines the period of significant financial stress used to calculate the [BANK]'s own internal estimates for haircuts under this section and must be able to provide empirical support for the period used. The [BANK] must obtain the prior approval of the [AGENCY] for, and notify the [AGENCY] if the [BANK] makes any material changes to, these policies and procedures.

(F) Nothing in this section prevents the [AGENCY] from requiring a [BANK] to use a different period of significant financial stress in the calculation of own internal estimates for haircuts.

(G) A [BANK] must update its data sets and calculate haircuts no less frequently than quarterly and must also reassess data sets and haircuts whenever market prices change materially.

(ii) With respect to debt securities that are investment grade, a [BANK] may calculate haircuts for categories of securities. For a category of securities, the [BANK] must calculate the haircut on the basis of internal volatility estimates for securities in that category that are representative of the securities in that category that the [BANK] has lent, sold subject to repurchase, posted as collateral, borrowed, purchased subject to resale, or taken as collateral. In determining relevant categories, the [BANK] must at a minimum take into account:

(A) The type of issuer of the security;

(B) The credit quality of the security;

(C) The maturity of the security; and

(D) The interest rate sensitivity of the security.

(iii) With respect to debt securities that are not investment grade and equity securities, a [BANK] must calculate a separate haircut for each individual security.

(iv) Where an exposure or collateral (whether in the form of cash or securities) is denominated in a currency that differs from the settlement currency, the [BANK] must calculate a separate currency mismatch haircut for its net position in each mismatched currency based on estimated volatilities of foreign exchange rates between the mismatched currency and the settlement currency.

(v) A [BANK]'s own estimates of market price and foreign exchange rate volatilities may not take into account the correlations among securities and foreign exchange rates on either the exposure or collateral side of a transaction (or netting set) or the correlations among securities and foreign exchange rates between the exposure and collateral sides of the transaction (or netting set).

RISK-WEIGHTED ASSETS FOR UNSETTLED TRANSACTIONS

§ __.38 Unsettled transactions.

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

(1) Delivery-versus-payment (DvP) transaction means a securities or commodities transaction in which the buyer is obligated to make payment only if the seller has made delivery of the securities or commodities and the seller is obligated to deliver the securities or commodities only if the buyer has made payment.

(2) Payment-versus-payment (PvP) transaction means a foreign exchange transaction in which each counterparty is obligated to make a final transfer of one or more currencies only if the other counterparty has made a final transfer of one or more currencies.

(3) Normal settlement period: a transaction has a normal settlement period if the contractual settlement period for the transaction is equal to or less than the market standard for the instrument underlying the transaction and equal to or less than five business days.

(4) Positive current exposure of a [BANK] for a transaction is the difference between the transaction value at the agreed settlement price and the current market price of the transaction, if the difference results in a credit exposure of the [BANK] to the counterparty.

(b) *Scope.* This section applies to all transactions involving securities, foreign exchange instruments, and commodities that have a risk of delayed settlement or delivery. This section does not apply to:

(1) Cleared transactions that are marked-to-market daily and subject to daily receipt and payment of variation margin;

(2) Repo-style transactions, including unsettled repo-style transactions;

(3) One-way cash payments on OTC derivative contracts; or

(4) Transactions with a contractual settlement period that is longer than the normal settlement period (which are treated as OTC derivative contracts as provided in § __.34).

(c) *System-wide failures.* In the case of a system-wide failure of a settlement, clearing system or central counterparty, the [AGENCY] may waive risk-based capital requirements for unsettled and failed transactions until the situation is rectified.

(d) *Delivery-versus-payment (DvP) and payment-versus-payment (PvP) transactions.* A [BANK] must hold risk-based capital against any DvP or PvP transaction with a normal settlement period if the [BANK]'s counterparty has not made delivery or payment within five business days after the settlement date. The [BANK] must determine its risk-weighted asset amount for such a transaction by multiplying the positive current exposure of the transaction for the [BANK] by the appropriate risk weight in Table 9.

TABLE 9—RISK WEIGHTS FOR UNSETTLED DVP AND PVP TRANSACTIONS

Number of business days after contractual settlement date	Risk weight to be applied to positive current exposure (in percent)
From 5 to 15	100.0
From 16 to 30	625.0
From 31 to 45	937.5
46 or more	1,250.0

(e) *Non-DvP/non-PvP (non-delivery-versus-payment/non-payment-versus-payment) transactions.* (1) A [BANK] must hold risk-based capital against any non-DvP/non-PvP transaction with a normal settlement period if the [BANK] has delivered cash, securities, commodities, or currencies to its counterparty but has not received its corresponding deliverables by the end of the same business day. The [BANK] must continue to hold risk-based capital against the transaction until the [BANK] has received its corresponding deliverables.

(2) From the business day after the [BANK] has made its delivery until five business days after the counterparty delivery is due, the [BANK] must calculate the risk-weighted asset amount for the transaction by treating the current market value of the deliverables owed to the [BANK] as an exposure to the counterparty and using the applicable counterparty risk weight under § ____.32.

(3) If the [BANK] has not received its deliverables by the fifth business day after counterparty delivery was due, the [BANK] must assign a 1,250 percent risk weight to the current market value of the deliverables owed to the [BANK].

(f) *Total risk-weighted assets for unsettled transactions.* Total risk-weighted assets for unsettled transactions is the sum of the risk-weighted asset amounts of all DvP, PvP, and non-DvP/non-PvP transactions.

RISK-WEIGHTED ASSETS FOR SECURITIZATION EXPOSURES

§ ____.41 Operational requirements for securitization exposures.

(a) *Operational criteria for traditional securitizations.* A [BANK] that transfers exposures it has originated or purchased to a securitization SPE or other third party in connection with a traditional securitization may exclude the exposures from the calculation of its risk-weighted assets only if each condition in this section is satisfied. A [BANK] that meets these conditions must hold risk-based capital against any credit risk it retains in connection with the securitization. A [BANK] that fails to meet these conditions must hold risk-based capital against the transferred exposures as if they had not been securitized and must deduct from common equity tier 1 capital any after-tax gain-on-sale resulting from the transaction. The conditions are:

(1) The exposures are not reported on the [BANK]'s consolidated balance sheet under GAAP;

(2) The [BANK] has transferred to one or more third parties credit risk associated with the underlying exposures; and

(3) Any clean-up calls relating to the securitization are eligible clean-up calls.

(4) The securitization does not:

(i) Include one or more underlying exposures in which the borrower is permitted to vary the drawn amount within an agreed limit under a line of credit; and

(ii) Contain an early amortization provision.

(b) *Operational criteria for synthetic securitizations.* For synthetic securitizations, a [BANK] may recognize for risk-based capital purposes the use of a credit risk mitigant to hedge underlying exposures only if each condition in this paragraph is satisfied. A [BANK] that meets these conditions must hold risk-based capital against any credit risk of the exposures it retains in connection with the synthetic securitization. A [BANK] that fails to meet these conditions or chooses not to recognize the credit risk mitigant for purposes of this section must instead hold risk-based capital against the underlying exposures as if they had not been synthetically securitized. The conditions are:

(1) The credit risk mitigant is financial collateral, an eligible credit derivative, or an eligible guarantee;

(2) The [BANK] transfers credit risk associated with the underlying exposures to one or more third parties, and the terms and conditions in the credit risk mitigants employed do not include provisions that:

(i) Allow for the termination of the credit protection due to deterioration in the credit quality of the underlying exposures;

(ii) Require the [BANK] to alter or replace the underlying exposures to improve the credit quality of the pool of underlying exposures;

(iii) Increase the [BANK]'s cost of credit protection in response to deterioration in the credit quality of the underlying exposures;

(iv) Increase the yield payable to parties other than the [BANK] in response to a deterioration in the credit quality of the underlying exposures; or

(v) Provide for increases in a retained first loss position or credit enhancement provided by the [BANK] after the inception of the securitization;

(3) The [BANK] obtains a well-reasoned opinion from legal counsel that confirms the enforceability of the credit risk mitigant in all relevant jurisdictions; and

(4) Any clean-up calls relating to the securitization are eligible clean-up calls.

(c) *Due diligence requirements.* (1) Except for exposures that are deducted from common equity tier 1 capital, if a [BANK] is unable to demonstrate to the satisfaction of the [AGENCY] a comprehensive understanding of the features of a securitization exposure that would materially affect the performance of the exposure, the [BANK] must assign the securitization exposure a risk weight of 1,250 percent. The [BANK]'s analysis must be commensurate with the complexity of the securitization exposure and the materiality of the exposure in relation to its capital.

(2) A [BANK] must demonstrate its comprehensive understanding of a securitization exposure under paragraph (c)(1) of this section, for each securitization exposure by:

(i) Conduct an analysis of the risk characteristics of a securitization exposure prior to acquiring the exposure, and document such analysis within three business days after acquiring the exposure, considering:

(A) Structural features of the securitization that would materially impact the performance of the exposure, for example, the contractual cash flow waterfall, waterfall-related triggers, credit enhancements, liquidity enhancements, market value triggers, the performance of organizations that service the exposure, and deal-specific definitions of default;

(B) Relevant information regarding the performance of the underlying credit exposure(s), for example, the percentage of loans 30, 60, and 90 days past due; default rates; prepayment rates; loans in foreclosure; property types; occupancy; average credit score or other measures of creditworthiness; average LTV ratio; and industry and geographic diversification data on the underlying exposure(s);

(C) Relevant market data of the securitization, for example, bid-ask spread, most recent sales price and historic price volatility, trading volume, implied market rating, and size, depth and concentration level of the market for the securitization; and

(D) In addition, for resecuritization exposures, performance information on the underlying securitization exposures, for example, the issuer name and credit quality, and the characteristics and performance of the exposures underlying the securitization exposures.

(ii) On an on-going basis (no less frequently than quarterly), evaluating, reviewing, and updating as appropriate the analysis required under paragraph (c)(1) of this section for each securitization exposure.

§ ____.42 Risk-weighted assets for securitization exposures.

(a) *Securitization risk weight approaches.* Except as provided elsewhere in this section or in § ____.41:

(1) A [BANK] must deduct from common equity tier 1capital any after-tax gain-on-sale resulting from a securitization and apply a 1,250 percent risk weight to the portion of a CEIO that does not constitute after-tax gain-on-sale.

(2) If a securitization exposure does not require deduction under paragraph (a)(1) of this section, a [BANK] may assign a risk weight to the securitization exposure using the simplified supervisory formula approach (SSFA) in accordance with §§ ____.43(a) through ____.43(d). Alternatively, a [BANK] that is not subject to subpart F may assign a risk weight to the securitization exposure using the gross-up approach in accordance with § ____.43(e). The [BANK] must apply either the SSFA or the gross-up approach consistently across all of its securitization exposures.

(3) If a securitization exposure does not require deduction under paragraph (a)(1) of this section and the [BANK] cannot, or chooses not to apply the SSFA or the gross-up approach to the exposure, the [BANK] must assign a risk weight to the exposure as described in § ____.44.

(4) If a securitization exposure is a derivative contract (other than a credit derivative) that has a first priority claim on the cash flows from the underlying exposures (notwithstanding amounts due under interest rate or currency derivative contracts, fees due, or other similar payments), with approval of the [AGENCY], a [BANK] may choose to set the risk-weighted asset amount of the exposure equal to the amount of the exposure as determined in paragraph (c) of this section.

(b) *Total risk-weighted assets for securitization exposures.* A [BANK]'s total risk-weighted assets for securitization exposures equals the sum of the risk-weighted asset amount for securitization exposures that the [BANK] risk weights under §§ ____.41(c), ____.42(a)(1), and ____.43, ____.44, or ____.45, except as provided in §§ ____.42(e) through (j).

(c) *Exposure amount of a securitization exposure.* (1) *On-balance sheet securitization exposures.* The exposure amount of an on-balance sheet securitization exposure that is not a repo-style transaction, eligible margin loan, or OTC derivative contract (other than a credit derivative) is equal to the carrying value of the exposure.

(2) *Off-balance sheet securitization exposures.* (i) The exposure amount of an off-balance sheet securitization exposure that is not a repo-style transaction, eligible margin loan, or an OTC derivative contract (other than a credit derivative) is the notional amount of the exposure, except for an eligible asset-backed commercial paper (ABCP) liquidity facility. For an off-balance sheet securitization exposure to an ABCP program, such as an eligible ABCP liquidity facility, the notional amount may be reduced to the maximum potential amount that the [BANK] could be required to fund given the ABCP program's current underlying assets (calculated without regard to the current credit quality of those assets).

(ii) A [BANK] must determine the exposure amount of an eligible ABCP liquidity facility for which the SSFA does not apply by multiplying the notional amount of the exposure by a CCF of 50 percent.

(iii) A [BANK] must determine the exposure amount of an eligible ABCP liquidity facility for which the SSFA applies by multiplying the notional amount of the exposure by a CCF of 100 percent.

(3) *Repo-style transactions, eligible margin loans, and derivative contracts.* The exposure amount of a securitization exposure that is a repo-style transaction, eligible margin loan, or derivative contract (other than a credit derivative) is the exposure amount of the transaction as calculated under § ____.34 or § ____.37 as applicable.

(d) *Overlapping exposures.* If a [BANK] has multiple securitization exposures that provide duplicative coverage to the underlying exposures of a securitization (such as when a [BANK] provides a program-wide credit enhancement and multiple pool-specific liquidity facilities to an ABCP program), the [BANK] is not required to hold duplicative risk-based capital against the overlapping position. Instead, the [BANK] may apply to the overlapping position the applicable risk-based capital treatment that results in the highest risk-based capital requirement.

(e) *Implicit support.* If a [BANK] provides support to a securitization in excess of the [BANK]'s contractual obligation to provide credit support to the securitization (implicit support):

(1) The [BANK] must include in risk-weighted assets all of the underlying exposures associated with the securitization as if the exposures had not been securitized and must deduct from common equity tier 1 capital any after-tax gain-on-sale resulting from the securitization; and

(2) The [BANK] must disclose publicly:

(i) That it has provided implicit support to the securitization; and

(ii) The risk-based capital impact to the [BANK] of providing such implicit support.

(f) *Undrawn portion of an eligible servicer cash advance facility.* Regardless of any other provision of this subpart, a [BANK] is not required to hold risk-based capital against the undrawn portion of an eligible servicer cash advance facility.

(g) *Interest-only mortgage-backed securities.* Regardless of any other provisions of this subpart, the risk weight for a non-credit-enhancing interest-only mortgage-backed security may not be less than 100 percent.

(h) *Small-business loans and leases on personal property transferred with retained contractual exposure.* (1) Regardless of any other provisions of this subpart, a [BANK] that has transferred small-business loans and leases on personal property (small-business obligations) must include in risk-weighted assets only its contractual exposure to the small-business obligations if all the following conditions are met:

(i) The transaction must be treated as a sale under GAAP.

(ii) The [BANK] establishes and maintains, pursuant to GAAP, a non-capital reserve sufficient to meet the [BANK]'s reasonably estimated liability under the contractual obligation.

(iii) The small business obligations are to businesses that meet the criteria for a small-business concern established by the Small Business Administration under section 3(a) of the Small Business Act.

(iv) The [BANK] is well capitalized, as defined in the [AGENCY]'s prompt corrective action regulation. For purposes of determining whether a [BANK] is well capitalized for purposes of this paragraph, the [BANK]'s capital ratios must be calculated without regard to the capital treatment for transfers of small-business obligations under this paragraph.

(2) The total outstanding amount of contractual exposure retained by a [BANK] on transfers of small-business obligations receiving the capital treatment specified in paragraph (h)(1) of this section cannot exceed 15 percent of the [BANK]'s total capital.

(3) If a [BANK] ceases to be well capitalized or exceeds the 15 percent capital limitation provided in paragraph (h)(2) of this section, the capital treatment under paragraph (h)(1) of this section will continue to apply to any transfers of small-business obligations with retained contractual exposure that occurred during the time that the [BANK] was well capitalized and did not exceed the capital limit.

(4) The risk-based capital ratios of the [BANK] must be calculated without regard to the capital treatment for transfers of small-business obligations specified in paragraph (h)(1) of this section for purposes of:

(i) Determining whether a [BANK] is adequately capitalized, undercapitalized, significantly undercapitalized, or critically undercapitalized under the [AGENCY]'s prompt corrective action regulations; and

(ii) Reclassifying a well-capitalized [BANK] to adequately capitalized and requiring an adequately capitalized [BANK] to comply with certain mandatory or discretionary supervisory actions as if the [BANK] were in the next lower prompt-corrective-action category.

(i) *Nth-to-default credit derivatives.* (1) *Protection provider.* A [BANK] may assign a risk weight using the SSFA in § ____.43 to an nth-to-default credit derivative in accordance with this paragraph. A [BANK] must determine its exposure in the nth-to-default credit derivative as the largest notional dollar amount of all the underlying exposures.

(2) For purposes of determining the risk weight for an nth-to-default credit derivative using the SSFA, the [BANK] must calculate the attachment point and detachment point of its exposure as follows:

(i) The attachment point (parameter A) is the ratio of the sum of the notional amounts of all underlying exposures that are subordinated to the [BANK]'s exposure to the total notional amount of all underlying exposures. In the case of a first-to-default credit derivative, there are no underlying exposures that are subordinated to the [BANK]'s exposure. In the case of a second-or-subsequent-to-default credit derivative, the smallest (n-1) notional amounts of the underlying exposure(s) are subordinated to the [BANK]'s exposure.

(ii) The detachment point (parameter D) equals the sum of parameter A plus the ratio of the notional amount of the [BANK]'s exposure in the nth-to-default credit derivative to the total notional amount of all underlying exposures.

(3) A [BANK] that does not use the SSFA to determine a risk weight for its nth-to-default credit derivative must assign a risk weight of 1,250 percent to the exposure.

(4) *Protection purchaser.* (i) *First-to-default credit derivatives.* A [BANK] that obtains credit protection on a group of underlying exposures through a first-to-default credit derivative that meets the rules of recognition of § __.36(b) must determine its risk-based capital requirement for the underlying exposures as if the [BANK] synthetically securitized the underlying exposure with the smallest risk-weighted asset amount and had obtained no credit risk mitigant on the other underlying exposures. A [BANK] must calculate a risk-based capital requirement for counterparty credit risk according to § __.34 for a first-to-default credit derivative that does not meet the rules of recognition of § __.36(b).

(ii) *Second-or-subsequent-to-default credit derivatives.* (A) A [BANK] that obtains credit protection on a group of underlying exposures through a nth -to-default credit derivative that meets the rules of recognition of § __.36(b) (other than a first-to-default credit derivative) may recognize the credit risk mitigation benefits of the derivative only if:

(*1*) The [BANK] also has obtained credit protection on the same underlying exposures in the form of first-through-(n-1)-to-default credit derivatives; or

(*2*) If n-1 of the underlying exposures have already defaulted.

(B) If a [BANK] satisfies the requirements of paragraph (i)(4)(ii)(A) of this section, the [BANK] must determine its risk-based capital requirement for the underlying exposures as if the [BANK] had only synthetically securitized the underlying exposure with the smallest risk-weighted asset amount.

(C) A [BANK] must calculate a risk-based capital requirement for counterparty credit risk according to § __.34 for a nth-to-default credit derivative that does not meet the rules of recognition of § __.36(b).

(j) *Guarantees and credit derivatives other than N-th to default credit derivatives.* (1) *Protection provider.* For a guarantee or credit derivative (other than an nth-to-default credit derivative) provided by a [BANK] that covers the full amount or a pro rata share of a securitization exposure's principal and interest, the [BANK] must risk weight the guarantee or credit derivative as if it holds the portion of the reference exposure covered by the guarantee or credit derivative.

(2) *Protection purchaser.* (i) If a [BANK] chooses (and is able) to recognize a guarantee or credit derivative (other than an nth-to-default credit derivative) that references a securitization exposure as a credit risk mitigant, where applicable, the [BANK] must apply § __.45.

(ii) If a [BANK] cannot, or chooses not to, recognize a credit derivative that references a securitization exposure as a credit risk mitigant under § __.45, the [BANK] must determine its capital requirement only for counterparty credit risk in accordance with § ____.31.

§ ____.43. Simplified supervisory formula approach (SSFA) and the gross-up approach.

(a) *General requirements.* To use the SSFA to determine the risk weight for a securitization exposure, a [BANK] must have data that enables it to assign accurately the parameters described in paragraph (b) of this section. Data used to assign the parameters described in paragraph (b) of this section must be the most currently available data and no more than 91 calendar days old. A [BANK] that does not have the appropriate data to assign the parameters described in paragraph (b) of this section must assign a risk weight of 1,250 percent to the exposure.

(b) *SSFA parameters.* To calculate the risk weight for a securitization exposure using the SSFA, a [BANK] must have accurate information on the following five inputs to the SSFA calculation:

(1) K_G is the weighted-average (with unpaid principal used as the weight for each exposure) total capital requirement of the underlying exposures calculated using this subpart. K_G is expressed as a decimal value between zero and 1 (that is, an average risk weight of 100 percent represents a value of K_G equal to .08).

(2) Parameter W is expressed as a decimal value between zero and one. Parameter W is the ratio of the sum of the dollar amounts of any underlying exposures within the securitized pool that meet any of the criteria as set forth in paragraphs (b)(2)(i) through (vi) of this section to the ending balance, measured in dollars, of underlying exposures:

(i) Ninety days or more past due,

(ii) Subject to a bankruptcy or insolvency proceeding,

(iii) In the process of foreclosure,

(iv) Held as real estate owned;

(v) Has contractually deferred interest payments for 90 days or more; or

(vi) Is in default.

(3) Parameter A is the attachment point for the exposure, which represents the threshold at which credit losses will first be allocated to the exposure. Parameter A equals the ratio of the current dollar amount of underlying exposures that are subordinated to the exposure of the [BANK] to the current dollar amount of underlying exposures. Any reserve account funded by the accumulated cash flows from the underlying exposures that is subordinated to the [BANK]'s securitization exposure may be included in the calculation of parameter A to the extent that cash is present in the account. Parameter A is expressed as a decimal value between zero and one.

(4) Parameter D is the detachment point for the exposure, which represents the threshold at which credit losses of principal allocated to the exposure would result in a total loss of principal. Parameter D equals parameter A plus the ratio of the current dollar amount of the securitization exposures that are *pari passu* with the exposure (that is, have equal seniority with respect to credit risk) to the current dollar amount of the underlying exposures. Parameter D is expressed as a decimal value between zero and one.

(5) A supervisory calibration parameter, p, is equal to 0.5 for securitization exposures that are not resecuritization exposures and equal to 1.5 for resecuritization exposures.

(c) *Mechanics of the SSFA.* K_G and W are used to calculate K_A, the augmented value of K_G, which reflects the observed credit quality of the underlying pool of exposures. K_A is defined in paragraph (d) of this section. The values of parameters A and D, relative to K_A determine the risk weight assigned to a securitization exposure as described in paragraph (d) of this section. The risk weight assigned to a securitization exposure, or portion of a exposure, as appropriate, is the larger of the risk weight determined in accordance with this paragraphs (c) and (d) of this section and a risk weight of 20 percent.

(1) When the detachment point, parameter D, for a securitization exposure is less than or equal to K_A, the exposure must be assigned a risk weight of 1,250 percent.

(2) When the attachment point, parameter A, for a securitization exposure is greater than or equal to K_A, the [BANK] must calculate the risk weight in accordance with paragraph (d) of this section.

(3) When A is less than K_A and D is greater than K_A, the risk weight is a weighted-average of 1,250 percent and 1,250 percent times K_{SSFA} calculated in accordance with paragraph (d) of this section, but with the parameter A revised to be set equal to K_A. For the purpose of this weighted-average calculation:

(i) The weight assigned to 1,250 percent equals $\frac{K_A - A}{D - A}$.

(ii) The weight assigned to 1,250 percent times K_{SSFA} equals $\frac{D - K_A}{D - A}$.

(iii) The risk weight will be set equal to:

$$RW = \left[\left(\frac{K_A - A}{D - A}\right) \times 1{,}250\ percent\right] + \left[\left(\frac{D - K_A}{D - A}\right) \times 1{,}250\ percent \times K_{SSFA}\right]$$

(d) SSFA equation. (1) The [BANK] must define the following parameters:

$$K_A = (1 - W) \cdot K_G + (.5 \cdot W)$$

$$a = -\frac{1}{p \cdot K_A}$$

$$u = D - K_A$$

$$l = A - K_A$$

$$e = 2.71828$$

, the base of the natural logarithms.

(2) Then the [BANK] must calculate K_{SSFA} according to the following equation:

$$K_{SSFA} = \frac{e^{a \cdot u} - e^{a \cdot l}}{a(u - l)}$$

(3) The risk weight for the exposure (expressed as a percent) is equal to $K_{SSFA} \times 1{,}250$.

(e) *Gross-up approach.* (1) *Applicability.* A [BANK] that is not subject to subpart F may apply the gross-up approach set forth in this section instead of the SSFA to determine the risk weight of its securitization exposures, provided that it applies the gross-up approach or a 1,250 percent risk weight to all of its securitization exposures, except as otherwise provided for certain securitization exposures in § __.44 and __.45.

(2) To use the gross-up approach, a [BANK] must calculate the following four inputs:

(i) Pro rata share, which is the par value of the [BANK]'s securitization exposure as a percent of the par value of the tranche in which the securitization exposure resides;

(ii) Enhanced amount, which is the value of tranches that are more senior to the tranche in which the [BANK]'s securitization resides;

(iii) Exposure amount of the [BANK]'s securitization exposure calculated under § ____.42(c); and

(iv) Risk weight, which is the weighted-average risk weight of underlying exposures in the securitization pool as calculated under this subpart.

(3) *Credit equivalent amount.* The credit equivalent amount of a securitization exposure under this section equals the sum of the exposure amount of the [BANK]'s securitization exposure and the pro rata share multiplied by the enhanced amount, each calculated in accordance with paragraph (e)(2) of this section.

(4) *Risk-weighted assets.* To calculate risk-weighted assets for a securitization exposure under the gross-up approach, a [BANK] must apply the risk weight calculated under paragraph (e)(2) of this section to the credit equivalent amount calculated in paragraph (e)(3) of this section.

(f) *Limitations.* Notwithstanding any other provision of this section, a [BANK] must assign a risk weight of not less than 20 percent to a securitization exposure.

§ ____.44. Securitization exposures to which the SSFA and gross-up approach do not apply.

(a) *General Requirement.* A [BANK] must assign a 1,250 percent risk weight to all securitization exposures to which the [BANK] does not apply the SSFA or the gross up approach under § ____.43, except as set forth in this section;

(b) *Eligible ABCP liquidity facilities.* A [BANK] may determine the risk-weighted asset amount of an eligible ABCP liquidity facility by multiplying the exposure amount by the highest risk weight applicable to any of the individual underlying exposures covered by the facility.

(c) *A securitization exposure in a second loss position or better to an ABCP program.* (1) *Risk weighting.* A [BANK] may determine the risk-weighted asset amount of a securitization exposure that is in a second loss position or better to an ABCP program that meets the requirements of paragraph (c)(2) of this section by multiplying the exposure amount by the higher of the following risk weights:

(i) 100 percent; and

(ii) The highest risk weight applicable to any of the individual underlying exposures of the ABCP program.

(2) *Requirements.* (i) The exposure is not an eligible ABCP liquidity facility;

(ii) The exposure must be economically in a second loss position or better, and the first loss position must provide significant credit protection to the second loss position;

(iii) The exposure qualifies as investment grade; and

(iv) The [BANK] holding the exposure must not retain or provide protection to the first loss position.

§ ____.45 Recognition of credit risk mitigants for securitization exposures.

(a) *General.* (1) An originating [BANK] that has obtained a credit risk mitigant to hedge its exposure to a synthetic or traditional securitization that satisfies the operational criteria provided in § ____.41 may recognize the credit risk mitigant under §§ ____.36 or ____.37, but only as provided in this section.

(2) An investing [BANK] that has obtained a credit risk mitigant to hedge a securitization exposure may recognize the credit risk mitigant under §§ ____.36 or ____.37, but only as provided in this section.

(b) *Eligible guarantors for securitization exposures.* A [BANK] may only recognize an eligible guarantee or eligible credit derivative from an eligible guarantor.

(c) *Mismatches.* A [BANK] must make any applicable adjustment to the protection amount of an eligible guarantee or credit derivative as required in §§ ____.36(d), (e), and (f) for any hedged securitization exposure. In the context of a synthetic securitization, when an eligible guarantee or eligible credit derivative covers multiple hedged exposures that have different residual maturities, the [BANK] must use the longest residual maturity of any of the hedged exposures as the residual maturity of all hedged exposures.

Risk-weighted Assets For Equity Exposures

§ ____.51 Introduction and exposure measurement.

(a) *General.* To calculate its risk-weighted asset amounts for equity exposures that are not equity exposures to an investment fund, a [BANK] must use the Simple Risk-Weight Approach (SRWA) provided in § ____.52. A [BANK] must use the look-through approaches provided in § ____.53 to calculate its risk-weighted asset amounts for equity exposures to investment funds.

(b) *Adjusted carrying value.* For purposes of §§ ____.51 through ____.53, the adjusted carrying value of an equity exposure is:

(1) For the on-balance sheet component of an equity exposure, the [BANK]'s carrying value of the exposure and

(2) For the off-balance sheet component of an equity exposure that is not an equity commitment, the effective notional principal amount of the exposure, the size of which is equivalent to a hypothetical on-balance sheet position in the underlying equity instrument that would evidence the same change in fair value (measured in dollars) given a small change in the price of the underlying equity instrument, minus the adjusted carrying value of the on-balance sheet component of the exposure as calculated in paragraph (b)(1) of this section.

(3) For a commitment to acquire an equity exposure (an equity commitment), the effective notional principal amount of the exposure is multiplied by the following conversion factors (CFs):

(i) Conditional equity commitments with an original maturity of one year or less receive a CF of 20 percent.

(ii) Conditional equity commitments with an original maturity of over one year receive a CF of 50 percent.

(iii) Unconditional equity commitments receive a CF of 100 percent.

§ ____.52 Simple risk-weight approach (SRWA).

(a) *General.* Under the SRWA, a [BANK]'s total risk-weighted assets for equity exposures equals the sum of the risk-weighted asset amounts for each of the [BANK]'s individual equity exposures (other than equity exposures to an investment fund) as determined under this section and the risk-weighted asset amounts for each of the [BANK]'s individual equity exposures to an investment fund as determined under § ____.53.

(b) *SRWA computation for individual equity exposures.* A [BANK] must determine the risk-weighted asset amount for an individual equity exposure (other than an equity exposure to an investment fund) by multiplying the adjusted carrying value of the equity exposure or the effective portion and ineffective portion of a hedge pair (as defined in paragraph (c) of this section) by the lowest applicable risk weight in this paragraph.

(1) *Zero percent risk weight equity exposures.* An equity exposure to a sovereign, the Bank for International Settlements, the European Central Bank, the European Commission, the International Monetary Fund, an MDB, and any other entity whose credit exposures receive a zero percent risk weight under § ____.32 may be assigned a zero percent risk weight.

(2) *20 percent risk weight equity exposures.* An equity exposure to a PSE, Federal Home Loan Bank or the Federal Agricultural Mortgage Corporation (Farmer Mac) must be assigned a 20 percent risk weight.

(3) *100 percent risk weight equity exposures.* The following equity exposures must be assigned a 100 percent risk weight:

(i) *Community development equity exposures.*

(A) For [BANK]s, savings and loan holding companies, and bank holding companies, an equity exposure that qualifies as a community development investment under § ____.24 (Eleventh) of the National Bank Act, excluding equity exposures to an unconsolidated small business investment company and equity exposures held through a consolidated small business investment company described in section 302 of the Small Business Investment Act.

(B) For savings associations, an equity exposure that is designed primarily to promote community welfare, including the welfare of low- and moderate-income communities or families, such as by providing services or employment, and excluding equity exposures to an unconsolidated small business investment company and equity exposures held through a small business investment company described in section 302 of the Small Business Investment Act.

(ii) *Effective portion of hedge pairs.* The effective portion of a hedge pair.

(iii) *Non-significant equity exposures.* Equity exposures, excluding exposures to an investment firm that would meet the definition of a traditional securitization were it not for the application of paragraph (8) of that definition in § _____.2 and has greater than immaterial leverage, to the extent that the aggregate adjusted carrying value of the exposures does not exceed 10 percent of the [BANK]'s total capital.

(A) To compute the aggregate adjusted carrying value of a [BANK]'s equity exposures for purposes of this section, the [BANK] may exclude equity exposures described in paragraphs (b)(1), (b)(2), (b)(3)(i), and (b)(3)(ii) of this section, the equity exposure in a hedge pair with the smaller adjusted carrying value, and a proportion of each equity exposure to an investment fund equal to the proportion of the assets of the investment fund that are not equity exposures or that meet the criterion of paragraph (b)(3)(i) of this section. If a [BANK] does not know the actual holdings of the investment fund, the [BANK] may calculate the proportion of the assets of the fund that are not equity exposures based on the terms of the prospectus, partnership agreement, or similar contract that defines the fund's permissible investments. If the sum of the investment limits for all exposure classes within the fund exceeds 100 percent, the [BANK] must assume for purposes of this section that the investment fund invests to the maximum extent possible in equity exposures.

(B) When determining which of a [BANK]'s equity exposures qualify for a 100 percent risk weight under this paragraph, a [BANK] first must include equity exposures to unconsolidated small business investment companies or held through consolidated small business investment companies described in section 302 of the Small Business Investment Act, then must include publicly-traded equity exposures (including those held indirectly through investment funds), and then must include nonpublicly-traded equity exposures (including those held indirectly through investment funds).

(4) *250 percent risk weight equity exposures.* Significant investments in the capital of unconsolidated financial institutions that are not deducted from capital pursuant to § ____.22(d) are assigned a 250 percent risk weight.

(5) *300 percent risk weight equity exposures.* A publicly-traded equity exposure (other than an equity exposure described in paragraph (b)(7) of this section and including the ineffective portion of a hedge pair) must be assigned a 300 percent risk weight.

(6) *400 percent risk weight equity exposures.* An equity exposure (other than an equity exposure described in paragraph (b)(7)) of this section that is not publicly-traded must be assigned a 400 percent risk weight.

(7) *600 percent risk weight equity exposures.* An equity exposure to an investment firm must be assigned a 600 percent risk weight, provided that the investment firm:

(i) Would meet the definition of a traditional securitization were it not for the application of paragraph (8) of that definition; and

(ii) Has greater than immaterial leverage.

(c) *Hedge transactions.* (1) *Hedge pair.* A hedge pair is two equity exposures that form an effective hedge so long as each equity exposure is publicly-traded or has a return that is primarily based on a publicly-traded equity exposure.

(2) *Effective hedge.* Two equity exposures form an effective hedge if the exposures either have the same remaining maturity or each has a remaining maturity of at least three months; the hedge relationship is formally documented in a prospective manner (that is, before the [BANK] acquires at least one of the equity exposures); the documentation specifies the measure of effectiveness (E) the [BANK] will use for the hedge relationship throughout the life of the transaction; and the hedge relationship has an E greater than or equal to 0.8. A [BANK] must measure E at least quarterly and must use one of three alternative measures of E:

(i) Under the dollar-offset method of measuring effectiveness, the [BANK] must determine the ratio of value change (RVC). The RVC is the ratio of the cumulative sum of the changes in value of one equity exposure to the cumulative sum of the changes in the value of the other equity exposure. If RVC is positive, the hedge is not effective and E equals 0. If RVC is negative and greater than or equal to −1 (that is, between zero and −1), then E equals the absolute value of RVC. If RVC is negative and less than −1, then E equals 2 plus RVC.

(ii) Under the variability-reduction method of measuring effectiveness:

$$E = 1 - \frac{\sum_{t=1}^{T} \left(X_t - X_{t-1} \right)^2}{\sum_{t=1}^{T} \left(A_t - A_{t-1} \right)^2}, \text{ where}$$

(A) $X_t = A_t - B_t$;

(B) A_t = the value at time t of one exposure in a hedge pair; and

(C) B_t = the value at time t of the other exposure in a hedge pair.

(iii) Under the regression method of measuring effectiveness, E equals the coefficient of determination of a regression in which the change in value of one exposure in a hedge pair is the dependent variable and the change in value of the other exposure in a hedge pair is the independent variable. However, if the estimated regression coefficient is positive, then E equals zero.

(3) The effective portion of a hedge pair is E multiplied by the greater of the adjusted carrying values of the equity exposures forming a hedge pair.

(4) The ineffective portion of a hedge pair is (1 − E) multiplied by the greater of the adjusted carrying values of the equity exposures forming a hedge pair.

§ ____.53 Equity exposures to investment funds.

(a) *Available approaches.* (1) Unless the exposure meets the requirements for a community development equity exposure under § ___.52(b)(3)(i), a [BANK] must determine the risk-weighted asset amount of an equity exposure to an investment fund under the Full Look-Through Approach described in paragraph (b) of this section, the Simple Modified Look-Through Approach described in paragraph (c) of this section, or the Alterative Modified Look-Through Approach described paragraph (d) of this section.

(2) The risk-weighted asset amount of an equity exposure to an investment fund that meets the requirements for a community development equity exposure in § ____.52(b)(3)(i) is its adjusted carrying value.

(3) If an equity exposure to an investment fund is part of a hedge pair and the [BANK] does not use the Full Look-Through Approach, the [BANK] may use the ineffective portion of the hedge pair as determined under § ____.52(c) as the adjusted carrying value for the equity exposure to the investment fund. The risk-weighted asset amount of the effective portion of the hedge pair is equal to its adjusted carrying value.

(b) *Full Look-Through Approach.* A [BANK] that is able to calculate a risk-weighted asset amount for its proportional ownership share of each exposure held by the investment fund (as calculated under this subpart as if the proportional ownership share of each exposure were held directly by the [BANK]) may set the risk-weighted asset amount of the [BANK]'s exposure to the fund equal to the product of:

(1) The aggregate risk-weighted asset amounts of the exposures held by the fund as if they were held directly by the [BANK]; and

(2) The [BANK]'s proportional ownership share of the fund.

(c) *Simple Modified Look-Through Approach.* Under the Simple Modified Look-Through Approach, the risk-weighted asset amount for a [BANK]'s equity exposure to an investment fund equals the adjusted carrying value of the equity exposure multiplied by the highest risk weight that applies to any exposure the fund is permitted to hold under the prospectus, partnership agreement, or similar agreement that defines the fund's permissible investments (excluding derivative contracts that are used for hedging rather than speculative purposes and that do not constitute a material portion of the fund's exposures).

(d) *Alternative Modified Look-Through Approach.* Under the Alternative Modified Look-Through Approach, a [BANK] may assign the adjusted carrying value of an equity exposure to an investment fund on a pro rata basis to different risk weight categories under this subpart based on the investment limits in the fund's prospectus, partnership agreement, or similar contract that defines the fund's permissible investments. The risk-weighted asset amount for the [BANK]'s equity exposure to the investment fund equals the sum of each portion of the adjusted carrying value assigned to an exposure type multiplied by the applicable risk weight under this subpart. If the sum of the investment limits for all exposure types within the fund exceeds 100 percent, the [BANK] must assume that the fund invests to the maximum extent permitted under its investment limits in the exposure type with the highest applicable risk weight under this subpart and continues to make investments in order of the exposure type with the next highest applicable risk weight under this subpart until the maximum total investment level is reached. If more than one exposure type applies to an exposure, the [BANK] must use the highest applicable risk weight. A [BANK] may exclude derivative contracts held by the fund that are used for hedging rather than for speculative purposes and do not constitute a material portion of the fund's exposures.

DISCLOSURES

§ ____.61 Purpose and scope.

Sections ____.61–____.63 of this subpart establish public disclosure requirements related to the capital requirements described in Subpart B for a [BANK] with total consolidated assets of $50 billion or more that is not an advanced approaches [BANK] making public disclosures pursuant to § ____.172. Such a [BANK] must comply with § ____.62 of this part unless it is a consolidated subsidiary of a bank holding company, savings and loan holding company, or depository institution that is subject to these disclosure requirements or a subsidiary of a non-U.S. banking organization that is subject to comparable public disclosure requirements in its home jurisdiction. For purposes of this section, total consolidated assets are determined based on the average of the [BANK]'s total consolidated assets in the four most recent quarters as reported on the [REGULATORY REPORT]; or the average of the [BANK]'s total consolidated assets in the most recent consecutive quarters as reported quarterly on the [BANK]'s [REGULATORY REPORT] if the [BANK] has not filed such a report for each of the most recent four quarters.

§ ____.62 Disclosure requirements.

(a) A [BANK] described in § ____.61 must provide timely public disclosures each calendar quarter of the information in the applicable tables in § ____.63. If a significant change occurs, such that the most recent reported amounts are no longer reflective of the [BANK]'s capital adequacy and risk profile, then a brief discussion of this change and its likely impact must be disclosed as soon as practicable thereafter. Qualitative disclosures that typically do not change each quarter (for example, a general summary of the [BANK]'s risk management objectives and policies, reporting system, and definitions) may be disclosed annually, provided that any significant changes are disclosed in the interim. The [BANK]'s management is encouraged to provide all of the disclosures required by §§ ____.61 through ____.63 of this part in one place on the [BANK]'s public Web site.[96]

(b) A [BANK] described in § ____.61 must have a formal disclosure policy approved by the board of directors that addresses its approach for determining the disclosures it makes. The policy must address the associated internal controls and disclosure controls and procedures. The board of directors and senior management are responsible for establishing and maintaining an effective internal control structure over financial reporting, including the disclosures required by this subpart, and must ensure that appropriate review of the disclosures takes place. One or more senior officers of the [BANK] must attest that the disclosures meet the requirements of this subpart.

(c) If a [BANK] described in § __.61 concludes that specific commercial or financial information that it would otherwise be required to disclose under this section would be exempt from disclosure by the [AGENCY] under the Freedom of Information Act (5 U.S.C. 552), then the [BANK] is not required to disclose that specific information pursuant to this section, but must disclose more general information about the subject matter of the requirement, together with the fact that, and the reason why, the specific items of information have not been disclosed.

§ __.63 Disclosures by [BANK]s described in § __.61.

(a) Except as provided in § __.62, a [BANK] described in § __.61 must make the disclosures described in Tables 14.1 through 14.10 of this section. The [BANK] must make these disclosures publicly available for each of the last three years (that is, twelve quarters) or such shorter period beginning on the effective date of this subpart D.

[96] Alternatively, a [BANK] may provide the disclosures in more than one place, as some of them may be included in public financial reports (for example, in Management's Discussion and Analysis included in SEC filings) or other regulatory reports. The [BANK] must publicly provide a summary table that specifically indicates where all the disclosures may be found (for example, regulatory report schedules, page numbers in annual reports).

(b) A [BANK] must publicly disclose each quarter the following:

(1) Common equity tier 1 capital, additional tier 1 capital, tier 2 capital, tier 1 and total capital ratios, including the regulatory capital elements and all the regulatory adjustments and deductions needed to calculate the numerator of such ratios;

(2) Total risk-weighted assets, including the different regulatory adjustments and deductions needed to calculate total risk-weighted assets;

(3) Regulatory capital ratios during any transition periods, including a description of all the regulatory capital elements and all regulatory adjustments and deductions needed to calculate the numerator and denominator of each capital ratio during any transition period; and

(4) A reconciliation of regulatory capital elements as they relate to its balance sheet in any audited consolidated financial statements.

TABLE 14.1—SCOPE OF APPLICATION

Qualitative Disclosures	(a)	The name of the top corporate entity in the group to which subpart D of this [PART] applies.
	(b)	A brief description of the differences in the basis for consolidating entities[97] for accounting and regulatory purposes, with a description of those entities: (1) That are fully consolidated; (2) That are deconsolidated and deducted from total capital; (3) For which the total capital requirement is deducted; and (4) That are neither consolidated nor deducted (for example, where the investment in the entity is assigned a risk weight in accordance with this subpart).
	(c)	Any restrictions, or other major impediments, on transfer of funds or total capital within the group.
Quantitative Disclosures	(d)	The aggregate amount of surplus capital of insurance subsidiaries included in the total capital of the consolidated group.
	(e)	The aggregate amount by which actual total capital is less than the minimum total capital requirement in all subsidiaries, with total capital requirements and the name(s) of the subsidiaries with such deficiencies.

[97] Entities include securities, insurance and other financial subsidiaries, commercial subsidiaries (where permitted), and significant minority equity investments in insurance, financial, and commercial entities.

TABLE 14.2—CAPITAL STRUCTURE

Qualitative Disclosures	(a)	Summary information on the terms and conditions of the main features of all regulatory capital instruments.
Quantitative Disclosures	(b)	The amount of common equity tier 1 capital, with separate disclosure of: (1) Common stock and related surplus; (2) Retained earnings; (3) Common equity minority interest; (4) AOCI; and (5) Regulatory deductions and adjustments made to common equity tier 1 capital.
	(c)	The amount of tier 1 capital, with separate disclosure of: (1) Additional tier 1 capital elements, including additional tier 1 capital instruments and tier 1 minority interest not included in common equity tier 1 capital; and (2) Regulatory deductions and adjustments made to tier 1 capital.
	(d)	The amount of total capital, with separate disclosure of: (1) Tier 2 capital elements, including tier 2 capital instruments and total capital minority interest not included in tier 1 capital; and (2) Regulatory deductions and adjustments made to total capital.

TABLE 14.3—CAPITAL ADEQUACY

Qualitative disclosures	(a)	A summary discussion of the [BANK]'s approach to assessing the adequacy of its capital to support current and future activities.
Quantitative disclosures	(b)	Risk-weighted assets for: (1) Exposures to sovereign entities; (2) Exposures to certain supranational entities and MDBs; (3) Exposures to depository institutions, foreign banks, and credit unions; (4) Exposures to PSEs; (5) Corporate exposures; (6) Residential mortgage exposures; (7) Statutory multifamily mortgages and pre-sold construction loans; (8) HVCRE loans; (9) Past due loans; (10) Other assets; (11) Cleared transactions; (12) Default fund contributions; (13) Unsettled transactions; (14) Securitization exposures; and (15) Equity exposures.
	(c)	Standardized market risk-weighted assets as calculated under subpart F of this [PART].[98]

TABLE 14.3—CAPITAL ADEQUACY—Continued

	(d)	Common equity tier 1, tier 1 and total risk-based capital ratios: (1) For the top consolidated group; and (2) For each depository institution subsidiary.
	(e)	Total risk-weighted assets.

[98] Standardized market risk-weighted assets determined under subpart F are to be disclosed only for the approaches used.

TABLE 14.4—CAPITAL CONSERVATION BUFFER

Quantitative Disclosures	(a)	At least quarterly, the [BANK] must calculate and publicly disclose the capital conservation buffer as described under § ___.11.
	(b)	At least quarterly, the [BANK] must calculate and publicly disclose the eligible retained income of the [BANK], as described under § __.11.
	(c)	At least quarterly, the [BANK] must calculate and publicly disclose any limitations it has on capital distributions and discretionary bonus payments resulting from the capital conservation buffer framework described under § __.11, including the maximum payout amount for the quarter.

General Qualitative Disclosure Requirement

For each separate risk area described in tables 14.5 through 14.10, the [BANK] must describe its risk management objectives and policies, including: strategies and processes; the structure and organization of the relevant risk management function; the scope and nature of risk reporting and/or measurement systems; policies for hedging and/or mitigating risk and strategies and processes for monitoring the continuing effectiveness of hedges/ mitigants.

TABLE 14.5 [99]—CREDIT RISK: GENERAL DISCLOSURES

Qualitative Disclosures	(a)	The general qualitative disclosure requirement with respect to credit risk (excluding counterparty credit risk disclosed in accordance with Table 14.6), including the: (1) Policy for determining past due or delinquency status; (2) Policy for placing loans on nonaccrual; (3) Policy for returning loans to accrual status; (4) Definition of and policy for identifying impaired loans (for financial accounting purposes); (5) Description of the methodology that the [BANK] uses to estimate its allowance for loan losses, including statistical methods used where applicable; (6) Policy for charging-off uncollectible amounts; and (7) Discussion of the [BANK]'s credit risk management policy.
Quantitative Disclosures	(b)	Total credit risk exposures and average credit risk exposures, after accounting offsets in accordance with GAAP, without taking into account the effects of credit risk mitigation techniques (for example, collateral and netting not permitted under GAAP), over the period categorized by major types of credit exposure. For example, [BANK]s could use categories similar to that used for financial statement purposes. Such categories might include, for instance (1) Loans, off-balance sheet commitments, and other non-derivative off-balance sheet exposures, (2) Debt securities, and (3) OTC derivatives.[100]
	(c)	Geographic distribution of exposures, categorized in significant areas by major types of credit exposure.[101]
	(d)	Industry or counterparty type distribution of exposures, categorized by major types of credit exposure.
	(e)	By major industry or counterparty type: (1) Amount of impaired loans for which there was a related allowance under GAAP; (2) Amount of impaired loans for which there was no related allowance under GAAP; (3) Amount of loans past due 90 days and on nonaccrual; (4) Amount of loans past due 90 days and still accruing;[102] (5) The balance in the allowance for credit losses at the end of each period, disaggregated on the basis of the [BANK]'s impairment method. To disaggregate the information required on the basis of impairment methodology, an entity shall separately disclose the amounts based on the requirements in GAAP; and (6) Charge-offs during the period.
	(f)	Amount of impaired loans and, if available, the amount of past due loans categorized by significant geographic areas including, if practical, the amounts of allowances related to each geographical area [103], further categorized as required by GAAP.
	(g)	Reconciliation of changes in ALLL.[104]
	(h)	Remaining contractual maturity delineation (for example, one year or less) of the whole portfolio, categorized by credit exposure.

[99] Table 14.5 does not cover equity exposures.
[100] *See,* for example, ASC Topic 815–10 and 210–20 (formerly FASB Interpretation Numbers 37 and 41).
[101] Geographical areas may consist of individual countries, groups of countries, or regions within countries. A [BANK] might choose to define the geographical areas based on the way the [BANK]'s portfolio is geographically managed. The criteria used to allocate the loans to geographical areas must be specified.
[102] A [BANK] is encouraged also to provide an analysis of the aging of past-due loans.
[103] The portion of the general allowance that is not allocated to a geographical area should be disclosed separately.

[104] The reconciliation should include the following: a description of the allowance; the opening balance of the allowance; charge-offs taken against the allowance during the period; amounts provided (or reversed) for estimated probable loan losses during the period; any other adjustments (for example, exchange rate differences, business combinations, acquisitions and disposals of subsidiaries), including transfers between allowances; and the closing balance of the allowance. Charge-offs and recoveries that have been recorded directly to the income statement should be disclosed separately.

TABLE 14.6—GENERAL DISCLOSURE FOR COUNTERPARTY CREDIT RISK-RELATED EXPOSURES

Qualitative Disclosures	(a)	The general qualitative disclosure requirement with respect to OTC derivatives, eligible margin loans, and repo-style transactions, including a discussion of: (1) The methodology used to assign credit limits for counterparty credit exposures; (2) Policies for securing collateral, valuing and managing collateral, and establishing credit reserves; (3) The primary types of collateral taken; and (4) The impact of the amount of collateral the [BANK] would have to provide given a deterioration in the [BANK]'s own creditworthiness.
Quantitative Disclosures	(b)	Gross positive fair value of contracts, collateral held (including type, for example, cash, government securities), and net unsecured credit exposure.[105] A [BANK] also must disclose the notional value of credit derivative hedges purchased for counterparty credit risk protection and the distribution of current credit exposure by exposure type.[106]
	(c)	Notional amount of purchased and sold credit derivatives, segregated between use for the [BANK]'s own credit portfolio and in its intermediation activities, including the distribution of the credit derivative products used, categorized further by protection bought and sold within each product group.

[105] Net unsecured credit exposure is the credit exposure after considering both the benefits from legally enforceable netting agreements and collateral arrangements without taking into account haircuts for price volatility, liquidity, etc.

[106] This may include interest rate derivative contracts, foreign exchange derivative contracts, equity derivative contracts, credit derivatives, commodity or other derivative contracts, repo-style transactions, and eligible margin loans.

TABLE 14.7—CREDIT RISK MITIGATION [107] [108]

Qualitative Disclosures	(a)	The general qualitative disclosure requirement with respect to credit risk mitigation, including: (1) Policies and processes for collateral valuation and management; (2) A description of the main types of collateral taken by the [BANK]; (3) The main types of guarantors/credit derivative counterparties and their creditworthiness; and (4) Information about (market or credit) risk concentrations with respect to credit risk mitigation.
Quantitative Disclosures	(b)	For each separately disclosed credit risk portfolio, the total exposure that is covered by eligible financial collateral, and after the application of haircuts.
	(c)	For each separately disclosed portfolio, the total exposure that is covered by guarantees/credit derivatives and the risk-weighted asset amount associated with that exposure.

[107] At a minimum, a [BANK] must provide the disclosures in Table 14.7 in relation to credit risk mitigation that has been recognized for the purposes of reducing capital requirements under this subpart. Where relevant, [BANK]s are encouraged to give further information about mitigants that have not been recognized for that purpose.

[108] Credit derivatives that are treated, for the purposes of this subpart, as synthetic securitization exposures should be excluded from the credit risk mitigation disclosures and included within those relating to securitization (Table 14.8).

TABLE 14.8—SECURITIZATION

Qualitative Disclosures	(a)	The general qualitative disclosure requirement with respect to a securitization (including synthetic securitizations), including a discussion of: (1) The [BANK]'s objectives for securitizing assets, including the extent to which these activities transfer credit risk of the underlying exposures away from the [BANK] to other entities and including the type of risks assumed and retained with resecuritization activity;[109] (2) The nature of the risks (e.g. liquidity risk) inherent in the securitized assets; (3) The roles played by the [BANK] in the securitization process [110] and an indication of the extent of the [BANK]'s involvement in each of them; (4) The processes in place to monitor changes in the credit and market risk of securitization exposures including how those processes differ for resecuritization exposures; (5) The [BANK]'s policy for mitigating the credit risk retained through securitization and resecuritization exposures; and (6) The risk-based capital approaches that the [BANK] follows for its securitization exposures including the type of securitization exposure to which each approach applies.
	(b)	A list of: (1) The type of securitization SPEs that the [BANK], as sponsor, uses to securitize third-party exposures. The [BANK] must indicate whether it has exposure to these SPEs , either on- or off-balance sheet; and (2) Affiliated entities— (i) That the [BANK] manages or advises; and (ii) That invest either in the securitization exposures that the [BANK] has securitized or in securitization SPEs that the [BANK] sponsors.[111]
	(c)	Summary of the [BANK]'s accounting policies for securitization activities, including: (1) Whether the transactions are treated as sales or financings; (2) Recognition of gain-on-sale; (3) Methods and key assumptions applied in valuing retained or purchased interests;

TABLE 14.8—SECURITIZATION—Continued

		(4) Changes in methods and key assumptions from the previous period for valuing retained interests and impact of the changes; (5) Treatment of synthetic securitizations; (6) How exposures intended to be securitized are valued and whether they are recorded under subpart D; and (7) Policies for recognizing liabilities on the balance sheet for arrangements that could require the [BANK] to provide financial support for securitized assets.
	(d)	An explanation of significant changes to any quantitative information since the last reporting period.
Quantitative Disclosures	(e)	The total outstanding exposures securitized by the [BANK] in securitizations that meet the operational criteria provided in § __.41 (categorized into traditional and synthetic securitizations), by exposure type, separately for securitizations of third-party exposures for which the bank acts only as sponsor.[112]
	(f)	For exposures securitized by the [BANK] in securitizations that meet the operational criteria in § __.41: (1) Amount of securitized assets that are impaired/past due categorized by exposure type; [113] and (2) Losses recognized by the [BANK] during the current period categorized by exposure type.[114]
	(g)	The total amount of outstanding exposures intended to be securitized categorized by exposure type.
	(h)	Aggregate amount of: (1) On-balance sheet securitization exposures retained or purchased categorized by exposure type; and (2) Off-balance sheet securitization exposures categorized by exposure type.
	(i)	(1) Aggregate amount of securitization exposures retained or purchased and the associated capital requirements for these exposures, categorized between securitization and resecuritization exposures, further categorized into a meaningful number of risk weight bands and by risk-based capital approach (e.g., SSFA); and (2) Exposures that have been deducted entirely from tier 1 capital, credit enhancing I/Os deducted from total capital (as described in § __.42(a)(1), and other exposures deducted from total capital should be disclosed separately by exposure type.
	(j)	Summary of current year's securitization activity, including the amount of exposures securitized (by exposure type), and recognized gain or loss on sale by exposure type.
	(k)	Aggregate amount of resecuritization exposures retained or purchased categorized according to: (1) Exposures to which credit risk mitigation is applied and those not applied; and (2) Exposures to guarantors categorized according to guarantor credit worthiness categories or guarantor name.

[109] The [BANK] should describe the structure of resecuritizations in which it participates; this description should be provided for the main categories of resecuritization products in which the [BANK] is active.

[110] For example, these roles may include originator, investor, servicer, provider of credit enhancement, sponsor, liquidity provider, or swap provider.

[111] Such affiliated entities may include, for example, money market funds, to be listed individually, and personal and private trusts, to be noted collectively.

[112] "Exposures securitized" include underlying exposures originated by the bank, whether generated by them or purchased, and recognized in the balance sheet, from third parties, and third-party exposures included in sponsored transactions. Securitization transactions (including underlying exposures originally on the bank's balance sheet and underlying exposures acquired by the bank from third-party entities) in which the originating bank does not retain any securitization exposure should be shown separately but need only be reported for the year of inception. Banks are required to disclose exposures regardless of whether there is a capital charge under Pillar 1.

[113] Include credit-related other than temporary impairment (OTTI).

[114] For example, charge-offs/allowances (if the assets remain on the bank's balance sheet) or credit-related OTTI of I/O strips and other retained residual interests, as well as recognition of liabilities for probable future financial support required of the bank with respect to securitized assets.

TABLE 14.9—EQUITIES NOT SUBJECT TO SUBPART F OF THIS [PART]

Qualitative Disclosures	(a)	The general qualitative disclosure requirement with respect to equity risk for equities not subject to subpart F of this [PART], including: (1) Differentiation between holdings on which capital gains are expected and those taken under other objectives including for relationship and strategic reasons; and (2) Discussion of important policies covering the valuation of and accounting for equity holdings not subject to subpart F of this [PART]. This includes the accounting techniques and valuation methodologies used, including key assumptions and practices affecting valuation as well as significant changes in these practices.
Quantitative Disclosures	(b)	Value disclosed on the balance sheet of investments, as well as the fair value of those investments; for securities that are publicly-traded, a comparison to publicly-quoted share values where the share price is materially different from fair value.
	(c)	The types and nature of investments, including the amount that is: (1) Publicly-traded; and (2) Non publicly-traded.
	(d)	The cumulative realized gains (losses) arising from sales and liquidations in the reporting period.
	(e)	(1) Total unrealized gains (losses).[115] (2) Total latent revaluation gains (losses).[116]

TABLE 14.9—EQUITIES NOT SUBJECT TO SUBPART F OF THIS [PART]—Continued

		(3) Any amounts of the above included in tier 1 or tier 2 capital.
	(f)	Capital requirements categorized by appropriate equity groupings, consistent with the [BANK]'s methodology, as well as the aggregate amounts and the type of equity investments subject to any supervisory transition regarding regulatory capital requirements.

[115] Unrealized gains (losses) recognized on the balance sheet but not through earnings.
[116] Unrealized gains (losses) not recognized either on the balance sheet or through earnings.

TABLE 14.10—INTEREST RATE RISK FOR NON-TRADING ACTIVITIES

Qualitative disclosures	(a)	The general qualitative disclosure requirement, including the nature of interest rate risk for non-trading activities and key assumptions, including assumptions regarding loan prepayments and behavior of non-maturity deposits, and frequency of measurement of interest rate risk for non-trading activities.
Quantitative disclosures	(b)	The increase (decline) in earnings or economic value (or relevant measure used by management) for upward and downward rate shocks according to management's method for measuring interest rate risk for non-trading activities, categorized by currency (as appropriate).

[End of Proposed Common Rule Text]

List of Subjects

12 CFR Part 3

Administrative practices and procedure, Capital, National banks, Reporting and recordkeeping requirements, Risk.

12 CFR Part 217

Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

12 CFR Part 325

Administrative practice and procedure, Banks, banking, Capital Adequacy, Reporting and recordkeeping requirements, Savings associations, State non-member banks.

Adoption of Proposed Common Rule

The adoption of the proposed 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 and under the authority of 12 U.S.C. 93a and 5412(b)(2)(B), the Office of the Comptroller of the Currency proposes to further amend part 3 of chapter I of title 12, Code of Federal Regulations as proposed to be amended elsewhere in this issue of the **Federal Register** under Docket IDs OCC–2012–0008 and OCC–2012–0010, as follows:

PART 3—MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

1. The authority citation for part 3 is revised to read as follows:

Authority: 12 U.S.C. 93a, 161, 1462, 1462a, 1463, 1464, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, 3909, and 5412(b)(2)(B).

2. Designate the text set forth at the end of the common preamble as subpart D of part 3.

3. Newly designated subpart D is amended as set forth below:

i. Remove ''[AGENCY]'' and add ''OCC'' in its place, wherever it appears;

ii. Remove ''[BANK]'' and add ''national bank or Federal savings association'' in its place, wherever it appears;

iii. Remove ''[BANK]s'' and add ''national banks and Federal savings associations'' in its place, wherever it appears;

iv. Remove ''[BANK]'s'' and add ''national bank's and Federal savings association's'' in its place, wherever it appears;

v. Remove ''[PART]'' and add ''Part 3'' in its place, wherever it appears; and

vi. Remove ''[REGULATORY REPORT]'' and add ''Call Report'' in its place, wherever it appears.

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 217 of chapter II of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 217—CAPITAL ADEQUACY OF BANK HOLDING COMPANIES, SAVINGS AND LOAN HOLDING COMPANIES, AND STATE MEMBER BANKS (REGULATION Q)

1. The authority citation for part 217 continues to read as follows:

Authority: 12 U.S.C. 248(a), 321–338a, 481–486, 1462a, 1467a, 1818, 1828, 1831n, 1831o, 1831p–l, 1831w, 1835, 1844(b), 3904, 3906–3909, 4808, 5365, 5371.

2. Subpart D is added as set forth at the end of the common preamble.

3. Subpart D is amended as set forth below:

a. Remove ''[AGENCY]'' and add ''Board'' in its place wherever it appears.

b. Remove ''[BANK]'' and add ''Board-regulated institution'' in its place wherever it appears.

c. Remove ''[BANK]s'' and add ''Board-regulated institutions'' in its place, wherever it appears;

d. Remove ''[BANK]'s'' and add ''Board-regulated institution's'' in its place, wherever it appears;

e. Remove ''[REGULATORY REPORT]'' wherever it appears and add in its place ''Consolidated Reports of Condition and Income (Call Report), for a state member bank, or the Consolidated Financial Statements for Bank Holding Companies (FR Y–9C), for a bank holding company or savings and loan holding company, as applicable'' the first time it appears and ''Call Report, for a state member bank, or FR Y–9C, for a bank holding company or savings and loan holding company, as applicable'' every time thereafter;

f. Remove ''[PART]'' and add ''part'' in its place wherever it appears.

4. In § 217.30, revise paragraph (b)(1)(i) to read as follows:

§ 217.30 Applicability.

* * * * *

(b) * * *

(1) * * *

(i) The methodology described in the general risk-based capital rules under 12 CFR part 208, appendix A, 12 CFR part 225, appendix A (Board); or

* * * * *

5. In § 217.32, revise paragraphs (g)(3)(ii)(B), (k) introductory text, (l)(1) and (l)(6) introductory text, and add new paragraph (m) to read as follows:

§ 217.32 General risk weights.

* * * * *

(g) * * *

(3) * * *

(ii) * * *

(B) A Board-regulated institution must base all estimates of a property's value on an appraisal or evaluation of the property that satisfies subpart E of 12 CFR part 208.

* * * * *

(k) *Past due exposures.* Except for an exposure to a sovereign entity or a residential mortgage exposure or a policy loan, if an exposure is 90 days or more past due or on nonaccrual:

* * * * *

(l) *Other assets.* (1)(i) A bank holding company or savings and loan holding company must assign a zero percent risk weight to cash owned and held in all offices of subsidiary depository institutions or in transit, and to gold bullion held in a subsidiary depository institution's own vaults, or held in another depository institution's vaults on an allocated basis, to the extent the gold bullion assets are offset by gold bullion liabilities.

(ii) A state member bank must assign a zero percent risk weight to cash owned and held in all offices of the state member bank or in transit; to gold bullion held in the state member bank's own vaults or held in another depository institution's vaults on an allocated basis, to the extent the gold bullion assets are offset by gold bullion liabilities; and to exposures that arise from the settlement of cash transactions (such as equities, fixed income, spot foreign exchange and spot commodities) with a central counterparty where there is no assumption of ongoing counterparty credit risk by the central counterparty after settlement of the trade and associated default fund contributions.

* * * * *

(6) Notwithstanding the requirements of this section, a state member bank may assign an asset that is not included in one of the categories provided in this section to the risk weight category applicable under the capital rules applicable to bank holding companies and savings and loan holding companies under this part, provided that all of the following conditions apply:

* * * * *

(m) *Other—insurance assets*—(1) *Assets held in a separate account.* (i) A bank holding company or savings and loan holding company must risk-weight the individual assets held in a separate account that does not qualify as a non-guaranteed separate account as if the individual assets were held directly by the bank holding company or savings and loan holding company.

(ii) A bank holding company or savings and loan holding company must assign a zero percent risk weight to an asset that is held in a non-guaranteed separate account.

(2) *Policy loans.* A bank holding company or savings and loan holding company must assign a 20 percent risk weight to a policy loan.

6. In § 217. 42, revise paragraph (h)(1)(iv) to read as follows:

§ 217.42 Risk-weighted assets for securitization exposures.

* * * * *

(h) * * *

(1) * * *

(iv) In the case of a state member bank, the bank is well capitalized, as defined in 12 CFR 208.43. For purposes of determining whether a state member bank is well capitalized for purposes of this paragraph, the state member bank's capital ratios must be calculated without regard to the capital treatment for transfers of small-business obligations under this paragraph.

(B) In the case of a bank holding company or savings and loan holding company, the bank holding company or savings and loan holding company is well capitalized, as defined in 12 CFR 225.2. For purposes of determining whether a bank holding company or savings and loan holding company is well capitalized for purposes of this paragraph, the bank holding company or savings and loan holding company's capital ratios must be calculated without regard to the capital treatment for transfers of small-business obligations with recourse specified in paragraph (k)(1) of this section.

* * * * *

7. In § 217.52, revise paragraph (b)(3)(i) to read as follows:

§ 217.52 Simple risk-weight approach (SRWA).

* * * * *

(b) * * *

(3) * * *

(i) *Community development equity exposures.*

(A) For state member banks and bank holding companies, an equity exposure that qualifies as a community development investment under 12 U.S.C. 24 (Eleventh), excluding equity exposures to an unconsolidated small business investment company and equity exposures held through a consolidated small business investment company described in section 302 of the Small Business Investment Act of 1958 (15 U.S.C. 682).

(B) For savings and loan holding companies, an equity exposure that is designed primarily to promote community welfare, including the welfare of low- and moderate-income communities or families, such as by providing services or employment, and excluding equity exposures to an unconsolidated small business investment company and equity exposures held through a small business investment company described in section 302 of the Small Business Investment Act of 1958 (15 U.S.C. 682).

* * * * *

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the common preamble, the Federal Deposit Insurance Corporation proposes to amend part 324 of chapter III of title 12 of the Code of Federal Regulations as follows:

PART 324—CAPITAL ADEQUACY

1. The authority citation for part 324 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 1835, 3907, 3909, 4808; 5371; 5412; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, 2355, as amended by Pub. L. 103–325, 108 Stat. 2160, 2233 (12 U.S.C. 1828 note); Pub. L. 102–242, 105 Stat. 2236, 2386, as amended by Pub. L. 102–550, 106 Stat. 3672, 4089 (12 U.S.C. 1828 note); Pub. L. 111–203, 124 Stat. 1376, 1887 (15 U.S.C. 78o–7 note).

2. Subpart D is added as set forth at the end of the common preamble.

3. Subpart D is amended as set forth below:

a. Remove ''[AGENCY]'' and add ''FDIC'' in its place, wherever it appears;

b. Remove ''[BANK]'' and add ''bank and state savings association'' in its place, wherever it appears in the phrase ''Each [BANK]'' or ''each [BANK]'';

c. Remove ''[BANK]'' and add ''bank or state savings association'' in its place, wherever it appears in the phrase ''A [BANK]'', ''a [BANK]'', ''The [BANK]'', or ''the [BANK]'';

d. Remove ''[BANK]S'' and add ''banks and state savings associations'' in its place, wherever it appears;

e. Remove ''[BANK]'S'' and add ''banks and state savings associations''' in its place, wherever it appears;

f. Remove ''[PART]'' and add ''Part 324'' in its place, wherever it appears;

g. Remove ''[REGULATORY REPORT]'' and add ''Consolidated Reports of Condition and Income (Call Report)'' in its place the first time it appears, and add ''Call Report'' in its place, wherever it appears every time thereafter.

Dated: June 11, 2012.

Thomas J. Curry,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, July 3, 2012.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, this 12th day of June, 2012.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2012–17010 Filed 8–10–12; 8:45 am]

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FEDERAL REGISTER

Vol. 77 Thursday,

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Part IV

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Part 3

Federal Reserve System

12 CFR Part 217

Federal Deposit Insurance Corporation

12 CFR Parts 324, 325

Regulatory Capital Rules: Advanced Approaches Risk-Based Capital Rule; Market Risk Capital Rule; Proposed Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket No. ID OCC–2012–0010]

RIN 1557–AD46

FEDERAL RESERVE SYSTEM

12 CFR Part 217

[Regulation Q; Docket No. R–1442]

RIN 7100 AD–87

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 324 and 325

RIN 3064–AD97

Regulatory Capital Rules: Advanced Approaches Risk-Based Capital Rule; Market Risk Capital Rule

AGENCY: Office of the Comptroller of the Currency, Treasury; the Board of Governors of the Federal Reserve System; and the Federal Deposit Insurance Corporation.

ACTION: Joint notice of proposed rulemaking.

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 seeking comment on three notices of proposed rulemaking (NPRs) that would revise and replace the agencies' current capital rules.

In this NPR (Advanced Approaches and Market Risk NPR) the agencies are proposing to revise the advanced approaches risk-based capital rule to incorporate certain aspects of ''Basel III: A Global Regulatory Framework for More Resilient Banks and Banking Systems'' (Basel III) that the agencies would apply only to advanced approach banking organizations. This NPR also proposes other changes to the advanced approaches rule that the agencies believe are consistent with changes by the Basel Committee on Banking Supervision (BCBS) to its ''International Convergence of Capital Measurement and Capital Standards: A Revised Framework'' (Basel II), as revised by the BCBS between 2006 and 2009, and recent consultative papers published by the BCBS. The agencies also propose to revise the advanced approaches risk-based capital rule to be consistent with Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act). These revisions include replacing references to credit ratings with alternative standards of creditworthiness consistent with section 939A of the Dodd-Frank Act.

Additionally, the OCC and FDIC are proposing that the market risk capital rule be applicable to federal and state savings associations, and the Board is proposing that the advanced approaches and market risk capital rules apply to top-tier savings and loan holding companies domiciled in the United States that meet the applicable thresholds. In addition, this NPR would codify the market risk rule consistent with the proposed codification of the other regulatory capital rules across the three proposals.

DATES: Comments must be submitted on or before October 22, 2012.

ADDRESSES: Comments should be directed to:

OCC: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by the Federal eRulemaking Portal or email, if possible. Please use the title ''Regulatory Capital Rules: Advanced Approaches Risk-based Capital Rule; Market Risk Capital Rule'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

• *Federal eRulemaking Portal—''Regulations.gov'':* Go to *http://www.regulations.gov,* under the ''More Search Options'' tab click next to the ''Advanced Docket Search'' option where indicated, select ''Comptroller of the Currency'' from the agency drop-down menu, and then click ''Submit.'' In the ''Docket ID'' column, select ''OCC–2012–0010'' to submit or view public comments and to view supporting and related materials for this proposed rule. The ''How to Use This Site'' link on the Regulations.gov home page provides information on using Regulations.gov, including instructions for submitting or viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.

• *Email: regs.comments@occ.treas.gov.*

• *Mail:* Office of the Comptroller of the Currency, 250 E Street SW., Mail Stop 2–3, Washington, DC 20219.

• *Fax:* (202) 874–5274.

• *Hand Delivery/Courier:* 250 E Street SW., Mail Stop 2–3, Washington, DC 20219.

Instructions: You must include ''OCC'' as the agency name and ''Docket Number OCC–2012–0010'' in your comment. In general, OCC will enter all comments received into the docket and publish them on the Regulations.gov Web site without change, including any business or personal information that you provide such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure. You may review comments and other related materials that pertain to this notice by any of the following methods:

• *Viewing Comments Electronically:* Go to *http://www.regulations.gov.* Select ''Document Type'' of ''Public Submissions,'' in ''Enter Keyword or ID Box,'' enter Docket ID ''OCC–2012–0010,'' and click ''Search.'' Comments will be listed under ''View By Relevance'' tab at bottom of screen. If comments from more than one agency are listed, the ''Agency'' column will indicate which comments were received by the OCC.

• *Viewing Comments Personally:* You may personally inspect and photocopy comments at the OCC, 250 E Street SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

• *Docket:* You may also view or request available background documents and project summaries using the methods described above.

Board: When submitting comments, please consider submitting your comments by email or fax because paper mail in the Washington, DC area and at the Board may be subject to delay. You may submit comments, identified by Docket No. [XX][XX], by any of the following methods:

• *Agency Web Site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Email: regs.comments@federalreserve.gov.* Include docket number in the subject line of the message.

• *Fax:* (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 Street NW., Washington, DC 20551) between 9 a.m. and 5 p.m. on weekdays.

FDIC: You may submit comments by any of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Agency Web site: http://www.FDIC.gov/regulations/laws/federal/propose.html.*

• *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

• *Hand Delivered/Courier:* The guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

• *E-mail: comments@FDIC.gov.*

Instructions: Comments submitted must include ''FDIC'' and ''RIN 3064–D97.'' Comments received will be posted without change to *http://www.FDIC.gov/regulations/laws/federal/propose.html,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT:

OCC: Margot Schwadron, Senior Risk Expert, (202) 874–6022, David Elkes, Risk Expert, (202) 874–3846, or Mark Ginsberg, Risk Expert, (202) 927–4580, or Ron Shimabukuro, Senior Counsel, Patrick Tierney, Counsel, Carl Kaminski, Senior Attorney, or Kevin Korzeniewski, Attorney, Legislative and Regulatory Activities Division, (202) 874–5090, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219.

Board: Anna Lee Hewko, Assistant Director, Capital and Regulatory Policy, (202) 530–6260, Thomas Boemio, Manager, Capital and Regulatory Policy, (202) 452–2982, or Constance M. Horsley, Manager, Capital and Regulatory Policy, (202) 452–5239, Division of Banking Supervision and Regulation; or Benjamin W. McDonough, Senior Counsel, (202) 452–2036, or April C. Snyder, Senior Counsel, (202) 452–3099, 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;* Ryan Billingsley, Senior Policy Analyst, *rbillingsley@fdic.gov;* or Karl Reitz, Senior Policy Analyst, *kreitz@fdic.gov,* Capital Markets Branch, Division of Risk Management Supervision, (202) 898–6888; or Mark Handzlik, Counsel, *mhandzlik@fdic.gov,* Michael Phillips, Counsel, *mphillips@fdic.gov;* or Greg Feder, Counsel, *gfeder@fdic.gov,* Ryan Clougherty, Senior Attorney, *rclougherty@fdic.gov;* Supervision Branch, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: In connection with the proposed changes to the agencies' capital rules in this NPR, the agencies are also seeking comment on the two related NPRs published elsewhere in today's **Federal Register**. In the notice titled ''Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III, Minimum Regulatory Capital Ratios, Capital Adequacy, Transition Provisions, and Prompt Corrective Action'' (Basel III NPR) the agencies are proposing to revise their minimum risk-based capital requirements and criteria for regulatory capital, as well as establish a capital conservation buffer framework, consistent with Basel III. The Basel III NPR also includes transition provisions for banking organizations to come into compliance with its requirements.

In the notice titled ''Regulatory Capital Rules: Standardized Approach for Risk-weighted Assets; Market Discipline and Disclosure Requirements'' (Standardized Approach NPR), the agencies are proposing to revise and harmonize their rules for calculating risk-weighted assets to enhance risk sensitivity and address weaknesses identified over recent years, including by incorporating aspects of the standardized framework in Basel II, and providing alternatives to credit ratings, consistent with section 939A of the Dodd-Frank Act. The revisions include methodologies for determining risk-weighted assets for residential mortgages, securitization exposures, and counterparty credit risk. The Standardized Approach NPR also would introduce disclosure requirements that would apply to top-tier banking organizations domiciled in the United States with $50 billion or more in total assets, including disclosures related to regulatory capital instruments.

The proposed requirements in the Basel III NPR and Standardized Approach NPR would apply to all banking organizations that are currently subject to minimum capital requirements (including national banks, state member banks, state nonmember banks, state and federal savings associations, and top-tier bank holding companies domiciled in the United States not subject to the Board's Small Bank Holding Company Policy Statement (12 CFR part 225, appendix C)), as well as top-tier savings and loan holding companies domiciled in the United States (collectively, banking organizations).

The proposals are being published in three separate NPRs to reflect the distinct objectives of each proposal, to allow interested parties to better understand the various aspects of the overall capital framework, including which aspects of the rules would apply to which banking organizations, and to help interested parties better focus their comments on areas of particular interest.

Table of Contents

I. Introduction

The Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) (collectively, the agencies) are issuing this notice of proposed rulemaking (NPR, proposal, or proposed rule) to revise the advanced approaches risk-based capital rule (advanced approaches rule) to incorporate certain aspects of ''Basel III: A global regulatory framework for more resilient banks and banking systems'' (Basel III). This NPR also proposes to revise the advanced approaches rule to incorporate other revisions to the Basel capital framework published by the Basel Committee on Banking Supervision (BCBS) in a series of documents between 2009 and 2011 [1] and subsequent consultative papers. The proposal would also address relevant provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act), and incorporate certain technical amendments to the existing requirements.[2]

In this NPR, the Board also proposes applying the advanced approaches rule and the market risk rule to savings and loan holding companies, and the Board, FDIC, and OCC propose applying the market risk capital rule to savings and loan holding companies and to state and federal savings associations, respectively. In addition, this NPR would codify the market risk rule in a manner similar to the other regulatory capital rules in the three proposals. In a separate **Federal Register** notice, also published today, the agencies are finalizing changes to the market risk rule. As described in more detail below, the agencies are proposing changes to the advanced approaches rule in a manner consistent with the BCBS requirements, including the requirements introduced by the BCBS in ''Enhancements to the Basel II framework'' (2009 Enhancements) in July 2009 and in Basel III.[3] The main proposed revisions to the advanced approaches rule are related to treatment of counterparty credit risk, the securitization framework, and disclosure requirements.

Consistent with Basel III, the proposal seeks to ensure that counterparty credit risk, credit valuation adjustments (CVA), and wrong-way risk are incorporated adequately into the agencies' regulatory capital requirements. More specifically, the NPR would establish a capital requirement for the market value of counterparty credit risk; propose a more risk-sensitive approach for certain transactions with central counterparties, including the treatment of default fund contributions to central counterparties; and make certain adjustments to the methodologies used to calculate counterparty credit risk requirements. In addition, consistent with the ''2009 Enhancements,'' the agencies propose strengthening the risk-based capital requirements for certain securitization exposures by requiring banking organizations that are subject to the advanced approaches rule to conduct more rigorous credit analysis of securitization exposures and enhancing the disclosure requirements related to these exposures.

In addition to the incorporation of the BCBS standards, the agencies are proposing changes to the advanced approaches rule in a manner consistent with the Dodd-Frank Act, by removing references to, or requirements of reliance on, credit ratings from their regulations.[4] Accordingly, the agencies are proposing to remove the ratings-based approach and the internal assessment approach for securitization exposures from the advanced approaches rule and require advanced approaches banking organizations to use either the supervisory formula approach (SFA) or a simplified version of the SFA when calculating capital requirements for securitization exposures. The agencies also are proposing to remove references to ratings from certain defined terms under the advanced approaches rule and replace them with alternative standards of creditworthiness. Finally, the proposed rule contains a number of proposed technical amendments that would clarify or adjust existing requirements under the advanced approaches rule.

In addition, in today's **Federal Register**, the agencies are publishing two separate notices of proposed rulemaking that are both relevant to the calculation of capital requirements for institutions using the advanced approaches rule. The notice titled ''Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III, Minimum Regulatory Capital Ratios, Capital Adequacy, Transition Provisions, and Prompt Corrective Action'' (Basel III NPR), which is applicable to all banking organizations, would revise the definition of capital (the numerator of the risk-based capital ratios), establish the new minimum ratio requirements, and make other changes to the agencies' general risk-based capital rules related to regulatory capital. In addition, the Basel III NPR proposes that certain elements of Basel III apply only to institutions using the advanced approaches rule, including a supplementary Basel III leverage ratio and a countercyclical capital buffer. The Basel III NPR also includes transition provisions for banking organizations to come into compliance with the requirements of that proposed rule.

The notice titled ''Regulatory Capital Rules: Standardized Approach for Risk-Weighted Assets; Market Discipline and Disclosure Requirements'' (Standardized Approach NPR) would also apply to all banking organizations. In the Standardized Approach NPR, the agencies are proposing to revise and harmonize their rules for calculating risk-weighted assets to enhance risk sensitivity and address weaknesses identified over recent years, including by incorporating aspects of the BCBS' Basel II standardized framework, changes proposed in recent consultative papers published by the BCBS and alternatives to credit ratings, consistent with section 939A of the Dodd-Frank Act. The revisions include methodologies for determining risk-weighted assets for residential mortgages, securitization exposures, and

[1] The BCBS is a committee of banking supervisory authorities, which was established by the central bank governors of the G–10 countries in 1975. It consists of senior representatives of bank supervisory authorities and central banks from Argentina, Australia, Belgium, Brazil, Canada, China, France, Germany, Hong Kong SAR, India, Indonesia, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, Russia, Saudi Arabia, Singapore, South Africa, Sweden, Switzerland, Turkey, the United Kingdom, and the United States. Documents issued by the BCBS are available through the Bank for International Settlements Web site at *http://www.bis.org.* Basel III was published in December 2010 and revised in June 2011. The text is available at *http://www.bis.org/publ/bcbs189.htm.*

[2] Public Law 111–203, 124 Stat. 1376 (July 21, 2010) (Dodd-Frank Act).

[3] *See* ''Enhancements to the Basel II framework'' (July 2009), available at *http://www.bis.org/publ/bcbs157.htm.*

[4] *See* section 939A of Dodd-Frank Act (15 U.S.C. 78o–7 note).

counterparty credit risk. The Standardized Approach NPR also would introduce disclosure requirements that would apply to top-tier banking organizations domiciled in the United States with $50 billion or more in total assets, including disclosures related to regulatory capital instruments.

The requirements proposed in the Basel III NPR and Standardized Approach NPR, as well as the market risk capital rule in this proposal, are proposed to become the ''generally applicable'' capital requirements for purposes of section 171 of the Dodd-Frank Act because they would be the capital requirements applied to insured depository institutions under section 38 of the Federal Deposit Insurance Act, without regard to asset size or foreign financial exposure. Banking organizations that are or would be subject to the advanced approaches rule (advanced approaches banking organizations) or the market risk rule should also review the Basel III NPR and Standardized Approach NPR.

II. Risk-Weighted Assets—Proposed Modifications to the Advanced Approaches

A. Counterparty Credit Risk

The recent financial crisis highlighted certain aspects of the treatment of counterparty credit risk under the Basel II framework that were inadequate and of banking organizations' risk management of counterparty credit risk that were insufficient. The Basel III revisions would address both areas of weakness by ensuring that all material on- and off-balance sheet counterparty risks, including those associated with derivative-related exposures, are appropriately incorporated into banking organizations' risk-based capital ratios. In addition, new risk management requirements in Basel III strengthen the oversight of counterparty credit risk exposures. The agencies are proposing the counterparty credit risk revisions in a manner generally consistent with Basel III, modified to incorporate alternative standards to the use of credit ratings. The discussion below highlights these revisions.

1. Revisions to the Recognition of Financial Collateral

Eligible Financial Collateral

The exposure-at-default (EAD) adjustment approach under section 132 of the proposed rules permits a banking organization to recognize the credit risk mitigation benefits of eligible financial collateral by adjusting the EAD to the counterparty. Such approaches include the collateral haircut approach, simple Value-at-Risk (VaR) approach and the internal models methodology (IMM).

Consistent with Basel III, the agencies are proposing to modify the definition of financial collateral so that resecuritizations would no longer qualify as eligible financial collateral under the advanced approaches rule. Thus, resecuritization collateral could not be used to adjust the EAD of an exposure. The agencies believe that this treatment is appropriate because resecuritizations have been shown to have more market value volatility than other collateral types. During the recent financial crisis, the market volatility of resecuritization exposures made it difficult for resecuritizations to serve as a source of liquidity because banking organizations were unable to sell those positions without incurring substantial loss or to use them as collateral for secured lending transactions.

Under the proposal, a securitization in which one or more of the underlying exposures is a securitization position would be considered a resecuritization. A resecuritization position under the proposal means an on- or off-balance sheet exposure to a resecuritization, or an exposure that directly or indirectly references a resecuritization exposure.

Consistent with these changes excluding less liquid collateral from the definition of financial collateral, the agencies also propose that conforming residential mortgages no longer qualify as financial collateral under the advanced approaches rule. As a result, under this proposal, a banking organization would no longer be able to recognize the credit risk mitigation benefit of such instruments through an adjustment to EAD. In addition, also consistent with the Basel framework, the agencies propose to exclude all debt securities that are not investment grade from the definition of financial collateral. As discussed in section II (B) of this preamble, the agencies are proposing to revise the definition of ''investment grade'' for both the advanced approaches rule and market risk capital rule.

Revised Supervisory Haircuts

As reflected in Basel III, securitization exposures have increased levels of volatility relative to other collateral types. To address this issue, Basel III incorporates new standardized supervisory haircuts for securitization exposures in the EAD adjustment approach based on the credit rating of the exposure. Consistent with section 939A of the Dodd Frank Act, the agencies are proposing an alternative approach to assigning standard supervisory haircuts for securitization exposures, and are also proposing to amend the standard supervisory haircuts for other types of financial collateral to remove the references to credit ratings.

Under the proposal, as outlined in table 1 below, the standard supervisory market price volatility haircuts would be revised based on the applicable risk weight of the exposure calculated under the standardized approach. Supervisory haircuts for exposures to sovereigns, government-sponsored entities, public sector entities, depository institutions, foreign banks, credit unions, and corporate issuers would be calculated based upon the risk weights for such exposures described under section 32 of the Standardized Approach NPR. The proposed table for the standard supervisory market price volatility haircuts would be revised as follows:

TABLE 1—STANDARD SUPERVISORY MARKET PRICE VOLATILITY HAIRCUTS [1]

Residual maturity	Haircut (in percents) assigned based on:						Investment grade securitization exposures (in percent)
	Sovereign issuers risk weight under § ___.32 [2]			Non-sovereign issuers risk weight under § ___.32			
	Zero%	20% or 50%	100%	20%	50%	100%	
Less than or equal to 1 year	0.5	1.0	15.0	1.0	2.0	25.0	4.0
Greater than 1 year and less than or equal to 5 years	2.0	3.0	15.0	4.0	6.0	25.0	12.0
Greater than 5 years	4.0	6.0	15.0	8.0	12.0	25.0	24.0

TABLE 1—STANDARD SUPERVISORY MARKET PRICE VOLATILITY HAIRCUTS [1]—Continued

Residual maturity	Haircut (in percents) assigned based on:						Investment grade securitization exposures (in percent)
	Sovereign issuers risk weight under § ___.32 [2]			Non-sovereign issuers risk weight under § ___.32			
	Zero%	20% or 50%	100%	20%	50%	100%	
Main index equities (including convertible bonds) and gold				15.0			
Other publicly-traded equities (including convertible bonds)				25.0			
Mutual funds				Highest haircut applicable to any security in which the fund can invest.			
Cash collateral held				Zero			

[1] The market price volatility haircuts in Table 2 are based on a 10 business-day holding period.
[2] Includes a foreign PSE that receives a zero percent risk weight.

The agencies are also proposing to clarify that if a banking organization lends instruments that do not meet the definition of financial collateral used in the Standardized Approach NPR and the advanced approaches rule (as modified by the proposal), such as non-investment grade corporate debt securities or resecuritization exposures, the haircut applied to the exposure would be the same as the haircut for equity that is publicly traded but which is not part of a main index.

Question 1: The agencies solicit comments on the proposed changes to the recognition of financial collateral under the advanced approaches rule.

2. Changes to Holding Periods and the Margin Period of Risk

During the financial crisis, many financial institutions experienced significant delays in settling or closing-out collateralized transactions, such as repo-style transactions and collateralized over-the-counter (OTC) derivatives. The assumed holding period for collateral in the collateral haircut and simple VaR approaches and the margin period of risk in the IMM under Basel II proved to be inadequate for certain transactions and netting sets.[5] It also did not reflect the difficulties and delays experienced by institutions when settling or liquidating collateral during a period of financial stress.

Under Basel II, the minimum assumed holding period for collateral and margin period of risk are five days for repo-style transactions, and ten days for other collateralized transactions where liquid financial collateral is posted under a daily margin maintenance requirement. Under Basel III, a banking organization must assume a holding period of 20 business days under the collateral haircut or simple VaR approaches, or must assume a margin period of risk under the IMM of 20 business days for netting sets where: (1) The number of trades exceeds 5,000 at any time during the quarter (except if the counterparty is a central counterparty (CCP) or the netting set consists of cleared transactions with a clearing member); (2) one or more trades involves illiquid collateral posted by the counterparty; or (3) the netting set includes any OTC derivatives that cannot be easily replaced.

For purposes of determining whether collateral is illiquid or an OTC derivative cannot be easily replaced for these purposes, a banking organization could, for example, assess whether, during a period of stressed market conditions, it could obtain multiple price quotes within two days or less for the collateral or OTC derivative that would not move the market or represent a market discount (in the case of collateral) or a premium (in the case of an OTC derivative).

If, over the two previous quarters, more than two margin disputes on a netting set have occurred that lasted longer than the holding period or margin period of risk used in the EAD calculation, then a banking organization would use a holding period or a margin period of risk for that netting set that is at least two times the minimum holding period that would otherwise be used for that netting set. Margin disputes occur when the banking organization and its counterparty do not agree on the value of collateral or on the eligibility of the collateral provided. In addition, such disputes also can occur when a banking organization and its counterparty disagree on the amount of margin that is required, which could result from differences in the valuation of a transaction, or from errors in the calculation of the net exposure of a portfolio (for instance, if a transaction is incorrectly included or excluded from the portfolio).

Consistent with Basel III, the agencies propose to amend the advanced approaches rule to incorporate these adjustments to the holding period in the collateral haircut and simple VaR approaches, and to the margin period of risk in the IMM that a banking organization may use to determine its capital requirement for repo-style transactions, OTC derivative transactions, or eligible margin loans. For cleared transactions, which are discussed below, the agencies propose that a banking organization not be required to adjust the holding period or margin period of risk upward when determining the capital requirement for its counterparty credit risk exposures to the central counterparty, which is also consistent with Basel III.

Question 2: The agencies solicit comments on the proposed changes to holding periods and margin periods of risk.

3. Changes to the Internal Models Methodology

During the recent financial crisis, increased volatility in the value of derivative positions and collateral led to higher counterparty exposures than amounts estimated by banking organizations' internal models. To address this issue, under Basel III, when

[5] Under the advanced approaches rule, the margin period of risk means, with respect to a netting set subject to a collateral agreement, the time period from the most recent exchange of collateral with a counterparty until the next required exchange of collateral plus the period of time required to sell and realize the proceeds of the least liquid collateral that can be delivered under the terms of the collateral agreement and, where applicable, the period of time required to re-hedge the resulting market risk, upon the default of the counterparty. *See* 12 CFR part 3, appendix C, and part 167, appendix C (OCC); 12 CFR part 208, appendix F, and 12 CFR part 225, appendix G (Board); 12 CFR part 325, appendix D, and 12 CFR part 390, subpart Z, appendix A (FDIC).

using the IMM, banking organizations are required to determine their capital requirements for counterparty credit risk using stressed inputs. Consistent with Basel III, the agencies propose to amend the advanced approaches rule so that the capital requirement for IMM exposures would be equal to the larger of the capital requirement for those exposures calculated using data from the most recent three-year period and data from a three-year period that contains a period of stress reflected in the credit default spreads of the banking organization's counterparties.

Under the proposal, an IMM exposure would be defined as a repo-style transaction, eligible margin loan, or OTC derivative for which a banking organization calculates its EAD using the IMM. A banking organization would be required to demonstrate to the satisfaction of the banking organization's primary federal supervisor at least quarterly that the stress period coincides with increased credit default swap (CDS) spreads, or other credit spreads of its counterparties and have procedures to evaluate the effectiveness of its stress calibration. These procedures would be required to include a process for using benchmark portfolios that are vulnerable to the same risk factors as the banking organization's portfolio. In addition, the primary federal supervisor could require a banking organization to modify its stress calibration if the primary federal supervisor believes that another calibration would better reflect the actual historic losses of the portfolio.

Consistent with Basel III, the agencies are proposing to require a banking organization to subject its internal models to an initial validation and annual model review process. As part of the model review process, the agencies propose that a banking organization would need to have a backtesting program for its model that includes a process by which unacceptable model performance would be identified and remedied. In addition, the agencies propose that when a banking organization multiplies expected positive exposure (EPE) by the default scaling factor alpha of 1.4 when calculating EAD, the primary federal supervisor may require the banking organization to set that alpha higher based on the performance of the banking organization's internal model.

The agencies also are proposing to require a banking organization to have policies for the measurement, management, and control of collateral, including the reuse of collateral and margin amounts, as a condition of using the IMM. Under the proposal, a banking organization would be required to have a comprehensive stress testing program that captures all credit exposures to counterparties and incorporates stress testing of principal market risk factors and the creditworthiness of its counterparties.

Under Basel II, a banking organization was permitted to capture within its internal model the effect on EAD of a collateral agreement that requires receipt of collateral when the exposure to the counterparty increases. Basel II also contained a ''shortcut'' method to provide a banking organization whose internal model did not capture the effects of collateral agreements with a method to recognize some benefit from the collateral agreement. Basel III modifies that ''shortcut'' method by setting effective EPE to a counterparty as the lesser of the following two exposure calculations: (1) The exposure without any held or posted margining collateral, plus any collateral posted to the counterparty independent of the daily valuation and margining process or current exposure, or (2) an add-on that reflects the potential increase of exposure over the margin period of risk plus the larger of (i) the current exposure of the netting set reflecting all collateral received or posted by the banking organization excluding any collateral called or in dispute; or (ii) the largest net exposure (including all collateral held or posted under the margin agreement) that would not trigger a collateral call. The add-on would be computed as the largest expected increase in the netting set's exposure over any margin period of risk in the next year. The agencies propose to include the Basel III modification of the ''shortcut'' method in this NPR.

Recognition of Wrong-way Risk

The financial crisis also highlighted the interconnectedness of large financial institutions through an array of complex transactions. To recognize this interconnectedness and to mitigate the risk of contagion from the banking sector to the broader financial system and the general economy, Basel III includes enhanced requirements for the recognition and treatment of wrong-way risk in the IMM. The proposed rule would define wrong-way risk as the risk that arises when an exposure to a particular counterparty is positively correlated with the probability of default of such counterparty itself.

The agencies are proposing enhancements to the advanced approaches rule that would require banking organizations' risk management procedures to identify, monitor, and control wrong-way risk throughout the life of an exposure. These risk management procedures should include the use of stress testing and scenario analysis. In addition, where a banking organization has identified an IMM exposure with specific wrong-way risk, the banking organization would be required to treat that transaction as its own netting set. Specific wrong-way risk is a type of wrong way risk that arises when either the counterparty and issuer of the collateral supporting the transaction, or the counterparty and the reference asset of the transaction, are affiliates or are the same entity.

In addition, where a banking organization has identified an OTC derivative transaction, repo-style transaction, or eligible margin loan with specific wrong-way risk for which the banking organization would otherwise apply the IMM, the banking organization would insert the probability of default (PD) of the counterparty and a loss given default (LGD) equal to 100 percent into the appropriate risk-based capital formula specified in table 1 of section 131 of the proposed rule, then multiply the output of the formula (K) by an alternative EAD based on the transaction type, as follows:

(1) For a purchased credit derivative, EAD would be the fair value of the underlying reference asset of the credit derivative contract;

(2) For an OTC equity derivative,[6] EAD would be the maximum amount that the banking organization could lose if the fair value of the underlying reference asset decreased to zero;

(3) For an OTC bond derivative (that is, a bond option, bond future, or any other instrument linked to a bond that gives rise to similar counterparty credit risks), EAD would be the smaller of the notional amount of the underlying reference asset and the maximum amount that the banking organization could lose if the fair value of the underlying reference asset decreased to zero; and

(4) For repo-style transactions and eligible margin loans, EAD would be calculated using the formula in the collateral haircut approach of section 132 and with the estimated value of the collateral substituted for the parameter C in the equation.

Question 3: The agencies solicit comment on the appropriateness of the proposed calculation of capital requirements for OTC equity or bond derivatives with specific wrong-way risk. What alternatives should be made

[6] Equity derivatives that are call options are not subject to a counterparty credit risk capital requirement for specific wrong-way risk.

available to banking organizations in order to calculate the EAD in such cases? What challenges would a banking organization face in estimating the EAD for OTC derivative transactions with specific wrong-way risk if the agencies were to permit a banking organization to use its incremental risk model that meets the requirements of section 8 of the market risk rule instead of the proposed alternatives?

Increased Asset Value Correlation Factor

To recognize the correlation of financial institutions' creditworthiness attributable to similar sensitivities to common risk factors, the agencies are proposing to incorporate the Basel III increase in the correlation factor used in the formula provided in table 1 of section 131 of the proposed rule for certain wholesale exposures. Under the proposed rule, banking organizations would apply a multiplier of 1.25 to the correlation factor for wholesale exposures to unregulated financial institutions that generate a majority of their revenue from financial activities, regardless of asset size. This category would include highly leveraged entities such as hedge funds and financial guarantors. In addition, banking organizations would apply a multiplier of 1.25 to the correlation factor for wholesale exposures to regulated financial institutions with consolidated assets of greater than or equal to $100 billion.

The proposed definitions of ''financial institution'' and ''regulated financial institution'' are set forth and discussed in the Basel III NPR.

4. Credit Valuation Adjustments

CVA is the fair value adjustment to reflect counterparty credit risk in the valuation of an OTC derivative contract. The BCBS reviewed the treatment of counterparty credit risk and found that roughly two-thirds of counterparty credit risk losses during the crisis were due to marked-to-market losses from CVA, while one-third of counterparty credit risk losses resulted from actual defaults. Basel II addressed counterparty credit risk as a combination of default risk and credit migration risk. Credit migration risk accounts for market value losses resulting from deterioration of counterparties' credit quality short of default and is addressed in Basel II via the maturity adjustment multiplier. However, the maturity adjustment multiplier in Basel II was calibrated for loan portfolios and may not be suitable for addressing CVA risk. Accordingly, Basel III requires banking organizations to directly reflect CVA risk through an additional capital requirement.

The Basel III CVA capital requirement would reflect the CVA due to changes of counterparties' credit spreads, assuming fixed expected exposure (EE) profiles. Basel III provides two approaches for calculating the CVA capital requirement: the simple approach and the advanced CVA approach. The agencies are proposing both approaches for calculating the CVA capital requirement (subject to certain requirements discussed below), but without references to credit ratings.

Only a banking organization that is subject to the market risk capital rule and has obtained prior approval from its primary federal supervisor to calculate both the EAD for OTC derivative contracts using the IMM described in section 132 of the proposed rule, and the specific risk add-on for debt positions using a specific risk model described in section 207(b) of subpart F would be eligible to use the advanced CVA approach. A banking organization that receives such approval would continue to use the advanced CVA approach until it notifies its primary federal supervisor in writing that it expects to begin calculating its CVA capital requirement using the simple CVA approach. The notice would include an explanation from the banking organization as to why it is choosing to use the simple CVA approach and the date when the banking organization would begin to calculate its CVA capital requirement using the simple CVA approach.

Under the proposal, when calculating a CVA capital requirement, a banking organization would be permitted to recognize the hedging benefits of single name CDS, single name contingent CDS, index CDS (CDS_{ind}), and any other equivalent hedging instrument that references the counterparty directly, provided that the equivalent hedging instrument is managed as a CVA hedge in accordance with the banking organization's hedging policies. Consistent with Basel III, under this NPR, a tranched or nth-to-default CDS would not qualify as a CVA hedge. In addition, the agencies propose that any position that is recognized as a CVA hedge would not be a covered position under the market risk capital rule, except in the case where the banking organization is using the advanced CVA approach, the hedge is a CDS_{ind}, and the VaR model does not capture the basis between the spreads of the index that is used as the hedging instrument and the hedged counterparty exposure over various time periods, as discussed in further detail below.

To convert the CVA capital requirement to a risk-weighted asset amount, a banking organization would multiply its CVA capital requirement by 12.5. Under the proposal, because the CVA capital requirement reflects market risk, the CVA risk-weighted asset amount would not be a component of credit risk-weighted assets and therefore would not be subject to the 1.06 multiplier for credit risk-weighted assets.

Simple CVA Approach

The agencies are proposing the Basel III formula for the simple CVA approach to calculate the CVA capital requirement (K_{CVA}), with a modification in a manner consistent with section 939A of the Dodd-Frank Act. A banking organization would use the formula below to calculate its CVA capital requirement for OTC derivative transactions. The banking organization would calculate K_{CVA} as the square root of the sum of the capital requirement for each of its OTC derivative counterparties multiplied by 2.33. The simple CVA approach is based on an analytical approximation derived from a general CVA VaR formulation under a set of simplifying assumptions:

- All credit spreads have a flat term structure;
- All credit spreads at the time horizon have a lognormal distribution;
- Each single name credit spread is driven by the combination of a single systematic factor and an idiosyncratic factor;
- The correlation between any single name credit spread and the systematic factor is equal to 0.5;
- All credit indices are driven by the single systematic factor; and
- The time horizon is short (the square root of time scaling to 1 year is applied in the end).

The approximation is based on the linearization of the dependence of both CVA and CDS hedges on credit spreads. Given the assumptions listed above (most notably, the single-factor assumption), CVA VaR can be expressed using an analytical formula. The formula of the simple CVA approach is obtained by applying certain standardizations, conservative adjustments, and scaling to the analytical CVA VaR result.

A banking organization would calculate K_{CVA}, where:

Formula 1

$$K_{CVA} = 2.33 \times \sqrt{\left(\sum_i 0.5 \times w_i \times \left(M_i \times EAD_i^{total} - M_i^{hedge} \times B_i \right) - \sum_{ind} w_{ind} \times M_{ind} \times B_{ind} \right)^2 + A}$$

Where:

$$A = \sum_i 0.75 \times w_i^2 \times \left(M_i \times EAD_i^{total} - M_i^{hedge} \times B_i \right)^2$$

In Formula 1, w_i refers to the weight applicable to counterparty i assigned according to Table 2 below.[7] In Basel III, the BCBS assigned w_i based on the external rating of the counterparty. However, to comply with the Dodd-Frank requirement to remove references to ratings, the agencies propose to assign w_i based on the relevant PD of the counterparty, as assigned by the banking organization. W_{ind} in Formula 1 refers to the weight applicable to the CDS_{ind} based on the average weight under Table 2 of the underlying reference names that comprise the index.

TABLE 2—ASSIGNMENT OF COUNTERPARTY WEIGHT UNDER THE SIMPLE CVA

Internal PD (in percent)	Weight W_{ind} (in percent)
0.00–0.07	0.70
>0.07–0.15	0.80
>0.15–0.40	1.00
>0.4–2.00	2.00
>2.0—6.00	3.00
>6.0	10.00

EAD_i^{total} in Formula 1 refers to the sum of the EAD for all netting sets of OTC derivative contracts with counterparty i calculated using the current exposure methodology described in section 132(c) of the proposed rule as adjusted by Formula 2 or the IMM described in section 132(d) of the proposed rule. When the banking organization calculates EAD using the IMM, EAD_i^{total} equals $EAD_{unstressed}$.

Formula 2[8]

$$EAD \times \left(\frac{1 - exp^{-.05 \times M_i}}{.05 \times M_i} \right)$$

M_i in Formulas 1 and 2 refers to the EAD-weighted average of the effective maturity of each netting set with counterparty i (where each netting set's M cannot be smaller than one). M_i^{hedge} in Formula 1 refers to the notional weighted average maturity of the hedge instrument. M_{ind} in Formula 1 equals the maturity of the CDS_{ind} or the notional weighted average maturity of any CDS_{ind} purchased to hedge CVA risk of counterparty i.

B_i in Formula 1 refers to the sum of the notional amounts of any purchased single name CDS referencing counterparty *i* that is used to hedge CVA risk to counterparty *i* multiplied by $(1-\exp(-0.05 \times M_{i\ hedge}))/(0.05 \times M_{i\ hedge})$. B_{ind} in Formula 1 refers to the notional amount of one or more CDS_{ind} purchased as protection to hedge CVA risk for counterparty *i* multiplied by $(1-\exp(-0.05 \times M_{ind}))/(0.05 \times M_{ind})$. A banking organization would be allowed to treat the notional amount in the index attributable to that counterparty as a single name hedge of counterparty *i* (B_i) when calculating K_{CVA} and subtract the notional amount of B_i from the notional amount of the CDS_{ind}. The banking organization would be required to then calculate its capital requirement for the remaining notional amount of the CDS_{ind} as a stand-alone position.

Advanced CVA Approach

Under the advanced CVA approach, a banking organization would use the VaR model it uses to calculate specific risk under section 205(b) of subpart F or another model that meets the quantitative requirements of sections 205(b) and 207(b) of subpart F to calculate its CVA capital requirement for a counterparty by modeling the impact of changes in the counterparty's credit spreads, together with any recognized CVA hedges on the CVA for the counterparty. A banking organization's total capital requirement for CVA equals the sum of the CVA capital requirements for each counterparty.

The agencies are proposing that the VaR model incorporate only changes in the counterparty's credit spreads, not changes in other risk factors. The banking organization would not be required to capture jump-to-default risk in its VaR model. A banking organization would be required to include any immaterial OTC derivative portfolios for which it uses the current exposure methodology by using the EAD calculated under the current exposure methodology as a constant EE in the formula for the calculation of CVA and setting the maturity equal to the greater of half of the longest maturity occurring in the netting set and the notional weighted average maturity of all transactions in the netting set.

In order for a banking organization to receive approval to use the advanced CVA approach, under the NPR, the

[7] These weights represent the assumed values of the product of a counterparties' current credit spread and the volatility of that credit spread.

[8] The term "exp" is the exponential function.

banking organization would need to have the systems capability to calculate the CVA capital requirement on a daily basis, but would not be expected or required to calculate the CVA capital requirement on a daily basis.

The CVA capital requirement under the advanced CVA approach would be equal to the general market risk capital requirement of the CVA exposure using the ten-business-day time horizon of the revised market risk framework. The capital requirement would not include the incremental risk requirement of subpart F. The agencies propose to require a banking organization to use the Basel III formula for the advanced CVA approach to calculate K_{CVA} as follows:

Formula 3

$$K_{CVA} = 3 \times \left(CVA_{UnstressedVAR} + CVA_{StressedVAR} \right)$$

$$CVA_j = \left(LGD_{MKT} \right) \times \sum_{i=1}^{T} Max\left(0; \exp\left(-\frac{s_{i-1} \times t_{i-1}}{LGD_{MKT}} \right) - \exp\left(-\frac{s_i \times t_i}{LGD_{MKT}} \right) \right) \times \left(\frac{EE_{i-1} \times D_{i-1} + EE_i \times D_i}{2} \right)$$

In Formula 3:

(A) t_i = the time of the i-th revaluation time bucket starting from $t_0 = 0$.

(B) t_T = the longest contractual maturity across the OTC derivative contracts with the counterparty.

(C) s_i = the CDS spread for the counterparty at tenor t_i used to calculate the CVA for the counterparty. If a CDS spread is not available, the banking organization would use a proxy spread based on the credit quality, industry and region of the counterparty.

(D) LGD_{MKT} = the loss given default of the counterparty based on the spread of a publicly traded debt instrument of the counterparty, or, where a publicly traded debt instrument spread is not available, a proxy spread based on the credit quality, industry and region of the counterparty.

(E) EE_i = the sum of the expected exposures for all netting sets with the counterparty at revaluation time t_i calculated using the IMM.

(F) D_i = the risk-free discount factor at time t_i, where $D_0 = 1$.

(G) Exp is the exponential function.

Under the proposal, if a banking organization's VaR model is not based on full repricing, the banking organization would use either Formula 4 or Formula 5 to calculate credit spread sensitivities. If the VaR model is based on credit spread sensitivities for specific tenors, the banking organization would calculate each credit spread sensitivity according to Formula 4:

Formula 4

$$\text{Regulatory CS01} = 0.0001 \times t_i \times \exp\left(-\frac{s_i \times t_i}{LGD_{MKT}} \right) \times \left(\frac{EE_{i-1} \times D_{i-1} - EE_{i+1} \times D_{i+1}}{2} \right)$$

Note that for the final time bucket,[9] Formula 4 would be adjusted as follows such that:

$$\text{Regulatory CS01} = 0.0001 \times t_i \times \exp\left(-\frac{s_i \times t_i}{LGD_{MKT}} \right) \times \left(\frac{EE_{i-1} \times D_{i-1} - EE_T \times D_T}{2} \right)$$

If the VaR model uses credit spread sensitivities to parallel shifts in credit spreads, the banking organization would calculate each credit spread sensitivity according to Formula 5:

Formula 5

$$\text{Regulatory CS01} =$$

$$0.0001 \times \sum_{i=1}^{T} \left(t_i \times \exp\left(-\frac{s_i \times t_i}{LGD_{MKT}} \right) - t_{i-1} \times \exp\left(-\frac{s_{i-1} \times t_{i-1}}{LGD_{MKT}} \right) \right) \times \left(\frac{EE_{i-1} \times D_{i-1} + EE_i \times D_i}{2} \right)$$

[9] For the final time bucket, i = T.

To calculate the $CVA_{UnstressedVAR}$ measure in Formula 3, a banking organization would use the EE for a counterparty calculated using current market data to compute current exposures and would estimate model parameters using the historical observation period required under section 205(b)(2) of subpart F. However, if a banking organization uses the shortcut method described in section 132(d)(5) of the proposed rule to capture the effect of a collateral agreement when estimating EAD using the IMM, the banking organization would calculate the EE for the counterparty using that method and keep that EE constant with the maturity equal to the maximum of half of the longest maturity occurring in the netting set, and the notional weighted average maturity of all transactions in the netting set.

To calculate the $CVA_{StressedVAR}$ measure in Formula 3, the banking organization would use the EE_i for a counterparty calculated using the stress calibration of the IMM. However, if a banking organization uses the shortcut method described in section 132(d)(5) of the proposed rule to capture the effect of a collateral agreement when estimating EAD using the IMM, the banking organization would calculate the EE_i for the counterparty using that method and keep that EE_i constant with the maturity equal to the greater of half of the longest maturity occurring in the netting set with the notional amount equal to the weighted average maturity of all transactions in the netting set. Consistent with Basel III, the agencies propose to require a banking organization to calibrate the VaR model inputs to historical data from the most severe twelve-month stress period contained within the three-year stress period used to calculate EE_i. However, the agencies propose to retain the flexibility to require a banking organization to use a different period of significant financial stress in the calculation of the $CVA_{StressedVAR}$ measure that would better reflect actual historic losses of the portfolio.

Under the NPR, a banking organization's VaR model would be required to capture the basis between the spreads of the index that is used as the hedging instrument and the hedged counterparty exposure over various time periods, including benign and stressed environments. If the VaR model does not capture that basis, the banking organization would be permitted to reflect only 50 percent of the notional amount of the CDS_{ind} hedge in the VaR model. The remaining 50 percent of the notional amount of the CDS_{ind} hedge would be a covered position under the market risk capital rule.

Question 4: The agencies solicit comments on the proposed CVA capital requirements, including the simple CVA approach and the advanced CVA approach.

5. Cleared Transactions (Central Counterparties)

CCPs help improve the safety and soundness of the derivatives and repo-style transaction markets through the multilateral netting of exposures, establishment and enforcement of collateral requirements, and market transparency. Under the current advanced approaches rule, exposures to qualifying central counterparties (QCCPs) received a zero percent risk weight. However, when developing Basel III, the BCBS recognized that as more derivatives and repo-style transactions move to CCPs, the potential for systemic risk increases. To address these concerns, the BCBS has sought comment on a specific capital requirement for such transactions with CCPs and a more risk-sensitive approach for determining a capital requirement for a banking organization's contributions to the default funds of these CCPs. The BCBS also has sought comment on a preferential capital treatment for exposures arising from derivative and repo-style transactions with, and related default fund contributions to, CCPs that meet the standards established by the Committee on Payment and Settlement Systems (CPSS) and International Organization of Securities Commissions (IOSCO).[10] The treatment for exposures that arise from the settlement of cash transactions (such as equities, fixed income, spot (FX), and spot commodities) with a QCCP where there is no assumption of ongoing counterparty credit risk by the QCCP after settlement of the trade and associated default fund contributions remains unchanged.

A banking organization that is a clearing member, a term that is defined in the Basel III NPR as a member of, or direct participant in, a CCP that is entitled to enter into transactions with the CCP, or a clearing member client, proposed to be defined as a party to a cleared transaction associated with a CCP in which a clearing member acts either as a financial intermediary with respect to the party or guarantees the performance of the party to the CCP, would first calculate its trade exposure for a cleared transaction. The trade exposure amount for a cleared transaction would be determined as follows:

(1) For a cleared transaction that is a derivative contract or netting set of derivative contracts, the trade exposure amount equals:

(i) The exposure amount for the derivative contract or netting set of derivative contracts, calculated using the methodology used to calculate exposure amount for OTC derivative contracts under section 132(c) or 132(d) of this NPR, plus

(ii) The fair value of the collateral posted by the banking organization and held by the CCP or a clearing member in a manner that is not bankruptcy remote.

(2) For a cleared transaction that is a repo-style transaction, the trade exposure amount equals:

(i) The exposure amount for the repo-style transaction calculated using the methodologies under sections 132(b)(2), 132(b)(3) or 132(d) of this NPR, plus

(ii) The fair value of the collateral posted by the banking organization and held by the CCP or a clearing member in a manner that is not bankruptcy remote.

When the banking organization calculates EAD under the IMM, EAD would be calculated using the most recent three years of historical data, that is, $EAD_{unstressed}$. Trade exposure would not include any collateral held by a custodian in a manner that is bankruptcy remote from the CCP.

Under the proposal, a clearing member banking organization would apply a risk weight of 2 percent to its trade exposure amount with a QCCP. The proposed definition of QCCP is discussed in the Standardized Approach NPR preamble. A banking organization that is a clearing member client would apply a 2 percent risk weight to the trade exposure amount if:

(1) The collateral posted by the banking organization to the QCCP or clearing member is subject to an arrangement that prevents any losses to the clearing member due to the joint default or a concurrent insolvency, liquidation, or receivership proceeding of the clearing member and any other clearing member clients of the clearing member; and

(2) The clearing member client has conducted sufficient legal review to conclude with a well-founded basis (and maintains sufficient written documentation of that legal review) that in the event of a legal challenge (including one resulting from default or a receivership, insolvency, or liquidation proceeding) the relevant court and administrative authorities

[10] *See* CPSS, "Recommendations for Central Counterparties," (November 2004), *available at http://www.bis.org/publ/cpss64.pdf?*

would find the arrangements to be legal, valid, binding, and enforceable under the law of the relevant jurisdiction, provided certain additional criteria are met.

The agencies believe that omnibus accounts (that is, accounts that are generally established by clearing entities for non-clearing members) in the United States would satisfy these requirements because of the protections afforded client accounts under certain regulations of the Securities and Exchange Commission (SEC) and Commodities Futures Trading Commission (CFTC).[11] If the criteria above are not met, a banking organization that is a clearing member client would apply a risk weight of 4 percent to the trade exposure amount.

For a cleared transaction with a CCP that is not a QCCP, a clearing member and a banking organization that is a clearing member client would risk weight the trade exposure according to the risk weight applicable to the CCP under the Standardized Approach NPR.

Collateral posted by a clearing member or clearing member client banking organization that is held in a manner that is bankruptcy remote from the CCP would not be subject to a capital requirement for counterparty credit risk. As with all posted collateral, the banking organization would continue to have a capital requirement for any collateral provided to a CCP or a custodian in connection with a cleared transaction.

Under the proposal, a cleared transaction would not include an exposure of a banking organization that is a clearing member to its clearing member client where the banking organization is either acting as a financial intermediary and enters into an offsetting transaction with a CCP or where the banking organization provides a guarantee to the CCP on the performance of the client. Such a transaction would be treated as an OTC derivative transaction. However, the agencies recognize that this treatment may create a disincentive for banking organizations to act as intermediaries and provide access to CCPs for clients. As a result, the agencies are considering approaches that could address this disincentive while at the same time appropriately reflect the risks of these transactions. For example, one approach would allow banking organizations that are clearing members to adjust the EAD calculated under section 132 downward by a certain percentage or, for banking organizations using the IMM, to adjust the margin period of risk. International discussions are ongoing on this issue, and the agencies would expect to revisit the treatment of these transactions in the event that the BCBS revises its treatment of these transactions.

Default Fund Contribution

The agencies are proposing that, under the advanced approaches rule, a banking organization that is a clearing member of a CCP calculate its capital requirement for its default fund contributions at least quarterly or more frequently upon material changes to the CCP. Banking organizations seeking more information on the proposed risk-based capital treatment of default fund contributions should refer to the preamble of the Standardized Approach NPR.

Question 5: The agencies request comment on the proposed treatment of cleared transactions. The agencies solicit comment on whether the proposal provides an appropriately risk-sensitive treatment of a transaction between a banking organization that is a clearing member and its client and a clearing member's guarantee of its client's transaction with a CCP by treating these exposures as OTC derivative contracts. The agencies also request comment on whether the adjustment of the exposure amount would address possible disincentives for banking organizations that are clearing members to facilitate the clearing of their clients' transactions. What other approaches should the agencies consider and why?

Question 6: The agencies are seeking comment on the proposed calculation of the risk-based capital for cleared transactions, including the proposed risk-based capital requirements for exposures to a QCCP. Are there specific types of exposures to certain QCCPs that would warrant an alternative risk-based capital approach? Please provide a detailed description of such transactions or exposures, the mechanics of the alternative risk-based approach, and the supporting rationale.

6. Stress Period for Own Internal Estimates

Under the collateral haircut approach in the advanced approaches rule, banking organizations that receive prior approval from their primary federal supervisory may calculate market price and foreign exchange volatility using own internal estimates. To receive approval to use such an approach, banking organizations are required to base own internal estimates on a historical observation period of at least one year, among other criteria. During the financial crisis, increased volatility in the value of collateral led to higher counterparty exposures than estimated by banking organizations. In response, the agencies are proposing in this NPR to modify the quantitative standards for approval by requiring banking organizations to base own internal estimates of haircuts on a historical observation period that reflects a continuous 12-month period of significant financial stress appropriate to the security or category of securities. As described in the Standardized Approach NPR preamble, a banking organization would also be required to have policies and procedures that describe how it determines the period of significant financial stress used to calculate the banking organization's own internal estimates, and to be able to provide empirical support for the period used. To ensure an appropriate level of conservativeness, in certain circumstances a primary federal supervisor may require a banking organization to use a different period of significant financial stress in the calculation of own internal estimates for haircuts.

B. Removal of Credit Ratings

Consistent with section 939A of the Dodd-Frank Act, the agencies are proposing a number of changes to the definitions in the advanced approaches rule that currently reference credit ratings.[12] These changes are similar to alternative standards proposed in the Standardized Approach NPR and alternative standards that already have been implemented in the agencies' market risk capital rule. In addition, the agencies are proposing necessary changes to the hierarchy for risk weighting securitization exposures necessitated by the removal of the ratings-based approach, as described further below.

The agencies propose to use an ''investment grade'' standard that does not rely on credit ratings as an alternative standard in a number of requirements under the advanced approaches rule, as explained below. Under this NPR and the Standardized Approach NPR, investment grade would mean that the entity to which the banking organization is exposed through a loan or security, or the reference entity with respect to a credit derivative, has adequate capacity to meet financial commitments for the projected life of the asset or exposure. Such an entity or reference entity has adequate capacity to meet financial commitments if the risk

[11] *See* Securities Investor Protection Act of 1970, 15 U.S.C Section 78aaa—78lll; 17 CFR part 300; 17 CFR part 190.

[12] *See* 76 FR 79380 (Dec. 21, 2011).

of its default is low and the full and timely repayment of principal and interest is expected.

Eligible Guarantor

Under the current advanced approaches rule, guarantors are required to meet a number of criteria in order to be considered as eligible guarantors under the securitization framework. For example, the entity must have issued and outstanding an unsecured long-term debt security without credit enhancement that has a long-term applicable external rating in one of the three highest investment-grade rating categories. The agencies are proposing to replace the term ''eligible securitization guarantor'' with the term ''eligible guarantor,'' which includes certain entities that have issued and outstanding an unsecured debt security without credit enhancement that is investment grade. Other modifications to the definition of eligible guarantor are discussed in subpart C of this preamble.

Eligible Double Default Guarantor

Under this proposal, the term ''eligible double default guarantor,'' with respect to a guarantee or credit derivative obtained by a banking organization, means:

(1) *U.S.-based-entities.* A depository institution, bank holding company, savings and loan holding company, or securities broker or dealer registered with the SEC under the Securities Exchange Act of 1934 (15 U.S.C. 78o *et seq.*), if at the time the guarantee is issued or any time thereafter, has issued and outstanding an unsecured debt security without credit enhancement that is investment grade.

(2) *Non-U.S.-based entities.* A foreign bank, or a non-U.S.-based securities firm if the banking organization demonstrates that the guarantor is subject to consolidated supervision and regulation comparable to that imposed on U.S. depository institutions, or securities broker-dealers) if at the time the guarantee is issued or anytime thereafter, has issued and outstanding an unsecured debt security without credit enhancement that is investment grade. Under the proposal, insurance companies in the business of providing credit protection would no longer be eligible double default guarantors.

Conversion Factor Matrix for OTC Derivative Contracts

Under this proposal and Standardized Approach NPR, the agencies propose to retain the metrics used to calculate the potential future exposure (PFE) for derivative contracts (as set forth in table 3 of the proposed rule), and apply the proposed definition of ''investment grade.''

Money Market Fund Approach

Previously, under the advanced approaches money market fund approach, banking organizations were permitted to assign a 7 percent risk weight to exposures to money market funds that were subject to SEC rule 2a-7 and that had an applicable external rating in the highest investment grade rating category. In this NPR, the agencies propose to eliminate the money market fund approach. The agencies believe it is appropriate to eliminate the preferential risk weight for money market fund investments due to the agencies' and banking organizations' experience with them during the recent financial crisis, in which they demonstrated, at times, elevated credit risk. As a result of the proposed changes, a banking organization would use one of the three alternative approaches under section 154 of this proposal to determine the risk weight for its exposures to a money market fund, subject to a 20 percent floor.

Modified Look-Through Approaches for Equity Exposures to Investment Funds

Under the proposal, risk weights for equity exposures under the simple modified look-through approach would be based on the highest risk weight assigned according to subpart D of the Standardized Approach NPR based on the investment limits in the fund's prospectus, partnership agreement, or similar contract that defines the fund's permissible investments.

Qualifying Operational Risk Mitigants

Under section 161 of the proposal, a banking organization may adjust its estimate of operational risk exposure to reflect qualifying operational risk mitigants. Previously, for insurance to be considered as a qualifying operational risk mitigant, it was required to be provided by an unaffiliated company rated in the three highest rating categories by a nationally recognized statistical ratings organization (NRSRO). Under the proposal, qualifying operational risk mitigants, among other criteria, would be required to be provided by an unaffiliated company that the banking organization deems to have strong capacity to meet its claims payment obligations and the obligor rating category to which the banking organization assigns the company is assigned a PD equal to or less than 10 basis points.

Question 7: The agencies request comment on the proposed use of alternative standards as they would relate to the definitions of investment grade, eligible guarantor, eligible double default guarantor under the advanced approaches rule, as well as the treatment of certain OTC derivative contracts, operational risk mitigants, money market mutual funds, and investment funds under the advanced approaches rule.

C. Proposed Revisions to the Treatment of Securitization Exposures

1. Definitions

Consistent with the *2009 Enhancements* and as proposed in the Standardized Approach NPR, the agencies are proposing to introduce a new definition for resecuritization exposures and broaden the definition of securitization. In addition, the agencies are proposing to amend the existing definition of traditional securitization in order to exclude certain types of investment firms from treatment under the securitization framework.

The definition of a securitization exposure would be broadened to include an exposure that directly or indirectly references a securitization exposure. Specifically, a securitization exposure would be defined as an on-balance sheet or off-balance sheet credit exposure (including credit-enhancing representations and warranties) that arises from a traditional securitization or synthetic securitization exposure (including a resecuritization), or an exposure that directly or indirectly references a securitization exposure. The agencies are proposing to define a resecuritization exposure as (1) an on- or off-balance sheet exposure to a resecuritization; or (2) an exposure that directly or indirectly references a resecuritization exposure. An exposure to an asset-backed commercial paper (ABCP) program would not be a resecuritization exposure if either: the program-wide credit enhancement does not meet the definition of a resecuritization exposure; or the entity sponsoring the program fully supports the commercial paper through the provision of liquidity so that the commercial paper holders effectively are exposed to the default risk of the sponsor instead of the underlying exposures. Resecuritization would mean a securitization in which one or more of the underlying exposures is a securitization exposure.

The recent financial crisis demonstrated that resecuritization exposures, such as collateralized debt obligations (CDOs) comprised of asset-backed securities (ABS), generally present greater levels of risk relative to other securitization exposures due to their increased complexity and lack of transparency and potential to concentrate systematic risk. Accordingly, the *2009 Enhancements* amended the Basel II internal ratings-based approach in the securitization framework to require a banking organization to assign higher risk weights to resecuritization exposures than other, similarly-rated securitization exposures. In this proposal, the agencies are proposing to assign risk weights under the simplified supervisory formula approach (SSFA) in a manner that would result in higher risk weights for resecuritization exposures. In addition, the agencies are proposing to modify the definition of financial collateral such that resecuritizations would no longer qualify as eligible financial collateral under the advanced approaches rule.

Asset-Backed Commercial Paper

The following is an example of how to evaluate whether a transaction involving a traditional multi-seller ABCP conduit would be considered a resecuritization exposure under the proposed rule. In this example, an ABCP conduit acquires securitization exposures where the underlying assets consist of wholesale loans and no securitization exposures. As is typically the case in multi-seller ABCP conduits, each seller provides first-loss protection by over-collateralizing the conduit to which it sells its loans. To ensure that the commercial paper issued by each conduit is highly-rated, a banking organization sponsor provides either a pool-specific liquidity facility or a program-wide credit enhancement such as a guarantee to cover a portion of the losses above the seller-provided protection.

The pool-specific liquidity facility generally would not be treated as a resecuritization exposure under this proposal because the pool-specific liquidity facility represents a tranche of a single asset pool (that is, the applicable pool of wholesale exposures), which contains no securitization exposures. However, a sponsor's program-wide credit enhancement that does not cover all losses above the seller-provided credit enhancement across the various pools generally would constitute tranching of risk of a pool of multiple assets containing at least one securitization exposure, and therefore would be treated as a resecuritization exposure.

In addition, if the conduit from the example funds itself entirely with a single class of commercial paper, then the commercial paper generally would not be considered a resecuritization exposure if either the program-wide credit enhancement did not meet the proposed definition of a resecuritization exposure, or the commercial paper was fully guaranteed by the sponsoring banking organization. When the sponsoring banking organization fully guarantees the commercial paper, the commercial paper holders effectively would be exposed to the default risk of the sponsor instead of the underlying exposures, thus ensuring that the commercial paper does not represent a tranched risk position.

Definition of Traditional Securitization

Since issuing the advanced approaches rules in 2007, the agencies have received feedback from banking organizations that the existing definition of traditional securitization is inconsistent with their risk experience and market practice. The agencies have reviewed this definition in light of this feedback and agree with commenters that changes to it may be appropriate. The agencies are proposing to exclude from the definition of traditional securitization exposures to investment funds, collective investment funds, pension funds regulated under the Employee Retirement Income Security Act (ERISA) and their foreign equivalents, and transactions regulated under the Investment Company Act of 1940 and their foreign equivalents, because these entities are generally prudentially regulated and subject to strict leverage requirements. Moreover, the agencies believe that the capital requirements for an extension of credit to, or an equity holding in these transactions would be more appropriately calculated under the rules for corporate and equity exposures, and that the securitization framework was not designed to apply to such transactions.

Accordingly, the agencies propose to amend the definition of a traditional securitization by excluding any fund that is (1) An investment fund, as defined under the rule, (2) a pension fund regulated under ERISA or a foreign equivalent, or (3) a company regulated under the Investment Company Act of 1940 or a foreign equivalent. Under the current rule, the definition of investment fund, which the agencies are not proposing to amend, means a company all or substantially all of the assets of which are financial assets; and that has no material liabilities.

Question 8: The agencies request comment on the proposed revisions to the definition of traditional securitization.

Under the current advanced approaches rule, the definition of eligible securitization guarantor includes, among other entities, any entity (other than a securitization special purpose entity (SPE)) that has issued and has outstanding an unsecured long-term debt security without credit enhancement that has a long-term applicable external rating in one of the three highest investment-grade rating categories, or has a PD assigned by the banking organization that is lower than or equal to the PD associated with a long-term external rating in the third highest investment grade category. The agencies are proposing to remove the existing references to ratings from the definition of an eligible guarantor (the proposed new term for an eligible securitization guarantor). As revised, the definition for an eligible guarantor would include:

(1) A sovereign, the Bank for International Settlements, the International Monetary Fund, the European Central Bank, the European Commission, a Federal Home Loan Bank, Federal Agricultural Mortgage Corporation (Farmer Mac), a multilateral development bank, a depository institution, a bank holding company, a savings and loan holding company (as defined in 12 U.S.C. 1467a), a credit union, or a foreign bank; or

(2) An entity (other than an SPE):

(i) That at the time the guarantee is issued or anytime thereafter, has issued and outstanding an unsecured debt security without credit enhancement that is investment grade;

(ii) Whose creditworthiness is not positively correlated with the credit risk of the exposures for which it has provided guarantees; and

(iii) That is not an insurance company engaged predominately in the business of providing credit protection (such as a monoline bond insurer or re-insurer).

During the financial crisis, certain guarantors of securitization exposures had difficulty honoring those guarantees as the financial condition of the guarantors deteriorated at the same time as the guaranteed exposures experienced losses. Therefore, the agencies are proposing to add the requirement related to the correlation between the guarantor's creditworthiness and the credit risk of the exposures it has guaranteed to address this concern.

Question 9: The agencies request comment on the proposed revisions to the definition of eligible securitization guarantor.

2. Operational Criteria for Recognizing Risk Transference in Traditional Securitizations

Section 41 of the current advanced approaches rule includes operational criteria for recognizing the transfer of risk. Under the criteria, a banking organization that transfers exposures that it has originated or purchased to a securitization SPE or other third party in connection with a traditional securitization may exclude the exposures from the calculation of risk-weighted assets only if certain conditions are met. Among the criteria listed is that the transfer is considered a sale under the Generally Accepted Accounting Principles (GAAP).

The purpose of the criterion that the transfer be considered a sale under GAAP was to ensure that the banking organization that transferred the exposures was not required under GAAP to consolidate the exposures on its balance sheet. Given changes in GAAP since the rule was published in 2007, the agencies propose to amend paragraph (a)(1) of section 41 of the advanced approaches rule to require that the transferred exposures are not reported on the banking organization's balance sheet under GAAP.[13]

Question 10: The agencies request comment on the proposed revisions to operational criteria under section 41 of the advanced approaches rule.

3. Proposed Revisions to the Hierarchy of Approaches

Consistent with section 939A of the Dodd-Frank Act, the agencies are proposing to remove the advanced approaches rule's ratings-based approach (RBA) and internal assessment approach (IAA) for securitization exposures. Under the proposal, the hierarchy for securitization exposures would be modified as follows:

(1) A banking organization would be required to deduct from common equity tier 1 capital any after-tax gain-on-sale resulting from a securitization and apply a 1,250 percent risk weight to the portion of a credit-enhancing interest-only strip (CEIO) that does not constitute after-tax gain-on-sale.

(2) If a securitization exposure does not require deduction, a banking organization would be required to assign a risk weight to the securitization exposure using the supervisory formula approach (SFA). The agencies expect banking organizations to use the SFA rather than the SSFA in all instances where data to calculate the SFA is available.

(3) If the banking organization cannot apply the SFA because not all the relevant qualification criteria are met, it would be allowed to apply the SSFA. A banking organization should be able to explain and justify (e.g., based on data availability) to its primary federal regulator any instances in which the banking organization uses the SSFA rather than the SFA for its securitization exposures.

If the banking organization does not apply the SSFA to the exposure, the banking organization would be required to assign a 1,250 percent risk weight, unless the exposure qualifies for a treatment available to certain ABCP exposures under section 44 of Standardized Approach NPR.

The SSFA, described in detail in the Standardized Approach NPR, is similar in construct and function to the SFA. A banking organization would need several inputs to calculate the SSFA. The first input is the weighted-average capital requirement under the requirements described in Standardized Approach NPR that would be applied to the underlying exposures if they were held directly by the banking organization. The second and third inputs indicate the position's level of subordination and relative size within the securitization. The fourth input is the level of delinquencies experienced on the underlying exposures. A bank would apply the hierarchy of approaches in section 142 of this proposed rule to determine which approach it would apply to a securitization exposure.

Banking organizations using the advanced approaches rule should note that the Standardized Approach NPR would require the use of the SSFA for certain securitizations subject to the advanced approaches rule.

Question 11: The agencies request comment on the proposed revisions to the hierarchy for securitization exposures under the advanced approaches rule.

4. Guarantees and Credit Derivatives Referencing a Securitization Exposure

The advanced approaches rule includes methods for calculating risk-weighted assets for nth-to-default credit derivatives, including first-to-default credit derivatives and second-or-subsequent-to-default credit derivatives.[14] The advanced approaches rule, however, does not specify how to treat guarantees or non-nth-to-default credit derivatives purchased or sold that reference a securitization exposure. Accordingly, the agencies are proposing clarifying revisions to the risk-based capital requirements for credit protection purchased or provided in the form of a guarantee or derivative other than nth-to-default credit derivatives that reference a securitization exposure.

For a guarantee or credit derivative (other than an nth-to-default credit derivative), the proposal would require a banking organization to determine the risk-based capital requirement for the guarantee or credit derivative as if it directly holds the portion of the reference exposure covered by the guarantee or credit derivative. The banking organization would calculate its risk-based capital requirement for the guarantee or credit derivative by applying either (1) the SFA as provided in section 143 of the proposal to the reference exposure if the bank and the reference exposure qualify for the SFA; or (2) the SSFA as provided in section 144 of the proposal. If the guarantee or credit derivative and the reference securitization exposure would not qualify for the SFA, or the SSFA, the bank would be required to assign a 1,250 percent risk weight to the notional amount of protection provided under the guarantee or credit derivative.

The proposal also would modify the advanced approaches rule to clarify how a banking organization may recognize a guarantee or credit derivative (other than an nth-to-default credit derivative) purchased as a credit risk mitigant for a securitization exposure held by the banking organization. In addition, the proposal adds a provision that would require a banking organization to use section 131 of the proposal instead of the approach required under the hierarchy of approaches in section 142 to calculate the risk-based capital requirements for a credit protection purchased by a banking organization in the form of a guarantee or credit derivative (other than an nth-to-default credit derivative) that references a securitization exposure that a banking organization does not hold. Credit protection purchased that references a securitization exposure not held by a banking organization subjects the banking organization to counterparty credit risk with respect to the credit protection but not credit risk to the securitization exposure.

[13] For more information on the changes in GAAP related to the transfer of exposures, *see* Financial Accounting Standards Board, Topics 810 and 860.

[14] Nth-to-default credit derivative means a credit derivative that provides credit protection only for the nth-defaulting reference exposure in a group of reference exposures. *See* 12 CFR part 3, appendix C, section 42(l) (OCC); 12 CFR part 208, appendix F, and 12 CFR part 225, appendix G (Board); 12 CFR part 325, appendix D, section 4(l), and 12 CFR part 390, subpart Z, appendix A, section 4(l) (FDIC).

Question 12: The agencies request comment on the proposed revisions to the treatment of guarantees and credit derivatives that reference a securitization exposure.

5. Due Diligence Requirements for Securitization Exposures

As the recent financial crisis unfolded, weaknesses in exposures underlying securitizations became apparent and resulted in NRSROs downgrading many securitization exposures held by banks. The agencies found that many banking organizations relied on NRSRO ratings as a proxy for the credit quality of securitization exposures they purchased and held without conducting their own sufficient independent credit analysis. As a result, some banking organizations did not have sufficient capital to absorb the losses attributable to these exposures. Accordingly, consistent with the *2009 Enhancements,* the agencies are proposing to implement due diligence requirements that banking organizations would be required to use the SFA or SSFA to determine the risk-weighted asset amount for securitization exposures under the advanced approaches proposal. These disclosure requirements are consistent with those required in the standardized approach, as discussed in the Standardized Approach NPR.

Question 13: The agencies solicit comments on what, if any, are specific challenges that are involved with meeting the proposed due diligence requirements and for what types of securitization exposures? How might the agencies address these challenges while ensuring that a banking organization conducts an appropriate level of due diligence commensurate with the risks of its exposures?

6. Nth-to-Default Credit Derivatives

The agencies propose that a banking organization that provides credit protection through an nth-to-default derivative assign a risk weight to the derivative using the SFA or the SSFA. In the case of credit protection sold, a banking organization would determine its exposure in the nth-to-default credit derivative as the largest notional dollar amount of all the underlying exposures.

When applying the SSFA to protection provided in the form of an nth-to-default credit derivative, the attachment point (parameter A) is the ratio of the sum of the notional amounts of all underlying exposures that are subordinated to the banking organization's exposure to the total notional amount of all underlying exposures. For purposes of applying the SFA, parameter A would be set equal to the credit enhancement level (L) used in the SFA formula. In the case of a first-to-default credit derivative, there are no underlying exposures that are subordinated to the banking organization's exposure. In the case of a second-or-subsequent-to default credit derivative, the smallest (n-1) underlying exposure(s) are subordinated to the banking organization's exposure.

Under the SSFA, the detachment point (parameter D) would be the sum of the attachment point and the ratio of the notional amount of the banking organization's exposure to the total notional amount of the underlying exposures. Under the SFA, Parameter D would be set to equal L plus the thickness of the tranche (T) under the SFA formula. A banking organization that does not use the SFA or SSFA to calculate a risk weight for an nth-to-default credit derivative would assign a risk weight of 1,250 percent to the exposure.

For the treatment of protection purchased through an nth-to-default, a banking organization would determine its risk-based capital requirement for the underlying exposures as if the banking organization had synthetically securitized the underlying exposure with the lowest risk-based capital requirement and had obtained no credit risk mitigant on the underlying exposures. A banking organization would calculate a risk-based capital requirement for counterparty credit risk according to section 132 of the proposal for a first-to-default credit derivative that does not meet the rules of recognition for guarantees and credit derivatives under section 134(b).

A banking organization that obtains credit protection on a group of underlying exposures through a nth-to-default credit derivative that meets the rules of recognition of section 134(b) of the proposal (other than a first-to-default credit derivative) would be permitted to recognize the credit risk mitigation benefits of the derivative only if the banking organization also has obtained credit protection on the same underlying exposures in the form of first-through-(n-1)-to-default credit derivatives; or if n-1 of the underlying exposures have already defaulted. If a banking organization satisfies these requirements, the banking organization would determine its risk-based capital requirement for the underlying exposures as if the banking organization had only synthetically securitized the underlying exposure with the nth lowest risk-based capital requirement and had obtained no credit risk mitigant on the other underlying exposures. A banking organization that does not fulfill these requirements would calculate a risk-based capital requirement for counterparty credit risk according to section 132 of the proposal for a nth-to-default credit derivative that does not meet the rules of recognition of section 134(b) of the proposal.

For a guarantee or credit derivative (other than an nth-to-default credit derivative) provided by a banking organization that covers the full amount or a pro rata share of a securitization exposure's principal and interest, the banking organization would risk weight the guarantee or credit derivative as if it holds the portion of the reference exposure covered by the guarantee or credit derivative.

As a protection purchaser, if a banking organization chooses (and is able) to recognize a guarantee or credit derivative (other than an nth-to-default credit derivative) that references a securitization exposure as a credit risk mitigant, where applicable, the banking organization must apply section 145 of the proposal for the recognition of credit risk mitigants. If a banking organization cannot, or chooses not to, recognize a credit derivative that references a securitization exposure as a credit risk mitigant under section 145, the banking organization would determine its capital requirement only for counterparty credit risk in accordance with section 131 of the proposal.

Question 14: The agencies request comment on the proposed treatment for nth-to-default credit derivatives.

D. Treatment of Exposures Subject to Deduction

Under the current advanced approaches rule, a banking organization must deduct certain exposures from total capital, including securitization exposures such as CEIOs, low-rated securitization exposures, and high-risk securitization exposures subject to the SFA; eligible credit reserves shortfall; and certain failed capital markets transactions.[15] Consistent with Basel III, the agencies are proposing that the exposures noted above that are currently deducted from total capital would instead be assigned a 1,250 percent risk weight, except as required under

[15] Section 42(a)(1) of the advanced approaches rule states, in part, that a banking organization must deduct from total capital the portion of any CEIO that does not constitute gain-on-sale. The proposal would clarify that this provision relates to any CEIO that does not constitute *after-tax* gain-on-sale; *see* 12 CFR part 3, appendix C, section 11, and 12 CFR part 167, section 11 (OCC); 12 CFR part 208, appendix F, section 11, and 12 CFR part 225, appendix G, section 11 (Board); 12 CFR part 325, appendix D, section 11, and 12 CFR part 390, subpart Z, appendix A, section 11 (FDIC).

subpart B of the Standardized Approach NPR, and except for deductions from total capital of insurance underwriting subsidiaries of bank holding companies. The proposed change would reduce the differences in the measure of tier 1 capital for risk-based capital purposes under the advanced approaches rule as compared to the leverage capital requirements.

The agencies note that such treatment is not equivalent to a deduction from tier 1 capital, as the effect of a 1,250 percent risk weight would depend on an individual banking organization's current risk-based capital ratios. Specifically, when a risk-based capital ratio (either tier 1 or total risk-based capital) exceeds 8.0 percent, the effect on that risk-based capital ratio of assigning an exposure a 1,250 percent risk weight would be more conservative than a deduction from total capital. The more a risk-based capital ratio exceeds 8.0 percent, the harsher is the effect of a 1,250 percent risk weight on risk-based capital ratios. Conversely, the effect of a 1,250 percent risk weight would be less harsh than a deduction from total capital for any risk-based capital ratio that is below 8.0 percent. Unlike a deduction from total capital, however, a bank's leverage ratio would not be affected by assigning an exposure a 1,250 percent risk weight.

The agencies are not proposing to apply a 1,250 percent risk weight to those exposures currently deducted from tier 1 capital under the advanced approaches rule. For example, the agencies are proposing that gain-on-sale that is deducted from tier 1 under the advanced approaches rule be deducted from common equity tier 1 under the proposed rule. In this regard, the agencies also clarify that any asset deducted from common equity tier 1, tier 1, or tier 2 capital under the advanced approaches rule would not be included in the measure of risk-weighted assets under the advanced approaches rule.

Question 15: The agencies request comment on the proposed 1,250 percent risk weighting approach to CEIOs, low-rated securitization exposures, and high-risk securitization exposures subject to the SFA, any eligible credit reserves shortfall, and certain failed capital markets transactions.

E. Technical Amendments to the Advanced Approaches Rule

The agencies are proposing other amendments to the advanced approaches rule that are designed to refine and clarify certain aspects of the rule's implementation. Each of these revisions is described below.

1. Eligible Guarantees and Contingent U.S. Government Guarantees

In order to be recognized as an eligible guarantee under the advanced approaches rule, the guarantee, among other criteria, must be unconditional. The agencies note that this definition would exclude certain guarantees provided by the U.S. Government or its agencies that would require some action on the part of the bank or some other third party. However, based on their risk perspective, the agencies believe that these guarantees should be recognized as eligible guarantees. Therefore, the agencies are proposing to amend the definition of eligible guarantee so that it explicitly includes a contingent obligation of the U.S. Government or an agency of the U.S. Government, the validity of which is dependent on some affirmative action on the part of the beneficiary or a third party (for example, servicing requirements) irrespective of whether such contingent obligation would otherwise be considered a conditional guarantee. A corresponding provision is included in section 36 of the Standardized Approach NPR.

2. Calculation of Foreign Exposures for Applicability of the Advanced Approaches—Insurance Underwriting Subsidiaries

A banking organization is subject to the advanced approaches rule if it has consolidated assets greater than or equal to $250 billion, or if it has total consolidated on-balance sheet foreign exposures of at least $10 billion.[16] For bank holding companies, in particular, the advanced approaches rule provides that the $250 billion threshold criterion excludes assets held by an insurance underwriting subsidiary. However, a similar provision does not exist for the $10 billion foreign-exposure threshold criteria. Therefore, for bank holding companies and savings and loan holding companies, the Board is proposing to exclude assets held by insurance underwriting subsidiaries from the $10 billion in total foreign exposures threshold. The Board believes such a parallel provision would result in a more appropriate scope of application for the advanced approaches rule.

[16] *See* 12 CFR part 3, appendix C, and 12 CFR part 167, appendix C (OCC); 12 CFR part 208, appendix F, and 12 CFR part 225, appendix G (Board); 12 CFR part 325, appendix D, and 12 CFR part 390, subpart Z (FDIC).

3. Calculation of Foreign Exposures for Applicability of the Advanced Approaches—Changes to FFIEC 009

The agencies are proposing to revise the advanced approaches rule to comport with changes to the Federal Financial Institutions Examination Council (FFIEC) Country Exposure Report (FFIEC 009) that occurred after the issuance of the advanced approaches rule in 2007. Specifically, the FFIEC 009 replaced the term "local country claims" with the term "foreign-office claims." Accordingly, the agencies have made a similar change under section 100, the section of the advanced approaches rule that makes the rules applicable to a banking organization that has consolidated total on-balance sheet foreign exposures equal to $10 billion or more. As a result, to determine total on-balance sheet foreign exposure, a bank would sum its adjusted cross-border claims, local country claims, and cross-border revaluation gains calculated in accordance with FFIEC 009. Adjusted cross-border claims would equal total cross-border claims less claims with the head office or guarantor located in another country, plus redistributed guaranteed amounts to the country of the head office or guarantor.

4. Applicability of the Rule

The agencies believe it would not be appropriate for banking organizations to move in and out of the scope of the advanced approaches rule based on fluctuating asset sizes. As a result, the agencies are proposing to amend the advanced approaches rule to clarify that once a banking organization is subject to the advanced approaches rule, it would remain subject to the rule until its primary federal supervisor determines 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. In connection with the consideration of a banking organization's level of complexity, risk profile, and scope of operations, the agencies also may consider a banking organization's interconnectedness and other relevant risk-related factors.

5. Change to the Definition of Probability of Default Related to Seasoning

The advanced approaches rule requires an upward adjustment to estimated PD for segments of retail exposures for which seasoning effects are material. The rationale underlying this requirement was the seasoning pattern displayed by some types of retail exposures—that is, the exposures have very low default rates in their first year, rising default rates in the next few years, and declining default rates for the remainder of their terms. Because of the one-year internal ratings-based (IRB) default horizon, capital based on the very low PDs for newly originated, or ''unseasoned,'' loans would be insufficient to cover the elevated risk in subsequent years. The upward seasoning adjustment to PD was designed to ensure that banking organizations would have sufficient capital when default rates for such segments rose predictably beginning in year two.

Since the issuance of the advanced approaches rule, the agencies have found the seasoning provision to be problematic. First, it is difficult to ensure consistency across institutions, given that there is no guidance or criteria for determining when seasoning is ''material'' or what magnitude of upward adjustment to PD is ''appropriate.'' Second, the advanced approaches rule lacks flexibility by requiring an upward PD adjustment whenever there is a significant relationship between a segment's default rate and its age (since origination). For example, the upward PD adjustment may be inappropriate in cases where (1) The outstanding balance of a segment is falling faster over time (due to defaults and prepayments) than the default rate is rising; (2) the age (since origination) distribution of a portfolio is stable over time; or (3) where the loans in a segment are intended, with a high degree of certainty, to be sold or securitized within a short time period.

Therefore, the agencies are proposing to delete the regulatory (Pillar 1) seasoning provision and instead to treat seasoning under Pillar 2. In addition to the difficulties in applying the advanced approaches rule's seasoning requirements discussed above, the agencies believe that the consideration of seasoning belongs more appropriately in Pillar 2 First, seasoning involves the determination of minimum required capital for a period in excess of the 12-month time horizon of Pillar 1. It thus falls more appropriately under longer-term capital planning and capital adequacy, which are major focal points of the internal capital adequacy assessment process component of Pillar 2. Second, seasoning is a major issue only where a banking organization has a concentration of unseasoned loans. The capital treatment of loan concentrations of all kinds is omitted from Pillar 1; however, it is dealt with explicitly in Pillar 2.

6. Cash Items in Process of Collection

Previously under the advanced approaches rule issued in 2007, cash items in the process of collection were not assigned a risk-based capital treatment and, as a result, would have been subject to a 100 percent risk weight. Under the proposed rule, the agencies are revising the advanced approaches rule to risk weight cash items in the process of collection at 20 percent of the carrying value, as the agencies have concluded that this treatment would be more commensurate with the risk of these exposures. A corresponding provision is included in section 32 of the Standardized Approach NPR.

7. Change to the Definition of Qualified Revolving Exposure

The agencies are proposing to modify the definition of Qualified Revolving Exposure (QRE) such that certain unsecured and unconditionally cancellable exposures where a banking organization consistently imposes in practice an upper exposure limit of $100,000 and requires payment in full every cycle will now qualify as QRE. Under the current definition, only unsecured and unconditionally cancellable revolving exposures with a pre-established maximum exposure amount of $100,000 (such as credit cards) are classified as QRE. Unsecured, unconditionally cancellable exposures that require payment in full and have no communicated maximum exposure amount (often referred to as ''charge cards'') are instead classified as ''other retail.'' For regulatory capital purposes, this classification is material and would generally result in substantially higher minimum required capital to the extent that the exposure's asset value correlation (AVC) will differ if classified as QRE (where it is assigned an AVC of 4 percent) or other retail (where AVC varies inversely with through-the-cycle PD estimated at the segment level and can go as high as almost 16 percent for very low PD segments).

The proposed definition would allow certain charge card products to qualify as QRE. Charge card exposures may be viewed as revolving in that there is an ability to borrow despite a requirement to pay in full. Where a banking organization consistently imposes in practice an upper exposure limit of $100,000 the agencies believe that charge cards are more closely aligned from a risk perspective with credit cards than with any type of ''other retail'' exposure and are therefore proposing to amend the definition of QRE in order to allow such products to qualify as QRE.

The agencies also have considered the appropriate treatment of hybrid cards. Hybrid cards have characteristics of both charge and credit cards. The agencies are uncertain whether it would be prudent to allow hybrid cards to qualify as QREs at this time. Hybrid cards are a relatively new product, and there is limited information available about them including data on their market and risk characteristics.

Question 16: Do hybrid cards exhibit similar risk characteristics to credit and charge cards and should the agencies allow them to qualify as QREs? Commenters are requested to provide a detailed explanation, as appropriate, as well as the relevant data and impact analysis to support their positions. Such information should include data on the number or dollar-amounts of cards issued to date, anticipated growth rate, and performance data including default and delinquency rates, credit score distribution of cardholders, volatilities, or asset-value correlations.

8. Trade-Related Letters of Credit

In 2011, the BCBS revised the Basel II advanced internal ratings-based approach to remove the one-year maturity floor for trade finance instruments. Consistent with this revision, this proposed rule would specify that an exposure's effective maturity must be no greater than five years and no less than one year, except that an exposure's effective maturity must be no less than one day if the exposure is a trade-related letter of credit, or if the exposure has an original maturity of less than one year and is not part of a banking organization's ongoing financing of the obligor.

A corresponding provision is included in section 33 of the Standardized Approach NPR.

Question 17: The agencies request comment on all the other proposed amendments to the advanced approaches rule described in section E (items 1 through 8), of this preamble.

F. Pillar 3 Disclosures

1. Frequency and Timeliness of Disclosures

Under the proposed rule, a banking organization is required to provide certain qualitative and quantitative disclosures on a quarterly, or in some cases, annual basis, and these disclosures must be ''timely.'' In the preamble to the advanced approaches rule issued in 2007, the agencies indicated that quarterly disclosures would be timely if they were provided within 45 days after calendar quarter-end. The preamble did not specify expectations regarding annual disclosures. The agencies acknowledged that timing of disclosures required under the federal banking laws may not always coincide with the timing of disclosures under other federal laws, including federal securities laws and their implementing regulations by the SEC. The agencies also indicated that a banking organization may use disclosures made pursuant to SEC, regulatory reporting, and other disclosure requirements to help meet its public disclosure requirements under the advanced approaches rule.

The agencies understand that the deadline for certain SEC financial reports is more than 45 calendar days after calendar quarter-end. Therefore, the agencies are proposing to clarify in this NPR that, where a banking organization's fiscal year-end coincides with the end of a calendar quarter, the requirement for timely disclosure would be no later than the applicable reporting deadlines for regulatory reports (for example, FR Y–9C) and financial reports (for example, SEC Forms 10–Q and 10–K). When these deadlines differ, banking organizations would adhere to the later deadline. In cases where a banking organization's fiscal year-end does not coincide with the end of a calendar quarter, the agencies would consider those disclosures that are made within 45 days as timely.

2. Enhanced Securitization Disclosure Requirements

In view of the significant contribution of securitization exposures to the financial crisis, the agencies believe that enhanced disclosure requirements are appropriate. Consistent with the disclosures introduced by the 2009 Enhancements, the agencies are proposing to amend the qualitative section for Table 11.8 disclosures (Securitization) to include the following:

- The nature of the risks inherent in a banking organization's securitized assets,
- A description of the policies that monitor changes in the credit and market risk of a banking organization's securitization exposures,
- A description of a banking organization's policy regarding the use of credit risk mitigation for securitization exposures,
- A list of the special purpose entities a banking organization uses to securitize exposures and the affiliated entities that a bank manages or advises and that invest in securitization exposures or the referenced SPEs, and
- A summary of the banking organization's accounting policies for securitization activities.

To the extent possible, the agencies are proposing the disclosure requirements included in the 2009 Enhancements. However, due to the prohibition on the use of credit ratings in the risk-based capital rules required by the Dodd-Frank Act, the proposed tables do not include those disclosure requirements related to the use of ratings.

3. Equity Holding That Are Not Covered Positions

Section 71 of the current advanced approaches rule requires banking organizations to include in their public disclosures a discussion of ''important policies covering the valuation of and accounting for equity holdings in the banking book.'' Since ''banking book'' is not a defined term under the advanced approaches rule, the agencies propose to refer to such exposures as equity holdings that are not covered positions.

III. Market Risk Capital Rule

In today's **Federal Register**, the federal banking agencies are finalizing revisions to the agencies' market risk capital rule (the market risk capital rule), which generally requires national banks, state banks, and bank holding companies with significant exposure to market risk to implement systems and procedures necessary to manage and measure that risk and to hold a commensurate amount of capital. As noted in the introduction of this preamble, in this NPR, the agencies are proposing to expand the scope of the market risk capital rule to include savings associations and savings and loan holding companies and codify the market risk rule in a manner similar to the other regulatory capital rules in the three proposals. In the process of incorporating the market risk rule into the regulatory capital framework, the agencies note that there will be some overlap among certain defined terms. In any final rule, the agencies intend to merge definitions and make any appropriate technical changes.

As a general matter, a banking organization subject to the market risk capital rule will not include assets held for trading purposes when calculating its risk-weighted assets for the purpose of the other risk-based capital rules. Instead, the banking organization must determine an appropriate capital requirement for such assets using the methodologies set forth in the final market risk capital rule. The banking organization then must multiply its market risk capital requirement by 12.5 to determine a risk-weighted asset amount for its market risk exposures and then add that amount to its credit risk-weighted assets to arrive at its total risk-weighted asset amount.

As described in the preamble to the market risk capital rule, the agencies revised their respective market risk rules to better capture positions subject to market risk, reduce pro-cyclicality in market risk capital requirements, enhance the rule's sensitivity to risks that were not adequately captured under the prior regulatory measurement methodologies, and increase transparency through enhanced disclosures.

The market risk capital rules is designed to determine capital requirements for trading assets based on general and specific market risk associated with these assets. General market risk is the risk of loss in the market value of positions resulting from broad market movements, such as changes in the general level of interest rates, equity prices, foreign exchange rates, or commodity prices. Specific market risk is the risk of loss from changes in the market value of a position due to factors other than broad market movements, including event risk (changes in market price due to unexpected events specific to a particular obligor or position) and default risk.

The agencies' current market risk capital rules do not apply to savings associations or savings and loan holding companies. The Board has previously expressed its intention to assess the condition, performance, and activities of savings and loan holding companies (SLHCs) on a consolidated risk-based basis in a manner that is consistent with the Board's established approach regarding bank holding company supervision while considering any unique characteristics of SLHCs and the requirements of the Home Owners' Loan Act.[17] Therefore, as noted above, the agencies are proposing in this NPR to expand the scope of the market risk rule to savings associations and savings and loan holding companies that meet the stated thresholds. As proposed, the market risk capital rule would apply to any savings association or savings and loan holding company whose trading activity (the gross sum of its trading assets and trading liabilities) is equal to 10 percent or more of its total assets or $1 billion or more. Under the proposed rule, each agency would retain the authority to apply its respective market risk rule to any entity under its jurisdiction, regardless of whether it

[17] *See* 76 FR 22663 (April, 22, 2011).

meets the aforementioned thresholds, if the agency deems it necessary or appropriate for safe and sound banking practices.

As a general matter, savings associations and savings and loan holding companies do not engage in trading activity to a substantial degree. However, the agencies believe that any savings association or savings and loan holding company whose trading activity grows to the extent that it meets the thresholds should hold capital commensurate with the risk of the trading activity and should have in place the prudential risk management systems and processes required under the market risk capital rule. Therefore, the agencies believe it would be necessary and appropriate to expand the scope of the market risk rule to apply to savings associations and savings and loan holding companies.

Application of the market risk capital rule to all banking organizations with material exposure to market risk would be particularly important because of banking organizations' increased exposure to traded credit products, such as credit default swaps, asset-backed securities and other structured products, as well as other less liquid products. In fact, many of the revisions to the final market risk capital rule were made in response to concerns that arose during the financial crisis when certain trading assets suffered substantial losses, causing banking organizations holding those assets to suffer substantial losses. For example, in addition to a market risk capital requirement to account for general market risk, the revised rules apply more conservative standardized specific risk capital requirements to most securitization positions, implement an additional incremental risk capital requirement for a banking organization that models specific risk for one or more portfolios of debt or, if applicable, equity positions. Additionally, to address concerns about the appropriate treatment of traded positions that have limited price transparency, a banking organization subject to the market risk capital rule must have a well-defined valuation process for all covered positions.

Question 18: The agencies request comment on the application of the market risk rule to savings associations and savings and loan holding companies.

IV. List of Acronyms

ABCP Asset-Backed Commercial Paper
ABS Asset-Backed Security
AVC Asset Value Correlation
BCBS Basel Committee on Banking Supervision
CCP Central Counterparty
CDO Collateralized Debt Obligation
CDS Credit Default Swap
CDS_{ind} Index Credit Default Swap
CEIO Credit-Enhancing Interest-Only Strip
CPSS Committee on Payment and Settlement Systems
CVA Credit Valuation Adjustment
DFA Dodd-Frank Act
DvP Delivery-versus-Payment
E Measure of Effectiveness
EAD Exposure-at-Default
EE Expected Exposure
Expected Operational Loss (EOL)
EPE Expected Positive Exposure
FDIC Federal Deposit Insurance Corporation
FFIEC Federal Financial Institutions Examination Council
FR **Federal Register**
GAAP Generally Accepted Accounting Principles
HVCRE High-Volatility Commercial Real Estate
IAA Internal Assessment Approach
IMA Internal Models Approach
IMM Internal Models Methodology
I/O Interest-Only
IOSCO International Organization of Securities Commissions
IRB Internal Ratings-Based
Loss Given Default (LGD)
M Effective Maturity
NGR Net-to-Gross Ratio
NPR Notice of Proposed Rulemaking
NRSRO Nationally Recognized Statistical Rating Organization
OCC Office of the Comptroller of the Currency
OTC Over-the-Counter
PD Probability of Default
PFE Potential Future Exposure
PvP Payment-versus-Payment
QCCP Qualifying Central Counterparty
QRE Qualified Retail Exposure
RBA Ratings-Based Approach
RVC Ratio of Value Change
SFA Supervisory Formula Approach
SSFA Simplified Supervisory Formula Approach
U.S.C. United States Code
VaR Value-at-Risk

V. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA) requires an agency to provide an initial regulatory flexibility analysis with a proposed rule or to certify that the rule will not have a significant economic impact on a substantial number of small entities (defined for purposes of the RFA to include banks with assets less than or equal to $175 million) and publish its certification and a short, explanatory statement in the **Federal Register** along with the proposed rule.

The Board is providing an initial regulatory flexibility analysis with respect to this NPR. The OCC and FDIC are certifying that the proposals in this NPR will not have a significant economic impact on a substantial number of small entities.

Board

Under regulations issued by the Small Business Administration,[18] a small entity includes a depository institution or bank holding company with total assets of $175 million or less (a small banking organization). As of March 31, 2012 there were 373 small state member banks. As of December 31, 2011, there were approximately 128 small savings and loan holding companies and 2,385 small bank holding companies.[19]

As discussed previously in the Supplementary Information, the Board is proposing to revise its capital requirements to promote safe and sound banking practices, implement Basel III, and other aspects of the Basel capital framework, and codify its capital requirements.

The proposals also satisfy certain requirements under the Dodd-Frank Act by imposing new or revised minimum capital requirements on certain depository institution holding companies.[20] Additionally, under section 38(c)(1) of the Federal Deposit Insurance Act, the agencies may prescribe capital standards for depository institutions that they regulate.[21] In addition, among other authorities, the Board may establish capital requirements for state member banks under the Federal Reserve Act,[22] for state member banks and bank holding companies under the International Lending Supervision Act and Bank Holding Company Act,[23] and for savings and loan holding companies under the Home Owners' Loan Act.[24]

The proposed requirements in this NPR generally would not apply to small bank holding companies that are not engaged in significant nonbanking activities, do not conduct significant off-balance sheet activities, and do not have a material amount of debt or equity securities outstanding that are registered with the SEC. These small bank holding companies remain subject to the Board's Small Bank Holding Company Policy Statement (Policy Statement).[25]

[18] *See* 13 CFR 121.201.

[19] The December 31, 2011, data are the most recent available data on small savings and loan holding companies and small bank holding companies.

[20] *See* 12 U.S.C. 5371.

[21] *See* 12 U.S.C. 1831o(c)(1).

[22] *See* 12 CFR 208.43.

[23] *See* 12 U.S.C. 3907; 12 U.S.C. 1844.

[24] *See* 12 U.S.C. 1467a(g)(1).

[25] *See* 12 CFR part 225, appendix C; *see also* 12 U.S.C. 5371(b)(5)(C). Section 171 of the Dodd-Frank provides an exemption from its requirements for bank holding companies subject to the Policy Statement (as in effect on May 19, 2010). Section 171 does not provide a similar exemption for small savings and loan holding companies and they are therefore subject to the proposed rules.

The proposals in this NPR would generally not apply to other small banking organizations. Those small banking organizations that would be subject to the proposed modifications to the advanced approaches rules would only be subject to those requirements because they are a subsidiary of a large banking organization that meets the criteria for advanced approaches. The Board expects that all such entities would rely on the systems developed by their parent banking organizations and would have no additional compliance costs. The Board also expects that the parent banking organization would remedy any capital shortfalls at such a subsidiary that would occur due to the proposals in this NPR.

The Board welcomes comment on all aspects of its analysis. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

OCC

Pursuant to section 605(b) of the Regulatory Flexibility Act, (RFA), the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (defined for purposes of the RFA to include banks with assets less than or equal to $175 million) and publishes its certification and a short, explanatory statement in the **Federal Register** along with its rule.

As of March 31, 2012, there were approximately 599 small national banks and 284 small federally chartered savings associations. The proposed changes to OCC's minimum risk-based capital requirements included in this NPR would impact only those small national banks and federal savings associations that are subsidiaries of large internationally active banking organizations that use the advanced approaches risk-based capital rules, and those small federal savings associations that meet the threshold criteria for application of the market risk rule. Only six small institutions would be subject to the advanced approaches risk-based capital rules, and no small federal savings associations satisfy the threshold criteria for application of the market risk rule. Therefore, the OCC does not believe that the proposed rule will result in a significant economic impact on a substantial number of small entities.

FDIC Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, (RFA), the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (defined for purposes of the RFA to include banks with assets less than or equal to $175 million) and publishes its certification and a short, explanatory statement in the **Federal Register** along with its rule.

As of March 31, 2012, there were approximately 2,433 small state nonmember banks, 115 small state savings banks, and 45 small state savings associations (collectively, small banks and savings associations). The proposed changes to FDIC's minimum risk-based capital requirements included in this NPR would impact only those small banks and savings associations that are subsidiaries of large, internationally-active banking organizations that use the advanced approaches risk-based capital rules, and those small state savings associations that meet the threshold criteria for application of the market risk rule. There are no small banks and savings associations subject to the advanced approaches risk-based capital rules, and no small state savings associations satisfy the threshold criteria for application of the market risk rule. Therefore, the FDIC does not believe that the proposed rule will result in a significant economic impact on a substantial number of small entities.

VI. Paperwork Reduction Act

Request for Comment on Proposed Information Collection

In accordance with the requirements of the Paperwork Reduction Act (PRA) of 1995, 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 Office of Management and Budget (OMB) control number. The Agencies are requesting comment on a proposed information collection.

The information collection requirements contained Subpart E of this joint notice of proposed rulemaking (NPR) have been submitted by the OCC and FDIC to OMB for review under the PRA, under OMB Control Nos. 1557–0234 and 3064–0153. The information collection requirements contained in Subpart F of this NPR have been submitted by the OCC and FDIC to OMB for review under the PRA. In accordance with the PRA (44 U.S.C. 3506; 5 CFR part 1320, Appendix A.1), the Board has reviewed the NPR under the authority delegated by OMB. The Board's OMB Control Number for the information collection requirements contained Subpart E of this NPR is 7100–0313 and for the information collection requirements contained Subpart F of this NPR is 7100–0314. The requirements in Subpart E are found in proposed sections __.121, __.122, __.123, __.124, __.132, __.141, __.142, __.152, __.173. The requirements in Subpart F are found in proposed sections __.203, __.204, __.205, __.206, __.207, __.208, __.209, __.210, and __.212.

The Agencies have published two other NPRs in this issue of the **Federal Register**. Please see the NPRs entitled ''Regulatory Capital Rules: Regulatory Capital, Minimum Regulatory Capital Ratios, Capital Adequacy, Transition Provisions'' and ''Regulatory Capital Rules: Standardized Approach for Risk-Weighted Assets; Market Discipline and Disclosure Requirements.'' While the three NPRs together comprise an integrated capital framework, the PRA burden has been divided among the three NPRs and a PRA statement has been provided in each.

Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the Agencies' functions, including whether the information has practical utility;

(b) The accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

All comments will become a matter of public record.

Comments should be addressed to:

OCC: Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mail stop 1–5, Attention: 1557–0234, 250 E Street SW., Washington, DC 20219. In addition, comments may be sent by fax to 202–874–4448, or by electronic mail to *regs.comments@occ.treas.gov.* You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling 202–874–5043.

Board: You may submit comments, identified by R–1443, by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov.* Follow the instructions for submitting comments on the *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include docket number in the subject line of the message.
- *Fax:* 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 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.

FDIC: You may submit written comments, which should refer to RIN 3064–AD97 Advanced Approaches Risk-based Capital Rule (3064–0153); Market Risk Capital Rule (NEW), by any of the following methods:

- *Agency Web Site: http://www.fdic.gov/regulations/laws/federal/propose.html.* Follow the instructions for submitting comments on the FDIC Web site.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: Comments@FDIC.gov.*
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, FDIC, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery/Courier:* Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Public Inspection: All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/propose/html* including any personal information provided. Comments may be inspected at the FDIC Public Information Center, Room 100, 801 17th Street NW., Washington, DC, between 9 a.m. and 4:30 p.m. on business days.

Proposed Information Collection

Title of Information Collection: Regulatory Capital Rules (Part 3): Advanced Approaches Risk-based Capital Rules (Basel III, Part 3).

Frequency of Response: Quarterly and annually.

Affected Public:

OCC: National banks and federally chartered savings associations.

Board: State member banks (SMBs), bank holding companies (BHCs), and savings and loan holding companies (SLHCs).

FDIC: Insured state nonmember banks, certain subsidiaries of these entities, and state chartered savings associations.

Estimated Burden: The burden estimates below exclude any regulatory reporting burden associated with changes to the Consolidated Reports of Income and Condition for banks (FFIEC 031 and FFIEC 041; OMB Nos. 7100–0036, 3064–0052, 1557–0081), Advanced Capital Adequacy Framework Regulatory Reporting Requirements (FFIEC 101; OMB Nos. 7100–0319, 3064–0159, 1557–0239), the Financial Statements for Bank Holding Companies (FR Y–9; OMB No. 7100–0128), and the Capital Assessments and Stress Testing information collection (FR Y–14A/Q/M; OMB No. 7100–0341). The agencies are still considering whether to revise these information collections or to implement a new information collection for the regulatory reporting requirements. In either case, a separate notice would be published for comment on the regulatory reporting requirements.

OCC

Estimated Number of Respondents: 45.

Estimated Burden per Respondent: One-time recordkeeping, 460 hours; ongoing recordkeeping, 176 hours; one-time disclosures, 280 hours; ongoing disclosures, 140 hours.

Total Estimated Annual Burden: 47,520 hours.

Board

Estimated Number of Respondents: SMBs, 4; BHCs, 20; SLHCs, 13.

Estimated Burden per Respondent: One-time recordkeeping, 460 hours; ongoing recordkeeping, 176 hours; one-time disclosures, 280 hours; ongoing disclosures, 140 hours.

Total Estimated Annual Burden: 39,072 hours.

FDIC

Estimated Number of Respondents: 8.

Estimated Burden per Respondent: One-time recordkeeping, 460 hours; ongoing recordkeeping, 176 hours; one-time disclosures, 280 hours; ongoing disclosures, 140 hours.

Total Estimated Annual Burden: 8,448 hours.

Abstract

The PRA burden associated with reporting, recordkeeping, and disclosure requirements of Subpart E that are found in proposed sections ____.121, ____.122, ____.123, ____.124, ____.132(b)(2)(iii), ____.132(b)(3), ____.132 (d)(1), ____.132(d)(1)(iii), ____.141(b)(3), ____.142(h)(2), ____.152(c)(2), ____.173 (tables: 11.1, 11.2, 11.3, 11.6, 11.7, 11.8, 11.10, and 11.11) are currently accounted for under the Agencies' existing information collections (ICs).

The PRA burden associated with recordkeeping and disclosure requirements found in proposed sections ____.132(b)(2)(iii)(A), ____.132(d)(2)(iv), ____.132(d)(3)(vi), ____.132(d)(3)(viii), ____.132(d)(3)(ix), ____.132(d)(3)(x), ____.132(d)(3)(xi), ____.141(c)(2)(i), ____.141(c)(2)(ii), ____.173 (tables: 11.4, 11.5, 11.9, and 11.12) would revise the Agencies' existing ICs and are described below.

Section-by-Section Analysis

Recordkeeping Requirements

Under proposed section ____.132(b)(2)(iii)(A), counterparty credit risk of repo-style transactions, eligible margin loans, and OTC derivative contracts, Own internal estimates for haircuts. With the prior written approval of the [AGENCY], a [BANK] may calculate haircuts (Hs and Hfx) using its own internal estimates of the volatilities of market prices and foreign exchange rates. To receive [AGENCY] approval to use its own internal estimates, a [BANK] must satisfy the minimum quantitative standards outlined in this section. The agencies estimate that respondents would take on average 80 hours (two business weeks) to reprogram and update systems with the requirements outlined in this section. In addition, the agencies estimate that, on a continuing basis, respondents would take on average 16 hours annually to maintain their internal systems.

Under proposed section ____.132(d)(2)(iv), counterparty credit risk of repo-style transactions, eligible margin loans, and OTC derivative contracts, Risk-weighted assets using IMM—Under the IMM, a [BANK] uses an internal model to estimate the expected exposure (EE) for a netting set and then calculates EAD based on that EE. A [BANK] must calculate two EEs and two EADs (one stressed and one unstressed) for each netting as outlined in this section. The agencies estimate that respondents would take on average 80 hours (two business weeks) to update their current model with the requirements outlined in this section. In addition, the agencies estimate that, on a continuing basis, respondents would take on average 40 hours annually to maintain their internal model.

Under proposed section ____.132(d)(3)(vi), counterparty credit risk of repo-style transactions, eligible margin loans, and OTC derivative contracts. To obtain [AGENCY] approval to calculate the distributions of exposures upon which the EAD calculation is based, the [BANK] must demonstrate to the satisfaction of the [AGENCY] that it has been using for at least one year an internal model that broadly meets the minimum standards, with which the [BANK] must maintain compliance. The [BANK] must have procedures to identify, monitor, and control wrong-way risk throughout the life of an exposure. The procedures must include stress testing and scenario analysis. The agencies estimate that respondents would take on average 80 hours (two business weeks) to implement a model with the requirements outlined in this section.

Under proposed section ____.132(d)(3)(viii), counterparty credit risk of repo-style transactions, eligible margin loans, and OTC derivative contracts. When estimating model parameters based on a stress period, the [BANK] must use at least three years of historical data that include a period of stress to the credit default spreads of the [BANK]'s counterparties. The [BANK] must review the data set and update the data as necessary, particularly for any material changes in its counterparties. The [BANK] must demonstrate at least quarterly that the stress period coincides with increased CDS or other credit spreads of the [BANK]'s counterparties. The [BANK] must have procedures to evaluate the effectiveness of its stress calibration that include a process for using benchmark portfolios that are vulnerable to the same risk factors as the [BANK]'s portfolio. The [AGENCY] may require the [BANK] to modify its stress calibration to better reflect actual historic losses of the portfolio. The agencies estimate that respondents would take on average 80 hours (two business weeks) to implement procedures with the requirements outlined in this section.

Under proposed section ____.132(d)(3)(ix), counterparty credit risk of repo-style transactions, eligible margin loans, and OTC derivative contracts. A [BANK] must subject its internal model to an initial validation and annual model review process. The model review should consider whether the inputs and risk factors, as well as the model outputs, are appropriate. As part of the model review process, the [BANK] must have a backtesting program for its model that includes a process by which unacceptable model performance will be determined and remedied. The agencies estimate that respondents would take on average 40 hours (one business week) to implement a model with the requirements outlined in this section. In addition, the agencies estimate that, on a continuing basis, respondents would take on average 40 hours annually to maintain their internal model.

Under proposed section ____.132(d)(3)(x), counterparty credit risk of repo-style transactions, eligible margin loans, and OTC derivative contracts. A [BANK] must have policies for the measurement, management and control of collateral and margin amounts. The agencies estimate that respondents would take on average 20 hours to implement policies with the requirements outlined in this section.

Under proposed section ____.132(d)(3)(xi), counterparty credit risk of repo-style transactions, eligible margin loans, and OTC derivative contracts. A [BANK] must have a comprehensive stress testing program that captures all credit exposures to counterparties, and incorporates stress testing of principal market risk factors and creditworthiness of counterparties. The agencies estimate that respondents would take on average 40 hours (one business week) to implement a program with the requirements outlined in this section. In addition, the agencies estimate that, on a continuing basis, respondents would take on average 40 hours annually to maintain their program.

Under proposed sections ____.141(c)(2)(i) and (ii), operational criteria for recognizing the transfer of risk. A [BANK] must demonstrate its comprehensive understanding of a securitization exposure under section 141(c)(1), for each securitization exposure by conducting an analysis of the risk characteristics of a securitization exposure prior to acquiring the exposure and document such analysis within three business days after acquiring the exposure. On an on-going basis (no less frequently than quarterly), evaluate, review, and update as appropriate the analysis required under this section for each securitization exposure. The agencies estimate that respondents would take on average 40 hours (one business week) to implement a program with the requirements outlined in this section. The agencies estimate that, on a continuing basis, respondents would take on average 10 hours quarterly to evaluate, review, and update the program requirements.

Disclosure Requirements

Under proposed section ____.173, disclosures by banks that are advanced approaches banks that have successfully completed parallel run. A [BANK] that is an advanced approaches bank must make the disclosures described in Tables 11.1 through 11.12. The [BANK] must make these disclosures publicly available for each of the last three years (that is, twelve quarters) or such shorter period beginning on the effective date of this subpart E.

Under proposed table 11.4—Capital Conservation and Countercyclical Buffers. The [BANK] must comply with the qualitative and quantitative public disclosures outlined in this table. The agencies estimate that respondents would take on average 80 hours (two business weeks) to comply with the disclosure requirements outlined in this table. The agencies estimate that, on a continuing basis, respondents would take on average 40 hours annually comply with the disclosure requirements outlined in this table.

Under proposed table 11.5—Credit Risk: General Disclosures. The [BANK] must comply with the qualitative and quantitative public disclosures outlined in this table. The agencies estimate that respondents would take on average 80 hours (two business weeks) to comply with the disclosure requirements outlined in this table. The agencies estimate that, on a continuing basis, respondents would take on average 40 hours annually to comply with the disclosure requirements outlined in this table.

Under proposed table 11.9—Securitization. The [BANK] must comply with the qualitative and quantitative public disclosures outlined in this table. The agencies estimate that respondents would take on average 60 hours to comply with the disclosure requirements outlined in this table. The agencies estimate that, on a continuing basis, respondents would take on average 30 hours annually comply with the disclosure requirements outlined in this table.

Under proposed Table 11.12—Interest Rate Risk for Non-trading Activities. The [BANK] must comply with the qualitative and quantitative public disclosures outlined in this table. The agencies estimate that respondents would take on average 60 hours to comply with the disclosure requirements outlined in this table. The agencies estimate that, on a continuing basis, respondents would take on average 30 hours annually comply with the disclosure requirements outlined in this table.

Proposed Information Collection

Title of Information Collection: Regulatory Capital Rules (Part 3): Market Risk Capital Rule (Basel III, Part 3).

Frequency of Response: Quarterly and annually.

Affected Public:

OCC: National banks and federally chartered savings associations.

Board: Savings associations and saving and loan holding companies.

FDIC: Insured state nonmember banks, state savings associations, and certain subsidiaries of these entities.

Estimated Burden:

OCC

Estimated Number of Respondents: 45.

Estimated Burden per Respondent: 1,964 hours.

Total Estimated Annual Burden: 99,180 hours.

Board

Estimated Number of Respondents: 30.

Estimated Burden per Respondent: 2,204 hours.

Total Estimated Annual Burden: 66,120 hours.

FDIC

Estimated Number of Respondents: 2.

Estimated Burden per Respondent: 1,964 hours.

Total Estimated Annual Burden: 3,928 hours.

Abstract:

The PRA burden associated with reporting, recordkeeping, and disclosure requirements of Subpart F that are found in proposed sections ____.203, ____.204, ____.205, ____.206, ____.207, ____.208, ____.209, ____.210, and ____.212. They would enhance risk sensitivity and introduce requirements for public disclosure of certain qualitative and quantitative information about a savings association's or a savings and loan holding company's market risk. The collection of information is necessary to ensure capital adequacy according to the level of market risk.

Section-by-Section Analysis

Section ____lowbarm;____lowbarm;.203 sets forth the requirements for applying the market risk framework. Section ____.203(a)(1) requires clearly defined policies and procedures for determining which trading assets and trading liabilities are trading positions, which of its trading positions are correlation trading positions, and specifies what must be taken into account. Section ____.203(a)(2) requires a clearly defined trading and hedging strategy for trading positions approved by senior management and specifies what each strategy must articulate. Section ____.203(b)(1) requires clearly defined policies and procedures for actively managing all covered positions and specifies the minimum that they must require. Sections ____.203(c)(4) through ____.203(c)(10) require the annual review of internal models and include certain requirements that the models must meet. Section ____.203(d)(4) requires an annual report to the board of directors on the effectiveness of controls supporting market risk measurement systems.

Section ____.204(b) requires quarterly backtesting. Section ____.205(a)(5) requires institutions to demonstrate to the agencies the appropriateness of proxies used to capture risks within value-at- risk models. Section ____.205(c) requires institutions to retain value-at-risk and profit and loss information on sub-portfolios for two years. Section ____.206(b)(3) requires policies and procedures for stressed value-at-risk models and prior approvals on determining periods of significant financial stress.

Section ____.207(b)(1) specifies what internal models for specific risk must include and address. Section 208(a) requires prior written approval for incremental risk. Section ____.209(a) requires prior approval for comprehensive risk models. Section ____.209(c)(2) requires retaining and making available the results of supervisory stress testing on a quarterly basis. Section ____.210(f) requires documentation quarterly for analysis of risk characteristics of each securitization position it holds. Section ____.212 requires quarterly quantitative disclosures, annual qualitative disclosures, and a formal disclosure policy approved by the board of directors that addresses the bank's approach for determining the market risk disclosures it makes.

VII. Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The agencies have sought to present the proposed rule in a simple and straightforward manner, and invite comment on the use of plain language.

VIII. OCC Unfunded Mandates Reform Act of 1995 Determination

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532 *et seq.*) requires that an agency prepare a written 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 annually for inflation) in any one year. If a written statement is required, the UMRA (2 U.S.C. 1535) also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule and from those alternatives, either select the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule, or provide a statement with the rule explaining why such an option was not chosen.

This NPR would incorporate revisions to the Basel Committee's capital framework into the banking agencies' advanced approaches risk-based capital rules and remove references to credit ratings consistent with section 939A of the Dodd-Frank Act. This NPR would modify various elements of the advanced approached risk-based capital rules regarding the determination of risk-weighted assets. These changes would (1) Modify treatment of counterparty credit risk, (2) remove references to credit ratings, (3) modify the treatment of securitization exposures, and (4) modify the treatment of exposures subject to deduction from capital. The NPR also would enhance disclosure requirements, especially with regard to securitizations, and would amend the advanced approaches so that capital requirements using the internal models methodology take into consideration stress in calibration data, stress testing, initial validation, collateral management, and annual model review. The NPR rule also would require national banks and federal savings associations subject to the advanced approaches risk-based capital rules to identify, monitor, and control wrong-way risk.

Finally, the NPR would expand the scope of the agencies' market risk capital rule to savings associations that meet certain thresholds.

To estimate the impact of this NPR on national banks and federal savings associations, the OCC estimated the amount of capital banks will need to raise to meet the new requirements relative to the amount of capital they currently hold, as well as the compliance costs associated with establishing the infrastructure to determine correct risk weights using the revised methods for calculating risk-weighted assets and the compliance costs associated with new disclosure requirements. The OCC has determined that its proposed rule will not result in expenditures by State, local, and Tribal governments, or by the private sector, of $100 million or more. Accordingly, the UMRA does not require that a written statement accompany this NPR.

Text of the Proposed Common Rule [All Agencies]

The text of the proposed common rule appears below:

PART ____ CAPITAL ADEQUACY OF [BANK]S

Subpart E—Risk-Weighted Assets—Internal Ratings-Based and Advanced Measurement Approaches

Sec.

Subpart E—Risk Weighted Assets—Internal Ratings-Based and Advanced Measurement Approaches

§ ____.100 Purpose, applicability, and principle of conservatism.

(a) *Purpose.* This subpart E establishes:

(1) Minimum qualifying criteria for [BANK]s using [BANK]-specific internal risk measurement and management processes for calculating risk-based capital requirements; and

(2) Methodologies for such [BANK]s to calculate their total risk-weighted assets.

(b) *Applicability.* (1) This subpart applies to a [BANK] that:

(i) Has consolidated total assets, as reported on the most recent year-end [Regulatory Reports] equal to $250 billion or more;

(ii) Has consolidated total on-balance sheet foreign exposure at the most recent year-end equal to $10 billion or more (where total on-balance sheet foreign exposure equals total cross-border claims less claims with a head office or guarantor located in another country plus redistributed guaranteed amounts to the country of head office or guarantor plus local country claims on local residents plus revaluation gains on foreign exchange and derivative products, calculated in accordance with the Federal Financial Institutions Examination Council (FFIEC) 009 Country Exposure Report);

(iii) Is a subsidiary of a depository institution that uses the advanced approaches pursuant to subpart E of 12 CFR part 3 (OCC), 12 CFR part 217 (Board), or 12 CFR part 325 (FDIC) to calculate its total risk-weighted assets;

(iv) Is a subsidiary of a bank holding company or savings and loan holding company that uses the advanced approaches pursuant to 12 CFR part 217 to calculate its total risk-weighted assets; or

(v) Elects to use this subpart to calculate its total risk-weighted assets.

(2) A bank that is subject to this subpart shall remain subject to this subpart unless the [AGENCY] determines in writing that application of this subpart is not appropriate in light of the [BANK]'s asset size, level of complexity, risk profile, or scope of operations. In making a determination under this paragraph, the [AGENCY] will apply notice and response procedures in the same manner and to the same extent as the notice and response procedures in 12 CFR 3.12 (OCC), 12 CFR 263.202 (Board), and 12 CFR 325.6(c) (FDIC).

(3) A market risk [BANK] must exclude from its calculation of risk-weighted assets under this subpart the risk-weighted asset amounts of all covered positions, as defined in subpart F of this part (except foreign exchange positions that are not trading positions, over-the-counter derivative positions, cleared transactions, and unsettled transactions).

(c) *Principle of Conservatism.* Notwithstanding the requirements of this subpart, a [BANK] may choose not to apply a provision of this subpart to one or more exposures provided that:

(1) The [BANK] can demonstrate on an ongoing basis to the satisfaction of the [AGENCY] that not applying the provision would, in all circumstances, unambiguously generate a risk-based capital requirement for each such exposure greater than that which would otherwise be required under this subpart;

(2) The [BANK] appropriately manages the risk of each such exposure;

(3) The [BANK] notifies the [AGENCY] in writing prior to applying this principle to each such exposure; and

(4) The exposures to which the [BANK] applies this principle are not, in the aggregate, material to the [BANK].

§ ____. 101 Definitions.

(a) Terms set forth in § ____.2 and used in this subpart have the definitions assigned thereto in § ____.2.

(b) For the purposes of this subpart, the following terms are defined as follows:

Advanced internal ratings-based (IRB) systems means an advanced approaches [BANK]'s internal risk rating and segmentation system; risk parameter quantification system; data management and maintenance system; and control, oversight, and validation system for credit risk of wholesale and retail exposures.

Advanced systems means an advanced approaches [BANK]'s advanced IRB systems, operational risk management processes, operational risk data and assessment systems, operational risk quantification systems, and, to the extent used by the [BANK], the internal models methodology, advanced CVA approach, double default excessive correlation detection process, and internal models approach (IMA) for equity exposures.

Backtesting means the comparison of a [BANK]'s internal estimates with actual outcomes during a sample period not used in model development. In this context, backtesting is one form of out-of-sample testing.

Benchmarking means the comparison of a [BANK]'s internal estimates with relevant internal and external data or with estimates based on other estimation techniques.

Bond option contract means a bond option, bond future, or any other instrument linked to a bond that gives rise to similar counterparty credit risk.

Business environment and internal control factors means the indicators of a [BANK]'s operational risk profile that reflect a current and forward-looking assessment of the [BANK]'s underlying business risk factors and internal control environment.

Credit default swap (CDS) means a financial contract executed under standard industry documentation that allows one party (the protection purchaser) to transfer the credit risk of one or more exposures (reference exposure(s)) to another party (the protection provider) for a certain period of time.

Credit valuation adjustment (CVA) means the fair value adjustment to reflect counterparty credit risk in valuation of an OTC derivative contract.

Default—For the purposes of calculating capital requirements under this subpart:

(1) *Retail.* (i) A retail exposure of a [BANK] is in default if:

(A) The exposure is 180 days past due, in the case of a residential mortgage exposure or revolving exposure;

(B) The exposure is 120 days past due, in the case of retail exposures that are not residential mortgage exposures or revolving exposures; or

(C) The [BANK] has taken a full or partial charge-off, write-down of principal, or material negative fair value adjustment of principal on the exposure for credit-related reasons.

(ii) Notwithstanding paragraph (1)(i) of this definition, for a retail exposure held by a non-U.S. subsidiary of the [BANK] that is subject to an internal ratings-based approach to capital adequacy consistent with the Basel Committee on Banking Supervision's ''International Convergence of Capital Measurement and Capital Standards: A Revised Framework'' in a non-U.S. jurisdiction, the [BANK] may elect to use the definition of default that is used in that jurisdiction, provided that the [BANK] has obtained prior approval from the [AGENCY] to use the definition of default in that jurisdiction.

(iii) A retail exposure in default remains in default until the [BANK] has reasonable assurance of repayment and performance for all contractual principal and interest payments on the exposure.

(2) *Wholesale.* (i) A [BANK]'s wholesale obligor is in default if:

(A) The [BANK] determines that the obligor is unlikely to pay its credit obligations to the [BANK] in full, without recourse by the [BANK] to actions such as realizing collateral (if held); or

(B) The obligor is past due more than 90 days on any material credit obligation(s) to the [BANK].[1]

(ii) An obligor in default remains in default until the [BANK] has reasonable assurance of repayment and performance for all contractual principal and interest payments on all exposures of the [BANK] to the obligor (other than exposures that have been fully written-down or charged-off).

Dependence means a measure of the association among operational losses across and within units of measure.

Economic downturn conditions means, with respect to an exposure held by the [BANK], those conditions in which the aggregate default rates for that exposure's wholesale or retail exposure subcategory (or subdivision of such subcategory selected by the [BANK]) in the exposure's national jurisdiction (or subdivision of such jurisdiction selected by the [BANK]) are significantly higher than average.

Effective maturity (M) of a wholesale exposure means:

[1] Overdrafts are past due once the obligor has breached an advised limit or been advised of a limit smaller than the current outstanding balance.

(1) For wholesale exposures other than repo-style transactions, eligible margin loans, and OTC derivative contracts described in paragraph (2) or (3) of this definition:

(i) The weighted-average remaining maturity (measured in years, whole or fractional) of the expected contractual cash flows from the exposure, using the undiscounted amounts of the cash flows as weights; or

(ii) The nominal remaining maturity (measured in years, whole or fractional) of the exposure.

(2) For repo-style transactions, eligible margin loans, and OTC derivative contracts subject to a qualifying master netting agreement for which the [BANK] does not apply the internal models approach in section 132(d), the weighted-average remaining maturity (measured in years, whole or fractional) of the individual transactions subject to the qualifying master netting agreement, with the weight of each individual transaction set equal to the notional amount of the transaction.

(3) For repo-style transactions, eligible margin loans, and OTC derivative contracts for which the [BANK] applies the internal models approach in § ____.132(d), the value determined in § ____.132(d)(4).

Effective notional amount means, for an eligible guarantee or eligible credit derivative, the lesser of the contractual notional amount of the credit risk mitigant and the EAD of the hedged exposure, multiplied by the percentage coverage of the credit risk mitigant.

Eligible double default guarantor, with respect to a guarantee or credit derivative obtained by a [BANK], means:

(1) *U.S.-based entities.* A depository institution, a bank holding company, a savings and loan holding company, or a securities broker or dealer registered with the SEC under the Securities Exchange Act, if at the time the guarantee is issued or anytime thereafter, has issued and outstanding an unsecured debt security without credit enhancement that is investment grade.

(2) *Non-U.S.-based entities.* A foreign bank, or a non-U.S.-based securities firm if the [BANK] demonstrates that the guarantor is subject to consolidated supervision and regulation comparable to that imposed on U.S. depository institutions, or securities broker-dealers) if at the time the guarantee is issued or anytime thereafter, has issued and outstanding an unsecured debt security without credit enhancement that is investment grade.

Eligible operational risk offsets means amounts, not to exceed expected operational loss, that:

(1) Are generated by internal business practices to absorb highly predictable and reasonably stable operational losses, including reserves calculated consistent with GAAP; and

(2) Are available to cover expected operational losses with a high degree of certainty over a one-year horizon.

Eligible purchased wholesale exposure means a purchased wholesale exposure that:

(1) The [BANK] or securitization SPE purchased from an unaffiliated seller and did not directly or indirectly originate;

(2) Was generated on an arm's-length basis between the seller and the obligor (intercompany accounts receivable and receivables subject to contra-accounts between firms that buy and sell to each other do not satisfy this criterion);

(3) Provides the [BANK] or securitization SPE with a claim on all proceeds from the exposure or a pro rata interest in the proceeds from the exposure;

(4) Has an M of less than one year; and

(5) When consolidated by obligor, does not represent a concentrated exposure relative to the portfolio of purchased wholesale exposures.

Expected exposure (EE) means the expected value of the probability distribution of non-negative credit risk exposures to a counterparty at any specified future date before the maturity date of the longest term transaction in the netting set. Any negative market values in the probability distribution of market values to a counterparty at a specified future date are set to zero to convert the probability distribution of market values to the probability distribution of credit risk exposures.

Expected operational loss (EOL) means the expected value of the distribution of potential aggregate operational losses, as generated by the [BANK]'s operational risk quantification system using a one-year horizon.

Expected positive exposure (EPE) means the weighted average over time of expected (non-negative) exposures to a counterparty where the weights are the proportion of the time interval that an individual expected exposure represents. When calculating risk-based capital requirements, the average is taken over a one-year horizon.

Exposure at default (EAD) means:

(1) For the on-balance sheet component of a wholesale exposure or segment of retail exposures (other than an OTC derivative contract, a repo-style transaction or eligible margin loan for which the [BANK] determines EAD under § ____.132, a cleared transaction, or default fund contribution), EAD means the [BANK]'s carrying value (including net accrued but unpaid interest and fees) for the exposure or segment less any allocated transfer risk reserve for the exposure or segment.

(2) For the off-balance sheet component of a wholesale exposure or segment of retail exposures (other than an OTC derivative contract, a repo-style transaction or eligible margin loan for which the [BANK] determines EAD under § ____.132, cleared transaction, or default fund contribution) in the form of a loan commitment, line of credit, trade-related letter of credit, or transaction-related contingency, EAD means the [BANK]'s best estimate of net additions to the outstanding amount owed the [BANK], including estimated future additional draws of principal and accrued but unpaid interest and fees, that are likely to occur over a one-year horizon assuming the wholesale exposure or the retail exposures in the segment were to go into default. This estimate of net additions must reflect what would be expected during economic downturn conditions. For the purposes of this definition:

(i) Trade-related letters of credit are short-term, self-liquidating instruments that are used to finance the movement of goods and are collateralized by the underlying goods.

(ii) Transaction-related contingencies relate to a particular transaction and include, among other things, performance bonds and performance-based letters of credit.

(3) For the off-balance sheet component of a wholesale exposure or segment of retail exposures (other than an OTC derivative contract, a repo-style transaction, or eligible margin loan for which the [BANK] determines EAD under § ____.132, cleared transaction, or default fund contribution) in the form of anything other than a loan commitment, line of credit, trade-related letter of credit, or transaction-related contingency, EAD means the notional amount of the exposure or segment.

(4) EAD for OTC derivative contracts is calculated as described in § ____.132. A [BANK] also may determine EAD for repo-style transactions and eligible margin loans as described in § ____.132.

Exposure category means any of the wholesale, retail, securitization, or equity exposure categories.

External operational loss event data means, with respect to a [BANK], gross operational loss amounts, dates, recoveries, and relevant causal information for operational loss events occurring at organizations other than the [BANK].

IMM exposure means a repo-style transaction, eligible margin loan, or OTC derivative for which a [BANK] calculates its EAD using the internal models methodology of § ____.132(d).

Internal operational loss event data means, with respect to a [BANK], gross operational loss amounts, dates, recoveries, and relevant causal information for operational loss events occurring at the [BANK].

Loss given default (LGD) means:

(1) For a wholesale exposure, the greatest of:

(i) Zero;

(ii) The [BANK]'s empirically based best estimate of the long-run default-weighted average economic loss, per dollar of EAD, the [BANK] would expect to incur if the obligor (or a typical obligor in the loss severity grade assigned by the [BANK] to the exposure) were to default within a one-year horizon over a mix of economic conditions, including economic downturn conditions; or

(iii) The [BANK]'s empirically based best estimate of the economic loss, per dollar of EAD, the [BANK] would expect to incur if the obligor (or a typical obligor in the loss severity grade assigned by the [BANK] to the exposure) were to default within a one-year horizon during economic downturn conditions.

(2) For a segment of retail exposures, the greatest of:

(i) Zero;

(ii) The [BANK]'s empirically based best estimate of the long-run default-weighted average economic loss, per dollar of EAD, the [BANK] would expect to incur if the exposures in the segment were to default within a one-year horizon over a mix of economic conditions, including economic downturn conditions; or

(iii) The [BANK]'s empirically based best estimate of the economic loss, per dollar of EAD, the [BANK] would expect to incur if the exposures in the segment were to default within a one-year horizon during economic downturn conditions.

(3) The economic loss on an exposure in the event of default is all material credit-related losses on the exposure (including accrued but unpaid interest or fees, losses on the sale of collateral, direct workout costs, and an appropriate allocation of indirect workout costs). Where positive or negative cash flows on a wholesale exposure to a defaulted obligor or a defaulted retail exposure (including proceeds from the sale of collateral, workout costs, additional extensions of credit to facilitate

repayment of the exposure, and draw-downs of unused credit lines) occur after the date of default, the economic loss must reflect the net present value of cash flows as of the default date using a discount rate appropriate to the risk of the defaulted exposure.

Obligor means the legal entity or natural person contractually obligated on a wholesale exposure, except that a [BANK] may treat the following exposures as having separate obligors:

(1) Exposures to the same legal entity or natural person denominated in different currencies;

(2)(i) An income-producing real estate exposure for which all or substantially all of the repayment of the exposure is reliant on the cash flows of the real estate serving as collateral for the exposure; the [BANK], in economic substance, does not have recourse to the borrower beyond the real estate collateral; and no cross-default or cross-acceleration clauses are in place other than clauses obtained solely out of an abundance of caution; and

(ii) Other credit exposures to the same legal entity or natural person; and

(3)(i) A wholesale exposure authorized under section 364 of the U.S. Bankruptcy Code (11 U.S.C. 364) to a legal entity or natural person who is a debtor-in-possession for purposes of Chapter 11 of the Bankruptcy Code; and

(ii) Other credit exposures to the same legal entity or natural person.

Operational loss means a loss (excluding insurance or tax effects) resulting from an operational loss event. Operational loss includes all expenses associated with an operational loss event except for opportunity costs, forgone revenue, and costs related to risk management and control enhancements implemented to prevent future operational losses.

Operational loss event means an event that results in loss and is associated with any of the following seven operational loss event type categories:

(1) Internal fraud, which means the operational loss event type category that comprises operational losses resulting from an act involving at least one internal party of a type intended to defraud, misappropriate property, or circumvent regulations, the law, or company policy excluding diversity- and discrimination-type events.

(2) External fraud, which means the operational loss event type category that comprises operational losses resulting from an act by a third party of a type intended to defraud, misappropriate property, or circumvent the law. Retail credit card losses arising from non-contractual, third-party-initiated fraud (for example, identity theft) are external fraud operational losses. All other third-party-initiated credit losses are to be treated as credit risk losses.

(3) Employment practices and workplace safety, which means the operational loss event type category that comprises operational losses resulting from an act inconsistent with employment, health, or safety laws or agreements, payment of personal injury claims, or payment arising from diversity- and discrimination-type events.

(4) Clients, products, and business practices, which means the operational loss event type category that comprises operational losses resulting from the nature or design of a product or from an unintentional or negligent failure to meet a professional obligation to specific clients (including fiduciary and suitability requirements).

(5) Damage to physical assets, which means the operational loss event type category that comprises operational losses resulting from the loss of or damage to physical assets from natural disaster or other events.

(6) Business disruption and system failures, which means the operational loss event type category that comprises operational losses resulting from disruption of business or system failures.

(7) Execution, delivery, and process management, which means the operational loss event type category that comprises operational losses resulting from failed transaction processing or process management or losses arising from relations with trade counterparties and vendors.

Operational risk means the risk of loss resulting from inadequate or failed internal processes, people, and systems or from external events (including legal risk but excluding strategic and reputational risk).

Operational risk exposure means the 99.9th percentile of the distribution of potential aggregate operational losses, as generated by the [BANK]'s operational risk quantification system over a one-year horizon (and not incorporating eligible operational risk offsets or qualifying operational risk mitigants).

Other retail exposure means an exposure (other than a securitization exposure, an equity exposure, a residential mortgage exposure, a pre-sold construction loan, a qualifying revolving exposure, or the residual value portion of a lease exposure) that is managed as part of a segment of exposures with homogeneous risk characteristics, not on an individual-exposure basis, and is either:

(1) An exposure to an individual for non-business purposes; or

(2) An exposure to an individual or company for business purposes if the [BANK]'s consolidated business credit exposure to the individual or company is $1 million or less.

Probability of default (PD) means:

(1) For a wholesale exposure to a non-defaulted obligor, the [BANK]'s empirically based best estimate of the long-run average one-year default rate for the rating grade assigned by the [BANK] to the obligor, capturing the average default experience for obligors in the rating grade over a mix of economic conditions (including economic downturn conditions) sufficient to provide a reasonable estimate of the average one-year default rate over the economic cycle for the rating grade.

(2) For a segment of non-defaulted retail exposures, the [BANK]'s empirically based best estimate of the long-run average one-year default rate for the exposures in the segment, capturing the average default experience for exposures in the segment over a mix of economic conditions (including economic downturn conditions) sufficient to provide a reasonable estimate of the average one-year default rate over the economic cycle for the segment.

(3) For a wholesale exposure to a defaulted obligor or segment of defaulted retail exposures, 100 percent.

Qualifying cross-product master netting agreement means a qualifying master netting agreement that provides for termination and close-out netting across multiple types of financial transactions or qualifying master netting agreements in the event of a counterparty's default, provided that:

(1) The underlying financial transactions are OTC derivative contracts, eligible margin loans, or repo-style transactions; and

(2) The [BANK] obtains a written legal opinion verifying the validity and enforceability of the agreement under applicable law of the relevant jurisdictions if the counterparty fails to perform upon an event of default, including upon receivership, insolvency, liquidation, or similar proceeding.

Qualifying revolving exposure (QRE) means an exposure (other than a securitization exposure or equity exposure) to an individual that is managed as part of a segment of exposures with homogeneous risk characteristics, not on an individual-exposure basis, and:

(1) Is revolving (that is, the amount outstanding fluctuates, determined largely by the borrower's decision to

borrow and repay, up to a pre-established maximum amount);

(2) Is unsecured and unconditionally cancelable by the [BANK] to the fullest extent permitted by Federal law; and

(3) Has a maximum contractual exposure amount (drawn plus undrawn) of up to $100,000, or the [BANK] consistently imposes in practice an upper limit of $100,000.

Retail exposure means a residential mortgage exposure, a qualifying revolving exposure, or an other retail exposure.

Retail exposure subcategory means the residential mortgage exposure, qualifying revolving exposure, or other retail exposure subcategory.

Risk parameter means a variable used in determining risk-based capital requirements for wholesale and retail exposures, specifically probability of default (PD), loss given default (LGD), exposure at default (EAD), or effective maturity (M).

Scenario analysis means a systematic process of obtaining expert opinions from business managers and risk management experts to derive reasoned assessments of the likelihood and loss impact of plausible high-severity operational losses. Scenario analysis may include the well-reasoned evaluation and use of external operational loss event data, adjusted as appropriate to ensure relevance to a [BANK]'s operational risk profile and control structure.

Total wholesale and retail risk-weighted assets means:

(1) The sum of:

(i) Risk-weighted assets for wholesale exposures that are not IMM exposures, cleared transactions, or default fund contributions to non-defaulted obligors and segments of non-defaulted retail exposures;

(ii) Risk-weighted assets for wholesale exposures to defaulted obligors and segments of defaulted retail exposures;

(iii) Risk-weighted assets for assets not defined by an exposure category;

(iv) Risk-weighted assets for non-material portfolios of exposures;

(v) Risk-weighted assets for IMM exposures (as determined in § ____.132(d));

(vi) Risk-weighted assets for cleared transactions and risk-weighted assets for default fund contributions (as determined in § ____.133); and

(vii) Risk-weighted assets for unsettled transactions (as determined in § ____.136); minus

(2) Any amounts deducted from capital pursuant to § ____.22.

Unexpected operational loss (UOL) means the difference between the [BANK]'s operational risk exposure and the [BANK]'s expected operational loss.

Unit of measure means the level (for example, organizational unit or operational loss event type) at which the [BANK]'s operational risk quantification system generates a separate distribution of potential operational losses.

Wholesale exposure means a credit exposure to a company, natural person, sovereign, or governmental entity (other than a securitization exposure, retail exposure, or equity exposure).

Wholesale exposure subcategory means the HVCRE or non-HVCRE wholesale exposure subcategory.

QUALIFICATION

§ ____.121 Qualification process.

(a) *Timing.* (1) A [BANK] that is described in § ____.100(b)(1)(i) through (iv) must adopt a written implementation plan no later than six months after the date the [BANK] meets a criterion in that section. The implementation plan must incorporate an explicit start date no later than 36 months after the date the [BANK] meets at least one criterion under § ____.100(b)(1)(i) through (iv). The [AGENCY] may extend the start date.

(2) A [BANK] that elects to be subject to this appendix under § ____.100(b)(1)(v) must adopt a written implementation plan.

(b) *Implementation plan.* (1) The [BANK]'s implementation plan must address in detail how the [BANK] complies, or plans to comply, with the qualification requirements in § ____.122. The [BANK] also must maintain a comprehensive and sound planning and governance process to oversee the implementation efforts described in the plan. At a minimum, the plan must:

(i) Comprehensively address the qualification requirements in § ____.122 for the [BANK] and each consolidated subsidiary (U.S. and foreign-based) of the [BANK] with respect to all portfolios and exposures of the [BANK] and each of its consolidated subsidiaries;

(ii) Justify and support any proposed temporary or permanent exclusion of business lines, portfolios, or exposures from the application of the advanced approaches in this subpart (which business lines, portfolios, and exposures must be, in the aggregate, immaterial to the [BANK]);

(iii) Include the [BANK]'s self-assessment of:

(A) The [BANK]'s current status in meeting the qualification requirements in § ____.122; and

(B) The consistency of the [BANK]'s current practices with the [AGENCY]'s supervisory guidance on the qualification requirements;

(iv) Based on the [BANK]'s self-assessment, identify and describe the areas in which the [BANK] proposes to undertake additional work to comply with the qualification requirements in § ____.122 or to improve the consistency of the [BANK]'s current practices with the [AGENCY]'s supervisory guidance on the qualification requirements (gap analysis);

(v) Describe what specific actions the [BANK] will take to address the areas identified in the gap analysis required by paragraph (b)(1)(iv) of this section;

(vi) Identify objective, measurable milestones, including delivery dates and a date when the [BANK]'s implementation of the methodologies described in this subpart will be fully operational;

(vii) Describe resources that have been budgeted and are available to implement the plan; and

(viii) Receive approval of the [BANK]'s board of directors.

(2) The [BANK] must submit the implementation plan, together with a copy of the minutes of the board of directors' approval, to the [AGENCY] at least 60 days before the [BANK] proposes to begin its parallel run, unless the [AGENCY] waives prior notice.

(c) *Parallel run.* Before determining its risk-weighted assets under this subpart and following adoption of the implementation plan, the [BANK] must conduct a satisfactory parallel run. A satisfactory parallel run is a period of no less than four consecutive calendar quarters during which the [BANK] complies with the qualification requirements in § ____.122 to the satisfaction of the [AGENCY]. During the parallel run, the [BANK] must report to the [AGENCY] on a calendar quarterly basis its risk-based capital ratios determined in accordance with § ____.10(b)(1) through (3) and § ____.(c)(1) through (3). During this period, the [BANK]'s minimum risk-based capital ratios are determined as set forth in subpart D of this part.

(d) *Approval to calculate risk-based capital requirements under this subpart.* The [AGENCY] will notify the [BANK] of the date that the [BANK] must begin to use this subpart for purposes of § ____.10 if the [AGENCY] determines that:

(1) The [BANK] fully complies with all the qualification requirements in § ____.122;

(2) The [BANK] has conducted a satisfactory parallel run under paragraph (c) of this section; and

(3) The [BANK] has an adequate process to ensure ongoing compliance with the qualification requirements in § ____.122.

§ ____.122 Qualification requirements.

(a) *Process and systems requirements.* (1) A [BANK] must have a rigorous process for assessing its overall capital adequacy in relation to its risk profile and a comprehensive strategy for maintaining an appropriate level of capital.

(2) The systems and processes used by a [BANK] for risk-based capital purposes under this subpart must be consistent with the [BANK]'s internal risk management processes and management information reporting systems.

(3) Each [BANK] must have an appropriate infrastructure with risk measurement and management processes that meet the qualification requirements of this section and are appropriate given the [BANK]'s size and level of complexity. Regardless of whether the systems and models that generate the risk parameters necessary for calculating a [BANK]'s risk-based capital requirements are located at any affiliate of the [BANK], the [BANK] itself must ensure that the risk parameters and reference data used to determine its risk-based capital requirements are representative of its own credit risk and operational risk exposures.

(b) *Risk rating and segmentation systems for wholesale and retail exposures.* (1) A [BANK] must have an internal risk rating and segmentation system that accurately and reliably differentiates among degrees of credit risk for the [BANK]'s wholesale and retail exposures.

(2) For wholesale exposures:

(i) A [BANK] must have an internal risk rating system that accurately and reliably assigns each obligor to a single rating grade (reflecting the obligor's likelihood of default). A [BANK] may elect, however, not to assign to a rating grade an obligor to whom the [BANK] extends credit based solely on the financial strength of a guarantor, provided that all of the [BANK]'s exposures to the obligor are fully covered by eligible guarantees, the [BANK] applies the PD substitution approach in § ____.134(c)(1) to all exposures to that obligor, and the [BANK] immediately assigns the obligor to a rating grade if a guarantee can no longer be recognized under this subpart. The [BANK]'s wholesale obligor rating system must have at least seven discrete rating grades for non-defaulted obligors and at least one rating grade for defaulted obligors.

(ii) Unless the [BANK] has chosen to directly assign LGD estimates to each wholesale exposure, the [BANK] must have an internal risk rating system that accurately and reliably assigns each wholesale exposure to a loss severity rating grade (reflecting the [BANK]'s estimate of the LGD of the exposure). A [BANK] employing loss severity rating grades must have a sufficiently granular loss severity grading system to avoid grouping together exposures with widely ranging LGDs.

(3) For retail exposures, a [BANK] must have an internal system that groups retail exposures into the appropriate retail exposure subcategory, groups the retail exposures in each retail exposure subcategory into separate segments with homogeneous risk characteristics, and assigns accurate and reliable PD and LGD estimates for each segment on a consistent basis. The [BANK]'s system must identify and group in separate segments by subcategories exposures identified in § ____.131(c)(2)(ii) and (iii).

(4) The [BANK]'s internal risk rating policy for wholesale exposures must describe the [BANK]'s rating philosophy (that is, must describe how wholesale obligor rating assignments are affected by the [BANK]'s choice of the range of economic, business, and industry conditions that are considered in the obligor rating process).

(5) The [BANK]'s internal risk rating system for wholesale exposures must provide for the review and update (as appropriate) of each obligor rating and (if applicable) each loss severity rating whenever the [BANK] receives new material information, but no less frequently than annually. The [BANK]'s retail exposure segmentation system must provide for the review and update (as appropriate) of assignments of retail exposures to segments whenever the [BANK] receives new material information, but generally no less frequently than quarterly.

(c) *Quantification of risk parameters for wholesale and retail exposures.* (1) The [BANK] must have a comprehensive risk parameter quantification process that produces accurate, timely, and reliable estimates of the risk parameters for the [BANK]'s wholesale and retail exposures.

(2) Data used to estimate the risk parameters must be relevant to the [BANK]'s actual wholesale and retail exposures, and of sufficient quality to support the determination of risk-based capital requirements for the exposures.

(3) The [BANK]'s risk parameter quantification process must produce appropriately conservative risk parameter estimates where the [BANK] has limited relevant data, and any adjustments that are part of the quantification process must not result in a pattern of bias toward lower risk parameter estimates.

(4) The [BANK]'s risk parameter estimation process should not rely on the possibility of U.S. government financial assistance, except for the financial assistance that the U.S. government has a legally binding commitment to provide.

(5) Where the [BANK]'s quantifications of LGD directly or indirectly incorporate estimates of the effectiveness of its credit risk management practices in reducing its exposure to troubled obligors prior to default, the [BANK] must support such estimates with empirical analysis showing that the estimates are consistent with its historical experience in dealing with such exposures during economic downturn conditions.

(6) PD estimates for wholesale obligors and retail segments must be based on at least five years of default data. LGD estimates for wholesale exposures must be based on at least seven years of loss severity data, and LGD estimates for retail segments must be based on at least five years of loss severity data. EAD estimates for wholesale exposures must be based on at least seven years of exposure amount data, and EAD estimates for retail segments must be based on at least five years of exposure amount data.

(7) Default, loss severity, and exposure amount data must include periods of economic downturn conditions, or the [BANK] must adjust its estimates of risk parameters to compensate for the lack of data from periods of economic downturn conditions.

(8) The [BANK]'s PD, LGD, and EAD estimates must be based on the definition of default in § ____.101.

(9) The [BANK] must review and update (as appropriate) its risk parameters and its risk parameter quantification process at least annually.

(10) The [BANK] must, at least annually, conduct a comprehensive review and analysis of reference data to determine relevance of reference data to the [BANK]'s exposures, quality of reference data to support PD, LGD, and EAD estimates, and consistency of reference data to the definition of default in § ____.101.

(d) *Counterparty credit risk model.* A [BANK] must obtain the prior written approval of the [AGENCY] under § ____.132 to use the internal models methodology for counterparty credit risk and the advanced CVA approach for the CVA capital requirement.

(e) *Double default treatment.* A [BANK] must obtain the prior written approval of the [AGENCY] under

§ ____.135 to use the double default treatment.

(f) *Equity exposures model.* A [BANK] must obtain the prior written approval of the [AGENCY] under § ____.153 to use the internal models approach for equity exposures.

(g) *Operational risk.* (1) Operational risk management processes. A [BANK] must:

(i) Have an operational risk management function that:

(A) Is independent of business line management; and

(B) Is responsible for designing, implementing, and overseeing the [BANK]'s operational risk data and assessment systems, operational risk quantification systems, and related processes;

(ii) Have and document a process (which must capture business environment and internal control factors affecting the [BANK]'s operational risk profile) to identify, measure, monitor, and control operational risk in [BANK] products, activities, processes, and systems; and

(iii) Report operational risk exposures, operational loss events, and other relevant operational risk information to business unit management, senior management, and the board of directors (or a designated committee of the board).

(2) *Operational risk data and assessment systems.* A [BANK] must have operational risk data and assessment systems that capture operational risks to which the [BANK] is exposed. The [BANK]'s operational risk data and assessment systems must:

(i) Be structured in a manner consistent with the [BANK]'s current business activities, risk profile, technological processes, and risk management processes; and

(ii) Include credible, transparent, systematic, and verifiable processes that incorporate the following elements on an ongoing basis:

(A) *Internal operational loss event data.* The [BANK] must have a systematic process for capturing and using internal operational loss event data in its operational risk data and assessment systems.

(*1*) The [BANK]'s operational risk data and assessment systems must include a historical observation period of at least five years for internal operational loss event data (or such shorter period approved by the [AGENCY] to address transitional situations, such as integrating a new business line).

(*2*) The [BANK] must be able to map its internal operational loss event data into the seven operational loss event type categories.

(*3*) The [BANK] may refrain from collecting internal operational loss event data for individual operational losses below established dollar threshold amounts if the [BANK] can demonstrate to the satisfaction of the [AGENCY] that the thresholds are reasonable, do not exclude important internal operational loss event data, and permit the [BANK] to capture substantially all the dollar value of the [BANK]'s operational losses.

(B) *External operational loss event data.* The [BANK] must have a systematic process for determining its methodologies for incorporating external operational loss event data into its operational risk data and assessment systems.

(C) *Scenario analysis.* The [BANK] must have a systematic process for determining its methodologies for incorporating scenario analysis into its operational risk data and assessment systems.

(D) *Business environment and internal control factors.* The [BANK] must incorporate business environment and internal control factors into its operational risk data and assessment systems. The [BANK] must also periodically compare the results of its prior business environment and internal control factor assessments against its actual operational losses incurred in the intervening period.

(3) *Operational risk quantification systems.* (i) The [BANK]'s operational risk quantification systems:

(A) Must generate estimates of the [BANK]'s operational risk exposure using its operational risk data and assessment systems;

(B) Must employ a unit of measure that is appropriate for the [BANK]'s range of business activities and the variety of operational loss events to which it is exposed, and that does not combine business activities or operational loss events with demonstrably different risk profiles within the same loss distribution;

(C) Must include a credible, transparent, systematic, and verifiable approach for weighting each of the four elements, described in paragraph (g)(2)(ii) of this section, that a [BANK] is required to incorporate into its operational risk data and assessment systems;

(D) May use internal estimates of dependence among operational losses across and within units of measure if the [BANK] can demonstrate to the satisfaction of the [AGENCY] that its process for estimating dependence is sound, robust to a variety of scenarios, and implemented with integrity, and allows for uncertainty surrounding the estimates. If the [BANK] has not made such a demonstration, it must sum operational risk exposure estimates across units of measure to calculate its total operational risk exposure; and

(E) Must be reviewed and updated (as appropriate) whenever the [BANK] becomes aware of information that may have a material effect on the [BANK]'s estimate of operational risk exposure, but the review and update must occur no less frequently than annually.

(ii) With the prior written approval of the [AGENCY], a [BANK] may generate an estimate of its operational risk exposure using an alternative approach to that specified in paragraph (g)(3)(i) of this section. A [BANK] proposing to use such an alternative operational risk quantification system must submit a proposal to the [AGENCY]. In determining whether to approve a [BANK]'s proposal to use an alternative operational risk quantification system, the [AGENCY] will consider the following principles:

(A) Use of the alternative operational risk quantification system will be allowed only on an exception basis, considering the size, complexity, and risk profile of the [BANK];

(B) The [BANK] must demonstrate that its estimate of its operational risk exposure generated under the alternative operational risk quantification system is appropriate and can be supported empirically; and

(C) A [BANK] must not use an allocation of operational risk capital requirements that includes entities other than depository institutions or the benefits of diversification across entities.

(h) *Data management and maintenance.* (1) A [BANK] must have data management and maintenance systems that adequately support all aspects of its advanced systems and the timely and accurate reporting of risk-based capital requirements.

(2) A [BANK] must retain data using an electronic format that allows timely retrieval of data for analysis, validation, reporting, and disclosure purposes.

(3) A [BANK] must retain sufficient data elements related to key risk drivers to permit adequate monitoring, validation, and refinement of its advanced systems.

(i) *Control, oversight, and validation mechanisms.* (1) The [BANK]'s senior management must ensure that all components of the [BANK]'s advanced systems function effectively and comply with the qualification requirements in this section.

(2) The [BANK]'s board of directors (or a designated committee of the board) must at least annually review the

effectiveness of, and approve, the [BANK]'s advanced systems.

(3) A [BANK] must have an effective system of controls and oversight that:

(i) Ensures ongoing compliance with the qualification requirements in this section;

(ii) Maintains the integrity, reliability, and accuracy of the [BANK]'s advanced systems; and

(iii) Includes adequate governance and project management processes.

(4) The [BANK] must validate, on an ongoing basis, its advanced systems. The [BANK]'s validation process must be independent of the advanced systems' development, implementation, and operation, or the validation process must be subjected to an independent review of its adequacy and effectiveness. Validation must include:

(i) An evaluation of the conceptual soundness of (including developmental evidence supporting) the advanced systems;

(ii) An ongoing monitoring process that includes verification of processes and benchmarking; and

(iii) An outcomes analysis process that includes backtesting.

(5) The [BANK] must have an internal audit function independent of business-line management that at least annually assesses the effectiveness of the controls supporting the [BANK]'s advanced systems and reports its findings to the [BANK]'s board of directors (or a committee thereof).

(6) The [BANK] must periodically stress test its advanced systems. The stress testing must include a consideration of how economic cycles, especially downturns, affect risk-based capital requirements (including migration across rating grades and segments and the credit risk mitigation benefits of double default treatment).

(j) *Documentation.* The [BANK] must adequately document all material aspects of its advanced systems.

§ ____.123 Ongoing qualification.

(a) *Changes to advanced systems.* A [BANK] must meet all the qualification requirements in § ____.122 on an ongoing basis. A [BANK] must notify the [AGENCY] when the [BANK] makes any change to an advanced system that would result in a material change in the [BANK]'s advanced approaches total risk-weighted asset amount for an exposure type or when the [BANK] makes any significant change to its modeling assumptions.

(b) *Failure to comply with qualification requirements.* (1) If the [AGENCY] determines that a [BANK] that uses this subpart and that has conducted a satisfactory parallel run fails to comply with the qualification requirements in § ____.122, the [AGENCY] will notify the [BANK] in writing of the [BANK]'s failure to comply.

(2) The [BANK] must establish and submit a plan satisfactory to the [AGENCY] to return to compliance with the qualification requirements.

(3) In addition, if the [AGENCY] determines that the [BANK]'s advanced approaches total risk-weighted assets are not commensurate with the [BANK]'s credit, market, operational, or other risks, the [AGENCY] may require such a [BANK] to calculate its advanced approaches total risk-weighted assets with any modifications provided by the [AGENCY].

§ ____.124 Merger and acquisition transitional arrangements.

(a) *Mergers and acquisitions of companies without advanced systems.* If a [BANK] merges with or acquires a company that does not calculate its risk-based capital requirements using advanced systems, the [BANK] may use subpart D of this part to determine the risk-weighted asset amounts for the merged or acquired company's exposures for up to 24 months after the calendar quarter during which the merger or acquisition consummates. The [AGENCY] may extend this transition period for up to an additional 12 months. Within 90 days of consummating the merger or acquisition, the [BANK] must submit to the [AGENCY] an implementation plan for using its advanced systems for the acquired company. During the period when subpart D applies to the merged or acquired company, any ALLL, net of allocated transfer risk reserves established pursuant to 12 U.S.C. 3904, associated with the merged or acquired company's exposures may be included in the acquiring [BANK]'s tier 2 capital up to 1.25 percent of the acquired company's risk-weighted assets. All general allowances of the merged or acquired company must be excluded from the [BANK]'s eligible credit reserves. In addition, the risk-weighted assets of the merged or acquired company are not included in the [BANK]'s credit-risk-weighted assets but are included in total risk-weighted assets. If a [BANK] relies on this paragraph, the [BANK] must disclose publicly the amounts of risk-weighted assets and qualifying capital calculated under this subpart for the acquiring [BANK] and under subpart D of this part for the acquired company.

(b) *Mergers and acquisitions of companies with advanced systems.* (1) If a [BANK] merges with or acquires a company that calculates its risk-based capital requirements using advanced systems, the [BANK] may use the acquired company's advanced systems to determine total risk-weighted assets for the merged or acquired company's exposures for up to 24 months after the calendar quarter during which the acquisition or merger consummates. The [AGENCY] may extend this transition period for up to an additional 12 months. Within 90 days of consummating the merger or acquisition, the [BANK] must submit to the [AGENCY] an implementation plan for using its advanced systems for the merged or acquired company.

(2) If the acquiring [BANK] is not subject to the advanced approaches in this subpart at the time of acquisition or merger, during the period when subpart D of this part applies to the acquiring [BANK], the ALLL associated with the exposures of the merged or acquired company may not be directly included in tier 2 capital. Rather, any excess eligible credit reserves associated with the merged or acquired company's exposures may be included in the [BANK]'s tier 2 capital up to 0.6 percent of the credit-risk-weighted assets associated with those exposures.

RISK-WEIGHTED ASSETS FOR GENERAL CREDIT RISK

§ ____.131 Mechanics for calculating total wholesale and retail risk-weighted assets.

(a) *Overview.* A [BANK] must calculate its total wholesale and retail risk-weighted asset amount in four distinct phases:

(1) Phase 1—categorization of exposures;

(2) Phase 2—assignment of wholesale obligors and exposures to rating grades and segmentation of retail exposures;

(3) Phase 3—assignment of risk parameters to wholesale exposures and segments of retail exposures; and

(4) Phase 4—calculation of risk-weighted asset amounts.

(b) *Phase 1—Categorization.* The [BANK] must determine which of its exposures are wholesale exposures, retail exposures, securitization exposures, or equity exposures. The [BANK] must categorize each retail exposure as a residential mortgage exposure, a QRE, or an other retail exposure. The [BANK] must identify which wholesale exposures are HVCRE exposures, sovereign exposures, OTC derivative contracts, repo-style transactions, eligible margin loans, eligible purchased wholesale exposures, cleared transactions, default fund contributions, unsettled transactions to which § ____.136 applies, and eligible guarantees or eligible credit derivatives that are used as credit risk mitigants. The [BANK] must identify any on-balance sheet asset that does not meet the definition of a wholesale, retail, equity, or securitization exposure, as well as any non-material portfolio of exposures described in paragraph (e)(4) of this section.

(c) *Phase 2—Assignment of wholesale obligors and exposures to rating grades and retail exposures to segments.* (1) *Assignment of wholesale obligors and exposures to rating grades.*

(i) The [BANK] must assign each obligor of a wholesale exposure to a single obligor rating grade and must assign each wholesale exposure to which it does not directly assign an LGD estimate to a loss severity rating grade.

(ii) The [BANK] must identify which of its wholesale obligors are in default.

(2) *Segmentation of retail exposures.* (i) The [BANK] must group the retail exposures in each retail subcategory into segments that have homogeneous risk characteristics.

(ii) The [BANK] must identify which of its retail exposures are in default. The [BANK] must segment defaulted retail exposures separately from non-defaulted retail exposures.

(iii) If the [BANK] determines the EAD for eligible margin loans using the approach in § ____.132(b), the [BANK] must identify which of its retail exposures are eligible margin loans for which the [BANK] uses this EAD approach and must segment such eligible margin loans separately from other retail exposures.

(3) *Eligible purchased wholesale exposures.* A [BANK] may group its eligible purchased wholesale exposures into segments that have homogeneous risk characteristics. A [BANK] must use the wholesale exposure formula in Table 1 of this section to determine the risk-based capital requirement for each segment of eligible purchased wholesale exposures.

(d) *Phase 3—Assignment of risk parameters to wholesale exposures and segments of retail exposures.* (1) *Quantification process.* Subject to the limitations in this paragraph (d), the [BANK] must:

(i) Associate a PD with each wholesale obligor rating grade;

(ii) Associate an LGD with each wholesale loss severity rating grade or assign an LGD to each wholesale exposure;

(iii) Assign an EAD and M to each wholesale exposure; and

(iv) Assign a PD, LGD, and EAD to each segment of retail exposures.

(2) *Floor on PD assignment.* The PD for each wholesale obligor or retail segment may not be less than 0.03 percent, except for exposures to or directly and unconditionally guaranteed by a sovereign entity, the Bank for International Settlements, the International Monetary Fund, the European Commission, the European Central Bank, or a multilateral development bank, to which the [BANK] assigns a rating grade associated with a PD of less than 0.03 percent.

(3) *Floor on LGD estimation.* The LGD for each segment of residential mortgage exposures (other than segments of residential mortgage exposures for which all or substantially all of the principal of each exposure is directly and unconditionally guaranteed by the full faith and credit of a sovereign entity) may not be less than 10 percent.

(4) *Eligible purchased wholesale exposures.* A [BANK] must assign a PD, LGD, EAD, and M to each segment of eligible purchased wholesale exposures. If the [BANK] can estimate ECL (but not PD or LGD) for a segment of eligible purchased wholesale exposures, the [BANK] must assume that the LGD of the segment equals 100 percent and that the PD of the segment equals ECL divided by EAD. The estimated ECL must be calculated for the exposures without regard to any assumption of recourse or guarantees from the seller or other parties.

(5) *Credit risk mitigation: credit derivatives, guarantees, and collateral.* (i) A [BANK] may take into account the risk reducing effects of eligible guarantees and eligible credit derivatives in support of a wholesale exposure by applying the PD substitution or LGD adjustment treatment to the exposure as provided in § ____.134 or, if applicable, applying double default treatment to the exposure as provided in § ____.135. A [BANK] may decide separately for each wholesale exposure that qualifies for the double default treatment under § ____.135 whether to apply the double default treatment or to use the PD substitution or LGD adjustment treatment without recognizing double default effects.

(ii) A [BANK] may take into account the risk reducing effects of guarantees and credit derivatives in support of retail exposures in a segment when quantifying the PD and LGD of the segment.

(iii) Except as provided in paragraph (d)(6) of this section, a [BANK] may take into account the risk reducing effects of collateral in support of a wholesale exposure when quantifying the LGD of the exposure, and may take into account the risk reducing effects of collateral in support of retail exposures when quantifying the PD and LGD of the segment.

(6) *EAD for OTC derivative contracts, repo-style transactions, and eligible margin loans.* A [BANK] must calculate its EAD for an OTC derivative contract as provided in §§ ____.132 (c) and (d). A [BANK] may take into account the risk-reducing effects of financial collateral in support of a repo-style transaction or eligible margin loan and of any collateral in support of a repo-style transaction that is included in the [BANK]'s VaR-based measure under subpart F of this [PART] through an adjustment to EAD as provided in §§ ____.132(b) and (d). A [BANK] that takes collateral into account through such an adjustment to EAD under § ____.132 may not reflect such collateral in LGD.

(7) *Effective maturity.* An exposure's M must be no greater than five years and no less than one year, except that an exposure's M must be no less than one day if the exposure is a trade related letter of credit, or if the exposure has an original maturity of less than one year and is not part of a [BANK]'s ongoing financing of the obligor. An exposure is not part of a [BANK]'s ongoing financing of the obligor if the [BANK]:

(i) Has a legal and practical ability not to renew or roll over the exposure in the event of credit deterioration of the obligor;

(ii) Makes an independent credit decision at the inception of the exposure and at every renewal or roll over; and

(iii) Has no substantial commercial incentive to continue its credit relationship with the obligor in the event of credit deterioration of the obligor.

(8) *EAD for exposures to certain central counterparties.* A [BANK] may attribute an EAD of zero to exposures that arise from the settlement of cash transactions (such as equities, fixed income, spot foreign exchange, and spot commodities) with a central counterparty where there is no assumption of ongoing counterparty credit risk by the central counterparty after settlement of the trade and associated default fund contributions.

(e) *Phase 4—Calculation of risk-weighted assets.* (1) *Non-defaulted exposures.*

(i) A [BANK] must calculate the dollar risk-based capital requirement for each of its wholesale exposures to a non-defaulted obligor (except for eligible guarantees and eligible credit derivatives that hedge another wholesale exposure, IMM exposures, cleared transactions, default fund contributions, unsettled transactions, and exposures to which the [BANK] applies the double default treatment in § ____.135) and segments of non-defaulted retail exposures by inserting the assigned risk parameters for the wholesale obligor and exposure or retail segment into the appropriate risk-based capital formula specified in Table 1 and multiplying the output of the formula (K) by the EAD of the exposure or segment. Alternatively, a [BANK] may apply a 300 percent risk weight to the EAD of an eligible margin loan if the [BANK] is not able to meet the agencies' requirements for estimation of PD and LGD for the margin loan.

TABLE 1 – IRB RISK-BASED CAPITAL FORMULAS FOR WHOLESALE EXPOSURES TO NON-DEFAULTED OBLIGORS AND SEGMENTS OF NON-DEFAULTED RETAIL EXPOSURES[2]

Retail	**Capital Requirement (K) Non-Defaulted Exposures**	$K = \left[LGD \times N\left(\frac{N^{-1}(PD) + \sqrt{R} \times N^{-1}(0.999)}{\sqrt{1-R}} \right) - (LGD \times PD) \right]$
	Correlation Factor (R)	For residential mortgage exposures: $R = 0.15$ For qualifying revolving exposures: $R = 0.04$ For other retail exposures: $R = 0.03 + 0.13 \times e^{-35 \times PD}$
Wholesale	**Capital Requirement (K) Non-Defaulted Exposures**	$K = \left[LGD \times N\left(\frac{N^{-1}(PD) + \sqrt{R} \times N^{-1}(0.999)}{\sqrt{1-R}} \right) - (LGD \times PD) \right] \times \left(\frac{1 + (M - 2.5) \times b}{1 - 1.5 \times b} \right)$
	Correlation Factor (R)	For HVCRE exposures: $R = 0.12 + 0.18 \times e^{-50 \times PD}$ For wholesale exposures to unregulated financial institutions: $R = 1.25 \times \left(0.12 + 0.18 \times e^{-50 \times PD}\right)$ For wholesale exposures to regulated financial institutions with total assets greater than or equal to $100 billion: $R = 1.25 \times \left(0.12 + 0.18 \times e^{-50 \times PD}\right)$ For wholesale exposures other than HVCRE exposures: $R = 0.12 + 0.12 \times e^{-50 \times PD}$
	Maturity Adjustment (b)	$b = (0.11852 - 0.05478 \times \ln(PD))^2$

[2] N(.) means the cumulative distribution function for a standard normal random variable. $N^{-1}(.)$ means the inverse cumulative distribution function for a standard normal random variable. The symbol e refers to the base of the natural logarithms, and the function ln(.) refers to the natural logarithm of the expression within parentheses. The formulas apply when PD is greater than zero. If PD equals zero, the capital requirement K is set equal to zero.

(ii) The sum of all the dollar risk-based capital requirements for each wholesale exposure to a non-defaulted obligor and segment of non-defaulted retail exposures calculated in paragraph (e)(1)(i) of this section and in § ____.135(e) equals the total dollar risk-based capital requirement for those exposures and segments.

(iii) The aggregate risk-weighted asset amount for wholesale exposures to non-defaulted obligors and segments of non-defaulted retail exposures equals the total dollar risk-based capital requirement in paragraph (e)(1)(ii) of this section multiplied by 12.5.

(2) *Wholesale exposures to defaulted obligors and segments of defaulted retail exposures.*

(i) The dollar risk-based capital requirement for each wholesale exposure to a defaulted obligor equals 0.08 multiplied by the EAD of the exposure.

(ii) The dollar risk-based capital requirement for a segment of defaulted retail exposures equals 0.08 multiplied by the EAD of the segment.

(iii) The sum of all the dollar risk-based capital requirements for each wholesale exposure to a defaulted obligor calculated in paragraph (e)(2)(i) of this section plus the dollar risk-based capital requirements for each segment of defaulted retail exposures calculated in paragraph (e)(2)(ii) of this section equals the total dollar risk-based capital requirement for those exposures and segments.

(iv) The aggregate risk-weighted asset amount for wholesale exposures to defaulted obligors and segments of defaulted retail exposures equals the total dollar risk-based capital requirement calculated in paragraph (e)(2)(iii) of this section multiplied by 12.5.

(3) *Assets not included in a defined exposure category.* (i) A [BANK] may assign a risk-weighted asset amount of zero to cash owned and held in all offices of the [BANK] or in transit and for gold bullion held in the [BANK]'s own vaults, or held in another [BANK]'s vaults on an allocated basis, to the extent the gold bullion assets are offset by gold bullion liabilities.

(ii) A [BANK] must assign a risk weighted asset amount equal to 20 percent of the carrying value of cash items in the process of collection.

(iii) The risk-weighted asset amount for the residual value of a retail lease exposure equals such residual value.

(iv) The risk-weighted asset amount for DTAs arising from temporary differences that the [BANK] could realize through net operating loss carrybacks equals the carrying value, netted in accordance with § ____.22.

(v) The risk-weighted asset amount for MSAs, DTAs arising from temporary timing differences that the [BANK] could not realize through net operating loss carrybacks, and significant investments in the capital of unconsolidated financial institutions in the form of common stock that are not deducted pursuant to § ____.22(a)(7) equals the amount not subject to deduction multiplied by 250 percent.

(vi) The risk-weighted asset amount for any other on-balance-sheet asset that does not meet the definition of a wholesale, retail, securitization, IMM, or equity exposure, cleared transaction, or default fund contribution equals the carrying value of the asset.

(4) *Non-material portfolios of exposures.* The risk-weighted asset amount of a portfolio of exposures for which the [BANK] has demonstrated to the [AGENCY]'s satisfaction that the portfolio (when combined with all other portfolios of exposures that the [BANK] seeks to treat under this paragraph) is not material to the [BANK] is the sum of the carrying values of on-balance sheet exposures plus the notional amounts of off-balance sheet exposures in the portfolio. For purposes of this paragraph (e)(4), the notional amount of an OTC derivative contract that is not a credit derivative is the EAD of the derivative as calculated in § ____.132.

§ ____.132 Counterparty credit risk of repo-style transactions, eligible margin loans, and OTC derivative contracts.

(a) *Methodologies for collateral recognition.* (1) Instead of an LGD estimation methodology, a [BANK] may use the following methodologies to recognize the benefits of financial collateral in mitigating the counterparty credit risk of repo-style transactions, eligible margin loans, collateralized OTC derivative contracts and single product netting sets of such transactions, and to recognize the benefits of any collateral in mitigating the counterparty credit risk of repo-style transactions that are included in a [BANK]'s VaR-based measure under subpart F:

(i) The collateral haircut approach set forth in paragraph (b)(2) of this section;

(ii) The internal models methodology set forth in paragraph (d) of this section; and

(iii) For single product netting sets of repo-style transactions and eligible margin loans, the simple VaR methodology set forth in paragraph (b)(3) of this section.

(2) A [BANK] may use any combination of the three methodologies for collateral recognition; however, it must use the same methodology for transactions in the same category.

(3) A [BANK] must use the methodology in paragraph (c) of this section, or with prior [AGENCY] approval, the internal model methodology in paragraph (d) of this section, to calculate EAD for an OTC derivative contract or a set of OTC derivative contracts subject to a qualifying master netting agreement. To estimate EAD for qualifying cross-product master netting agreements, a [BANK] may only use the internal models methodology in paragraph (d) of this section.

(4) A [BANK] must also use the methodology in paragraph (e) of this section for calculating the risk-weighted asset amounts for CVA for OTC derivatives.

(b) *EAD for eligible margin loans and repo-style transactions.* (1) *General.* A [BANK] may recognize the credit risk mitigation benefits of financial collateral that secures an eligible margin loan, repo-style transaction, or single-product netting set of such transactions by factoring the collateral into its LGD estimates for the exposure. Alternatively, a [BANK] may estimate an unsecured LGD for the exposure, as well as for any repo-style transaction that is included in the [BANK]'s VaR-based measure under subpart F of this part, and determine the EAD of the exposure using:

(i) The collateral haircut approach described in paragraph (b)(2) of this section;

(ii) For netting sets only, the simple VaR methodology described in paragraph (b)(3) of this section; or

(iii) The internal models methodology described in paragraph (d) of this section.

(2) *Collateral haircut approach.* (i) *EAD equation.* A [BANK] may determine EAD for an eligible margin loan, repo-style transaction, or netting set by setting EAD equal to max $\{0, [(\Sigma E - \Sigma C) + \Sigma(E_S \times H_S) + \Sigma(E_{fx} \times H_{fx})]\}$, where:

(A) ΣE equals the value of the exposure (the sum of the current market values of all instruments, gold, and cash the [BANK] has lent, sold subject to repurchase, or posted as collateral to the counterparty under the transaction (or netting set));

(B) ΣC equals the value of the collateral (the sum of the current market values of all instruments, gold, and cash the [BANK] has borrowed, purchased subject to resale, or taken as collateral from the counterparty under the transaction (or netting set));

(C) E_s equals the absolute value of the net position in a given instrument or in gold (where the net position in a given instrument or in gold equals the sum of the current market values of the instrument or gold the [BANK] has lent, sold subject to repurchase, or posted as collateral to the counterparty minus the sum of the current market values of that same instrument or gold the [BANK] has borrowed, purchased subject to resale, or taken as collateral from the counterparty);

(D) H_s equals the market price volatility haircut appropriate to the instrument or gold referenced in E_S;

(E) E_{fx} equals the absolute value of the net position of instruments and cash in a currency that is different from the settlement currency (where the net position in a given currency equals the sum of the current market values of any instruments or cash in the currency the [BANK] has lent, sold subject to repurchase, or posted as collateral to the counterparty minus the sum of the current market values of any instruments or cash in the currency the [BANK] has borrowed, purchased subject to resale, or taken as collateral from the counterparty); and

(F) H_{fx} equals the haircut appropriate to the mismatch between the currency referenced in E_{fx} and the settlement currency.

(ii) *Standard supervisory haircuts.* (A) Under the standard supervisory haircuts approach:

(*1*) A [BANK] must use the haircuts for market price volatility (H_s) in Table 2, as adjusted in certain circumstances as provided in paragraphs (b)(2)(ii)(A)(*3*) and (*4*) of this section;

TABLE 2—STANDARD SUPERVISORY MARKET PRICE VOLATILITY HAIRCUTS [1]

Residual maturity	Haircut (in percents) assigned based on: Sovereign issuers risk weight under this section [2]			Non-sovereign issuers risk weight under this section			Investment grade securitization exposures (in percent)
	Zero %	20% or 50%	100%	20%	50%	100%	
Less than or equal to 1 year	0.5	1.0	15.0	1.0	2.0	25.0	4.0
Greater than 1 year and less than or equal to 5 years	2.0	3.0	15.0	4.0	6.0	25.0	12.0
Greater than 5 years	4.0	6.0	15.0	8.0	12.0	25.0	24.0
Main index equities (including convertible bonds) and gold				15.0			
Other publicly-traded equities (including convertible bonds)				25.0			
Mutual funds				Highest haircut applicable to any security in which the fund can invest.			
Cash collateral held				Zero.			

[1] The market price volatility haircuts in Table 2 are based on a 10-business-day holding period.
[2] Includes a foreign PSE that receives a zero percent risk weight.

(*2*) For currency mismatches, a [BANK] must use a haircut for foreign exchange rate volatility (H_{fx}) of 8 percent, as adjusted in certain circumstances as provided in paragraphs (b)(2)(ii)(A)(*3*) and (*4*) of this section.

(*3*) For repo-style transactions, a [BANK] may multiply the supervisory haircuts provided in paragraphs (b)(2)(ii)(A)(*1*) and (*2*) of this section by the square root of ½ (which equals 0.707107).

(*4*) A [BANK] must adjust the supervisory haircuts upward on the basis of a holding period longer than ten business days (for eligible margin loans) or five business days (for repo-style transactions) where the following conditions apply. If the number of trades in a netting set exceeds 5,000 at any time during a quarter, a [BANK] must adjust the supervisory haircuts upward on the basis of a holding period of twenty business days for the following quarter (except when a [BANK] is calculating EAD for a cleared transaction under § ____.133). If a netting set contains one or more trades involving illiquid collateral or an OTC derivative that cannot be easily replaced, a [BANK] must adjust the supervisory haircuts upward on the basis of a holding period of twenty business days. If over the two previous quarters more than two margin disputes on a netting set have occurred that lasted more than the holding period, then the [BANK] must adjust the supervisory haircuts upward for that netting set on the basis of a holding period that is at least two times the minimum holding period for that netting set. A [BANK] must adjust the standard supervisory haircuts upward using the following formula:

$$H_A = H_S \sqrt{\frac{T_M}{T_S}}$$

Where,

(*i*) T_M equals a holding period of longer than 10 business days for eligible margin loans and derivative contracts or longer than 5 business days for repo-style transactions;

(*ii*) H_S equals the standard supervisory haircut; and

(*iii*) T_S equals 10 business days for eligible margin loans and derivative contracts or 5 business days for repo-style transactions.

(*5*) If the instrument a [BANK] has lent, sold subject to repurchase, or posted as collateral does not meet the definition of financial collateral, the [BANK] must use a 25.0 percent haircut for market price volatility (H_S).

(iii) *Own internal estimates for haircuts.* With the prior written approval of the [AGENCY], a [BANK] may calculate haircuts (H_s and H_{fx}) using its own internal estimates of the volatilities of market prices and foreign exchange rates.

(A) To receive [AGENCY] approval to use its own internal estimates, a [BANK] must satisfy the following minimum quantitative standards:

(*1*) A [BANK] must use a 99th percentile one-tailed confidence interval.

(*2*) The minimum holding period for a repo-style transaction is five business days and for an eligible margin loan is ten business days except for transactions or netting sets for which paragraph (b)(2)(iii)(A)(*3*) of this section applies. When a [BANK] calculates an own-estimates haircut on a T_N-day holding period, which is different from the minimum holding period for the transaction type, the applicable haircut (H_M) is calculated using the following square root of time formula:

$$H_M = H_N \sqrt{\frac{T_M}{T_N}}$$

Where,

(*i*) T_M equals 5 for repo-style transactions and 10 for eligible margin loans;

(*ii*) T_N equals the holding period used by the [BANK] to derive H_N; and

(*iii*) H_N equals the haircut based on the holding period T_N.

(*3*) If the number of trades in a netting set exceeds 5,000 at any time during a quarter, a [BANK] must calculate the haircut using a minimum holding period of twenty business days for the following quarter (except when a [BANK] is calculating EAD for a cleared transaction under § ____.133). If a netting set contains one or more trades involving illiquid collateral or an OTC derivative that cannot be easily replaced, a [BANK] must calculate the haircut using a minimum holding period of twenty business days. If over the two previous quarters more than two margin disputes on a netting set have occurred that lasted more than the holding period, then the [BANK] must calculate the haircut for transactions in that netting set on the basis of a holding period that is at least two times the minimum holding period for that netting set.

(*4*) A [BANK] is required to calculate its own internal estimates with inputs calibrated to historical data from a continuous 12-month period that reflects a period of significant financial stress appropriate to the security or category of securities.

(*5*) A [BANK] must have policies and procedures that describe how it determines the period of significant financial stress used to calculate the [BANK]'s own internal estimates for haircuts under this section and must be able to provide empirical support for the period used. The [BANK] must obtain the prior approval of the [AGENCY] for, and notify the [AGENCY] if the [BANK] makes any material changes to, these policies and procedures.

(*6*) Nothing in this section prevents the [AGENCY] from requiring a [BANK] to use a different period of significant financial stress in the calculation of own internal estimates for haircuts.

(*7*) A [BANK] must update its data sets and calculate haircuts no less frequently than quarterly and must also reassess data sets and haircuts whenever market prices change materially.

(B) With respect to debt securities that are investment grade, a [BANK] may calculate haircuts for categories of securities. For a category of securities, the [BANK] must calculate the haircut on the basis of internal volatility estimates for securities in that category that are representative of the securities in that category that the [BANK] has lent, sold subject to repurchase, posted as collateral, borrowed, purchased subject to resale, or taken as collateral. In determining relevant categories, the [BANK] must at a minimum take into account:

(*1*) The type of issuer of the security;

(*2*) The credit quality of the security;

(*3*) The maturity of the security; and

(*4*) The interest rate sensitivity of the security.

(C) With respect to debt securities that are not investment grade and equity securities, a [BANK] must calculate a separate haircut for each individual security.

(D) Where an exposure or collateral (whether in the form of cash or securities) is denominated in a currency that differs from the settlement currency, the [BANK] must calculate a separate currency mismatch haircut for its net position in each mismatched currency based on estimated volatilities of foreign exchange rates between the mismatched currency and the settlement currency.

(E) A [BANK]'s own estimates of market price and foreign exchange rate volatilities may not take into account the correlations among securities and foreign exchange rates on either the exposure or collateral side of a transaction (or netting set) or the correlations among securities and foreign exchange rates between the exposure and collateral sides of the transaction (or netting set).

(3) *Simple VaR methodology.* With the prior written approval of the [AGENCY], a [BANK] may estimate EAD for a netting set using a VaR model that meets the requirements in paragraph (b)(3)(iii) of this section. In such event, the [BANK] must set EAD equal to max $\{0, [(\Sigma E - \Sigma C) + PFE]\}$, where:

(i) ΣE equals the value of the exposure (the sum of the current market values of all instruments, gold, and cash the [BANK] has lent, sold subject to repurchase, or posted as collateral to the counterparty under the netting set);

(ii) ΣC equals the value of the collateral (the sum of the current market values of all instruments, gold, and cash the [BANK] has borrowed, purchased subject to resale, or taken as collateral from the counterparty under the netting set); and

(iii) PFE (potential future exposure) equals the [BANK]'s empirically based best estimate of the 99th percentile, one-tailed confidence interval for an increase in the value of $(\Sigma E - \Sigma C)$ over a five-business-day holding period for repo-style transactions, or over a ten-business-day holding period for eligible margin loans except for netting sets for which paragraph (b)(3)(iv) of this section applies using a minimum one-year historical observation period of price data representing the instruments that the [BANK] has lent, sold subject to repurchase, posted as collateral, borrowed, purchased subject to resale, or taken as collateral. The [BANK] must validate its VaR model by establishing and maintaining a rigorous and regular backtesting regime.

(iv) If the number of trades in a netting set exceeds 5,000 at any time during a quarter, a [BANK] must use a twenty-business-day holding period for the following quarter (except when a [BANK] is calculating EAD for a cleared transaction under § ____.133). If a netting set contains one or more trades involving illiquid collateral, a [BANK] must use a twenty-business-day holding period. If over the two previous quarters more than two margin disputes on a netting set have occurred that lasted more than the holding period, then the [BANK] must set its PFE for that netting set equal to an estimate over a holding period that is at least two times the minimum holding period for that netting set.

(c) *EAD for OTC derivative contracts.* (1) A [BANK] must determine the EAD for an OTC derivative contract that is not subject to a qualifying master netting agreement using the current exposure methodology in paragraph (c)(5) of this section or using the internal models methodology described in paragraph (d) of this section.

(2) A [BANK] must determine the EAD for multiple OTC derivative contracts that are subject to a qualifying master netting agreement using the current exposure methodology in § ____.132(c)(6) or using the internal models methodology described in paragraph (d) of this section.

(3) *Counterparty credit risk for credit derivatives.* Notwithstanding paragraphs (c) (1) and (c)(2) of this section:

(i) A [BANK] that purchases a credit derivative that is recognized under § ____.134 or § ____.135 as a credit risk mitigant for an exposure that is not a covered position under subpart F of this part is not required to calculate a separate counterparty credit risk capital requirement under this section so long as the [BANK] does so consistently for all such credit derivatives and either includes or excludes all such credit derivatives that are subject to a master netting agreement from any measure used to determine counterparty credit risk exposure to all relevant counterparties for risk-based capital purposes.

(ii) A [BANK] that is the protection provider in a credit derivative must treat the credit derivative as a wholesale exposure to the reference obligor and is not required to calculate a counterparty credit risk capital requirement for the credit derivative under this section, so long as it does so consistently for all such credit derivatives and either includes all or excludes all such credit derivatives that are subject to a master netting agreement from any measure used to determine counterparty credit risk exposure to all relevant counterparties for risk-based capital purposes (unless the [BANK] is treating the credit derivative as a covered position under subpart F of this part, in which case the [BANK] must calculate a supplemental counterparty credit risk capital requirement under this section).

(4) *Counterparty credit risk for equity derivatives.* A [BANK] must treat an equity derivative contract as an equity exposure and compute a risk-weighted asset amount for the equity derivative contract under §§ ____.151–____.155 (unless the [BANK] is treating the contract as a covered position under subpart F of this part). In addition, if the [BANK] is treating the contract as a covered position under subpart F of this part, and under certain other circumstances described in § ____.155, the [BANK] must also calculate a risk-based capital requirement for the counterparty credit risk of an equity derivative contract under this section.

(5) *Single OTC derivative contract.* Except as modified by paragraph (c)(7) of this section, the EAD for a single OTC derivative contract that is not subject to a qualifying master netting agreement is equal to the sum of the [BANK]'s current credit exposure and potential future credit exposure (PFE) on the derivative contract.

(i) *Current credit exposure.* The current credit exposure for a single OTC derivative contract is the greater of the mark-to-market value of the derivative contract or zero.

(ii) *PFE.* The PFE for a single OTC derivative contract, including an OTC derivative contract with a negative mark-to-market value, is calculated by multiplying the notional principal amount of the derivative contract by the appropriate conversion factor in Table 3. For purposes of calculating either the PFE under paragraph (c)(5) of this section or the gross PFE under paragraph (c)(6) of this section for exchange rate contracts and other similar contracts in which the notional principal amount is equivalent to the cash flows, the notional principal amount is the net receipts to each party falling due on each value date in each currency. For any OTC derivative contract that does not fall within one of the specified categories in Table 3, the PFE must be calculated using the ''other'' conversion factors. A [BANK] must use an OTC derivative contract's effective notional principal amount (that is, its apparent or stated notional principal amount multiplied by any multiplier in the OTC derivative contract) rather than its apparent or stated notional principal amount in calculating PFE. PFE of the protection provider of a credit derivative is capped at the net present value of the amount of unpaid premiums.

TABLE 3—CONVERSION FACTOR MATRIX FOR OTC DERIVATIVE CONTRACTS [1]

Remaining maturity [2]	Interest rate	Foreign exchange rate and gold	Credit (investment-grade reference asset) [3]	Credit (non-investment-grade reference asset)	Equity	Precious metals (except gold)	Other
One year or less	0.00	0.01	0.05	0.10	0.06	0.07	0.10
Over one to five years	0.005	0.05	0.05	0.10	0.08	0.07	0.12
Over five years	0.015	0.075	0.05	0.10	0.10	0.08	0.15

[1] For an OTC derivative contract with multiple exchanges of principal, the conversion factor is multiplied by the number of remaining payments in the derivative contract.

[2] For an OTC derivative contract that is structured such that on specified dates any outstanding exposure is settled and the terms are reset so that the market value of the contract is zero, the remaining maturity equals the time until the next reset date. For an interest rate derivative contract with a remaining maturity of greater than one year that meets these criteria, the minimum conversion factor is 0.005.

[3] A [BANK] must use the column labeled ''Credit (investment-grade reference asset)'' for a credit derivative whose reference asset is an outstanding unsecured long-term debt security without credit enhancement that is investment grade. A [BANK] must use the column labeled ''Credit (non-investment-grade reference asset)'' for all other credit derivatives.

(6) *Multiple OTC derivative contracts subject to a qualifying master netting agreement.* Except as modified by paragraph (c)(7) of this section, the EAD for multiple OTC derivative contracts subject to a qualifying master netting agreement is equal to the sum of the net current credit exposure and the adjusted sum of the PFE exposure for all OTC derivative contracts subject to the qualifying master netting agreement.

(i) *Net current credit exposure.* The net current credit exposure is the greater of:

(A) The net sum of all positive and negative mark-to-market values of the individual OTC derivative contracts subject to the qualifying master netting agreement; or

(B) Zero.

(ii) *Adjusted sum of the PFE.* The adjusted sum of the PFE, A_{net}, is calculated as $A_{net} = (0.4 \times A_{gross}) + (0.6 \times NGR \times A_{gross})$, where:

(A) A_{gross} = the gross PFE (that is, the sum of the PFE amounts (as determined under paragraph (c)(5)(ii) of this section) for each individual derivative contract subject to the qualifying master netting agreement); and

(B) NGR = the net to gross ratio (that is, the ratio of the net current credit exposure to the gross current credit exposure). In calculating the NGR, the gross current credit exposure equals the sum of the positive current credit exposures (as determined under paragraph (c)(6)(i) of this section) of all individual derivative contracts subject to the qualifying master netting agreement.

(7) *Collateralized OTC derivative contracts.* A [BANK] may recognize the credit risk mitigation benefits of financial collateral that secures an OTC derivative contract or single-product netting set of OTC derivatives by factoring the collateral into its LGD estimates for the contract or netting set. Alternatively, a [BANK] may recognize the credit risk mitigation benefits of financial collateral that secures such a contract or netting set that is marked-to-market on a daily basis and subject to a daily margin maintenance requirement by estimating an unsecured LGD for the contract or netting set and adjusting the EAD calculated under paragraph (c)(5) or (c)(6) of this section using the collateral haircut approach in paragraph (b)(2) of this section. The [BANK] must substitute the EAD calculated under paragraph (c)(5) or (c)(6) of this section for ΣE in the equation in paragraph (b)(2)(i) of this section and must use a ten-business day minimum holding period ($T_M = 10$) unless a longer holding

period is required by paragraph (b)(2)(iii)(A)(*3*) of this section.

(d) *Internal models methodology.* (1) With prior written approval from the [AGENCY], a [BANK] may use the internal models methodology in this paragraph (d) to determine EAD for counterparty credit risk for derivative contracts (collateralized or uncollateralized) and single-product netting sets thereof, for eligible margin loans and single-product netting sets thereof, and for repo-style transactions and single-product netting sets thereof. A [BANK] that uses the internal models methodology for a particular transaction type (derivative contracts, eligible margin loans, or repo-style transactions) must use the internal models methodology for all transactions of that transaction type. A [BANK] may choose to use the internal models methodology for one or two of these three types of exposures and not the other types. A [BANK] may also use the internal models methodology for derivative contracts, eligible margin loans, and repo-style transactions subject to a qualifying cross-product netting agreement if:

(i) The [BANK] effectively integrates the risk mitigating effects of cross-product netting into its risk management and other information technology systems; and

(ii) The [BANK] obtains the prior written approval of the [AGENCY].

A [BANK] that uses the internal models methodology for a transaction type must receive approval from the [AGENCY] to cease using the methodology for that transaction type or to make a material change to its internal model.

(2) *Risk-weighted assets using IMM.* Under the IMM, a [BANK] uses an internal model to estimate the expected exposure (EE) for a netting set and then calculates EAD based on that EE. A [BANK] must calculate two EEs and two EADs (one stressed and one unstressed) for each netting set as follows:

(i) $EAD_{unstressed}$ is calculated using an EE estimate based on the most recent data meeting the requirements of paragraph (d)(3)(vii) of this section.

(ii) $EAD_{stressed}$ is calculated using an EE estimate based on a historical period that includes a period of stress to the credit default spreads of the [BANK]'s counterparties according to paragraph (d)(3)(viii) of this section.

(iii) The [BANK] must use its internal model's probability distribution for changes in the market value of a netting set that are attributable to changes in market variables to determine EE.

(iv) Under the internal models methodology, EAD = Max (0, α × effective EPE − CVA), or, subject to [AGENCY] approval as provided in paragraph (d)(10) of this section, a more conservative measure of EAD.

(A) CVA equals the credit valuation adjustment that the [BANK] has recognized in its balance sheet valuation of any OTC derivative contracts in the netting set. For purposes of this paragraph, CVA does not include any adjustments to common equity tier 1 capital attributable to changes in the fair value of the [BANK]'s liabilities that are due to changes in its own credit risk since the inception of the transaction with the counterparty.

(B) $Effective\ EPE_{t_k} = \sum_{k=1}^{n} Effective\ EE_{t_k} \times \Delta t_k$ (that is, effective EPE is the time-weighted average of effective EE where the weights are the proportion that an individual effective EE represents in a one-year time interval) where:

(*1*) $EffectiveEE_{t_k} = \max(EffectiveEE_{t_{k-1}}, EE_{t_k})$ (that is, for a specific date t_k, effective EE is the greater of EE at that date or the effective EE at the previous date); and

(*2*) t_k represents the kth future time period in the model and there are n time periods represented in the model over the first year, and

(C) α = 1.4 except as provided in paragraph (d)(5) of this section, or when the [AGENCY] has determined that the [BANK] must set α higher based on the [BANK]'s specific characteristics of counterparty credit risk or model performance.

(v) A [BANK] may include financial collateral currently posted by the counterparty as collateral (but may not include other forms of collateral) when calculating EE.

(vi) If a [BANK] hedges some or all of the counterparty credit risk associated with a netting set using an eligible credit derivative, the [BANK] may take the reduction in exposure to the counterparty into account when estimating EE. If the [BANK] recognizes this reduction in exposure to the counterparty in its estimate of EE, it must also use its internal model to estimate a separate EAD for the [BANK]'s exposure to the protection provider of the credit derivative.

(3) To obtain [AGENCY] approval to calculate the distributions of exposures upon which the EAD calculation is based, the [BANK] must demonstrate to the satisfaction of the [AGENCY] that it has been using for at least one year an internal model that broadly meets the following minimum standards, with which the [BANK] must maintain compliance:

(i) The model must have the systems capability to estimate the expected exposure to the counterparty on a daily basis (but is not expected to estimate or report expected exposure on a daily basis).

(ii) The model must estimate expected exposure at enough future dates to reflect accurately all the future cash flows of contracts in the netting set.

(iii) The model must account for the possible non-normality of the exposure distribution, where appropriate.

(iv) The [BANK] must measure, monitor, and control current counterparty exposure and the exposure to the counterparty over the whole life of all contracts in the netting set.

(v) The [BANK] must be able to measure and manage current exposures gross and net of collateral held, where appropriate. The [BANK] must estimate expected exposures for OTC derivative contracts both with and without the effect of collateral agreements.

(vi) The [BANK] must have procedures to identify, monitor, and control wrong-way risk throughout the life of an exposure. The procedures must include stress testing and scenario analysis.

(vii) The model must use current market data to compute current exposures. The [BANK] must estimate model parameters using historical data from the most recent three-year period and update the data quarterly or more frequently if market conditions warrant. The [BANK] should consider using model parameters based on forward-looking measures, where appropriate.

(viii) When estimating model parameters based on a stress period, the [BANK] must use at least three years of historical data that include a period of stress to the credit default spreads of the [BANK]'s counterparties. The [BANK] must review the data set and update the data as necessary, particularly for any material changes in its counterparties. The [BANK] must demonstrate at least quarterly that the stress period coincides with increased CDS or other credit spreads of the [BANK]'s counterparties. The [BANK] must have procedures to evaluate the effectiveness of its stress calibration that include a process for using benchmark portfolios that are vulnerable to the same risk factors as the [BANK]'s portfolio. The [AGENCY] may require the [BANK] to modify its stress calibration to better reflect actual historic losses of the portfolio.

(ix) A [BANK] must subject its internal model to an initial validation and annual model review process. The model review should consider whether the inputs and risk factors, as well as the model outputs, are appropriate. As part of the model review process, the [BANK] must have a backtesting program for its model that includes a process by which unacceptable model performance will be determined and remedied.

(x) A [BANK] must have policies for the measurement, management and control of collateral and margin amounts.

(xi) A [BANK] must have a comprehensive stress testing program that captures all credit exposures to counterparties, and incorporates stress testing of principal market risk factors and creditworthiness of counterparties.

(4) *Maturity.* (i) If the remaining maturity of the exposure or the longest-dated contract in the netting set is greater than one year, the [BANK] must set M for the exposure or netting set equal to the lower of five years or M(EPE), where:

(A) $$M(EPE) = 1 + \frac{\sum_{t_k > 1\,year}^{maturity} EE_k \times \Delta t_k \times df_k}{\sum_{k=1}^{t_k \le 1\,year} effectiveEE_k \times \Delta t_k \times df_k};$$

(B) df_k is the risk-free discount factor for future time period t_k; and

(C) $\Delta t_k = t_k - t_{k-1}$.

(ii) If the remaining maturity of the exposure or the longest-dated contract in the netting set is one year or less, the [BANK] must set M for the exposure or netting set equal to one year, except as provided in section§ ____.131(d)(7).

(iii) Alternatively, a [BANK] that uses an internal model to calculate a one-sided credit valuation adjustment may use the effective credit duration estimated by the model as M(EPE) in place of the formula in paragraph (d)(4)(i) of this section.

(5) *Collateral agreements.* A [BANK] may capture the effect on EAD of a collateral agreement that requires receipt of collateral when exposure to the counterparty increases, but may not capture the effect on EAD of a collateral agreement that requires receipt of collateral when counterparty credit quality deteriorates. Two methods are available to capture the effect of a collateral agreement:

(i) With prior written approval from the [AGENCY], a [BANK] may include the effect of a collateral agreement within its internal model used to calculate EAD. The [BANK] may set EAD equal to the expected exposure at the end of the margin period of risk. The margin period of risk means, with respect to a netting set subject to a collateral agreement, the time period from the most recent exchange of collateral with a counterparty until the next required exchange of collateral, plus the period of time required to sell and realize the proceeds of the least liquid collateral that can be delivered under the terms of the collateral agreement and, where applicable, the period of time required to re-hedge the resulting market risk upon the default of the counterparty. The minimum margin period of risk is set according to paragraph (d)(5)(iii) of this section.

(ii) A [BANK] that can model EPE without collateral agreements but cannot achieve the higher level of modeling sophistication to model EPE with collateral agreements can set effective EPE for a collateralized netting set equal to the lesser of:

(A) An add-on that reflects the potential increase in exposure of the netting set over the margin period of risk, plus the larger of:

(*1*) The current exposure of the netting set reflecting all collateral held or posted by the [BANK] excluding any collateral called or in dispute; or

(*2*) The largest net exposure including all collateral held or posted under the margin agreement that would not trigger a collateral call. For purposes of this section, the add-on is computed as the largest expected increase in the netting set's exposure over any margin period of risk in the next year (set in accordance with paragraph (d)(5)(iii) of this section); or

(B) Effective EPE without a collateral agreement plus any collateral the [BANK] posts to the counterparty that exceeds the required margin amount.

(iii) The margin period of risk for a netting set subject to a collateral agreement is:

(A) Five business days for repo-style transactions subject to daily remargining and daily marking-to-market, and ten business days for other transactions when liquid financial collateral is posted under a daily margin maintenance requirement, or

(B) Twenty business days if the number of trades in a netting set exceeds 5,000 at any time during the previous quarter or contains one or more trades involving illiquid collateral or any derivative contract that cannot be easily replaced (except if the [BANK] is calculating EAD for a cleared transaction under § ____.133). If over the two previous quarters more than two margin disputes on a netting set have occurred that lasted more than the margin period of risk, then the [BANK] must use a margin period of risk for that netting set that is at least two times the minimum margin period of risk for that netting set. If the periodicity of the receipt of collateral is N-days, the minimum margin period of risk is the minimum margin period of risk under this paragraph plus N minus 1. This period should be extended to cover any impediments to prompt re-hedging of any market risk.

(6) *Own estimate of alpha.* With prior written approval of the [AGENCY], a [BANK] may calculate alpha as the ratio of economic capital from a full simulation of counterparty exposure across counterparties that incorporates a joint simulation of market and credit risk factors (numerator) and economic capital based on EPE (denominator), subject to a floor of 1.2. For purposes of this calculation, economic capital is the unexpected losses for all counterparty credit risks measured at a 99.9 percent

confidence level over a one-year horizon. To receive approval, the [BANK] must meet the following minimum standards to the satisfaction of the [AGENCY]:

(i) The [BANK]'s own estimate of alpha must capture in the numerator the effects of:

(A) The material sources of stochastic dependency of distributions of market values of transactions or portfolios of transactions across counterparties;

(B) Volatilities and correlations of market risk factors used in the joint simulation, which must be related to the credit risk factor used in the simulation to reflect potential increases in volatility or correlation in an economic downturn, where appropriate; and

(C) The granularity of exposures (that is, the effect of a concentration in the proportion of each counterparty's exposure that is driven by a particular risk factor).

(ii) The [BANK] must assess the potential model uncertainty in its estimates of alpha.

(iii) The [BANK] must calculate the numerator and denominator of alpha in a consistent fashion with respect to modeling methodology, parameter specifications, and portfolio composition.

(iv) The [BANK] must review and adjust as appropriate its estimates of the numerator and denominator of alpha on at least a quarterly basis and more frequently when the composition of the portfolio varies over time.

(7) *Risk-based capital requirements for transactions with specific wrong-way risk.* A [BANK] must determine if a repo-style transaction, eligible margin loan, bond option, or equity derivative contract or purchased credit derivative to which the [BANK] applies the internal models methodology has specific wrong-way risk. If a transaction has specific wrong-way risk, the [BANK] must exclude it from the model described in 132(d)(2) and instead calculate the risk-based capital requirement for the transaction as follows:

(i) For an equity derivative contract, by multiplying:

(A) K, calculated using the appropriate risk-based capital formula specified in Table 1 of § ____.131 using the PD of the counterparty and LGD equal to 100 percent, by

(B) The maximum amount the [BANK] could lose on the equity derivative.

(ii) For a purchased credit derivative by multiplying:

(A) K, calculated using the appropriate risk-based capital formula specified in Table 1 of § ____.131 using the PD of the counterparty and LGD equal to 100 percent, by

(B) The fair value of the reference asset of the credit derivative.

(iii) For a bond option, by multiplying:

(A) K, calculated using the appropriate risk-based capital formula specified in Table 1 of § ____.131 using the PD of the counterparty and LGD equal to 100 percent, by

(B) The smaller of the notional amount of the underlying reference asset and the maximum potential loss under the bond option contract.

(iv) For a repo-style transaction or eligible margin loan by multiplying:

(A) K, calculated using the appropriate risk-based capital formula specified in Table 1 of § ____.131 using the PD of the counterparty and LGD equal to 100 percent, by

(B) The EAD of the transaction determined according to the EAD equation in § ____.131(b)(2), substituting the estimated value of the collateral assuming a default of the counterparty for the value of the collateral in ΣC of the equation.

(8) *Risk-weighted asset amount for IMM exposures with specific wrong-way risk.* The aggregate risk-weighted asset amount for IMM exposures with specific wrong-way risk is the sum of a [BANK]'s risk-based capital requirement for purchased credit derivatives that are not bond options with specific wrong-way risk as calculated under paragraph (d)(7)(ii) of this section, a [BANK]'s risk-based capital requirement for equity derivatives with specific wrong-way risk as calculated under paragraph (d)(7)(i) of this section, a [BANK]'s risk-based capital requirement for bond options with specific wrong-way risk as calculated under paragraph (d)(7)(iii) of this section, and a [BANK]'s risk-based capital requirement for repo-style transactions and eligible margin loans with specific wrong-way risk as calculated under paragraph (d)(7)(iv) of this section, multiplied by 12.5.

(9) *Risk-weighted assets for IMM exposures.* (i) The [BANK] must insert the assigned risk parameters for each counterparty and netting set into the appropriate formula specified in Table 1 of § ____.131 and multiply the output of the formula by the $EAD_{unstressed}$ of the netting set to obtain the unstressed capital requirement for each netting set. A [BANK] that uses an advanced CVA approach that captures migrations in credit spreads under paragraph (e)(3) of this section must set the maturity adjustment (b) in the formula equal to zero. The sum of the unstressed capital requirement calculated for each netting set equals $K_{unstressed}$.

(ii) The [BANK] must insert the assigned risk parameters for each wholesale obligor and netting set into the appropriate formula specified in Table 1 of § ____.131 and multiply the output of the formula by the $EAD_{stressed}$ of the netting set to obtain the stressed capital requirement for each netting set. A [BANK] that uses an advanced CVA approach that captures migrations in credit spreads under paragraph (e)(3) of this section must set the maturity adjustment (b) in the formula equal to zero. The sum of the stressed capital requirement calculated for each netting set equals $K_{stressed}$.

(iii) The [BANK]'s dollar risk-based capital requirement under the internal models methodology equals the larger of $K_{unstressed}$ and $K_{stressed}$. A [BANK]'s risk-weighted assets amount for IMM exposures is equal to the capital requirement multiplied by 12.5, plus risk weighted assets for IMM exposures with specific wrong-way risk in paragraph (d)(8) of this section and those in paragraph (d)(10) of this section.

(10) *Other measures of counterparty exposure.* (i) With prior written approval of the [AGENCY], a [BANK] may set EAD equal to a measure of counterparty credit risk exposure, such as peak EAD, that is more conservative than an alpha of 1.4 (or higher under the terms of paragraph (d)(7)(iv)(C) of this section) times the larger of $EPE_{unstressed}$ and $EPE_{stressed}$ for every counterparty whose EAD will be measured under the alternative measure of counterparty exposure. The [BANK] must demonstrate the conservatism of the measure of counterparty credit risk exposure used for EAD.

(A) For material portfolios of new OTC derivative products, the [BANK] may assume that the current exposure methodology in paragraphs (c)(5) and (c)(6) of this section meets the conservatism requirement of this section for a period not to exceed 180 days.

(B) For immaterial portfolios of OTC derivative contracts, the [BANK] generally may assume that the current exposure methodology in paragraphs (c)(5) and (c)(6) of this section meets the conservatism requirement of this section.

(ii) To calculate risk-weighted assets under this approach, the [BANK] must insert the assigned risk parameters for each counterparty and netting set into the appropriate formula specified in Table 1 of § ____.131, multiply the output of the formula by the EAD for the exposure as specified above, and multiply by 12.5.

(e) *Credit Valuation Adjustment (CVA) Risk-Weighted Assets.* (1) *In* *general.* With respect to its OTC derivative contracts, a [BANK] must calculate a CVA risk-weighted asset amount for each counterparty using the simple CVA approach described in paragraph (e)(5) of this section or, with prior written approval of the [AGENCY], the advanced CVA approach described in paragraph (e)(6) of this section. A [BANK] that receives prior [AGENCY] approval to calculate its CVA risk-weighted asset amounts for a class of counterparties using the advanced CVA approach must continue to use that approach for that class of counterparties until it notifies the [AGENCY] in writing that the [BANK] expects to begin calculating its CVA risk-weighted asset amount using the simple CVA approach. Such notice must include an explanation of the [BANK]'s rationale and the date upon which the [BANK] will begin to calculate its CVA risk-weighted asset amount using the simple CVA approach.

(2) *Market risk [BANK]s.* Notwithstanding the prior approval requirement in paragraph (e)(1) of this section, a market risk [BANK] may calculate its CVA risk-weighted asset amount for a counterparty using the advanced CVA approach if the [BANK] has [AGENCY] approval to:

(i) Determine EAD for OTC derivative contracts using the internal models methodology described in paragraph (d) of this section; and

(ii) Determine its specific risk add-on for debt positions issued by the counterparty using a specific risk model described in § ____.207(b) of subpart F of this part.

(3) *Recognition of Hedges.* (i) A [BANK] may recognize a single name CDS, single name contingent CDS, any other equivalent hedging instrument that references the counterparty directly, and index credit default swaps (CDS_{ind}) as a CVA hedge under paragraph (e)(5)(ii) of this section or paragraph (e)(6) of this section, provided that the position is managed as a CVA hedge in accordance with the [BANK]'s hedging policies.

(ii) A [BANK] shall not recognize as a CVA hedge any tranched or nth-to-default credit derivative.

(4) *Total CVA risk-weighted assets.* Total CVA risk-weighted assets is the sum of the CVA capital requirement, K_{CVA}, calculated for each of a [BANK]'s OTC derivative counterparties, multiplied by 12.5.

(5) *Simple CVA approach.* (i) Under the simple CVA approach, the CVA capital requirement, K_{CVA}, is calculated according to the following formula:

$$K_{CVA} = 2.33 \times \sqrt{\left(\sum_i 0.5 \times w_i \times \left(M_i \times EAD_i^{total} - M_i^{hedge} \times B_i\right) - \sum_{ind} w_{ind} \times M_{ind} \times B_{ind}\right)^2 + A} \quad \text{Where:}$$

$$A = \sum_i 0.75 \times w_i^2 \times \left(M_i \times EAD_i^{total} - M_i^{hedge} \times B_i\right)^2$$

(A) w_i = the weight applicable to counterparty i under Table 4;

(B) M_i = the EAD-weighted average of the effective maturity of each netting set with counterparty i (where each netting set's M can be no less than one year.)

(C) EAD_i^{total} = the sum of the EAD for all netting sets of OTC derivative contracts with counterparty i calculated using the current exposure methodology described in paragraph (c) of this section or the internal models methodology described in paragraph (d) of this section. When the [BANK] calculates EAD under paragraph (c) of this section, such EAD may be adjusted for purposes of calculating EAD_i^{total} by multiplying EAD by (1-exp(-0.05 x M_i))/(0.05 x M_i).[2] When the [BANK] calculates EAD under paragraph (d) of this section, EAD_i^{total} equals $EAD_{unstressed}$.

(D) M_i^{hedge} = the notional weighted average maturity of the hedge instrument.

(E) B_i = the sum of the notional amounts of any purchased single name CDS referencing counterparty i that is used to hedge CVA risk to counterparty i multiplied by (1-exp(-0.05 x M_i^{hedge}))/(0.05 x M_i^{hedge}).

(F) M_{ind} = the maturity of the CDS_{ind} or the notional weighted average maturity of any CDS_{ind} purchased to hedge CVA risk of counterparty i.

(G) B_{ind} = the notional amount of one or more CDS_{ind} purchased to hedge CVA risk for counterparty i multiplied by (1-exp($-0.05 \times M_{ind}$))/($0.05 \times M_{ind}$).

(H) w_{ind} = the weight applicable to the CDS_{ind} based on the average weight of the underlying reference names that comprise the index under Table 4.

(ii) The [BANK] may treat the notional amount of the index attributable to a counterparty as a single name hedge of counterparty i (B_i,) when calculating K_{CVA}, and subtract the notional amount of B_i from the notional amount of the CDS_{ind}. The [BANK] must calculate its capital requirement for the remaining notional amount of the CDS_{ind} as a stand alone position.

TABLE 4—ASSIGNMENT OF COUNTERPARTY WEIGHT

Internal PD (in percent)	Weight Wi (in percent)
0.00–0.07	0.70
>0.070–0.15	0.80
>0.15–0.40	1.00
>0.40–2.00	2.00
>2.00–6.00	3.00
>6.00	10.00

(6) *Advanced CVA Approach.* (i) A [BANK] may use the VaR model it uses to determine specific risk under § ____.207(b) or another VaR model that meets the quantitative requirements of § ____.205(b) and § ____.207(b)(1) to calculate its CVA capital requirement for a counterparty by modeling the impact of changes in the counterparty's credit spreads, together with any recognized CVA hedges, on the CVA for the counterparty.

(A) The VaR model must incorporate only changes in the counterparty's credit spreads, not changes in other risk factors. It is not required that the VaR model capture jump-to-default risk.

(B) A [BANK] that qualifies to use the advanced CVA approach must include in that approach any immaterial OTC derivative portfolios for which it uses the current exposure methodology in paragraph (c) of this section according to paragraph (e)(6)(viii) of this section.

(C) A [BANK] must have the systems capability to calculate the CVA capital requirement for a counterparty on a daily basis (but is not required to calculate the CVA capital requirement on a daily basis).

(ii) Under the advanced CVA approach, the CVA capital requirement, K_{CVA}, is calculated according to the following formulas:

[2] The term "exp" is the exponential function.

$$K_{CVA} = 3 \times \left(CVA_{Unstressed\ VAR} + CVA_{StressedVA\ R} \right)$$

$$CVA_j = \left(LGD_{MKT} \right) \times \sum_{i=1}^{T} Max\left(0; \exp\left(-\frac{s_{i-1} \times t_{i-1}}{LGD_{MKT}} \right) - \exp\left(-\frac{s_i \times t_i}{LGD_{MKT}} \right) \right) \times \left(\frac{EE_{i-1} \times D_{i-1} + EE_i \times D_i}{2} \right)$$

Where:

(A) t_i = the time of the i-th revaluation time bucket starting from $t_0 = 0$.

(B) t_T = the longest contractual maturity across the OTC derivative contracts with the counterparty.

(C) s_i = the CDS spread for the counterparty at tenor t_i used to calculate the CVA for the counterparty. If a CDS spread is not available, the [BANK] must use a proxy spread based on the credit quality, industry and region of the counterparty.

(D) LGD_{MKT} = the loss given default of the counterparty based on the spread of a publicly-traded debt instrument of the counterparty, or, where a publicly-traded debt instrument spread is not available, a proxy spread based on the credit quality, industry, and region of the counterparty.

(E) EE_i = the sum of the expected exposures for all netting sets with the counterparty at revaluation time t_i, calculated above.

(F) D_i = the risk-free discount factor at time t_i, where $D_0 = 1$.

(G) Exp is the exponential function.

(iii) A [BANK] must use the formulas in paragraph (e)(6)(iii)(A) or (e)(6)(iii)(B) of this section to calculate credit spread sensitivities if its VaR model is not based on full repricing.

(A) If the VaR model is based on credit spread sensitivities for specific tenors, the [BANK] must calculate each credit spread sensitivity according to the following formula:

Regulatory CS01 =

$$0.0001 \times t_i \times exp\left(-\frac{s_i \times t_i}{LGD_{MKT}} \right) \times \left(\frac{EE_{i-1} \times D_{i-1} - EE_{i+1} \times D_{i+1}}{2} \right)$$

Note that for the final time bucket,[3] the formula would be adjusted as follows such that:

$$\text{Regulatory CS01} = 0.0001 \times t_i \times \exp\left(-\frac{s_i \times t_i}{LGD_{MKT}} \right) \times \left(\frac{EE_{i-1} \times D_{i-1} + EE_T \times D_T}{2} \right)$$

(B) If the VaR model uses credit spread sensitivities to parallel shifts in credit spreads, the [BANK] must calculate each credit spread sensitivity according to the following formula:

Regulatory CS01 =

$$0.0001 \times \sum_{i=1}^{T} \left(t_i \times \exp\left(-\frac{s_i \times t_i}{LGD_{MKT}} \right) - t_{i-1} \times \exp\left(-\frac{s_{i-1} \times t_{i-1}}{LGD_{MKT}} \right) \right) \times \left(\frac{EE_{i-1} \times D_{i-1} + EE_i \times D_i}{2} \right)$$

(iv) To calculate the $CVA_{UnstressedVaR}$ measure for purposes of paragraph (e)(6)(ii) of this section, the [BANK] must:

(A) Use the EE_i calculated using the calibration of paragraph (d)(3)(vii) of this section, except as provided in § ____.132 (e)(6)(vi), and

(B) Use the historical observation period required under § ____.205(b)(2) of subpart F.

(v) To calculate the $CVA_{StressedVaR}$ measure for purposes of paragraph (e)(6)(ii) of this section, the [BANK] must:

(A) Use the EE_i calculated using the stress calibration in paragraph (d)(3)(viii) of this section except as provided in § ____.132(e)(6)(vi) of this section.

(B) Calibrate VaR model inputs to historical data from the most severe twelve-month stress period contained within the three-year stress period used to calculate EE_i. The [AGENCY] may require a [BANK] to use a different period of significant financial stress in the calculation of the $CVA_{StressedVaR}$ measure.

(vi) If a [BANK] captures the effect of a collateral agreement on EAD using the method described in paragraph (d)(5)(ii) of this section, for purposes of paragraph (e)(6)(ii) of this section, the [BANK] must calculate EE_i using the method in paragraph (d)(5)(ii) of this section and keep that EE constant with the maturity equal to the maximum of:

(A) Half of the longest maturity of a transaction in the netting set, and

(B) The notional weighted average maturity of all transactions in the netting set.

(vii) The [BANK]'s VaR model must capture the basis between the spreads of any CDS_{ind} that is used as the hedging instrument and the hedged counterparty exposure over various time periods, including benign and stressed

[3] For the final time bucket, i = T.

environments. If the VaR model does not capture that basis, the [BANK] must reflect only 50 percent of the notional amount of the CDS_{ind} hedge in the VaR model. The remaining 50 percent of the notional amount of the CDS_{ind} hedge is a covered position under subpart F.

(viii) If a [BANK] uses the current exposure methodology described in paragraphs (c)(5) and (c)(6) of this section to calculate the EAD for any immaterial portfolios of OTC derivative contracts, the [BANK] must use that EAD as a constant EE in the formula for the calculation of CVA with the maturity equal to the maximum of:

(A) Half of the longest maturity of a transaction in the netting set, and

(B) The notional weighted average maturity of all transactions in the netting set.

§ ____.133 Cleared transactions.

(a) *General requirements.* (1) A [BANK] that is a clearing member client must use the methodologies set forth in paragraph (b) of this section to calculate risk-weighted assets for a cleared transaction.

(2) A [BANK] that is a clearing member must use the methodologies set forth in paragraph (c) of this section to calculate its risk-weighted assets for cleared transactions and paragraph (d) of this section to calculate its risk-weighted assets for its default fund contribution to a CCP.

(b) *Clearing member client [BANK]s.* (1) *Risk-weighted assets for cleared transactions.*

(i) To determine the risk-weighted asset amount for a cleared transaction, a clearing member client [BANK] must multiply the trade exposure amount for the cleared transaction, calculated in accordance with paragraph (b)(2) of this section, by the risk weight appropriate for the cleared transaction, determined in accordance with paragraph (b)(3) of this section .

(ii) A clearing member client [BANK]'s total risk-weighted assets for cleared transactions is the sum of the risk-weighted asset amounts for all of its cleared transactions.

(2) *Trade exposure amount.* (i) For a cleared transaction that is a derivative contract or netting set of derivative contracts, trade exposure amount equals the EAD for the derivative contract or netting set calculated using the methodology used to calculate EAD for OTC derivative contracts set forth in § ____.132(c) or § ____.132(d), plus the fair value of the collateral posted by the clearing member client [BANK] and held by the CCP or a clearing member in a manner that is not bankruptcy remote. When the [BANK] calculates EAD for the cleared transaction using the methodology in § ____.132(d), EAD equals $EAD_{unstressed}$.

(ii) For a cleared transaction that is a repo-style transaction, trade exposure amount equals the EAD for the repo-style transaction calculated using the methodology set forth in § ____.132(b)(2), (b)(3), or (d), plus the fair value of the collateral posted by the clearing member client [BANK] and held by the CCP or a clearing member in a manner that is not bankruptcy remote. When the [BANK] calculates EAD for the cleared transaction under § ____.132(d), EAD equals $EAD_{unstressed}$.

(3) *Cleared transaction risk weights.* (i) For a cleared transaction with a QCCP, a clearing member client [BANK] must apply a risk weight of:

(A) Two percent if the collateral posted by the [BANK] to the QCCP or clearing member is subject to an arrangement that prevents any loss to the clearing member client [BANK] due to the joint default or a concurrent insolvency, liquidation, or receivership proceeding of the clearing member and any other clients of the clearing member; and the clearing member client [BANK] has conducted sufficient legal review to conclude with a well-founded basis (and maintains sufficient written documentation of that legal review) that in the event of a legal challenge (including one resulting from default or from liquidation, insolvency, receivership or similar proceeding) the relevant court and administrative authorities would find the arrangements to be legal, valid, binding and enforceable under the law of the relevant jurisdictions.

(B) Four percent, if the requirements of § ____.132(b)(3)(i)(A) are not met.

(ii) For a cleared transaction with a CCP that is not a QCCP, a clearing member client [BANK] must apply the risk weight applicable to the CCP under § ____.32.

(iii) Notwithstanding any other requirement of this section, collateral posted by a clearing member client [BANK] that is held by a custodian in a manner that is bankruptcy remote from the CCP, clearing member, and other clearing member clients of the clearing member, is not subject to a capital requirement under this section. A [BANK] must calculate a risk-weighted asset amount for any collateral provided to a CCP, clearing member or a custodian in connection with a cleared transaction according to § ____.131.

(c) *Clearing member banks.* (1) *Risk-weighted assets for cleared transactions.* (i) To determine the risk-weighted asset amount for a cleared transaction, a clearing member [BANK] must multiply the trade exposure amount for the cleared transaction, calculated in accordance with paragraph (c)(2) of this section by the risk weight appropriate for the cleared transaction, determined in accordance with paragraph (c)(3) of this section.

(ii) A clearing member [BANK]'s total risk-weighted assets for cleared transactions is the sum of the risk-weighted asset amounts for all of its cleared transactions.

(2) *Trade exposure amount.* A clearing member [BANK] must calculate its trade exposure amount for a cleared transaction as follows:

(i) For a cleared transaction that is a derivative contract, trade exposure amount equals the EAD calculated using the methodology used to calculate EAD for OTC derivative contracts set forth in § ____.132(c) or § ____.132(d), plus the fair value of the collateral posted by the [BANK] and held by the CCP in a manner that is not bankruptcy remote. When the [BANK] calculates EAD for the cleared transaction using the methodology in § ____.132(d), EAD equals $EAD_{unstressed}$.

(ii) For a cleared transaction that is a repo-style transaction, trade exposure amount equals the EAD calculated under sections § ____.132(b)(2), § ____.132(b)(3), or § ____.132(d), plus the fair value of the collateral posted by the clearing member [BANK] and held by the CCP in a manner that is not bankruptcy remote. When the [BANK] calculates EAD for the cleared transaction under § ____.132(d), EAD equals $EAD_{unstressed}$.

(3) *Cleared transaction risk weights.* (i) For a cleared transaction with a QCCP, a clearing member [BANK] must apply a risk weight of 2 percent.

(ii) For a cleared transaction with a CCP that is not a QCCP, a clearing member [BANK] must apply the risk weight applicable to the CCP according to § ____.32 of subpart D of this part.

(iii) Notwithstanding any other requirement of this section, collateral posted by a clearing member [BANK] that is held by a custodian in a manner that is bankruptcy remote from the CCP is not subject to a capital requirement under this section. A [BANK] must calculate a risk-weighted asset amount for any collateral provided to a CCP or a custodian in connection with a cleared transaction according to § ____.131.

(d) *Default fund contributions.* (1) *General requirement.* A clearing member [BANK] must determine the risk-weighted asset amount for a default fund contribution to a CCP at least quarterly, or more frequently if there is a material change in the financial condition of the CCP.

(2) *Risk-weighted asset amount for default fund contributions to non-qualifying CCPs.* A clearing member [BANK]'s risk-weighted asset amount for default fund contributions to CCPs that are not QCCPs equals the sum of such default fund contributions multiplied by 1,250 percent.

(3) *Risk-weighted asset amount for default fund contributions to QCCPs.* A clearing member [BANK]'s risk-weighted asset amount for default fund contributions to QCCPs equals the sum of its capital requirement, K_{CM} for each QCCP, as calculated under this paragraph (d)(3), multiplied by 1,250 percent.

(i) The hypothetical capital requirement of a QCCP (K_{CCP}) equals:

$$K_{CCP} = \sum_{clearing\,member\ i} \max\left(EBRM_i - VM_i - IM_i - DF_i; 0\right) \times RW \times 0.08$$

Where:

(A) $EBRM_i$ = the EAD for each transaction cleared through the QCCP by clearing member i, calculated using the methodology used to calculate EAD for OTC derivative contracts set forth in § ____.132(c)(5) and § ____.132.(c)(6) or the methodology used to calculate EAD for repo-style transactions set forth in § ____.132(b)(2) for repo-style transactions, provided that:

(*1*) For purposes of this section, when calculating the EAD, the [BANK] may replace the formula provided in § ____.132 (c)(6)(ii) with the following formula:

$A_{net} = (0.3 \times A_{gross}) + (0.7 \times NGR \times A_{gross})$; or

(*2*) If the [BANK] cannot calculate NGR, it may use a value of 0.30 until March 31, 2013; and

(*3*) For cleared transactions that are option derivative contracts, the PFE set forth in § ____.132(c)(5) must be adjusted by multiplying the notional principal amount of the derivative contract by the appropriate conversion factor in Table 3 and the absolute value of the option's delta, that is, the ratio of the change in the value of the derivative contract to the corresponding change in the price of the underlying asset.

(B) VM_i = any collateral posted by clearing member i to the QCCP that it is entitled to receive from the QCCP but has not yet received, and any collateral that the QCCP is entitled to receive from clearing member i but has not yet received;

(C) IM_i = the collateral posted as initial margin by clearing member i to the QCCP;

(D) DF_i = the funded portion of clearing member i's default fund contribution that will be applied to reduce the QCCP's loss upon a default by clearing member i; and

(E) RW = 20 percent, except when the [AGENCY] has determined that a higher risk weight is more appropriate based on the specific characteristics of the QCCP and its clearing members.

(ii) For a [BANK] that is a clearing member of a QCCP with a default fund supported by funded commitments, K_{CM} equals:

$$K_{CM_i} = \left((1+\beta)\cdot\frac{N}{N-2}\right)\cdot\frac{DF_i}{DF_{CM}}\cdot K_{CM}^*$$

$$K_{CM}^* = \begin{cases} c_2 \cdot \mu \cdot (K_{CCP} - DF') + c_2 \cdot DF_{CM}' & if \quad DF' < K_{CCP} \quad (i) \\ c_2 \cdot (K_{CCP} - DF_{CCP}) + c_1 \cdot (DF' - K_{CCP}) & if \quad DF_{CCP} < K_{CCP} \le DF' \quad (ii) \\ c_1 \cdot DF_{CM}' & if \quad K_{CCP} \le DF_{CCP} \quad (iii) \end{cases}$$

Where:

$$\text{(A)} \quad \beta = \frac{A_{Net,1} + A_{Net,2}}{\sum_i A_{Net,i}}$$

Subscripts 1 and 2 denote the clearing members with the two largest A_{Net} values. For purposes of this section, for cleared transactions that are derivatives, A_{Net} is defined using the definition set forth in § ____.132(c)(6)(ii) and for cleared transactions that are repo-style transactions, A_{Net} is the EAD equation max $\{0, [(\Sigma E - \Sigma C) + \Sigma(E_s \times H_s) + \Sigma(Efx]\}$ from § ____.132(b)(2(i));

(B) N = the number of clearing members in the QCCP;

(C) DF_{CCP} = the QCCP's own funds and other financial resources that would be used to cover its losses before clearing members' default fund contributions are used to cover losses;

(D) DF_{CM} = Funded default fund contributions from all clearing members and any other clearing member contributed financial resources that are available to absorb mutualized QCCP losses;

(E) $DF = DF_{CCP} + DF_{CM}$ (that is, the total funded default fund contribution);

(F) $\overline{DF_i}$ = Average $\overline{DF_i}$ = the average funded default fund contribution from an individual clearing member;

(G) $DF'_{CM} = DF_{CM} - 2 \cdot \overline{DF_i} = \sum_i DF_i - 2 \cdot \overline{DF_i}$ (that is, the funded default fund contribution from surviving clearing members assuming that two average clearing members have defaulted and their default fund contributions and initial margins have been used to absorb the resulting losses);

(H) $DF' = DF_{CCP} + DF'_{CM} = DF - 2 \cdot \overline{DF_i}$ (that is, the total funded default fund contributions from the QCCP and the surviving clearing members that are available to mutualize losses, assuming that two average clearing members have defaulted);

(I) ; $c_1 = Max\left\{\frac{1.6\%}{\left(DF'/K_{CCP}\right)^{0.3}};0.16\%\right\}$ (that is, a decreasing capital factor, between .16 percent and 1.6 percent, applied to the excess funded default funds provided by clearing members);

(J) c_2 = 100 percent; and
(K) μ= 1.2;

(iii) For a [BANK] that is a clearing member of a QCCP with a default fund supported by unfunded commitments, K_{CM} equals:

$$K_{CM_i} = \frac{DF_i}{DF_{CM}} \cdot K^*_{CM}$$

Where:

(A) DF_i = the [BANK]'s unfunded commitment to the default fund;
(B) DF_{CM} = the total of all clearing members' unfunded commitments to the default fund; and
(C) K^*_{CM} as defined in § ____.133(d)(3)(ii).

(D) For a [BANK] that is a clearing member of a QCCP with a default fund supported by unfunded commitments and that is unable to calculate K_{CM} using the methodology described above in this paragraph (d)(3)(iii), K_{CM} equals:

$$K_{CM_i} = \frac{IM_i}{IM_{CM}} \cdot K^*_{CM}$$

Where:

(*1*) IM_i = the [BANK]'s initial margin posted to the QCCP;
(*2*) IM_{CM} = the total of initial margin posted to the QCCP; and
(*3*) K^*_{CM} as defined above in this paragraph (d)(3)(iii).

(iv) *Total risk-weighted assets for default fund contributions.* Total risk-weighted assets for default fund contributions is the sum of a clearing member [BANK]'s risk-weighted assets for all of its default fund contributions to all CCPs of which the [BANK] is a clearing member.

§ ____.134 Guarantees and credit derivatives: PD substitution and LGD adjustment approaches.

(a) *Scope.* (1) This section applies to wholesale exposures for which:

(i) Credit risk is fully covered by an eligible guarantee or eligible credit derivative; or

(ii) Credit risk is covered on a pro rata basis (that is, on a basis in which the [BANK] and the protection provider share losses proportionately) by an eligible guarantee or eligible credit derivative.

(2) Wholesale exposures on which there is a tranching of credit risk (reflecting at least two different levels of seniority) are securitization exposures subject to § ____.141 through § ____.145.

(3) A [BANK] may elect to recognize the credit risk mitigation benefits of an eligible guarantee or eligible credit derivative covering an exposure described in paragraph (a)(1) of this section by using the PD substitution approach or the LGD adjustment approach in paragraph (c) of this section or, if the transaction qualifies, using the double default treatment in § ____.135. A [BANK]'s PD and LGD for the hedged exposure may not be lower than the PD and LGD floors described in § ____.131(d)(2) and (d)(3).

(4) If multiple eligible guarantees or eligible credit derivatives cover a single exposure described in paragraph (a)(1) of this section, a [BANK] may treat the hedged exposure as multiple separate exposures each covered by a single eligible guarantee or eligible credit

derivative and may calculate a separate risk-based capital requirement for each separate exposure as described paragraph (a)(3) of this section.

(5) If a single eligible guarantee or eligible credit derivative covers multiple hedged wholesale exposures described in paragraph (a)(1) of this section, a [BANK] must treat each hedged exposure as covered by a separate eligible guarantee or eligible credit derivative and must calculate a separate risk-based capital requirement for each exposure as described in paragraph (a)(3) of this section.

(6) A [BANK] must use the same risk parameters for calculating ECL as it uses for calculating the risk-based capital requirement for the exposure.

(b) *Rules of recognition.* (1) A [BANK] may only recognize the credit risk mitigation benefits of eligible guarantees and eligible credit derivatives.

(2) A [BANK] may only recognize the credit risk mitigation benefits of an eligible credit derivative to hedge an exposure that is different from the credit derivative's reference exposure used for determining the derivative's cash settlement value, deliverable obligation, or occurrence of a credit event if:

(i) The reference exposure ranks *pari passu* (that is, equally) with or is junior to the hedged exposure; and

(ii) The reference exposure and the hedged exposure are exposures to the same legal entity, and legally enforceable cross-default or cross-acceleration clauses are in place to assure payments under the credit derivative are triggered when the obligor fails to pay under the terms of the hedged exposure.

(c) *Risk parameters for hedged exposures.*

(1) *PD substitution approach.* (i) *Full coverage.* If an eligible guarantee or eligible credit derivative meets the conditions in paragraphs (a) and (b) of this section and the protection amount (P) of the guarantee or credit derivative is greater than or equal to the EAD of the hedged exposure, a [BANK] may recognize the guarantee or credit derivative in determining the [BANK]'s risk-based capital requirement for the hedged exposure by substituting the PD associated with the rating grade of the protection provider for the PD associated with the rating grade of the obligor in the risk-based capital formula applicable to the guarantee or credit derivative in Table 1 of § ____.131 and using the appropriate LGD as described in paragraph (c)(1)(iii) of this section. If the [BANK] determines that full substitution of the protection provider's PD leads to an inappropriate degree of risk mitigation, the [BANK] may substitute a higher PD than that of the protection provider.

(ii) *Partial coverage.* If an eligible guarantee or eligible credit derivative meets the conditions in paragraphs (a) and (b) of this section and P of the guarantee or credit derivative is less than the EAD of the hedged exposure, the [BANK] must treat the hedged exposure as two separate exposures (protected and unprotected) in order to recognize the credit risk mitigation benefit of the guarantee or credit derivative.

(A) The [BANK] must calculate its risk-based capital requirement for the protected exposure under § ____.131, where PD is the protection provider's PD, LGD is determined under paragraph (c)(1)(iii) of this section, and EAD is P. If the [BANK] determines that full substitution leads to an inappropriate degree of risk mitigation, the [BANK] may use a higher PD than that of the protection provider.

(B) The [BANK] must calculate its risk-based capital requirement for the unprotected exposure under § ____.131, where PD is the obligor's PD, LGD is the hedged exposure's LGD (not adjusted to reflect the guarantee or credit derivative), and EAD is the EAD of the original hedged exposure minus P.

(C) The treatment in paragraph (c)(1)(ii) is applicable when the credit risk of a wholesale exposure is covered on a partial pro rata basis or when an adjustment is made to the effective notional amount of the guarantee or credit derivative under paragraphs (d), (e), or (f) of this section.

(iii) *LGD of hedged exposures.* The LGD of a hedged exposure under the PD substitution approach is equal to:

(A) The lower of the LGD of the hedged exposure (not adjusted to reflect the guarantee or credit derivative) and the LGD of the guarantee or credit derivative, if the guarantee or credit derivative provides the [BANK] with the option to receive immediate payout upon triggering the protection; or

(B) The LGD of the guarantee or credit derivative, if the guarantee or credit derivative does not provide the [BANK] with the option to receive immediate payout upon triggering the protection.

(2) *LGD adjustment approach.* (i) *Full coverage.* If an eligible guarantee or eligible credit derivative meets the conditions in paragraphs (a) and (b) of this section and the protection amount (P) of the guarantee or credit derivative is greater than or equal to the EAD of the hedged exposure, the [BANK]'s risk-based capital requirement for the hedged exposure is the greater of:

(A) The risk-based capital requirement for the exposure as calculated under § ____.131, with the LGD of the exposure adjusted to reflect the guarantee or credit derivative; or

(B) The risk-based capital requirement for a direct exposure to the protection provider as calculated under § ____.131, using the PD for the protection provider, the LGD for the guarantee or credit derivative, and an EAD equal to the EAD of the hedged exposure.

(ii) *Partial coverage.* If an eligible guarantee or eligible credit derivative meets the conditions in paragraphs (a) and (b) of this section and the protection amount (P) of the guarantee or credit derivative is less than the EAD of the hedged exposure, the [BANK] must treat the hedged exposure as two separate exposures (protected and unprotected) in order to recognize the credit risk mitigation benefit of the guarantee or credit derivative.

(A) The [BANK]'s risk-based capital requirement for the protected exposure would be the greater of:

(*1*) The risk-based capital requirement for the protected exposure as calculated under § ____.131, with the LGD of the exposure adjusted to reflect the guarantee or credit derivative and EAD set equal to P; or

(*2*) The risk-based capital requirement for a direct exposure to the guarantor as calculated under § ____.131, using the PD for the protection provider, the LGD for the guarantee or credit derivative, and an EAD set equal to P.

(B) The [BANK] must calculate its risk-based capital requirement for the unprotected exposure under § ____.131, where PD is the obligor's PD, LGD is the hedged exposure's LGD (not adjusted to reflect the guarantee or credit derivative), and EAD is the EAD of the original hedged exposure minus P.

(3) *M of hedged exposures.* The M of the hedged exposure is the same as the M of the exposure if it were unhedged.

(d) *Maturity mismatch.* (1) A [BANK] that recognizes an eligible guarantee or eligible credit derivative in determining its risk-based capital requirement for a hedged exposure must adjust the effective notional amount of the credit risk mitigant to reflect any maturity mismatch between the hedged exposure and the credit risk mitigant.

(2) A maturity mismatch occurs when the residual maturity of a credit risk mitigant is less than that of the hedged exposure(s).

(3) The residual maturity of a hedged exposure is the longest possible remaining time before the obligor is scheduled to fulfil its obligation on the exposure. If a credit risk mitigant has embedded options that may reduce its term, the [BANK] (protection purchaser) must use the shortest possible residual

maturity for the credit risk mitigant. If a call is at the discretion of the protection provider, the residual maturity of the credit risk mitigant is at the first call date. If the call is at the discretion of the [BANK] (protection purchaser), but the terms of the arrangement at origination of the credit risk mitigant contain a positive incentive for the [BANK] to call the transaction before contractual maturity, the remaining time to the first call date is the residual maturity of the credit risk mitigant.[4]

(4) A credit risk mitigant with a maturity mismatch may be recognized only if its original maturity is greater than or equal to one year and its residual maturity is greater than three months.

(5) When a maturity mismatch exists, the [BANK] must apply the following adjustment to the effective notional amount of the credit risk mitigant: $P_m = E \times (t - 0.25)/(T - 0.25)$, where:

(i) P_m = effective notional amount of the credit risk mitigant, adjusted for maturity mismatch;

(ii) E = effective notional amount of the credit risk mitigant;

(iii) t = the lesser of T or the residual maturity of the credit risk mitigant, expressed in years; and

(iv) T = the lesser of five or the residual maturity of the hedged exposure, expressed in years.

(e) *Credit derivatives without restructuring as a credit event.* If a [BANK] recognizes an eligible credit derivative that does not include as a credit event a restructuring of the hedged exposure involving forgiveness or postponement of principal, interest, or fees that results in a credit loss event (that is, a charge-off, specific provision, or other similar debit to the profit and loss account), the [BANK] must apply the following adjustment to the effective notional amount of the credit derivative: $P_r = P_m \times 0.60$, where:

(1) P_r = effective notional amount of the credit risk mitigant, adjusted for lack of restructuring event (and maturity mismatch, if applicable); and

(2) P_m = effective notional amount of the credit risk mitigant adjusted for maturity mismatch (if applicable).

(f) *Currency mismatch.* (1) If a [BANK] recognizes an eligible guarantee or eligible credit derivative that is denominated in a currency different from that in which the hedged exposure is denominated, the [BANK] must apply the following formula to the effective notional amount of the guarantee or credit derivative: $P_c = P_r \times (1 - H_{FX})$, where:

(i) P_c = effective notional amount of the credit risk mitigant, adjusted for currency mismatch (and maturity mismatch and lack of restructuring event, if applicable);

(ii) P_r = effective notional amount of the credit risk mitigant (adjusted for maturity mismatch and lack of restructuring event, if applicable); and

(iii) H_{FX} = haircut appropriate for the currency mismatch between the credit risk mitigant and the hedged exposure.

(2) A [BANK] must set H_{FX} equal to 8 percent unless it qualifies for the use of and uses its own internal estimates of foreign exchange volatility based on a ten-business-day holding period and daily marking-to-market and remargining. A [BANK] qualifies for the use of its own internal estimates of foreign exchange volatility if it qualifies for:

(i) The own-estimates haircuts in § ____.132(b)(2)(iii);

(ii) The simple VaR methodology in § ____.132(b)(3); or

(iii) The internal models methodology in § ____.132(d).

(3) A [BANK] must adjust H_{FX} calculated in paragraph (f)(2) of this section upward if the [BANK] revalues the guarantee or credit derivative less frequently than once every ten business days using the square root of time formula provided in § ____.132(b)(2)(iii)(A)(*2*).

§ ____.135 Guarantees and credit derivatives: Double default treatment.

(a) *Eligibility and operational criteria for double default treatment.* A [BANK] may recognize the credit risk mitigation benefits of a guarantee or credit derivative covering an exposure described in § ____.134(a)(1) by applying the double default treatment in this section if all the following criteria are satisfied:

(1) The hedged exposure is fully covered or covered on a pro rata basis by:

(i) An eligible guarantee issued by an eligible double default guarantor; or

(ii) An eligible credit derivative that meets the requirements of § ____.134(b)(2) and that is issued by an eligible double default guarantor.

(2) The guarantee or credit derivative is:

(i) An uncollateralized guarantee or uncollateralized credit derivative (for example, a credit default swap) that provides protection with respect to a single reference obligor; or

(ii) An n^{th}-to-default credit derivative (subject to the requirements of § ____.142(m).

(3) The hedged exposure is a wholesale exposure (other than a sovereign exposure).

(4) The obligor of the hedged exposure is not:

(i) An eligible double default guarantor or an affiliate of an eligible double default guarantor; or

(ii) An affiliate of the guarantor.

(5) The [BANK] does not recognize any credit risk mitigation benefits of the guarantee or credit derivative for the hedged exposure other than through application of the double default treatment as provided in this section.

(6) The [BANK] has implemented a process (which has received the prior, written approval of the [AGENCY]) to detect excessive correlation between the creditworthiness of the obligor of the hedged exposure and the protection provider. If excessive correlation is present, the [BANK] may not use the double default treatment for the hedged exposure.

(b) *Full coverage.* If the transaction meets the criteria in paragraph (a) of this section.and the protection amount (P) of the guarantee or credit derivative is at least equal to the EAD of the hedged exposure, the [BANK] may determine its risk-weighted asset amount for the hedged exposure under paragraph (e) of this section.

(c) *Partial coverage.* If the transaction meets the criteria in paragraph (a) of this section and the protection amount (P) of the guarantee or credit derivative is less than the EAD of the hedged exposure, the [BANK] must treat the hedged exposure as two separate exposures (protected and unprotected) in order to recognize double default treatment on the protected portion of the exposure.

(1) For the protected exposure, the [BANK] must set EAD equal to P and calculate its risk-weighted asset amount as provided in paragraph (e) of this section.

(2) For the unprotected exposure, the [BANK] must set EAD equal to the EAD of the original exposure minus P and then calculate its risk-weighted asset amount as provided in § ____.131.

(d) *Mismatches.* For any hedged exposure to which a [BANK] applies double default treatment, the [BANK] must make applicable adjustments to the protection amount as required in § ____.134(d), (e), and (f).

(e) *The double default dollar risk-based capital requirement.* The dollar risk-based capital requirement for a hedged exposure to which a [BANK] has applied double default treatment is K_{DD} multiplied by the EAD of the exposure. K_{DD} is calculated according to the following formula: $K_{DD} = K_o \times (0.15 + 160 \times PD_g)$,

[4] For example, where there is a step-up in cost in conjunction with a call feature or where the effective cost of protection increases over time even if credit quality remains the same or improves, the residual maturity of the credit risk mitigant will be the remaining time to the first call.

Where:

(1)

$$K_O = LGD_g \times \left[N\left(\frac{N^{-1}(PD_o) + N^{-1}(0.999)\sqrt{\rho_{os}}}{\sqrt{1-\rho_{os}}} \right) - PD_o \right] \times \left[\frac{1+(M-2.5)\times b}{1-1.5\times b} \right]$$

(2) PD_g = PD of the protection provider.

(3) PD_o = PD of the obligor of the hedged exposure.

(4) LGD_g = (i) The lower of the LGD of the hedged exposure (not adjusted to reflect the guarantee or credit derivative) and the LGD of the guarantee or credit derivative, if the guarantee or credit derivative provides the [BANK] with the option to receive immediate payout on triggering the protection; or

(ii) The LGD of the guarantee or credit derivative, if the guarantee or credit derivative does not provide the [BANK] with the option to receive immediate payout on triggering the protection.

(5) ρ_{os} (asset value correlation of the obligor) is calculated according to the appropriate formula for (R) provided in Table 1 in § ____.131, with PD equal to PD_o.

(6) b (maturity adjustment coefficient) is calculated according to the formula for b provided in Table 1 in § ____.131, with PD equal to the lesser of PD_o and PD_g.

(7) M (maturity) is the effective maturity of the guarantee or credit derivative, which may not be less than one year or greater than five years.

§ ____.136 Unsettled transactions.

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

(1) Delivery-versus-payment (DvP) transaction means a securities or commodities transaction in which the buyer is obligated to make payment only if the seller has made delivery of the securities or commodities and the seller is obligated to deliver the securities or commodities only if the buyer has made payment.

(2) Payment-versus-payment (PvP) transaction means a foreign exchange transaction in which each counterparty is obligated to make a final transfer of one or more currencies only if the other counterparty has made a final transfer of one or more currencies.

(3) Normal settlement period. A transaction has a normal settlement period if the contractual settlement period for the transaction is equal to or less than the market standard for the instrument underlying the transaction and equal to or less than five business days.

(4) Positive current exposure. The positive current exposure of a [BANK] for a transaction is the difference between the transaction value at the agreed settlement price and the current market price of the transaction, if the difference results in a credit exposure of the [BANK] to the counterparty.

(b) *Scope.* This section applies to all transactions involving securities, foreign exchange instruments, and commodities that have a risk of delayed settlement or delivery. This section does not apply to:

(1) Cleared transactions that are subject to daily marking-to-market and daily receipt and payment of variation margin;

(2) Repo-style transactions, including unsettled repo-style transactions (which are addressed in §§ ____.131 and 132);

(3) One-way cash payments on OTC derivative contracts (which are addressed in §§ ____.131 and 132); or

(4) Transactions with a contractual settlement period that is longer than the normal settlement period (which are treated as OTC derivative contracts and addressed in §§ ____.131 and 132).

(c) *System-wide failures.* In the case of a system-wide failure of a settlement or clearing system, or a central counterparty, the [AGENCY] may waive risk-based capital requirements for unsettled and failed transactions until the situation is rectified.

(d) *Delivery-versus-payment (DvP) and payment-versus-payment (PvP) transactions.* A [BANK] must hold risk-based capital against any DvP or PvP transaction with a normal settlement period if the [BANK]'s counterparty has not made delivery or payment within five business days after the settlement date. The [BANK] must determine its risk-weighted asset amount for such a transaction by multiplying the positive current exposure of the transaction for the [BANK] by the appropriate risk weight in Table 5.

TABLE 5—RISK WEIGHTS FOR UNSETTLED DVP AND PVP TRANSACTIONS

Number of business days after contractual settlement date	Risk weight to be applied to positive current exposure (in percent)
From 5 to 15	100
From 16 to 30	625
From 31 to 45	937.5
46 or more	1,250

(e) *Non-DvP/non-PvP (non-delivery-versus-payment/non-payment-versus-payment) transactions.* (1) A [BANK] must hold risk-based capital against any non-DvP/non-PvP transaction with a normal settlement period if the [BANK] has delivered cash, securities, commodities, or currencies to its counterparty but has not received its corresponding deliverables by the end of the same business day. The [BANK] must continue to hold risk-based capital against the transaction until the [BANK] has received its corresponding deliverables.

(2) From the business day after the [BANK] has made its delivery until five business days after the counterparty delivery is due, the [BANK] must calculate its risk-based capital requirement for the transaction by treating the current market value of the deliverables owed to the [BANK] as a wholesale exposure.

(i) A [BANK] may use a 45 percent LGD for the transaction rather than estimating LGD for the transaction provided the [BANK] uses the 45 percent LGD for all transactions described in § ____.135(e)(1) and (e)(2).

(ii) A [BANK] may use a 100 percent risk weight for the transaction provided the [BANK] uses this risk weight for all transactions described in sections 135(e)(1) and (e)(2).

(3) If the [BANK] has not received its deliverables by the fifth business day after the counterparty delivery was due, the [BANK] must apply a 1,250 percent risk weight to the current market value of the deliverables owed to the [BANK].

(f) *Total risk-weighted assets for unsettled transactions.* Total risk-weighted assets for unsettled transactions is the sum of the risk-weighted asset amounts of all DvP, PvP, and non-DvP/non-PvP transactions.

RISK-WEIGHTED ASSETS FOR SECURITIZATION EXPOSURES

§ ____.141 Operational criteria for recognizing the transfer of risk.

(a) *Operational criteria for traditional securitizations.* A [BANK] that transfers exposures it has originated or purchased to a securitization SPE or other third party in connection with a traditional securitization may exclude the exposures from the calculation of its risk-weighted assets only if each of the conditions in this paragraph (a) is satisfied. A [BANK] that meets these conditions must hold risk-based capital against any securitization exposures it retains in connection with the securitization. A [BANK] that fails to meet these conditions must hold risk-based capital against the transferred exposures as if they had not been securitized and must deduct from common equity tier 1 capital any after-tax gain-on-sale resulting from the transaction. The conditions are:

(1) The exposures are not reported on the [BANK]'s balance sheet under GAAP;

(2) The [BANK] has transferred to third parties credit risk associated with the underlying exposures;

(3) Any clean-up calls relating to the securitization are eligible clean-up calls; and

(4) The securitization does not:

(i) Include one or more underlying exposures in which the borrower is permitted to vary the drawn amount within an agreed limit under a line of credit; and

(ii) Contain an early amortization provision.

(b) *Operational criteria for synthetic securitizations.* For synthetic securitizations, a [BANK] may recognize for risk-based capital purposes the use of a credit risk mitigant to hedge underlying exposures only if each of the conditions in this section is satisfied. A [BANK] that meets these conditions must hold risk-based capital against any credit risk of the exposures it retains in connection with the synthetic securitization. A [BANK] that fails to meet these conditions must hold risk-based capital against the underlying exposures as if they had not been synthetically securitized. The conditions are:

(1) The credit risk mitigant is financial collateral, an eligible credit derivative from an eligible guarantor or an eligible guarantee from an eligible guarantor;

(2) The [BANK] transfers credit risk associated with the underlying exposures to third parties, and the terms and conditions in the credit risk mitigants employed do not include provisions that:

(i) Allow for the termination of the credit protection due to deterioration in the credit quality of the underlying exposures;

(ii) Require the [BANK] to alter or replace the underlying exposures to improve the credit quality of the pool of underlying exposures;

(iii) Increase the [BANK]'s cost of credit protection in response to deterioration in the credit quality of the underlying exposures;

(iv) Increase the yield payable to parties other than the [BANK] in response to a deterioration in the credit quality of the underlying exposures; or

(v) Provide for increases in a retained first loss position or credit enhancement provided by the [BANK] after the inception of the securitization;

(3) The [BANK] obtains a well-reasoned opinion from legal counsel that confirms the enforceability of the credit risk mitigant in all relevant jurisdictions; and

(4) Any clean-up calls relating to the securitization are eligible clean-up calls.

(c) *Due diligence requirements for securitization exposures.* (1) Except for exposures that are deducted from common equity tier 1 capital and exposures subject to § ____.142(k), if a [BANK] is unable to demonstrate to the satisfaction of the [AGENCY] a comprehensive understanding of a feature of a securitization exposure that would materially affect the performance of the position, the [BANK] must assign a 1,250 percent risk weight to the securitization exposure. The [BANK]'s analysis must be commensurate with the complexity of the securitization exposure and the materiality of the position in relation to capital.

(2) A [BANK] must demonstrate its comprehensive understanding of a securitization exposure under paragraph (c)(1) of this section, for each securitization exposure by:

(i) Conduct an analysis of the risk characteristics of a securitization exposure prior to acquiring the exposure and document such analysis within three business days after acquiring the exposure, considering:

(A) Structural features of the securitization that would materially impact the performance of the exposure, for example, the contractual cash flow waterfall, waterfall-related triggers, credit enhancements, liquidity enhancements, market value triggers, the performance of organizations that service the position, and deal-specific definitions of default;

(B) Relevant information regarding the performance of the underlying credit exposure(s), for example, the percentage of loans 30, 60, and 90 days past due; default rates; prepayment rates; loans in foreclosure; property types; occupancy; average credit score or other measures of creditworthiness; average loan-to-value ratio; and industry and geographic diversification data on the underlying exposure(s);

(C) Relevant market data of the securitization, for example, bid-ask spreads, most recent sales price and historical price volatility, trading volume, implied market rating, and size, depth and concentration level of the market for the securitization; and

(D) For resecuritization exposures—

(*1*) Performance information on the underlying securitization exposures, for example, the issuer name and credit quality, and the characteristics and performance of the exposures underlying the securitization exposures; and

(*2*) On an on-going basis (no less frequently than quarterly), evaluate, review, and update as appropriate the analysis required under this section for each securitization exposure.

§ ____.142 Risk-weighted assets for securitization exposures.

(a) *Hierarchy of approaches.* Except as provided elsewhere in this section and in § ____.141:

(1) A [BANK] must deduct from common equity tier 1 capital any after-tax gain-on-sale resulting from a securitization and must apply a 1,250 percent risk weight to the portion of any CEIO that does not constitute after tax gain-on-sale.

(2) If a securitization exposure does not require deduction or a 1,250 percent risk weight under paragraph (a)(1) of this section, the [BANK] must apply the supervisory formula approach in § ____.143 to the exposure if the [BANK] and the exposure qualify for the supervisory formula approach according to § ____.143(a).

(3) If a securitization exposure does not require deduction or a 1,250 percent risk weight under paragraph (a)(1) of this section and does not qualify for the supervisory formula approach, the [BANK] may apply the simplified supervisory formula approach under § ____.144.

(4) If a securitization exposure does not require deduction or a 1,250 percent risk weight under paragraph (a)(1) of this section, does not qualify for the supervisory formula approach, and the [BANK] does not apply the simplified supervisory formula approach, the

[BANK] must apply a 1,250 percent risk weight to the exposure.

(5) If a securitization exposure is a derivative contract (other than a credit derivative) that has a first priority claim on the cash flows from the underlying exposures (notwithstanding amounts due under interest rate or currency derivative contracts, fees due, or other similar payments), with approval of the [AGENCY], a [BANK] may choose to set the risk-weighted asset amount of the exposure equal to the amount of the exposure as determined in paragraph (e) of this section rather than apply the hierarchy of approaches described in paragraphs (a)(1) through (4) of this section.

(b) *Total risk-weighted assets for securitization exposures.* A [BANK]'s total risk-weighted assets for securitization exposures is equal to the sum of its risk-weighted assets calculated using §§ ____.142 through 146.

(c) *Deductions.* A [BANK] may calculate any deduction from common equity tier 1 capital for a securitization exposure net of any DTLs associated with the securitization exposure.

(d) *Maximum risk-based capital requirement.* Except as provided in § ____.141(c), unless one or more underlying exposures does not meet the definition of a wholesale, retail, securitization, or equity exposure, the total risk-based capital requirement for all securitization exposures held by a single [BANK] associated with a single securitization (excluding any risk-based capital requirements that relate to the [BANK]'s gain-on-sale or CEIOs associated with the securitization) may not exceed the sum of:

(1) The [BANK]'s total risk-based capital requirement for the underlying exposures calculated under this subpart as if the [BANK] directly held the underlying exposures; and

(2) The total ECL of the underlying exposures calculated under this subpart.

(e) *Amount of a securitization exposure.* (1) The amount of an on-balance sheet securitization exposure that is not a repo-style transaction, eligible margin loan, or OTC derivative contract (other than a credit derivative) is the [BANK]'s carrying value.

(2) The amount of an off-balance sheet securitization exposure that is not an OTC derivative contract or cleared transaction (other than a credit derivative) is the notional amount of the exposure. For an off-balance-sheet securitization exposure to an ABCP program, such as an eligible ABCP liquidity facility, the notional amount may be reduced to the maximum potential amount that the [BANK] could be required to fund given the ABCP program's current underlying assets (calculated without regard to the current credit quality of those assets).

(3) The amount of a securitization exposure that is a repo-style transaction, eligible margin loan, or OTC derivative contract or cleared transaction (other than a credit derivative) is the EAD of the exposure as calculated in § ____.132 or § ____.133.

(f) *Overlapping exposures.* If a [BANK] has multiple securitization exposures that provide duplicative coverage of the underlying exposures of a securitization (such as when a [BANK] provides a program-wide credit enhancement and multiple pool-specific liquidity facilities to an ABCP program), the [BANK] is not required to hold duplicative risk-based capital against the overlapping position. Instead, the [BANK] may assign to the overlapping securitization exposure the applicable risk-based capital treatment that results in the highest risk-based capital requirement.

(g) *Securitizations of non-IRB exposures.* Except as provided in § ____.141(c), if a [BANK] has a securitization exposure where any underlying exposure is not a wholesale exposure, retail exposure, securitization exposure, or equity exposure, the [BANK]:

(1) Must deduct from common equity tier 1 capital any after-tax gain-on-sale resulting from the securitization and apply a 1,250 percent risk weight to the portion of any CEIO that does not constitute gain-on-sale, if the [BANK] is an originating [BANK];

(2) May apply the simplified supervisory formula approach in § ____.144 to the exposure, if the securitization exposure does not require deduction or a 1,250 percent risk weight under paragraph (g)(1) of this section;

(3) Must assign a 1,250 percent risk weight to the exposure if the securitization exposure does not require deduction or a 1,250 percent risk weight under paragraph (g)(1) of this section, does not qualify for the supervisory formula approach, and the [BANK] does not apply the simplified supervisory formula approach to the exposure.

(h) *Implicit support.* If a [BANK] provides support to a securitization in excess of the [BANK]'s contractual obligation to provide credit support to the securitization (implicit support):

(1) The [BANK] must calculate a risk-weighted asset amount for underlying exposures associated with the securitization as if the exposures had not been securitized and must deduct from common equity tier 1 capital any after-tax gain-on-sale resulting from the securitization; and

(2) The [BANK] must disclose publicly:

(i) That it has provided implicit support to the securitization; and

(ii) The regulatory capital impact to the [BANK] of providing such implicit support.

(i) *Eligible servicer cash advance facilities.* Regardless of any other provisions of subpart E, a [BANK] is not required to hold risk-based capital against the undrawn portion of an eligible servicer cash advance facility.

(j) *Interest-only mortgage-backed securities.* Except as provided in § ____.141(c), the risk weight for a non-credit-enhancing interest-only mortgage-backed security may not be less than 100 percent.

(k) *Small-business loans and leases on personal property transferred with recourse.* (1) Notwithstanding any other provisions of this subpart E, a [BANK] that has transferred small-business loans and leases on personal property (small-business obligations) with recourse must include in risk-weighted assets only the contractual amount of retained recourse if all the following conditions are met:

(i) The transaction is a sale under GAAP.

(ii) The [BANK] establishes and maintains, pursuant to GAAP, a non-capital reserve sufficient to meet the [BANK]'s reasonably estimated liability under the recourse arrangement.

(iii) The loans and leases are to businesses that meet the criteria for a small-business concern established by the Small Business Administration under section 3(a) of the Small Business Act.

(iv) The [BANK] is well capitalized, as defined in[the [AGENCY]'s [prompt corrective action regulation]—12 CFR part 6 (for national banks), 12 CFR part 208, subpart D (for state member banks or bank holding companies), 12 CFR part 325, subpart B (for state nonmember banks), and 12 CFR part 165 (for savings associations)]. For purposes of determining whether a [BANK] is well capitalized for purposes of this paragraph, the [BANK]'s capital ratios must be calculated without regard to the capital treatment for transfers of small-business obligations with recourse specified in paragraph (k)(1) of this section.

(2) The total outstanding amount of recourse retained by a [BANK] on transfers of small-business obligations receiving the capital treatment specified in paragraph (k)(1) of this section cannot exceed 15 percent of the [BANK]'s total capital.

(3) If a [BANK] ceases to be well capitalized or exceeds the 15 percent capital limitation, the preferential capital treatment specified in paragraph (k)(1) of this section will continue to apply to any transfers of small-business obligations with recourse that occurred during the time that the [BANK] was well capitalized and did not exceed the capital limit.

(4) The risk-based capital ratios of the [BANK] must be calculated without regard to the capital treatment for transfers of small-business obligations with recourse specified in paragraph (k)(1) of this section .

(l) *Nth-to-default credit derivatives.* (1) *Protection provider.* A [BANK] must determine a risk weight using the SFA or the SSFA for an nth-to-default credit derivative in accordance with this paragraph. In the case of credit protection sold, a [BANK] must determine its exposure in the nth-to-default credit derivative as the largest notional dollar amount of all the underlying exposures

(2) For purposes of determining the risk weight for an nth-to-default credit derivative using the SFA or the SSFA, the [BANK] must calculate the attachment point and detachment point of its exposure as follows:

(i) The attachment point (parameter A) is the ratio of the sum of the notional amounts of all underlying exposures that are subordinated to the [BANK]'s exposure to the total notional amount of all underlying exposures. For purposes of using the SFA to calculate the risk weight for its exposure in an nth-to-default credit derivative, parameter A must be set equal to the credit enhancement level (L) input to the SFA formula. In the case of a first-to-default credit derivative, there are no underlying exposures that are subordinated to the [BANK]'s exposure. In the case of a second-or-subsequent-to-default credit derivative, the smallest (n-1) risk-weighted asset amounts of the underlying exposure(s) are subordinated to the [BANK]'s exposure.

(ii) The detachment point (parameter D) equals the sum of parameter A plus the ratio of the notional amount of the [BANK]'s exposure in the nth-to-default credit derivative to the total notional amount of all underlying exposures. For purposes of using the SFA to calculate the risk weight for its exposure in an nth-to-default credit derivative, parameter D must be set to equal L plus the thickness of tranche T input to the SFA formula.

(3) A [BANK] that does not use the SFA or the SSFA to determine a risk weight for its exposure in an nth-to-default credit derivative must assign a risk weight of 1,250 percent to the exposure.

(4) *Protection purchaser.* (i) *First-to-default credit derivatives.* A [BANK] that obtains credit protection on a group of underlying exposures through a first-to-default credit derivative that meets the rules of recognition of § ____.134(b) must determine its risk-based capital requirement for the underlying exposures as if the [BANK] synthetically securitized the underlying exposure with the lowest risk-based capital requirement and had obtained no credit risk mitigant on the other underlying exposures. A [BANK] must calculate a risk-based capital requirement for counterparty credit risk according to § ____.132 for a first-to-default credit derivative that does not meet the rules of recognition of § ____.134(b).

(ii) *Second-or-subsequent-to-default credit derivatives.* (A) A [BANK] that obtains credit protection on a group of underlying exposures through a nth -to-default credit derivative that meets the rules of recognition of § ____.134(b) (other than a first-to-default credit derivative) may recognize the credit risk mitigation benefits of the derivative only if:

(*1*) The [BANK] also has obtained credit protection on the same underlying exposures in the form of first-through-(n-1)-to-default credit derivatives; or

(*2*) If n-1 of the underlying exposures have already defaulted.

(B) If a [BANK] satisfies the requirements of paragraph (l)(3)(ii)(A) of this section, the [BANK] must determine its risk-based capital requirement for the underlying exposures as if the bank had only synthetically securitized the underlying exposure with the nth lowest risk-based capital requirement and had obtained no credit risk mitigant on the other underlying exposures.

(C) A [BANK] must calculate a risk-based capital requirement for counterparty credit risk according to § ____.132 for a nth-to-default credit derivative that does not meet the rules of recognition of § ____.134(b).

(m) *Guarantees and credit derivatives other than nth-to-default credit derivatives.* (1) *Protection provider.* For a guarantee or credit derivative (other than an nth-to-default credit derivative) provided by a [BANK] that covers the full amount or a pro rata share of a securitization exposure's principal and interest, the [BANK] must risk weight the guarantee or credit derivative as if it holds the portion of the reference exposure covered by the guarantee or credit derivative.

(2) *Protection purchaser.* (i) If a [BANK] chooses (and is able) to recognize a guarantee or credit derivative (other than an nth-to-default credit derivative) that references a securitization exposure as a credit risk mitigant, where applicable, the [BANK] must apply § ____.145.

(ii) If a [BANK] cannot, or chooses not to, recognize a credit derivative that references a securitization exposure as a credit risk mitigant under § ____.145, the [BANK] must determine its capital requirement only for counterparty credit risk in accordance with § ____.131.

§ ____.143 Supervisory formula approach (SFA).

(a) *Eligibility requirements.* A [BANK] must use the SFA to determine its risk-weighted asset amount for a securitization exposure if the [BANK] can calculate on an ongoing basis each of the SFA parameters in paragraph (e) of this section.

(b) *Mechanics.* The risk-weighted asset amount for the securitization exposure equals the SFA risk-based capital requirement for the exposure multiplied by 12.5.

(c) *The SFA risk-based capital requirement.* (1) If K_{IRB} is greater than or equal to L + T, the capital requirement equals the exposure amount.

(2) If K_{IRB} is less than or equal to L, the exposure's SFA risk-based capital requirement is UE multiplied by TP multiplied by the greater of:

(i) $F \times T$ (where F is 0.016 for all securitization exposures); or

(ii) $S[L + + T] - S[L]$.

(3) If K_{IRB} is greater than L and less than L + T, the [BANK] must apply a 1,250 percent risk weight to an amount equal to $UE * TP * (K_{IRB} - L)$, and the exposure's SFA risk-based capital requirement is UE multiplied by TP multiplied by the greater of:

(i) $F \times (T - (K_{IRB} - L)$ (where F is 0.016for all other securitization exposures); or

(ii) $S[L + + T] - S[K_{IRB}]$.

(d) *The supervisory formula:*

$$(1)\ S[Y]=\begin{cases} Y & \text{when } Y \le K_{IRB} \\ K_{IRB}+K[Y]-K[K_{IRB}]+\dfrac{d\cdot K_{IRB}}{20}(1-e^{\frac{20\cdot(K_{IRB}-Y)}{K_{IRB}}}) & \text{when } Y > K_{IRB} \end{cases}$$

$$(2)\ K[Y]=(1-h)\cdot\left[(1-\beta[Y;a,b])\cdot Y+\beta[Y;a+1,b]\cdot c\right]$$

$$(3)\ h=\left(1-\frac{K_{IRB}}{EWALGD}\right)^{N}$$

$$(4)\ a = g \cdot c$$

$$(5)\ b = g\cdot(1-c)$$

$$(6)\ c=\frac{K_{IRB}}{1-h}$$

$$(7)\ g=\frac{(1-c)\cdot c}{f}-1$$

$$(8)\ f=\frac{v+K_{IRB}^{\ 2}}{1-h}-c^{2}+\frac{(1-K_{IRB})\cdot K_{IRB}-v}{(1-h)\cdot 1000}$$

$$(9)\ v=K_{IRB}\cdot\frac{(EWALGD-K_{IRB})+.25\cdot(1-EWALGD)}{N}$$

$$(10)\ d=1-(1-h)\cdot(1-\beta[K_{IRB};a,b]).$$

(11) In these expressions, β[Y; a, b] refers to the cumulative beta distribution with parameters a and b evaluated at Y. In the case where N = 1 and EWALGD = 100 percent, S[Y] in formula (1) must be calculated with K[Y] set equal to the product of K_{IRB} and Y, and d set equal to 1 − K_{IRB}.

(e) *SFA parameters.* (1) *Amount of the underlying exposures (UE).* UE is the EAD of any underlying exposures that are wholesale and retail exposures (including the amount of any funded spread accounts, cash collateral accounts, and other similar funded credit enhancements) plus the amount of any underlying exposures that are securitization exposures (as defined in § ____.142(e)) plus the adjusted carrying value of any underlying exposures that are equity exposures (as defined in § ____.151(b)).

(2) *Tranche percentage (TP).* TP is the ratio of the amount of the [BANK]'s securitization exposure to the amount of the tranche that contains the securitization exposure.

(3) *Capital requirement on underlying exposures (K_{IRB}).*

(i) K_{IRB} is the ratio of:

(A) The sum of the risk-based capital requirements for the underlying exposures plus the expected credit losses of the underlying exposures (as determined under this subpart E as if the underlying exposures were directly held by the [BANK]); to

(B) UE.

(ii) The calculation of K_{IRB} must reflect the effects of any credit risk mitigant applied to the underlying exposures (either to an individual underlying exposure, to a group of underlying exposures, or to the entire pool of underlying exposures).

(iii) All assets related to the securitization are treated as underlying exposures, including assets in a reserve account (such as a cash collateral account).

(4) *Credit enhancement level (L).* (i) L is the ratio of:

(A) The amount of all securitization exposures subordinated to the tranche that contains the [BANK]'s securitization exposure; to

(B) UE.

(ii) A [BANK] must determine L before considering the effects of any tranche-specific credit enhancements.

(iii) Any gain-on-sale or CEIO associated with the securitization may not be included in L.

(iv) Any reserve account funded by accumulated cash flows from the underlying exposures that is subordinated to the tranche that contains the [BANK]'s securitization exposure may be included in the numerator and denominator of L to the extent cash has accumulated in the account. Unfunded reserve accounts (that is, reserve accounts that are to be funded from future cash flows from the underlying exposures) may not be included in the calculation of L.

(v) In some cases, the purchase price of receivables will reflect a discount that provides credit enhancement (for example, first loss protection) for all or certain tranches of the securitization.

When this arises, L should be calculated inclusive of this discount if the discount provides credit enhancement for the securitization exposure.

(5) *Thickness of tranche (T).* T is the ratio of:

(i) The amount of the tranche that contains the [BANK]'s securitization exposure; to

(ii) UE.

(6) *Effective number of exposures (N).* (i) Unless the [BANK] elects to use the formula provided in paragraph (f) of this section,

$$N = \frac{\left(\sum_i EAD_i\right)^2}{\sum_i EAD_i^2}$$

where EAD_i represents the EAD associated with the i^{th} instrument in the pool of underlying exposures.

(ii) Multiple exposures to one obligor must be treated as a single underlying exposure.

(iii) In the case of a re-securitization, the [BANK] must treat each underlying exposure as a single underlying exposure and must not look through to the originally securitized underlying exposures.

(7) *Exposure-weighted average loss given default (EWALGD).* EWALGD is calculated as:

$$EWALGD = \frac{\sum_i LGD_i \cdot EAD_i}{\sum_i EAD_i}$$

where LGD_i represents the average LGD associated with all exposures to the i^{th} obligor. In the case of a re-securitization, an LGD of 100 percent must be assumed for the underlying exposures that are themselves securitization exposures.

(f) *Simplified method for computing N and EWALGD.* (1) If all underlying exposures of a securitization are retail exposures, a [BANK] may apply the SFA using the following simplifications:

(i) h = 0; and

(ii) v = 0.

(2) Under the conditions in sections 143(f)(3) and (f)(4), a [BANK] may employ a simplified method for calculating N and EWALGD.

(3) If C_1 is no more than 0.03, a [BANK] may set EWALGD = 0.50 if none of the underlying exposures is a securitization exposure, or may set EWALGD = 1 if one or more of the underlying exposures is a securitization exposure, and may set N equal to the following amount:

$$N = \frac{1}{C_1 C_m + \left(\frac{C_m - C_1}{m-1}\right)\max(1 - mC_1, 0)}$$

where:

(i) C_m is the ratio of the sum of the amounts of the 'm' largest underlying exposures to UE; and

(ii) The level of m is to be selected by the [BANK].

(4) Alternatively, if only C_1 is available and C_1 is no more than 0.03, the [BANK] may set EWALGD = 0.50 if none of the underlying exposures is a securitization exposure, or may set EWALGD = 1 if one or more of the underlying exposures is a securitization exposure and may set $N = 1/C_1$.

§____.144 Simplified supervisory formula approach (SSFA).

(a) *General requirements.* To use the SSFA to determine the risk weight for a securitization exposure, a [BANK] must have data that enables it to assign accurately the parameters described in paragraph (b) of this section. Data used to assign the parameters described in paragraph (b) of this section must be the most currently available data and no more than 91 calendar days old. A [BANK] that does not have the appropriate data to assign the parameters described in paragraph (b) of this section must assign a risk weight of 1,250 percent to the exposure.

(b) *SSFA parameters.* To calculate the risk weight for a securitization exposure using the SSFA, a [BANK] must have accurate information on the five inputs to the SSFA calculation described and defined, for purposes of this section, in paragraphs (b)(1) through (b)(5) of this section:

(1) K_G is the weighted-average (with unpaid principal used as the weight for each exposure) total capital requirement of the underlying exposures calculated using this subpart. K_G is expressed as a decimal value between zero and 1 (that is, an average risk weight of 100 percent represents a value of K_G equal to .08).

(2) Parameter W is expressed as a decimal value between zero and one. Parameter W is the ratio of the sum of the dollar amounts of any underlying exposures within the securitized pool that meet any of the criteria as set forth in paragraphs (b)(2)(i) through (vi) of this section to the ending balance, measured in dollars, of underlying exposures.

(i) Ninety days or more past due;

(ii) Subject to a bankruptcy or insolvency proceeding;

(iii) In the process of foreclosure;

(iv) Held as real estate owned;

(v) Has contractually deferred interest payments for 90 days or more; or

(vi) Is in default.

(3) Parameter A is the attachment point for the exposure, which represents the threshold at which credit losses will first be allocated to the exposure. Parameter A equals the ratio of the current dollar amount of underlying exposures that are subordinated to the exposure of the [BANK] to the current dollar amount of underlying exposures. Any reserve account funded by the accumulated cash flows from the underlying exposures that is subordinated to the [BANK]'s securitization exposure may be included in the calculation of parameter A to the extent that cash is present in the account. Parameter A is expressed as a decimal value between zero and one.

(4) Parameter D is the detachment point for the exposure, which represents the threshold at which credit losses of principal allocated to the exposure would result in a total loss of principal. Parameter D equals parameter A plus the ratio of the current dollar amount of the securitization exposures that are *pari passu* with the exposure (that is, have equal seniority with respect to credit risk) to the current dollar amount of the underlying exposures. Parameter D is expressed as a decimal value between zero and one.

(5) A supervisory calibration parameter, p, is equal to 0.5 for securitization exposures that are not resecuritization exposures and equal to 1.5 for resecuritization exposures.

(c) *Mechanics of the SSFA.* K_G and W are used to calculate K_A, the augmented value of K_G, which reflects the observed credit quality of the underlying pool of exposures. K_A is defined in paragraph (d) of this section. The values of parameters A and D, relative to K_A determine the risk weight assigned to a securitization exposure as described in paragraph (d) of this section. The risk weight assigned to a securitization exposure, or portion of an exposure, as appropriate, is the larger of the risk weight determined in accordance with this paragraph and paragraph (d) of this section and a risk weight of 20 percent.

(1) When the detachment point, parameter D, for a securitization exposure is less than or equal to K_A, the exposure must be assigned a risk weight of 1,250 percent.

(2) When the attachment point, parameter A, for a securitization exposure is greater than or equal to K_A, the [BANK] must calculate the risk weight in accordance with paragraph (d) of this section.

(3) When A is less than K_A and D is greater than K_A, the risk weight is a weighted-average of 1,250 percent and 1,250 percent times K_{SSFA} calculated in accordance with paragraph (d) of this section, but with the parameter A revised to be set equal to K_A. For the purpose of this weighted-average calculation:

(i) The weight assigned to 1,250 percent equals $\frac{K_A - A}{D - A}$.

(ii) The weight assigned to 1,250 percent times K_{SSFA} equals $\frac{D - K_A}{D - A}$. The risk weight will be set equal to:

$$Risk\ Weight =$$

$$\left[\left(\frac{K_A - A}{D - A}\right) \times 1{,}250\ percent\right] + \left[\left(\frac{D - K_A}{D - A}\right) \times 1{,}250\ percent \times K_{SSFA}\right]$$

(d) SSFA equation. (1) The [BANK] must define the following parameters:

$$K_A = (1 - W) \cdot K_G + (.5 \cdot W)$$

$$a = -\frac{1}{p \cdot K_A}$$

$$u = D - K_A$$

$$l = A - K_A$$

$e = 2.71828$, the base of the natural logarithms.

(2) Then the [BANK] must calculate K_{SSFA} according to the following equation:

$$K_{SSFA} = \frac{e^{a \cdot u} - e^{a \cdot l}}{a(u - l)}$$

(3) The risk weight for the exposure (expressed as a percent) is equal to $K_{SSFA} \times 1{,}250$.

§ ____.145 Recognition of credit risk mitigants for securitization exposures.

(a) *General.* An originating [BANK] that has obtained a credit risk mitigant to hedge its securitization exposure to a synthetic or traditional securitization that satisfies the operational criteria in § ____.141 may recognize the credit risk mitigant, but only as provided in this section. An investing [BANK] that has obtained a credit risk mitigant to hedge a securitization exposure may recognize the credit risk mitigant, but only as provided in this section.

(b) *Collateral.* (1) *Rules of recognition.* A [BANK] may recognize financial collateral in determining the [BANK]'s risk-weighted asset amount for a securitization exposure (other than a repo-style transaction, an eligible margin loan, or an OTC derivative contract for which the [BANK] has reflected collateral in its determination of exposure amount under § ____.132) as follows. The [BANK]'s risk-weighted asset amount for the collateralized securitization exposure is equal to the risk-weighted asset amount for the securitization exposure as calculated under the SSFA in § ____.144 or under the SFA in § ____.143 multiplied by the ratio of adjusted exposure amount (SE*) to original exposure amount (SE), where:

(i) SE* = max {0, [SE − C × (1 − Hs − Hfx)]};

(ii) SE = the amount of the securitization exposure calculated under § ____.142(e);

(iii) C = the current market value of the collateral;

(iv) Hs = the haircut appropriate to the collateral type; and

(v) Hfx = the haircut appropriate for any currency mismatch between the collateral and the exposure.

(2) *Mixed collateral.* Where the collateral is a basket of different asset types or a basket of assets denominated in different currencies, the haircut on the basket will be

$$H = \sum_i a_i H_i \ ,$$

where a_i is the current market value of the asset in the basket divided by the current market value of all assets in the basket and H_i is the haircut applicable to that asset.

(3) *Standard supervisory haircuts.* Unless a [BANK] qualifies for use of and uses own-estimates haircuts in paragraph (b)(4) of this section:

(i) A [BANK] must use the collateral type haircuts (Hs) in Table 2;

(ii) A [BANK] must use a currency mismatch haircut (Hfx) of 8 percent if the exposure and the collateral are denominated in different currencies;

(iii) A [BANK] must multiply the supervisory haircuts obtained in paragraphs (b)(3)(i) and (ii) of this section by the square root of 6.5 (which equals 2.549510); and

(iv) A [BANK] must adjust the supervisory haircuts upward on the basis of a holding period longer than 65 business days where and as appropriate to take into account the illiquidity of the collateral.

(4) *Own estimates for haircuts.* With the prior written approval of the [AGENCY], a [BANK] may calculate haircuts using its own internal estimates of market price volatility and foreign exchange volatility, subject to § ____.132(b)(2)(iii). The minimum holding period (T_M) for securitization exposures is 65 business days.

(c) *Guarantees and credit derivatives.* (1) *Limitations on recognition.* A [BANK] may only recognize an eligible guarantee or eligible credit derivative provided by an eligible guarantor in determining the [BANK]'s risk-weighted asset amount for a securitization exposure.

(2) *ECL for securitization exposures.* When a [BANK] recognizes an eligible guarantee or eligible credit derivative provided by an eligible guarantor in determining the [BANK]'s risk-weighted asset amount for a securitization exposure, the [BANK] must also:

(i) Calculate ECL for the protected portion of the exposure using the same risk parameters that it uses for calculating the risk-weighted asset amount of the exposure as described in paragraph (c)(3) of this section; and

(ii) Add the exposure's ECL to the [BANK]'s total ECL.

(3) *Rules of recognition.* A [BANK] may recognize an eligible guarantee or eligible credit derivative provided by an eligible guarantor in determining the [BANK]'s risk-weighted asset amount for the securitization exposure as follows:

(i) *Full coverage.* If the protection amount of the eligible guarantee or eligible credit derivative equals or exceeds the amount of the securitization exposure, the [BANK] may set the risk-weighted asset amount for the securitization exposure equal to the risk-weighted asset amount for a direct exposure to the eligible guarantor (as determined in the wholesale risk weight function described in § ____.131), using the [BANK]'s PD for the guarantor, the [BANK]'s LGD for the guarantee or credit derivative, and an EAD equal to the amount of the securitization exposure (as determined in § ____.142(e)).

(ii) *Partial coverage.* If the protection amount of the eligible guarantee or eligible credit derivative is less than the amount of the securitization exposure, the [BANK] may set the risk-weighted asset amount for the securitization exposure equal to the sum of:

(A) *Covered portion.* The risk-weighted asset amount for a direct exposure to the eligible guarantor (as determined in the wholesale risk weight function described in § ____.131 of this subpart), using the [BANK]'s PD for the guarantor, the [BANK]'s LGD for the guarantee or credit derivative, and an EAD equal to the protection amount of the credit risk mitigant; and

(B) *Uncovered portion.* (*1*) 1.0 minus the ratio of the protection amount of the eligible guarantee or eligible credit derivative to the amount of the securitization exposure); multiplied by

(*2*) The risk-weighted asset amount for the securitization exposure without the credit risk mitigant (as determined in §§ ____.142 through 146).

(4) *Mismatches.* The [BANK] must make applicable adjustments to the protection amount as required in § ____.134(d), (e), and (f) for any hedged securitization exposure and any more senior securitization exposure that benefits from the hedge. In the context of a synthetic securitization, when an eligible guarantee or eligible credit derivative covers multiple hedged exposures that have different residual maturities, the [BANK] must use the longest residual maturity of any of the hedged exposures as the residual maturity of all the hedged exposures.

Risk-Weighted Assets for Equity Exposures

§ ____.151 Introduction and exposure measurement.

(a) *General.* To calculate its risk-weighted asset amounts for equity exposures that are not equity exposures to investment funds, a [BANK] may apply either the Simple Risk Weight Approach (SRWA) in § ____.152 or, if it qualifies to do so, the Internal Models Approach (IMA) in § ____.153. A [BANK] must use the look-through approaches in § ____.154 to calculate its risk-weighted asset amounts for equity exposures to investment funds.

(b) *Adjusted carrying value.* For purposes of this [PART], the adjusted carrying value of an equity exposure is:

(1) For the on-balance sheet component of an equity exposure, the [BANK]'s carrying value of the exposure; and

(2) For the off-balance sheet component of an equity exposure, the effective notional principal amount of the exposure, the size of which is equivalent to a hypothetical on-balance sheet position in the underlying equity instrument that would evidence the same change in fair value (measured in dollars) for a given small change in the price of the underlying equity instrument, minus the adjusted carrying value of the on-balance sheet component of the exposure as calculated in paragraph (b)(1) of this section. For unfunded equity commitments that are unconditional, the effective notional principal amount is the notional amount of the commitment. For unfunded equity commitments that are conditional, the effective notional principal amount is the [BANK]'s best estimate of the amount that would be funded under economic downturn conditions.

§ ____.152 Simple risk weight approach (SRWA).

(a) *General.* Under the SRWA, a [BANK]'s aggregate risk-weighted asset amount for its equity exposures is equal to the sum of the risk-weighted asset amounts for each of the [BANK]'s individual equity exposures (other than equity exposures to an investment fund) as determined in this section and the risk-weighted asset amounts for each of the [BANK]'s individual equity exposures to an investment fund as determined in § ____.154.

(b) *SRWA computation for individual equity exposures.* A [BANK] must determine the risk-weighted asset amount for an individual equity exposure (other than an equity exposure to an investment fund) by multiplying the adjusted carrying value of the equity exposure or the effective portion and ineffective portion of a hedge pair (as defined in paragraph (c) of this section) by the lowest applicable risk weight in this section.

(1) *Zero percent risk weight equity exposures.* An equity exposure to an entity whose credit exposures are exempt from the 0.03 percent PD floor in § ____.131(d)(2) is assigned a zero percent risk weight.

(2) *20 percent risk weight equity exposures.* An equity exposure to a Federal Home Loan Bank or the Federal Agricultural Mortgage Corporation (Farmer Mac) is assigned a 20 percent risk weight.

(3) *100 percent risk weight equity exposures.* The following equity exposures are assigned a 100 percent risk weight:

(i) *Community development equity exposures.* An equity exposure that qualifies as a community development investment under section 24 (Eleventh) of the National Bank Act, excluding equity exposures to an unconsolidated small business investment company and equity exposures held through a consolidated small business investment company described in section 302 of the Small Business Investment Act.

(ii) *Effective portion of hedge pairs.* The effective portion of a hedge pair.

(iii) *Non-significant equity exposures.* Equity exposures, excluding exposures to an investment firm that would meet the definition of a traditional securitization were it not for the [AGENCY]'s application of paragraph (8) of that definition in § ____.2 and has greater than immaterial leverage, to the extent that the aggregate adjusted carrying value of the exposures does not exceed 10 percent of the [BANK]'s total capital.

(A) To compute the aggregate adjusted carrying value of a [BANK]'s equity exposures for purposes of this section, the [BANK] may exclude equity exposures described in paragraphs (b)(1), (b)(2), (b)(3)(i), and (b)(3)(ii) of this section, the equity exposure in a hedge pair with the smaller adjusted carrying value, and a proportion of each equity exposure to an investment fund equal to the proportion of the assets of the investment fund that are not equity exposures or that meet the criterion of paragraph (b)(3)(i) of this section. If a [BANK] does not know the actual holdings of the investment fund, the [BANK] may calculate the proportion of the assets of the fund that are not equity exposures based on the terms of the prospectus, partnership agreement, or similar contract that defines the fund's permissible investments. If the sum of the investment limits for all exposure classes within the fund exceeds 100 percent, the [BANK] must assume for purposes of this section that the investment fund invests to the maximum extent possible in equity exposures.

(B) When determining which of a [BANK]'s equity exposures qualifies for a 100 percent risk weight under this section, a [BANK] first must include equity exposures to unconsolidated small business investment companies or held through consolidated small business investment companies described in section 302 of the Small Business Investment Act, then must include publicly-traded equity exposures (including those held indirectly through investment funds), and then must include non-publicly-traded equity exposures (including those held indirectly through investment funds).

(4) *250 percent risk weight equity exposures.* Significant investments in the capital of unconsolidated financial institutions that are not deducted from capital pursuant to § ____.22(b)(4) of subpart B are assigned a 250 percent risk weight.

(5) *300 percent risk weight equity exposures.* A publicly-traded equity exposure (other than an equity exposure described in paragraph (b)(6) of this section and including the ineffective portion of a hedge pair) is assigned a 300 percent risk weight.

(6) *400 percent risk weight equity exposures.* An equity exposure (other than an equity exposure described in paragraph (b)(6) of this section) that is not publicly-traded is assigned a 400 percent risk weight.

(7) *600 percent risk weight equity exposures.* An equity exposure to an investment firm that:

(i) Would meet the definition of a traditional securitization were it not for the [AGENCY]'s application of paragraph (8) of that definition in § ____.2; and

(ii) Has greater than immaterial leverage is assigned a 600 percent risk weight.

(c) *Hedge transactions.* (1) *Hedge pair.* A hedge pair is two equity exposures that form an effective hedge so long as each equity exposure is publicly-traded or has a return that is primarily based on a publicly-traded equity exposure.

(2) *Effective hedge.* Two equity exposures form an effective hedge if the exposures either have the same remaining maturity or each has a remaining maturity of at least three months; the hedge relationship is formally documented in a prospective manner (that is, before the [BANK] acquires at least one of the equity exposures); the documentation specifies the measure of effectiveness (E) the [BANK] will use for the hedge relationship throughout the life of the transaction; and the hedge relationship has an E greater than or equal to 0.8. A [BANK] must measure E at least quarterly and must use one of three alternative measures of E:

(i) Under the dollar-offset method of measuring effectiveness, the [BANK] must determine the ratio of value change (RVC). The RVC is the ratio of the cumulative sum of the periodic changes in value of one equity exposure to the cumulative sum of the periodic changes in the value of the other equity exposure. If RVC is positive, the hedge is not effective and E equals zero. If RVC is negative and greater than or equal to −1 (that is, between zero and −1), then E equals the absolute value of RVC. If RVC is negative and less than −1, then E equals 2 plus RVC.

(ii) Under the variability-reduction method of measuring effectiveness:

$$E = 1 - \frac{\sum_{t=1}^{T} \left(X_t - X_{t-1} \right)^2}{\sum_{t=1}^{T} \left(A_t - A_{t-1} \right)^2},$$

where

(A) $X_t = A_t - B_t$;

(B) A_t = the value at time t of one exposure in a hedge pair; and

(C) B_t = the value at time t of the other exposure in a hedge pair.

(iii) Under the regression method of measuring effectiveness, E equals the coefficient of determination of a regression in which the change in value of one exposure in a hedge pair is the dependent variable and the change in value of the other exposure in a hedge pair is the independent variable. However, if the estimated regression coefficient is positive, then the value of E is zero.

(3) The effective portion of a hedge pair is E multiplied by the greater of the adjusted carrying values of the equity exposures forming a hedge pair.

(4) The ineffective portion of a hedge pair is (1–E) multiplied by the greater of the adjusted carrying values of the equity exposures forming a hedge pair.

§ ____.153 Internal models approach (IMA).

(a) *General.* A [BANK] may calculate its risk-weighted asset amount for equity exposures using the IMA by modeling publicly-traded and non-publicly-traded equity exposures (in accordance with paragraph (c) of this section) or by modeling only publicly-traded equity exposures (in accordance with paragraphs (c) and (d) of this section).

(b) *Qualifying criteria.* To qualify to use the IMA to calculate risk-weighted assets for equity exposures, a [BANK] must receive prior written approval from the [AGENCY]. To receive such approval, the [BANK] must demonstrate to the [AGENCY]'s satisfaction that the [BANK] meets the following criteria:

(1) The [BANK] must have one or more models that:

(i) Assess the potential decline in value of its modeled equity exposures;

(ii) Are commensurate with the size, complexity, and composition of the [BANK]'s modeled equity exposures; and

(iii) Adequately capture both general market risk and idiosyncratic risk.

(2) The [BANK]'s model must produce an estimate of potential losses for its modeled equity exposures that is no less than the estimate of potential losses produced by a VaR methodology employing a 99.0 percent, one-tailed confidence interval of the distribution of quarterly returns for a benchmark portfolio of equity exposures comparable to the [BANK]'s modeled equity exposures using a long-term sample period.

(3) The number of risk factors and exposures in the sample and the data period used for quantification in the [BANK]'s model and benchmarking exercise must be sufficient to provide confidence in the accuracy and robustness of the [BANK]'s estimates.

(4) The [BANK]'s model and benchmarking process must incorporate data that are relevant in representing the risk profile of the [BANK]'s modeled equity exposures, and must include data from at least one equity market cycle containing adverse market movements relevant to the risk profile of the [BANK]'s modeled equity exposures. In addition, the [BANK]'s benchmarking exercise must be based on daily market prices for the benchmark portfolio. If the [BANK]'s model uses a scenario methodology, the [BANK] must demonstrate that the model produces a conservative estimate of potential losses on the [BANK]'s modeled equity exposures over a relevant long-term market cycle. If the [BANK] employs risk factor models, the [BANK] must demonstrate through empirical analysis the appropriateness of the risk factors used.

(5) The [BANK] must be able to demonstrate, using theoretical arguments and empirical evidence, that any proxies used in the modeling process are comparable to the [BANK]'s modeled equity exposures and that the [BANK] has made appropriate adjustments for differences. The [BANK] must derive any proxies for its modeled equity exposures and benchmark portfolio using historical market data that are relevant to the [BANK]'s modeled equity exposures and benchmark portfolio (or, where not, must use appropriately adjusted data), and such proxies must be robust estimates of the risk of the [BANK]'s modeled equity exposures.

(c) *Risk-weighted assets calculation for a [BANK] modeling publicly-traded and non-publicly-traded equity exposures.* If a [BANK] models publicly-traded and non-publicly-traded equity exposures, the [BANK]'s aggregate risk-weighted asset amount for its equity exposures is equal to the sum of:

(1) The risk-weighted asset amount of each equity exposure that qualifies for a 0 percent, 20 percent, or 100 percent risk weight under §§ ____.152(b)(1) through (b)(3)(i) (as determined under § ____.152) and each equity exposure to an investment fund (as determined under § ____.154); and

(2) The greater of:

(i) The estimate of potential losses on the [BANK]'s equity exposures (other than equity exposures referenced in paragraph (c)(1) of this section) generated by the [BANK]'s internal equity exposure model multiplied by 12.5; or

(ii) The sum of:

(A) 200 percent multiplied by the aggregate adjusted carrying value of the [BANK]'s publicly-traded equity exposures that do not belong to a hedge pair, do not qualify for a 0 percent, 20 percent, or 100 percent risk weight under §§ ____.152(b)(1) through (b)(3)(i), and are not equity exposures to an investment fund;

(B) 200 percent multiplied by the aggregate ineffective portion of all hedge pairs; and

(C) 300 percent multiplied by the aggregate adjusted carrying value of the [BANK]'s equity exposures that are not publicly-traded, do not qualify for a 0 percent, 20 percent, or 100 percent risk weight under §§ ____.152(b)(1) through (b)(3)(i), and are not equity exposures to an investment fund.

(d) *Risk-weighted assets calculation for a [BANK] using the IMA only for publicly-traded equity exposures.* If a [BANK] models only publicly-traded equity exposures, the [BANK]'s aggregate risk-weighted asset amount for its equity exposures is equal to the sum of:

(1) The risk-weighted asset amount of each equity exposure that qualifies for a 0 percent, 20 percent, or 100 percent risk weight under §§ ____.152(b)(1) through (b)(3)(i) (as determined under § ____.152), each equity exposure that qualifies for a 400 percent risk weight under § ____.152(b)(5) or a 600 percent risk weight under § ____.152(b)(6) (as determined under § ____.152), and each equity exposure to an investment fund (as determined under § ____.154); and

(2) The greater of:

(i) The estimate of potential losses on the [BANK]'s equity exposures (other than equity exposures referenced in paragraph (d)(1) of this section) generated by the [BANK]'s internal equity exposure model multiplied by 12.5; or

(ii) The sum of:

(A) 200 percent multiplied by the aggregate adjusted carrying value of the [BANK]'s publicly-traded equity exposures that do not belong to a hedge pair, do not qualify for a 0 percent, 20 percent, or 100 percent risk weight under §§ ____.152(b)(1) through (b)(3)(i), and are not equity exposures to an investment fund; and

(B) 200 percent multiplied by the aggregate ineffective portion of all hedge pairs.

§ ____.154 Equity exposures to investment funds.

(a) *Available approaches.* (1) Unless the exposure meets the requirements for a community development equity exposure in § ____.152(b)(3)(i), a [BANK] must determine the risk-weighted asset amount of an equity exposure to an investment fund under the Full Look-Through Approach in paragraph (b) of this section, the Simple Modified Look-Through Approach in paragraph (c) of this section, or the Alternative Modified Look-Through Approach in paragraph (d) of this section.

(2) The risk-weighted asset amount of an equity exposure to an investment fund that meets the requirements for a community development equity exposure in § ____.152(b)(3)(i) is its adjusted carrying value.

(3) If an equity exposure to an investment fund is part of a hedge pair and the [BANK] does not use the Full Look-Through Approach, the [BANK] may use the ineffective portion of the hedge pair as determined under § ____.152(c) as the adjusted carrying value for the equity exposure to the investment fund. The risk-weighted asset amount of the effective portion of the hedge pair is equal to its adjusted carrying value.

(b) *Full Look-Through Approach.* A [BANK] that is able to calculate a risk-weighted asset amount for its proportional ownership share of each exposure held by the investment fund (as calculated under this subpart E as if the proportional ownership share of each exposure were held directly by the [BANK]) may either:

(1) Set the risk-weighted asset amount of the [BANK]'s exposure to the fund equal to the product of:

(i) The aggregate risk-weighted asset amounts of the exposures held by the fund as if they were held directly by the [BANK]; and

(ii) The [BANK]'s proportional ownership share of the fund; or

(2) Include the [BANK]'s proportional ownership share of each exposure held by the fund in the [BANK]'s IMA.

(c) *Simple Modified Look-Through Approach.* Under this approach, the risk-weighted asset amount for a [BANK]'s equity exposure to an investment fund equals the adjusted carrying value of the equity exposure multiplied by the highest risk weight assigned according to subpart D that applies to any exposure the fund is permitted to hold under its prospectus, partnership agreement, or similar contract that defines the fund's permissible investments (excluding derivative contracts that are used for hedging rather than speculative purposes and that do not constitute a material portion of the fund's exposures).

(d) *Alternative Modified Look-Through Approach.* Under this approach, a [BANK] may assign the adjusted carrying value of an equity exposure to an investment fund on a pro rata basis to different risk weight categories assigned according to subpart D of this part based on the investment limits in the fund's prospectus, partnership agreement, or similar contract that defines the fund's permissible investments. The risk-weighted asset amount for the [BANK]'s equity exposure to the investment fund equals the sum of each portion of the adjusted carrying value assigned to an exposure class multiplied by the applicable risk weight. If the sum of the investment limits for all exposure types within the fund exceeds 100 percent, the [BANK] must assume that the fund invests to the maximum extent permitted under its investment limits in the exposure type with the highest risk weight under subpart D of this part, and continues to make investments in order of the exposure type with the next highest risk weight under subpart D until the maximum total investment level is reached. If more than one exposure type applies to an exposure, the [BANK] must use the highest applicable risk weight. A [BANK] may exclude derivative contracts held by the fund that are used for hedging rather than for speculative purposes and do not constitute a material portion of the fund's exposures.

§ ____.155 Equity derivative contracts.

(a) Under the IMA, in addition to holding risk-based capital against an equity derivative contract under this [PART], a [BANK] must hold risk-based capital against the counterparty credit risk in the equity derivative contract by also treating the equity derivative contract as a wholesale exposure and computing a supplemental risk-weighted asset amount for the contract under § ____.132.

(b) Under the SRWA, a [BANK] may choose not to hold risk-based capital against the counterparty credit risk of equity derivative contracts, as long as it does so for all such contracts. Where the equity derivative contracts are subject to a qualified master netting agreement, a [BANK] using the SRWA must either include all or exclude all of the contracts from any measure used to determine counterparty credit risk exposure.

Risk-Weighted Assets for Operational Risk

§ ____.161 Qualification requirements for incorporation of operational risk mitigants.

(a) *Qualification to use operational risk mitigants.* A [BANK] may adjust its estimate of operational risk exposure to reflect qualifying operational risk mitigants if:

(1) The [BANK]'s operational risk quantification system is able to generate an estimate of the [BANK]'s operational risk exposure (which does not incorporate qualifying operational risk mitigants) and an estimate of the [BANK]'s operational risk exposure adjusted to incorporate qualifying operational risk mitigants; and

(2) The [BANK]'s methodology for incorporating the effects of insurance, if the [BANK] uses insurance as an operational risk mitigant, captures through appropriate discounts to the amount of risk mitigation:

(i) The residual term of the policy, where less than one year;

(ii) The cancellation terms of the policy, where less than one year;

(iii) The policy's timeliness of payment;

(iv) The uncertainty of payment by the provider of the policy; and

(v) Mismatches in coverage between the policy and the hedged operational loss event.

(b) *Qualifying operational risk mitigants.* Qualifying operational risk mitigants are:

(1) Insurance that:

(i) Is provided by an unaffiliated company that the [BANK] deems to have strong capacity to meet its claims payment obligations and the obligor rating category to which the [BANK] assigns the company is assigned a PD equal to or less than 10 basis points;

(ii) Has an initial term of at least one year and a residual term of more than 90 days;

(iii) Has a minimum notice period for cancellation by the provider of 90 days;

(iv) Has no exclusions or limitations based upon regulatory action or for the receiver or liquidator of a failed depository institution; and

(v) Is explicitly mapped to a potential operational loss event;

(2) Operational risk mitigants other than insurance for which the [AGENCY] has given prior written approval. In evaluating an operational risk mitigant other than insurance, the [AGENCY] will consider whether the operational risk mitigant covers potential operational losses in a manner equivalent to holding total capital.

§ ____.162 Mechanics of risk-weighted asset calculation.

(a) If a [BANK] does not qualify to use or does not have qualifying operational risk mitigants, the [BANK]'s dollar risk-based capital requirement for operational risk is its operational risk exposure minus eligible operational risk offsets (if any).

(b) If a [BANK] qualifies to use operational risk mitigants and has qualifying operational risk mitigants, the [BANK]'s dollar risk-based capital requirement for operational risk is the greater of:

(1) The [BANK]'s operational risk exposure adjusted for qualifying operational risk mitigants minus eligible operational risk offsets (if any); or

(2) 0.8 multiplied by the difference between:

(i) The [BANK]'s operational risk exposure; and

(ii) Eligible operational risk offsets (if any).

(c) The [BANK]'s risk-weighted asset amount for operational risk equals the [BANK]'s dollar risk-based capital requirement for operational risk determined under sections 162(a) or (b) multiplied by 12.5.

Disclosures

§ ____.171 Purpose and scope.

Sections ____.171 through ____.173 establish public disclosure requirements related to the capital requirements of a [BANK] that is an advanced approaches bank.

§ ____.172 Disclosure requirements.

(a) A [BANK] that is an advanced approaches bank must publicly disclose each quarter its total and tier 1 risk-based capital ratios and their components as calculated under this subpart (that is, common equity tier 1 capital, additional tier 1 capital, tier 2 capital, total qualifying capital, and total risk-weighted assets).

(b) A [BANK] that is an advanced approaches bank must comply with paragraph (c) of this section unless it is a consolidated subsidiary of a bank holding company, savings and loan holding company, or depository institution that is subject to these disclosure requirements or a subsidiary of a non-U.S. banking organization that is subject to comparable public disclosure requirements in its home jurisdiction.

(c)(1) A [BANK] described in paragraph (b) of this section and that has successfully completed its parallel run must provide timely public disclosures each calendar quarter of the information in the applicable tables in § ____.173. If a significant change occurs, such that the most recent reported amounts are no longer reflective of the [BANK]'s capital adequacy and risk profile, then a brief discussion of this change and its likely impact must be disclosed as soon as practicable thereafter. Qualitative disclosures that typically do not change each quarter (for example, a general summary of the [BANK]'s risk management objectives and policies, reporting system, and definitions) may be disclosed annually, provided that any significant changes to these are disclosed in the interim. Management is encouraged to provide all of the disclosures required by this subpart in one place on the [BANK]'s public Web site.[5]

(2) A [BANK] described in paragraph (b) of this section must have a formal disclosure policy approved by the board of directors that addresses its approach for determining the disclosures it makes. The policy must address the associated internal controls and disclosure controls and procedures. The board of directors and senior management are responsible for establishing and maintaining an effective internal control structure over financial reporting, including the disclosures required by this subpart, and must ensure that appropriate review of the disclosures takes place. One or more senior officers of the [BANK] must attest that the disclosures meet the requirements of this subpart.

(3) If a [BANK] described in paragraph (b) of this section believes that disclosure of specific commercial or financial information would prejudice seriously its position by making public information that is either proprietary or confidential in nature, the [BANK] is not required to disclose those specific items, but must disclose more general information about the subject matter of the requirement, together with the fact that, and the reason why, the specific items of information have not been disclosed.

§ ____.173 Disclosures by certain advanced approaches [BANKS].

Except as provided in § ____.172(b), a [BANK] that is an advanced approaches bank must make the disclosures described in Tables 11.1 through 11.12 below. The [BANK] must make these disclosures publicly available for each of the last three years (that is, twelve quarters) or such shorter period beginning on the effective date of this subpart E.

TABLE 11.1—SCOPE OF APPLICATION

Qualitative disclosures	(a) The name of the top corporate entity in the group to which subpart E of this [PART] applies. (b) A brief description of the differences in the basis for consolidating entities[6] for accounting and regulatory purposes, with a description of those entities: (1) That are fully consolidated; (2) That are deconsolidated and deducted from total capital; (3) For which the total capital requirement is deducted; and (4) That are neither consolidated nor deducted (for example, where the investment in the entity is assigned a risk weight in accordance with this subpart). (c) Any restrictions, or other major impediments, on transfer of funds or total capital within the group.
Quantitative disclosures	(d) The aggregate amount of surplus capital of insurance subsidiaries included in the total capital of the consolidated group. (e) The aggregate amount by which actual total capital is less than the minimum total capital requirement in all subsidiaries, with total capital requirements and the name(s) of the subsidiaries with such deficiencies.

TABLE 11.2—CAPITAL STRUCTURE

Qualitative disclosures	(a) Summary information on the terms and conditions of the main features of all regulatory capital instruments.
Quantitative disclosures	(b) The amount of common equity tier 1 capital, with separate disclosure of: (1) Common stock and related surplus; (2) Retained earnings; (3) Common equity minority interest;

[5] Alternatively, a [BANK] may provide the disclosures in more than one place, as some of them may be included in public financial reports (for example, in Management's Discussion and Analysis included in SEC filings) or other regulatory reports. The [BANK] must publicly provide a summary table that specifically indicates where all the disclosures may be found (for example, regulatory report schedules, page numbers in annual reports).

[6] Such entities include securities, insurance and other financial subsidiaries, commercial subsidiaries (where permitted), and significant minority equity investments in insurance, financial and commercial entities.

TABLE 11.2—CAPITAL STRUCTURE—Continued

	(4) AOCI (net of tax) and other reserves; and (5) Regulatory deductions and adjustments made to common equity tier 1 capital. (c) The amount of tier 1 capital, with separate disclosure of: (1) Additional tier 1 capital elements, including additional tier 1 capital instruments and tier 1 minority interest not included in common equity tier 1 capital; and (2) Regulatory deductions and adjustments made to tier 1 capital. (d) The amount of total capital, with separate disclosure of: (1) Tier 2 capital elements, including tier 2 capital instruments and total capital minority interest not included in tier 1 capital; and (2) Regulatory deductions and adjustments made to total capital.

TABLE 11.3—CAPITAL ADEQUACY

Qualitative disclosures	(a) A summary discussion of the [BANK]'s approach to assessing the adequacy of its capital to support current and future activities.
Quantitative disclosures	(b) Risk-weighted assets for credit risk from: (1) Wholesale exposures; (2) Residential mortgage exposures; (3) Qualifying revolving exposures; (4) Other retail exposures; (5) Securitization exposures; (6) Equity exposures: (7) Equity exposures subject to the simple risk weight approach; and (8) Equity exposures subject to the internal models approach. (c) Standardized market risk-weighted assets and advanced market risk-weighted assets as calculated under subpart F of this [PART]: [7] (1) Standardized approach for specific risk; and (2) Internal models approach for specific risk. (d) Risk-weighted assets for operational risk. (e) Common equity tier 1, tier 1 and total risk-based capital ratios: (1) For the top consolidated group; and (2) For each depository institution subsidiary. (f) Total risk-weighted assets.

TABLE 11.4—CAPITAL CONSERVATION AND COUNTERCYCLICAL BUFFERS

Qualitative disclosures	(a) The [BANK] must publicly disclose the geographic breakdown of its private sector credit exposures used in the calculation of the countercyclical capital buffer.
Quantitative disclosures	(b) At least quarterly, the [BANK] must calculate and publicly disclose the capital conservation buffer and the countercyclical capital buffer as described under § ____.11 of subpart B. (c) At least quarterly, the [BANK] must calculate and publicly disclose the buffer retained income of the [BANK], as described under § ____.11 of subpart B. (d) At least quarterly, the [BANK] must calculate and publicly disclose any limitations it has on capital distributions and discretionary bonus payments resulting from the capital conservation buffer and the countercyclical buffer framework described under § ____.11 of subpart B, including the maximum payout amount for the quarter.

General Qualitative Disclosure Requirement

For each separate risk area described in Tables 11.5 through 11.12, the [BANK] must describe its risk management objectives and policies, including:

- Strategies and processes;
- The structure and organization of the relevant risk management function;
- The scope and nature of risk reporting and/or measurement systems; and
- Policies for hedging and/or mitigating risk and strategies and processes for monitoring the continuing effectiveness of hedges/mitigants.

[7] Standardized market risk-weighted assets and advanced market risk-weighted assets as calculated under this subpart are to be disclosed only with respect to an approach that is used by a [BANK].

[8] Table 11.5 does not cover equity exposures.

[9] *See,* for example, ASC Topic 815–10 and 210–20 (formerly FASB Interpretation Numbers 37 and 41).

[10] Geographical areas may comprise individual countries, groups of countries, or regions within countries. A [BANK] might choose to define the geographical areas based on the way the company's portfolio is geographically managed. The criteria used to allocate the loans to geographical areas must be specified.

[11] A [BANK] is encouraged also to provide an analysis of the aging of past-due loans.

[12] The portion of the general allowance that is not allocated to a geographical area should be disclosed separately.

[13] The reconciliation should include the following: A description of the allowance; the opening balance of the allowance; charge-offs taken against the allowance during the period; amounts provided (or reversed) for estimated probable loan losses during the period; any other adjustments (for example, exchange rate differences, business combinations, acquisitions and disposals of subsidiaries), including transfers between allowances; and the closing balance of the allowance. Charge-offs and recoveries that have been recorded directly to the income statement should be disclosed separately.

TABLE 11.5 [8]—CREDIT RISK: GENERAL DISCLOSURES

Qualitative disclosures	(a) The general qualitative disclosure requirement with respect to credit risk (excluding counterparty credit risk disclosed in accordance with Table 11.7), including: (1) Policy for determining past due or delinquency status; (2) Policy for placing loans on nonaccrual; (3) Policy for returning loans to accrual status; (4) Definition of and policy for identifying impaired loans (for financial accounting purposes). (5) Description of the methodology that the entity uses to estimate its allowance for loan losses, including statistical methods used where applicable; (6) Policy for charging-off uncollectible amounts; and (7) Discussion of the [BANK]'s credit risk management policy
Quantitative disclosures	(b) Total credit risk exposures and average credit risk exposures, after accounting offsets in accordance with GAAP,[9] without taking into account the effects of credit risk mitigation techniques (for example, collateral and netting not permitted under GAAP), over the period categorized by major types of credit exposure. For example, [BANK]s could use categories similar to that used for financial statement purposes. Such categories might include, for instance: (1) Loans, off-balance sheet commitments, and other non-derivative off-balance sheet exposures; (2) Debt securities; and (3) OTC derivatives. (c) Geographic[10] distribution of exposures, categorized in significant areas by major types of credit exposure. (d) Industry or counterparty type distribution of exposures, categorized by major types of credit exposure. (e) By major industry or counterparty type: (1) Amount of impaired loans for which there was a related allowance under GAAP; (2) Amount of impaired loans for which there was no related allowance under GAAP; (3) Amount of loans past due 90 days and on nonaccrual; (4) Amount of loans past due 90 days and still accruing; [11] (5) The balance in the allowance for credit losses at the end of each period, disaggregated on the basis of the entity's impairment method. To disaggregate the information required on the basis of impairment methodology, an entity shall separately disclose the amounts based on the requirements in GAAP; and (6) Charge-offs during the period. (f) Amount of impaired loans and, if available, the amount of past due loans categorized by significant geographic areas including, if practical, the amounts of allowances related to each geographical area,[12] further categorized as required by GAAP. (g) Reconciliation of changes in ALLL.[13] (h) Remaining contractual maturity breakdown (for example, one year or less) of the whole portfolio, categorized by credit exposure.

TABLE 11.6—CREDIT RISK: DISCLOSURES FOR PORTFOLIOS SUBJECT TO IRB RISK-BASED CAPITAL FORMULAS

Qualitative disclosures	(a) Explanation and review of the: (1) Structure of internal rating systems and relation between internal and external ratings; (2) Use of risk parameter estimates other than for regulatory capital purposes; (3) Process for managing and recognizing credit risk mitigation (see Table 11.8); and (4) Control mechanisms for the rating system, including discussion of independence, accountability, and rating systems review. (b)(1) Description of the internal ratings process, provided separately for the following: (i) Wholesale category; (ii) Retail subcategories— (A) Residential mortgage exposures; (B) Qualifying revolving exposures; and (C) Other retail exposures. (2) For each category and subcategory above the description should include: (i) The types of exposure included in the category/subcategories; and (ii) The definitions, methods and data for estimation and validation of PD, LGD, and EAD, including assumptions employed in the derivation of these variables.[14]
Quantitative disclosures: Risk assessment.	(c)(1) For wholesale exposures, present the following information across a sufficient number of PD grades (including default) to allow for a meaningful differentiation of credit risk: [15] (i) Total EAD; [16] (ii) Exposure-weighted average LGD (percentage); (iii) Exposure-weighted average risk weight; and (iv) Amount of undrawn commitments and exposure-weighted average EAD including average drawdowns prior to default for wholesale exposures. (2) For each retail subcategory, present the disclosures outlined above across a sufficient number of segments to allow for a meaningful differentiation of credit risk.
Quantitative disclosures: Historical results.	(d) Actual losses in the preceding period for each category and subcategory and how this differs from past experience. A discussion of the factors that impacted the loss experience in the preceding period—for example, has the [BANK] experienced higher than average default rates, loss rates or EADs. (e) [BANK]'s estimates compared against actual outcomes over a longer period.[17] At a minimum, this should include information on estimates of losses against actual losses in the wholesale category and each retail subcategory over a period sufficient to allow for a meaningful assessment of the performance of the internal rating processes for each category/subcategory.[18] Where appropriate, the [BANK] should further decompose this to provide analysis of PD, LGD, and EAD outcomes against estimates provided in the quantitative risk assessment disclosures above.[19]

TABLE 11.7—GENERAL DISCLOSURE FOR COUNTERPARTY CREDIT RISK OF OTC DERIVATIVE CONTRACTS, REPO-STYLE TRANSACTIONS, AND ELIGIBLE MARGIN LOANS

Qualitative disclosures	(a) The general qualitative disclosure requirement with respect to OTC derivatives, eligible margin loans, and repo-style transactions, including: (1) Discussion of methodology used to assign economic capital and credit limits for counterparty credit exposures; (2) Discussion of policies for securing collateral, valuing and managing collateral, and establishing credit reserves; (3) Discussion of the primary types of collateral taken; (4) Discussion of policies with respect to wrong-way risk exposures; and (5) Discussion of the impact of the amount of collateral the [BANK] would have to provide if the [BANK] were to receive a credit rating downgrade.
Quantitative disclosures	(b) Gross positive fair value of contracts, netting benefits, netted current credit exposure, collateral held (including type, for example, cash, government securities), and net unsecured credit exposure.[20] Also report measures for EAD used for regulatory capital for these transactions, the notional value of credit derivative hedges purchased for counterparty credit risk protection, and, for [BANK]s not using the internal models methodology in § ____.132(d), the distribution of current credit exposure by types of credit exposure.[21] (c) Notional amount of purchased and sold credit derivatives, segregated between use for the [BANK]'s own credit portfolio and for its intermediation activities, including the distribution of the credit derivative products used, categorized further by protection bought and sold within each product group. (d) The estimate of alpha if the [BANK] has received supervisory approval to estimate alpha.

TABLE 11.8—CREDIT RISK MITIGATION[22] [23]

Qualitative disclosures	(a) The general qualitative disclosure requirement with respect to credit risk mitigation, including: (1) Policies and processes for, and an indication of the extent to which the [BANK] uses, on- or off-balance sheet netting; (2) Policies and processes for collateral valuation and management; (3) A description of the main types of collateral taken by the [BANK]; (4) The main types of guarantors/credit derivative counterparties and their creditworthiness; and (5) Information about (market or credit) risk concentrations within the mitigation taken.
Quantitative disclosures	(b) For each separately disclosed portfolio, the total exposure (after, where applicable, on- or off-balance sheet netting) that is covered by guarantees/credit derivatives.

TABLE 11.9—SECURITIZATION

Qualitative disclosures	(a) The general qualitative disclosure requirement with respect to securitization (including synthetic securitizations), including a discussion of: (1) The [BANK]'s objectives for securitizing assets, including the extent to which these activities transfer credit risk of the underlying exposures away from the [BANK] to other entities and including the type of risks assumed and retained with resecuritization activity;[24] (2) The nature of the risks (e.g. liquidity risk) inherent in the securitized assets;

[14] This disclosure item does not require a detailed description of the model in full—it should provide the reader with a broad overview of the model approach, describing definitions of the variables and methods for estimating and validating those variables set out in the quantitative risk disclosures below. This should be done for each of the four category/subcategories. The [BANK] must disclose any significant differences in approach to estimating these variables within each category/subcategories.

[15] The PD, LGD and EAD disclosures in Table 11.6(c) should reflect the effects of collateral, qualifying master netting agreements, eligible guarantees and eligible credit derivatives as defined under this part. Disclosure of each PD grade should include the exposure-weighted average PD for each grade. Where a [BANK] aggregates PD grades for the purposes of disclosure, this should be a representative breakdown of the distribution of PD grades used for regulatory capital purposes.

[16] Outstanding loans and EAD on undrawn commitments can be presented on a combined basis for these disclosures.

[17] These disclosures are a way of further informing the reader about the reliability of the information provided in the ''quantitative disclosures: risk assessment'' over the long run. The disclosures are requirements from year-end 2010; in the meantime, early adoption is encouraged. The phased implementation is to allow a [BANK] sufficient time to build up a longer run of data that will make these disclosures meaningful.

[18] This disclosure item is not intended to be prescriptive about the period used for this assessment. Upon implementation, it is expected that a [BANK] would provide these disclosures for as long a set of data as possible—for example, if a [BANK] has 10 years of data, it might choose to disclose the average default rates for each PD grade over that 10-year period. Annual amounts need not be disclosed.

[19] A [BANK] must provide this further decomposition where it will allow users greater insight into the reliability of the estimates provided in the ''quantitative disclosures: risk assessment.'' In particular, it must provide this information where there are material differences between its estimates of PD, LGD or EAD compared to actual outcomes over the long run. The [BANK] must also provide explanations for such differences.

[20] Net unsecured credit exposure is the credit exposure after considering the benefits from legally enforceable netting agreements and collateral arrangements, without taking into account haircuts for price volatility, liquidity, etc.

[21] This may include interest rate derivative contracts, foreign exchange derivative contracts, equity derivative contracts, credit derivatives, commodity or other derivative contracts, repostyle transactions, and eligible margin loans.

[22] At a minimum, a [BANK] must provide the disclosures in Table 11.8 in relation to credit risk mitigation that has been recognized for the purposes of reducing capital requirements under this subpart. Where relevant, [BANK]s are encouraged to give further information about mitigants that have not been recognized for that purpose.

[23] Credit derivatives and other credit mitigation that are treated for the purposes of this subpart as synthetic securitization exposures should be excluded from the credit risk mitigation disclosures (in Table 11.8) and included within those relating to securitization (in Table 11.9).

TABLE 11.9—SECURITIZATION—Continued

	(3) The roles played by the [BANK] in the securitization process [25] and an indication of the extent of the [BANK]'s involvement in each of them; (4) The processes in place to monitor changes in the credit and market risk of securitization exposures including how those processes differ for resecuritization exposures; (5) The [BANK]'s policy for mitigating the credit risk retained through securitization and resecuritization exposures; and (6) The risk-based capital approaches that the [BANK] follows for its securitization exposures including the type of securitization exposure to which each approach applies. (b) A list of: (1) The type of securitization SPEs that the [BANK], as sponsor, uses to securitize third-party exposures. The [BANK] must indicate whether it has exposure to these SPEs, either on- or off- balance sheet; and (2) Affiliated entities: (i) That the [BANK] manages or advises; and (ii) That invest either in the securitization exposures that the [BANK] has securitized or in securitization SPEs that the [BANK] sponsors.[26] (c) Summary of the [BANK]'s accounting policies for securitization activities, including: (1) Whether the transactions are treated as sales or financings; (2) Recognition of gain-on-sale; (3) Methods and key assumptions and inputs applied in valuing retained or purchased interests; (4) Changes in methods and key assumptions and inputs from the previous period for valuing retained interests and impact of the changes; (5) Treatment of synthetic securitizations; (6) How exposures intended to be securitized are valued and whether they are recorded under subpart E of this part; and (7) Policies for recognizing liabilities on the balance sheet for arrangements that could require the [BANK] to provide financial support for securitized assets. (d) An explanation of significant changes to any of the quantitative information set forth below since the last reporting period.
Quantitative disclosures	(e) The total outstanding exposures securitized [27] by the [BANK] in securitizations that meet the operational criteria in § ____.141 (categorized into traditional/synthetic), by underlying exposure type,[28] separately for securitizations of third-party exposures for which the bank acts only as sponsor. (f) For exposures securitized by the [BANK] in securitizations that meet the operational criteria in § ____.141: (1) Amount of securitized assets that are impaired [29]/past due categorized by exposure type; and (2) Losses recognized by the [BANK] during the current period categorized by exposure type.[30] (g) The total amount of outstanding exposures intended to be securitized categorized by exposure type. (h) Aggregate amount of: (1) On-balance sheet securitization exposures retained or purchased categorized by exposure type; and (2) Off-balance sheet securitization exposures categorized by exposure type. (i)(1) Aggregate amount of securitization exposures retained or purchased and the associated capital requirements for these exposures, categorized between securitization and resecuritization exposures, further categorized into a meaningful number of risk weight bands and by risk-based capital approach (e.g. SA, SFA, or SSFA). (2) Exposures that have been deducted entirely from tier 1 capital, credit enhancing I/Os deducted from total capital (as described in § ____.42(a)(1), and other exposures deducted from total capital should be disclosed separately by exposure type. (j) Summary of current year's securitization activity, including the amount of exposures securitized (by exposure type), and recognized gain or loss on sale by asset type. (k) Aggregate amount of resecuritization exposures retained or purchased categorized according to: (1) Exposures to which credit risk mitigation is applied and those not applied; and (2) Exposures to guarantors categorized according to guarantor credit worthiness categories or guarantor name.

TABLE 11.10—OPERATIONAL RISK

Qualitative disclosures	(a) The general qualitative disclosure requirement for operational risk. (b) Description of the AMA, including a discussion of relevant internal and external factors considered in the [BANK]'s measurement approach.

[24] The [BANK] must describe the structure of resecuritizations in which it participates; this description must be provided for the main categories of resecuritization products in which the [BANK] is active.

[25] For example, these roles would include originator, investor, servicer, provider of credit enhancement, sponsor, liquidity provider, or swap provider.

[26] For example, money market mutual funds should be listed individually, and personal and private trusts should be noted collectively.

[27] ''Exposures securitized'' include underlying exposures originated by the bank, whether generated by them or purchased, and recognized in the balance sheet, from third parties, and third-party exposures included in sponsored transactions. Securitization transactions (including underlying exposures originally on the bank's balance sheet and underlying exposures acquired by the bank from third-party entities) in which the originating bank does not retain any securitization exposure should be shown separately but need only be reported for the year of inception.

[28] A [BANK] is required to disclose exposures regardless of whether there is a capital charge under Pillar 1.

[29] A [BANK] must include credit-related other than temporary impairment (OTTI).

[30] For example, charge-offs/allowances (if the assets remain on the bank's balance sheet) or credit-related OTTI of I/O strips and other retained residual interests, as well as recognition of liabilities for probable future financial support required of the bank with respect to securitized assets.

TABLE 11.10—OPERATIONAL RISK—Continued

	(c) A description of the use of insurance for the purpose of mitigating operational risk.

TABLE 11.11—EQUITIES NOT SUBJECT TO SUBPART F OF THIS PART

Qualitative disclosures	(a) The general qualitative disclosure requirement with respect to the equity risk of equity holdings not subject to subpart F of this part, including: (1) Differentiation between holdings on which capital gains are expected and those held for other objectives, including for relationship and strategic reasons; and (2) Discussion of important policies covering the valuation of and accounting for equity holdings not subject to subpart F of this [PART]. This includes the accounting methodology and valuation methodologies used, including key assumptions and practices affecting valuation as well as significant changes in these practices.
Quantitative disclosures	(b) Carrying value on the balance sheet of equity investments, as well as the fair value of those investments. (c) The types and nature of investments, including the amount that is: (1) Publicly-traded; and (2) Non-publicly-traded. (d) The cumulative realized gains (losses) arising from sales and liquidations in the reporting period. (e)(1) Total unrealized gains (losses) [31] (2) Total latent revaluation gains (losses) [32] (3) Any amounts of the above included in tier 1 and/or tier 2 capital. (f) Capital requirements categorized by appropriate equity groupings, consistent with the [BANK]'s methodology, as well as the aggregate amounts and the type of equity investments subject to any supervisory transition regarding total capital requirements.[33]

TABLE 11.12—INTEREST RATE RISK FOR NON-TRADING ACTIVITIES

Qualitative disclosures	(a) The general qualitative disclosure requirement, including the nature of interest rate risk for non-trading activities and key assumptions, including assumptions regarding loan prepayments and behavior of non-maturity deposits, and frequency of measurement of interest rate risk for non-trading activities.
Quantitative disclosures	(b) The increase (decline) in earnings or economic value (or relevant measure used by management) for upward and downward rate shocks according to management's method for measuring interest rate risk for non-trading activities, categorized by currency (as appropriate).

Subpart F—Risk-Weighted Assets—Market Risk

§ ____.201 Purpose, applicability, and reservation of authority.

(a) *Purpose.* This subpart F establishes risk-based capital requirements for [BANK]s with significant exposure to market risk, provides methods for these [BANK]s to calculate their standardized measure for market risk and, if applicable, advanced measure for market risk, and establishes public disclosure requirements.

(b) *Applicability.* (1) This subpart applies to any [BANK] with aggregate trading assets and trading liabilities (as reported in the [BANK]'s most recent quarterly [regulatory report]), equal to:

(i) 10 percent or more of quarter-end total assets as reported on the most recent quarterly [Call Report or FR Y–9C]; or

(ii) $1 billion or more.

(2) The [AGENCY] may apply this subpart to any [BANK] if the [AGENCY] deems it necessary or appropriate because of the level of market risk of the [BANK] or to ensure safe and sound banking practices.

(3) The [AGENCY] may exclude a [BANK] that meets the criteria of paragraph (b)(1) of this section from application of this subpart if the [AGENCY] determines that the exclusion is appropriate based on the level of market risk of the [BANK] and is consistent with safe and sound banking practices.

(c) *Reservation of authority.* (1) The [AGENCY] may require a [BANK] to hold an amount of capital greater than otherwise required under this subpart if the [AGENCY] determines that the [BANK]'s capital requirement for market risk as calculated under this subpart is not commensurate with the market risk of the [BANK]'s covered positions. In making determinations under paragraphs (c)(1) through (c)(3) of this section, the [AGENCY] will apply notice and response procedures generally in the same manner as the notice and response procedures set forth in [12 CFR 3.12, 12 CFR 263.202, 12 CFR 325.6(c), 12 CFR 567.3(d)].

(2) If the [AGENCY] determines that the risk-based capital requirement calculated under this subpart by the [BANK] for one or more covered positions or portfolios of covered positions is not commensurate with the risks associated with those positions or portfolios, the [AGENCY] may require the [BANK] to assign a different risk-based capital requirement to the positions or portfolios that more accurately reflects the risk of the positions or portfolios.

(3) The [AGENCY] may also require a [BANK] to calculate risk-based capital requirements for specific positions or portfolios under this subpart, or under subpart D or subpart E of this part, as appropriate, to more accurately reflect the risks of the positions.

(4) Nothing in this subpart limits the authority of the [AGENCY] 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 capital levels, or violations of law.

§ ____.202 Definitions.

(a) Terms set forth in § ____.2 and used in this subpart have the definitions assigned thereto in § ____.2.

[31] Unrealized gains (losses) recognized in the balance sheet but not through earnings.

[32] Unrealized gains (losses) not recognized either in the balance sheet or through earnings.

[33] This disclosure must include a breakdown of equities that are subject to the 0 percent, 20 percent, 100 percent, 300 percent, 400 percent, and 600 percent risk weights, as applicable.

(b) For the purposes of this subpart, the following terms are defined as follows:

Backtesting means the comparison of a [BANK]'s internal estimates with actual outcomes during a sample period not used in model development. For purposes of this subpart, backtesting is one form of out-of-sample testing.

Commodity position means a position for which price risk arises from changes in the price of a commodity.

Corporate debt position means a debt position that is an exposure to a company that is not a sovereign entity, the Bank for International Settlements, the European Central Bank, the European Commission, the International Monetary Fund, a multilateral development bank, a depository institution, a foreign bank, a credit union, a public sector entity, a government-sponsored entity, or a securitization.

Correlation trading position means:

(1) A securitization position for which all or substantially all of the value of the underlying exposures is based on the credit quality of a single company for which a two-way market exists, or on commonly traded indices based on such exposures for which a two-way market exists on the indices; or

(2) A position that is not a securitization position and that hedges a position described in paragraph (1) of this definition; and

(3) A correlation trading position does not include:

(i) A resecuritization position;

(ii) A derivative of a securitization position that does not provide a pro rata share in the proceeds of a securitization tranche; or

(iii) A securitization position for which the underlying assets or reference exposures are retail exposures, residential mortgage exposures, or commercial mortgage exposures.

Covered position means the following positions:

(1) A trading asset or trading liability (whether on- or off-balance sheet),[1] as reported on Schedule RC–D of the Call Report or Schedule HC–D of the FR Y–9C, that meets the following conditions:

(i) The position is a trading position or hedges another covered position;[2] and

(ii) The position is free of any restrictive covenants on its tradability or the [BANK] is able to hedge the material risk elements of the position in a two-way market;

(2) A foreign exchange or commodity position, regardless of whether the position is a trading asset or trading liability (excluding any structural foreign currency positions that the [BANK] chooses to exclude with prior supervisory approval); and

(3) Notwithstanding paragraphs (1) and (2) of this definition, a covered position does not include:

(i) An intangible asset, including any servicing asset;

(ii) Any hedge of a trading position that the [AGENCY] determines to be outside the scope of the [BANK]'s hedging strategy required in paragraph (a)(2) of § ____.203;

(iii) Any position that, in form or substance, acts as a liquidity facility that provides support to asset-backed commercial paper;

(iv) A credit derivative the [BANK] recognizes as a guarantee for risk-weighted asset amount calculation purposes under subpart D or subpart E of this part;

(v) Any position that is recognized as a credit valuation adjustment hedge under § ____.132(e)(5) or § ____.132(e)(6), except as provided in § ____.132(e)(6)(vii);

(vi) Any equity position that is not publicly traded, other than a derivative that references a publicly traded equity;

(vii) Any position a [BANK] holds with the intent to securitize; or

(viii) Any direct real estate holding.

Debt position means a covered position that is not a securitization position or a correlation trading position and that has a value that reacts primarily to changes in interest rates or credit spreads.

Default by a sovereign entity has the same meaning as the term sovereign default under § ____.2.

Equity position means a covered position that is not a securitization position or a correlation trading position and that has a value that reacts primarily to changes in equity prices.

Event risk means the risk of loss on equity or hybrid equity positions as a result of a financial event, such as the announcement or occurrence of a company merger, acquisition, spin-off, or dissolution.

Foreign exchange position means a position for which price risk arises from changes in foreign exchange rates.

General market risk means the risk of loss that could result from broad market movements, such as changes in the general level of interest rates, credit spreads, equity prices, foreign exchange rates, or commodity prices.

Hedge means a position or positions that offset all, or substantially all, of one or more material risk factors of another position.

Idiosyncratic risk means the risk of loss in the value of a position that arises from changes in risk factors unique to that position.

Incremental risk means the default risk and credit migration risk of a position. Default risk means the risk of loss on a position that could result from the failure of an obligor to make timely payments of principal or interest on its debt obligation, and the risk of loss that could result from bankruptcy, insolvency, or similar proceeding. Credit migration risk means the price risk that arises from significant changes in the underlying credit quality of the position.

Market risk means the risk of loss on a position that could result from movements in market prices.

Resecuritization position means a covered position that is:

(1) An on- or off-balance sheet exposure to a resecuritization; or

(2) An exposure that directly or indirectly references a resecuritization exposure in paragraph (1) of this definition.

Securitization means a transaction in which:

(1) All or a portion of the credit risk of one or more underlying exposures is transferred to one or more third parties;

(2) The credit risk associated with the underlying exposures has been separated into at least two tranches that reflect different levels of seniority;

(3) Performance of the securitization exposures depends upon the performance of the underlying exposures;

(4) All or substantially all of the underlying exposures are financial exposures (such as loans, commitments, credit derivatives, guarantees, receivables, asset-backed securities, mortgage-backed securities, other debt securities, or equity securities);

(5) For non-synthetic securitizations, the underlying exposures are not owned by an operating company;

(6) The underlying exposures are not owned by a small business investment company described in section 302 of the Small Business Investment Act;

(7) The underlying exposures are not owned by a firm an investment in which qualifies as a community development investment under section 24 (Eleventh) of the National Bank Act;

(8) The [AGENCY] may determine that a transaction in which the underlying exposures are owned by an investment firm that exercises substantially unfettered control over the size and composition of its assets, liabilities, and off-balance sheet

[1] Securities subject to repurchase and lending agreements are included as if they are still owned by the lender.

[2] A position that hedges a trading position must be within the scope of the bank's hedging strategy as described in paragraph (a)(2) of section 203 of this subpart.

exposures is not a securitization based on the transaction's leverage, risk profile, or economic substance;

(9) The [AGENCY] may deem an exposure to a transaction that meets the definition of a securitization, notwithstanding paragraph (5), (6), or (7) of this definition, to be a securitization based on the transaction's leverage, risk profile, or economic substance; and

(10) The transaction is not:

(i) An investment fund;

(ii) A collective investment fund (as defined in 12 CFR 208.34 (Board), 12 CFR 9.18 (OCC), and 12 CFR 344.3 (FDIC);

(iii) A pension fund regulated under the ERISA or a foreign equivalent thereof; or

(iv) Regulated under the Investment Company Act of 1940 (15 U.S.C. 80a–1) or a foreign equivalent thereof.

Securitization position means a covered position that is:

(1) An on-balance sheet or off-balance sheet credit exposure (including credit-enhancing representations and warranties) that arises from a securitization (including a resecuritization); or

(2) An exposure that directly or indirectly references a securitization exposure described in paragraph (1) of this definition.

Sovereign debt position means a direct exposure to a sovereign entity.

Specific risk means the risk of loss on a position that could result from factors other than broad market movements and includes event risk, default risk, and idiosyncratic risk.

Structural position in a foreign currency means a position that is not a trading position and that is:

(1) Subordinated debt, equity, or minority interest in a consolidated subsidiary that is denominated in a foreign currency;

(2) Capital assigned to foreign branches that is denominated in a foreign currency;

(3) A position related to an unconsolidated subsidiary or another item that is denominated in a foreign currency and that is deducted from the [BANK]'s tier 1 or tier 2 capital; or

(4) A position designed to hedge a [BANK]'s capital ratios or earnings against the effect on paragraphs (1), (2), or (3) of this definition of adverse exchange rate movements.

Term repo-style transaction means a repo-style transaction that has an original maturity in excess of one business day.

Trading position means a position that is held by the [BANK] for the purpose of short-term resale or with the intent of benefiting from actual or expected short-term price movements, or to lock in arbitrage profits.

Two-way market means a market where there are independent bona fide offers to buy and sell so that a price reasonably related to the last sales price or current bona fide competitive bid and offer quotations can be determined within one day and settled at that price within a relatively short timeframe conforming to trade custom.

Value-at-Risk (VaR) means the estimate of the maximum amount that the value of one or more positions could decline due to market price or rate movements during a fixed holding period within a stated confidence interval.

§ ____.203 Requirements for application of this subpart F.

(a) *Trading positions.* (1) *Identification of trading positions.* A [BANK] must have clearly defined policies and procedures for determining which of its trading assets and trading liabilities are trading positions and which of its trading positions are correlation trading positions. These policies and procedures must take into account:

(i) The extent to which a position, or a hedge of its material risks, can be marked-to-market daily by reference to a two-way market; and

(ii) Possible impairments to the liquidity of a position or its hedge.

(2) *Trading and hedging strategies.* A [BANK] must have clearly defined trading and hedging strategies for its trading positions that are approved by senior management of the [BANK].

(i) The trading strategy must articulate the expected holding period of, and the market risk associated with, each portfolio of trading positions.

(ii) The hedging strategy must articulate for each portfolio of trading positions the level of market risk the [BANK] is willing to accept and must detail the instruments, techniques, and strategies the [BANK] will use to hedge the risk of the portfolio.

(b) *Management of covered positions.* (1) *Active management.* A [BANK] must have clearly defined policies and procedures for actively managing all covered positions. At a minimum, these policies and procedures must require:

(i) Marking positions to market or to model on a daily basis;

(ii) Daily assessment of the [BANK]'s ability to hedge position and portfolio risks, and of the extent of market liquidity;

(iii) Establishment and daily monitoring of limits on positions by a risk control unit independent of the trading business unit;

(iv) Daily monitoring by senior management of information described in paragraphs (b)(1)(i) through (b)(1)(iii) of this section;

(v) At least annual reassessment of established limits on positions by senior management; and

(vi) At least annual assessments by qualified personnel of the quality of market inputs to the valuation process, the soundness of key assumptions, the reliability of parameter estimation in pricing models, and the stability and accuracy of model calibration under alternative market scenarios.

(2) *Valuation of covered positions.* The [BANK] must have a process for prudent valuation of its covered positions that includes policies and procedures on the valuation of positions, marking positions to market or to model, independent price verification, and valuation adjustments or reserves. The valuation process must consider, as appropriate, unearned credit spreads, close-out costs, early termination costs, investing and funding costs, liquidity, and model risk.

(c) *Requirements for internal models.* (1) A [BANK] must obtain the prior written approval of the [AGENCY] before using any internal model to calculate its risk-based capital requirement under this subpart.

(2) A [BANK] must meet all of the requirements of this section on an ongoing basis. The [BANK] must promptly notify the [AGENCY] when:

(i) The [BANK] plans to extend the use of a model that the [AGENCY] has approved under this subpart to an additional business line or product type;

(ii) The [BANK] makes any change to an internal model approved by the [AGENCY] under this subpart that would result in a material change in the [BANK]'s risk-weighted asset amount for a portfolio of covered positions; or

(iii) The [BANK] makes any material change to its modeling assumptions.

(3) The [AGENCY] may rescind its approval of the use of any internal model (in whole or in part) or of the determination of the approach under § ____.209(a)(2)(ii) for a [BANK]'s modeled correlation trading positions and determine an appropriate capital requirement for the covered positions to which the model would apply, if the [AGENCY] determines that the model no longer complies with this subpart or fails to reflect accurately the risks of the [BANK]'s covered positions.

(4) The [BANK] must periodically, but no less frequently than annually, review its internal models in light of developments in financial markets and modeling technologies, and enhance those models as appropriate to ensure

that they continue to meet the [AGENCY]'s standards for model approval and employ risk measurement methodologies that are most appropriate for the [BANK]'s covered positions.

(5) The [BANK] must incorporate its internal models into its risk management process and integrate the internal models used for calculating its VaR-based measure into its daily risk management process.

(6) The level of sophistication of a [BANK]'s internal models must be commensurate with the complexity and amount of its covered positions. A [BANK]'s internal models may use any of the generally accepted approaches, including but not limited to variance-covariance models, historical simulations, or Monte Carlo simulations, to measure market risk.

(7) The [BANK]'s internal models must properly measure all the material risks in the covered positions to which they are applied.

(8) The [BANK]'s internal models must conservatively assess the risks arising from less liquid positions and positions with limited price transparency under realistic market scenarios.

(9) The [BANK] must have a rigorous and well-defined process for re-estimating, re-evaluating, and updating its internal models to ensure continued applicability and relevance.

(10) If a [BANK] uses internal models to measure specific risk, the internal models must also satisfy the requirements in paragraph (b)(1) of § ____.207.

(d) *Control, oversight, and validation mechanisms.* (1) The [BANK] must have a risk control unit that reports directly to senior management and is independent from the business trading units.

(2) The [BANK] must validate its internal models initially and on an ongoing basis. The [BANK]'s validation process must be independent of the internal models' development, implementation, and operation, or the validation process must be subjected to an independent review of its adequacy and effectiveness. Validation must include:

(i) An evaluation of the conceptual soundness of (including developmental evidence supporting) the internal models;

(ii) An ongoing monitoring process that includes verification of processes and the comparison of the [BANK]'s model outputs with relevant internal and external data sources or estimation techniques; and

(iii) An outcomes analysis process that includes backtesting. For internal models used to calculate the VaR-based measure, this process must include a comparison of the changes in the [BANK]'s portfolio value that would have occurred were end-of-day positions to remain unchanged (therefore, excluding fees, commissions, reserves, net interest income, and intraday trading) with VaR-based measures during a sample period not used in model development.

(3) The [BANK] must stress test the market risk of its covered positions at a frequency appropriate to each portfolio, and in no case less frequently than quarterly. The stress tests must take into account concentration risk (including but not limited to concentrations in single issuers, industries, sectors, or markets), illiquidity under stressed market conditions, and risks arising from the [BANK]'s trading activities that may not be adequately captured in its internal models.

(4) The [BANK] must have an internal audit function independent of business-line management that at least annually assesses the effectiveness of the controls supporting the [BANK]'s market risk measurement systems, including the activities of the business trading units and independent risk control unit, compliance with policies and procedures, and calculation of the [BANK]'s measures for market risk under this subpart. At least annually, the internal audit function must report its findings to the [BANK]'s board of directors (or a committee thereof).

(e) *Internal assessment of capital adequacy.* The [BANK] must have a rigorous process for assessing its overall capital adequacy in relation to its market risk. The assessment must take into account risks that may not be captured fully in the VaR-based measure, including concentration and liquidity risk under stressed market conditions.

(f) *Documentation.* The [BANK] must adequately document all material aspects of its internal models, management and valuation of covered positions, control, oversight, validation and review processes and results, and internal assessment of capital adequacy.

§ ____.204 Measure for market risk.

(a) *General requirement.* (1) A [BANK] must calculate its standardized measure for market risk by following the steps described in paragraph (a)(2) of this section. An advanced approaches [BANK] also must calculate an advanced measure for market risk by following the steps in paragraph (a)(2) of this section.

(2) *Measure for market risk.* A [BANK] must calculate the standardized measure for market risk, which equals the sum of the VaR-based capital requirement, stressed VaR-based capital requirement, specific risk add-ons, incremental risk capital requirement, comprehensive risk capital requirement, and capital requirement for *de minimis* exposures all as defined under this paragraph (a)(2), (except, that the [BANK] may not use the SFA in section 210(b)(2)(vii)(B) of this subpart for purposes of this calculation). An advanced approaches [BANK] also must calculate the advanced measure for market risk, which equals the sum of the VaR-based capital requirement, stressed VaR-based capital requirement, specific risk add-ons, incremental risk capital requirement, comprehensive risk capital requirement, and capital requirement for *de minimis* exposures as defined under this paragraph (a)(2).

(i) *VaR-based capital requirement.* A [BANK]'s VaR-based capital requirement equals the greater of:

(A) The previous day's VaR-based measure as calculated under § ____.205; or

(B) The average of the daily VaR-based measures as calculated under § ____.205 for each of the preceding 60 business days multiplied by three, except as provided in paragraph (b) of this section.

(ii) *Stressed VaR-based capital requirement.* A [BANK]'s stressed VaR-based capital requirement equals the greater of:

(A) The most recent stressed VaR-based measure as calculated under § ____.206; or

(B) The average of the stressed VaR-based measures as calculated under § ____.206 for each of the preceding 12 weeks multiplied by three, except as provided in paragraph (b) of this section.

(iii) *Specific risk add-ons.* A [BANK]'s specific risk add-ons equal any specific risk add-ons that are required under § ____.207 and are calculated in accordance with § ____.210.

(iv) *Incremental risk capital requirement.* A [BANK]'s incremental risk capital requirement equals any incremental risk capital requirement as calculated under section 208 of this subpart.

(v) *Comprehensive risk capital requirement.* A [BANK]'s comprehensive risk capital requirement equals any comprehensive risk capital requirement as calculated under section 209 of this subpart.

(vi) *Capital requirement for de minimis exposures.* A [BANK]'s capital requirement for *de minimis* exposures equals:

(A) The absolute value of the market value of those *de minimis* exposures that are not captured in the [BANK]'s VaR-based measure or under paragraph (a)(2)(vi)(B) of this section; and

(B) With the prior written approval of the [AGENCY], the capital requirement for any *de minimis* exposures using alternative techniques that appropriately measure the market risk associated with those exposures.

(b) *Backtesting.* A [BANK] must compare each of its most recent 250 business days' trading losses (excluding fees, commissions, reserves, net interest income, and intraday trading) with the corresponding daily VaR-based measures calibrated to a one-day holding period and at a one-tail, 99.0 percent confidence level. A [BANK] must begin backtesting as required by this paragraph no later than one year after the later of January 1, 2013 and the date on which the [BANK] becomes subject to this subpart. In the interim, consistent with safety and soundness principles, a [BANK] subject to this subpart as of its effective date should continue to follow backtesting procedures in accordance with the [AGENCY]'s supervisory expectations.

(1) Once each quarter, the [BANK] must identify the number of exceptions (that is, the number of business days for which the actual daily net trading loss, if any, exceeds the corresponding daily VaR-based measure) that have occurred over the preceding 250 business days.

(2) A [BANK] must use the multiplication factor in table 1 that corresponds to the number of exceptions identified in paragraph (b)(1) of this section to determine its VaR-based capital requirement for market risk under paragraph (a)(2)(i) of this section and to determine its stressed VaR-based capital requirement for market risk under paragraph (a)(2)(ii) of this section until it obtains the next quarter's backtesting results, unless the [AGENCY] notifies the [BANK] in writing that a different adjustment or other action is appropriate.

TABLE 1—MULTIPLICATION FACTORS BASED ON RESULTS OF BACKTESTING

Number of exceptions	Multiplication factor
4 or fewer	3.00
5	3.40
6	3.50
7	3.65
8	3.75
9	3.85
10 or more	4.00

§ ____.205 VaR-based measure.

(a) *General requirement.* A [BANK] must use one or more internal models to calculate daily a VaR-based measure of the general market risk of all covered positions. The daily VaR-based measure also may reflect the [BANK]'s specific risk for one or more portfolios of debt and equity positions, if the internal models meet the requirements of paragraph (b)(1) of § ____.207. The daily VaR-based measure must also reflect the [BANK]'s specific risk for any portfolio of correlation trading positions that is modeled under § ____.209. A [BANK] may elect to include term repo-style transactions in its VaR-based measure, provided that the [BANK] includes all such term repo-style transactions consistently over time.

(1) The [BANK]'s internal models for calculating its VaR-based measure must use risk factors sufficient to measure the market risk inherent in all covered positions. The market risk categories must include, as appropriate, interest rate risk, credit spread risk, equity price risk, foreign exchange risk, and commodity price risk. For material positions in the major currencies and markets, modeling techniques must incorporate enough segments of the yield curve—in no case less than six—to capture differences in volatility and less than perfect correlation of rates along the yield curve.

(2) The VaR-based measure may incorporate empirical correlations within and across risk categories, provided the [BANK] validates and demonstrates the reasonableness of its process for measuring correlations. If the VaR-based measure does not incorporate empirical correlations across risk categories, the [BANK] must add the separate measures from its internal models used to calculate the VaR-based measure for the appropriate market risk categories (interest rate risk, credit spread risk, equity price risk, foreign exchange rate risk, and/or commodity price risk) to determine its aggregate VaR-based measure.

(3) The VaR-based measure must include the risks arising from the nonlinear price characteristics of options positions or positions with embedded optionality and the sensitivity of the market value of the positions to changes in the volatility of the underlying rates, prices, or other material risk factors. A [BANK] with a large or complex options portfolio must measure the volatility of options positions or positions with embedded optionality by different maturities and/or strike prices, where material.

(4) The [BANK] must be able to justify to the satisfaction of the [AGENCY] the omission of any risk factors from the calculation of its VaR-based measure that the [BANK] uses in its pricing models.

(5) The [BANK] must demonstrate to the satisfaction of the [AGENCY] the appropriateness of any proxies used to capture the risks of the [BANK]'s actual positions for which such proxies are used.

(b) *Quantitative requirements for VaR-based measure.* (1) The VaR-based measure must be calculated on a daily basis using a one-tail, 99.0 percent confidence level, and a holding period equivalent to a 10-business-day movement in underlying risk factors, such as rates, spreads, and prices. To calculate VaR-based measures using a 10-business-day holding period, the [BANK] may calculate 10-business-day measures directly or may convert VaR-based measures using holding periods other than 10 business days to the equivalent of a 10-business-day holding period. A [BANK] that converts its VaR-based measure in such a manner must be able to justify the reasonableness of its approach to the satisfaction of the [AGENCY].

(2) The VaR-based measure must be based on a historical observation period of at least one year. Data used to determine the VaR-based measure must be relevant to the [BANK]'s actual exposures and of sufficient quality to support the calculation of risk-based capital requirements. The [BANK] must update data sets at least monthly or more frequently as changes in market conditions or portfolio composition warrant. For a [BANK] that uses a weighting scheme or other method for the historical observation period, the [BANK] must either:

(i) Use an effective observation period of at least one year in which the average time lag of the observations is at least six months; or

(ii) Demonstrate to the [AGENCY] that its weighting scheme is more effective than a weighting scheme with an average time lag of at least six months representing the volatility of the [BANK]'s trading portfolio over a full business cycle. A [BANK] using this option must update its data more frequently than monthly and in a manner appropriate for the type of weighting scheme.

(c) A [BANK] must divide its portfolio into a number of significant subportfolios approved by the [AGENCY] for subportfolio backtesting purposes. These subportfolios must be sufficient to allow the [BANK] and the [AGENCY] to assess the adequacy of the VaR model at the risk factor level; the [AGENCY] will evaluate the appropriateness of these subportfolios relative to the value and composition of the [BANK]'s covered positions. The [BANK] must retain and make available to the [AGENCY] the following information for each subportfolio for each business day over the previous two years (500 business days), with no more than a 60-day lag:

(1) A daily VaR-based measure for the subportfolio calibrated to a one-tail, 99.0 percent confidence level;

(2) The daily profit or loss for the subportfolio (that is, the net change in price of the positions held in the portfolio at the end of the previous business day); and

(3) The p-value of the profit or loss on each day (that is, the probability of observing a profit that is less than, or a loss that is greater than, the amount reported for purposes of paragraph (c)(2) of this section based on the model used to calculate the VaR-based measure described in paragraph (c)(1) of this section).

§ ____.206 Stressed VaR-based measure.

(a) *General requirement.* At least weekly, a [BANK] must use the same internal model(s) used to calculate its VaR-based measure to calculate a stressed VaR-based measure.

(b) *Quantitative requirements for stressed VaR-based measure.* (1) A [BANK] must calculate a stressed VaR-based measure for its covered positions using the same model(s) used to calculate the VaR-based measure, subject to the same confidence level and holding period applicable to the VaR-based measure under § ____.205, but with model inputs calibrated to historical data from a continuous 12-month period that reflects a period of significant financial stress appropriate to the [BANK]'s current portfolio.

(2) The stressed VaR-based measure must be calculated at least weekly and be no less than the [BANK]'s VaR-based measure.

(3) A [BANK] must have policies and procedures that describe how it determines the period of significant financial stress used to calculate the [BANK]'s stressed VaR-based measure under this section and must be able to provide empirical support for the period used. The [BANK] must obtain the prior approval of the [AGENCY] for, and notify the [AGENCY] if the [BANK] makes any material changes to, these policies and procedures. The policies and procedures must address:

(i) How the [BANK] links the period of significant financial stress used to calculate the stressed VaR-based measure to the composition and directional bias of its current portfolio; and

(ii) The [BANK]'s process for selecting, reviewing, and updating the period of significant financial stress used to calculate the stressed VaR-based measure and for monitoring the appropriateness of the period to the [BANK]'s current portfolio.

(4) Nothing in this section prevents the [AGENCY] from requiring a [BANK] to use a different period of significant financial stress in the calculation of the stressed VaR-based measure.

§ ____.207 Specific risk.

(a) *General requirement.* A [BANK] must use one of the methods in this section to measure the specific risk for each of its debt, equity, and securitization positions with specific risk.

(b) *Modeled specific risk.* A [BANK] may use models to measure the specific risk of covered positions as provided in paragraph (a) of section 205 of this subpart (therefore, excluding securitization positions that are not modeled under section 209 of this subpart). A [BANK] must use models to measure the specific risk of correlation trading positions that are modeled under § ____.209.

(1) *Requirements for specific risk modeling.* (i) If a [BANK] uses internal models to measure the specific risk of a portfolio, the internal models must:

(A) Explain the historical price variation in the portfolio;

(B) Be responsive to changes in market conditions;

(C) Be robust to an adverse environment, including signaling rising risk in an adverse environment; and

(D) Capture all material components of specific risk for the debt and equity positions in the portfolio. Specifically, the internal models must:

(*1*) Capture event risk and idiosyncratic risk;

(*2*) Capture and demonstrate sensitivity to material differences between positions that are similar but not identical and to changes in portfolio composition and concentrations.

(ii) If a [BANK] calculates an incremental risk measure for a portfolio of debt or equity positions under section 208 of this subpart, the [BANK] is not required to capture default and credit migration risks in its internal models used to measure the specific risk of those portfolios.

(2) *Specific risk fully modeled for one or more portfolios.* If the [BANK]'s VaR-based measure captures all material aspects of specific risk for one or more of its portfolios of debt, equity, or correlation trading positions, the [BANK] has no specific risk add-on for those portfolios for purposes of paragraph (a)(2)(iii) of § ____.204.

(c) *Specific risk not modeled.* (1) If the [BANK]'s VaR-based measure does not capture all material aspects of specific risk for a portfolio of debt, equity, or correlation trading positions, the [BANK] must calculate a specific-risk add-on for the portfolio under the standardized measurement method as described in § ____.210.

(2) A [BANK] must calculate a specific risk add-on under the standardized measurement method as described in § ____.210 for all of its securitization positions that are not modeled under § ____.209.

§ ____.208 Incremental risk.

(a) *General requirement.* A [BANK] that measures the specific risk of a portfolio of debt positions under § ____.207(b) using internal models must calculate at least weekly an incremental risk measure for that portfolio according to the requirements in this section. The incremental risk measure is the [BANK]'s measure of potential losses due to incremental risk over a one-year time horizon at a one-tail, 99.9 percent confidence level, either under the assumption of a constant level of risk, or under the assumption of constant positions. With the prior approval of the [AGENCY], a [BANK] may choose to include portfolios of equity positions in its incremental risk model, provided that it consistently includes such equity positions in a manner that is consistent with how the [BANK] internally measures and manages the incremental risk of such positions at the portfolio level. If equity positions are included in the model, for modeling purposes default is considered to have occurred upon the default of any debt of the issuer of the equity position. A [BANK] may not include correlation trading positions or securitization positions in its incremental risk measure.

(b) *Requirements for incremental risk modeling.* For purposes of calculating the incremental risk measure, the incremental risk model must:

(1) Measure incremental risk over a one-year time horizon and at a one-tail, 99.9 percent confidence level, either under the assumption of a constant level of risk, or under the assumption of constant positions.

(i) A constant level of risk assumption means that the [BANK] rebalances, or rolls over, its trading positions at the beginning of each liquidity horizon over the one-year horizon in a manner that maintains the [BANK]'s initial risk level. The [BANK] must determine the frequency of rebalancing in a manner consistent with the liquidity horizons of the positions in the portfolio. The liquidity horizon of a position or set of positions is the time required for a [BANK] to reduce its exposure to, or hedge all of its material risks of, the position(s) in a stressed market. The liquidity horizon for a position or set of positions may not be less than the shorter of three months or the contractual maturity of the position.

(ii) A constant position assumption means that the [BANK] maintains the same set of positions throughout the one-year horizon. If a [BANK] uses this assumption, it must do so consistently across all portfolios.

(iii) A [BANK]'s selection of a constant position or a constant risk assumption must be consistent between the [BANK]'s incremental risk model and its comprehensive risk model described in section 209 of this subpart, if applicable.

(iv) A [BANK]'s treatment of liquidity horizons must be consistent between the [BANK]'s incremental risk model and its comprehensive risk model described in section 209, if applicable.

(2) Recognize the impact of correlations between default and migration events among obligors.

(3) Reflect the effect of issuer and market concentrations, as well as concentrations that can arise within and across product classes during stressed conditions.

(4) Reflect netting only of long and short positions that reference the same financial instrument.

(5) Reflect any material mismatch between a position and its hedge.

(6) Recognize the effect that liquidity horizons have on dynamic hedging strategies. In such cases, a [BANK] must:

(i) Choose to model the rebalancing of the hedge consistently over the relevant set of trading positions;

(ii) Demonstrate that the inclusion of rebalancing results in a more appropriate risk measurement;

(iii) Demonstrate that the market for the hedge is sufficiently liquid to permit rebalancing during periods of stress; and

(iv) Capture in the incremental risk model any residual risks arising from such hedging strategies.

(7) Reflect the nonlinear impact of options and other positions with material nonlinear behavior with respect to default and migration changes.

(8) Maintain consistency with the [BANK]'s internal risk management methodologies for identifying, measuring, and managing risk.

(c) *Calculation of incremental risk capital requirement.* The incremental risk capital requirement is the greater of:

(1) The average of the incremental risk measures over the previous 12 weeks; or

(2) The most recent incremental risk measure.

§ ____.209 Comprehensive risk.

(a) *General requirement.* (1) Subject to the prior approval of the [AGENCY], a [BANK] may use the method in this section to measure comprehensive risk, that is, all price risk, for one or more portfolios of correlation trading positions.

(2) A [BANK] that measures the price risk of a portfolio of correlation trading positions using internal models must calculate at least weekly a comprehensive risk measure that captures all price risk according to the requirements of this section. The comprehensive risk measure is either:

(i) The sum of:

(A) The [BANK]'s modeled measure of all price risk determined according to the requirements in paragraph (b) of this section; and

(B) A surcharge for the [BANK]'s modeled correlation trading positions equal to the total specific risk add-on for such positions as calculated under section 210 of this subpart multiplied by 8.0 percent; or

(ii) With approval of the [AGENCY] and provided the [BANK] has met the requirements of this section for a period of at least one year and can demonstrate the effectiveness of the model through the results of ongoing model validation efforts including robust benchmarking, the greater of:

(A) The [BANK]'s modeled measure of all price risk determined according to the requirements in paragraph (b) of this section; or

(B) The total specific risk add-on that would apply to the bank's modeled correlation trading positions as calculated under section 210 of this subpart multiplied by 8.0 percent.

(b) *Requirements for modeling all price risk.* If a [BANK] uses an internal model to measure the price risk of a portfolio of correlation trading positions:

(1) The internal model must measure comprehensive risk over a one-year time horizon at a one-tail, 99.9 percent confidence level, either under the assumption of a constant level of risk, or under the assumption of constant positions.

(2) The model must capture all material price risk, including but not limited to the following:

(i) The risks associated with the contractual structure of cash flows of the position, its issuer, and its underlying exposures;

(ii) Credit spread risk, including nonlinear price risks;

(iii) The volatility of implied correlations, including nonlinear price risks such as the cross-effect between spreads and correlations;

(iv) Basis risk;

(v) Recovery rate volatility as it relates to the propensity for recovery rates to affect tranche prices; and

(vi) To the extent the comprehensive risk measure incorporates the benefits of dynamic hedging, the static nature of the hedge over the liquidity horizon must be recognized. In such cases, a [BANK] must:

(A) Choose to model the rebalancing of the hedge consistently over the relevant set of trading positions;

(B) Demonstrate that the inclusion of rebalancing results in a more appropriate risk measurement;

(C) Demonstrate that the market for the hedge is sufficiently liquid to permit rebalancing during periods of stress; and

(D) Capture in the comprehensive risk model any residual risks arising from such hedging strategies;

(3) The [BANK] must use market data that are relevant in representing the risk profile of the [BANK]'s correlation trading positions in order to ensure that the [BANK] fully captures the material risks of the correlation trading positions in its comprehensive risk measure in accordance with this section; and

(4) The [BANK] must be able to demonstrate that its model is an appropriate representation of comprehensive risk in light of the historical price variation of its correlation trading positions.

(c) *Requirements for stress testing.* (1) A [BANK] must at least weekly apply specific, supervisory stress scenarios to its portfolio of correlation trading positions that capture changes in:

(i) Default rates;

(ii) Recovery rates;

(iii) Credit spreads;

(iv) Correlations of underlying exposures; and

(v) Correlations of a correlation trading position and its hedge.

(2) *Other requirements.* (i) A [BANK] must retain and make available to the [AGENCY] the results of the supervisory stress testing, including comparisons with the capital requirements generated by the [BANK]'s comprehensive risk model.

(ii) A [BANK] must report to the [AGENCY] promptly any instances where the stress tests indicate any material deficiencies in the comprehensive risk model.

(d) *Calculation of comprehensive risk capital requirement.* The comprehensive risk capital requirement is the greater of:

(1) The average of the comprehensive risk measures over the previous 12 weeks; or

(2) The most recent comprehensive risk measure.

§ ____.210 Standardized measurement method for specific risk.

(a) *General requirement.* A [BANK] must calculate a total specific risk add-on for each portfolio of debt and equity positions for which the [BANK]'s VaR-based measure does not capture all material aspects of specific risk and for all securitization positions that are not modeled under § ____.209. A [BANK] must calculate each specific risk add-on in accordance with the requirements of this section. Notwithstanding any other definition or requirement in this appendix, a position that would have qualified as a debt position or an equity position but for the fact that it qualifies as a correlation trading position under paragraph (2) of the definition of correlation trading position in § ____.2, shall be considered a debt position or an equity position, respectively, for purposes of this section 210 of this subpart.

(1) The specific risk add-on for an individual debt or securitization position that represents sold credit protection is capped at the notional amount of the credit derivative contract. The specific risk add-on for an individual debt or securitization position that represents purchased credit protection is capped at the current market value of the transaction plus the absolute value of the present value of all remaining payments to the protection seller under the transaction. This sum is equal to the value of the protection leg of the transaction.

(2) For debt, equity, or securitization positions that are derivatives with linear payoffs, a [BANK] must assign a specific risk-weighting factor to the market value of the effective notional amount of the underlying instrument or index portfolio, except for a securitization position for which the [BANK] directly calculates a specific risk add-on using the SFA in paragraph (b)(2)(vii)(B) of this section. A swap must be included as an effective notional position in the underlying instrument or portfolio, with the receiving side treated as a long position and the paying side treated as a short position. For debt, equity, or securitization positions that are derivatives with nonlinear payoffs, a [BANK] must risk weight the market value of the effective notional amount of the underlying instrument or portfolio multiplied by the derivative's delta.

(3) For debt, equity, or securitization positions, a [BANK] may net long and short positions (including derivatives) in identical issues or identical indices. A [BANK] may also net positions in depositary receipts against an opposite position in an identical equity in different markets, provided that the [BANK] includes the costs of conversion.

(4) A set of transactions consisting of either a debt position and its credit derivative hedge or a securitization position and its credit derivative hedge has a specific risk add-on of zero if:

(i) The debt or securitization position is fully hedged by a total return swap (or similar instrument where there is a matching of swap payments and changes in market value of the debt or securitization position);

(ii) There is an exact match between the reference obligation of the swap and the debt or securitization position;

(iii) There is an exact match between the currency of the swap and the debt or securitization position; and

(iv) There is either an exact match between the maturity date of the swap and the maturity date of the debt or securitization position; or, in cases where a total return swap references a portfolio of positions with different maturity dates, the total return swap maturity date must match the maturity date of the underlying asset in that portfolio that has the latest maturity date.

(5) The specific risk add-on for a set of transactions consisting of either a debt position and its credit derivative hedge or a securitization position and its credit derivative hedge that does not meet the criteria of paragraph (a)(4) of this section is equal to 20.0 percent of the capital requirement for the side of the transaction with the higher specific risk add-on when:

(i) The credit risk of the position is fully hedged by a credit default swap or similar instrument;

(ii) There is an exact match between the reference obligation of the credit derivative hedge and the debt or securitization position;

(iii) There is an exact match between the currency of the credit derivative hedge and the debt or securitization position; and

(iv) There is either an exact match between the maturity date of the credit derivative hedge and the maturity date of the debt or securitization position; or, in the case where the credit derivative hedge has a standard maturity date:

(A) The maturity date of the credit derivative hedge is within 30 business days of the maturity date of the debt or securitization position; or

(B) For purchased credit protection, the maturity date of the credit derivative hedge is later than the maturity date of the debt or securitization position, but is no later than the standard maturity date for that instrument that immediately follows the maturity date of the debt or securitization position. The maturity date of the credit derivative hedge may not exceed the maturity date of the debt or securitization position by more than 90 calendar days.

(6) The specific risk add-on for a set of transactions consisting of either a debt position and its credit derivative hedge or a securitization position and its credit derivative hedge that does not meet the criteria of either paragraph (a)(4) or (a)(5) of this section, but in which all or substantially all of the price risk has been hedged, is equal to the specific risk add-on for the side of the transaction with the higher specific risk add-on.

(b) *Debt and securitization positions.* (1) The total specific risk add-on for a portfolio of debt or securitization positions is the sum of the specific risk add-ons for individual debt or securitization positions, as computed under this section. To determine the specific risk add-on for individual debt or securitization positions, a [BANK] must multiply the absolute value of the current market value of each net long or net short debt or securitization position in the portfolio by the appropriate specific risk-weighting factor as set forth in paragraphs (b)(2)(i) through (b)(2)(vii) of this section.

(2) For the purpose of this section, the appropriate specific risk-weighting factors include: (i) *Sovereign debt positions.* (A) *In general.* A [BANK] must assign a specific risk-weighting factor to a sovereign debt position based on the CRC applicable to the sovereign entity and, as applicable, the remaining contractual maturity of the position, in accordance with table 2 of this section. Sovereign debt positions that are backed by the full faith and credit of the United States are treated as having a CRC of 0.

TABLE 2—SPECIFIC RISK-WEIGHTING FACTORS FOR SOVEREIGN DEBT POSITIONS

		Specific risk-weighting factor	Percent
Sovereign CRC	0–1		0.0
	2–3	Remaining contractual maturity is 6 months or less	0.25
		Remaining contractual maturity is greater than 6 and up to and including 24 months.	1.0
		Remaining contractual maturity exceeds 24 months	1.6
	4–6		8.0
	7		12.0
No CRC			8.0
Default by the Sovereign Entity			12.0

(B) Notwithstanding paragraph (b)(2)(i)(A) of this section, a [BANK] may assign to a sovereign debt position a specific risk-weighting factor that is lower than the applicable specific risk-weighting factor in table 2 if:

(*1*) The position is denominated in the sovereign entity's currency;

(*2*) The [BANK] has at least an equivalent amount of liabilities in that currency; and

(*3*) The sovereign entity allows banks under its jurisdiction to assign the lower specific risk-weighting factor to the same exposures to the sovereign entity.

(C) A [BANK] must assign a 12.0 percent specific risk-weighting factor to a sovereign debt position immediately upon determination a default has occurred; or if a default has occurred within the previous five years.

(D) A [BANK] must assign an 8.0 percent specific risk-weighting factor to a sovereign debt position if the sovereign entity does not have a CRC assigned to it, unless the sovereign debt position must be assigned a higher specific risk-weighting factor under paragraph (b)(2)(i)(C) of this section.

(ii) *Certain supranational entity and multilateral development bank debt positions.* A [BANK] may assign a 0.0 percent specific risk-weighting factor to a debt position that is an exposure to the Bank for International Settlements, the European Central Bank, the European Commission, the International Monetary Fund, or an MDB.

(iii) *GSE debt positions.* A [BANK] must assign a 1.6 percent specific risk-weighting factor to a debt position that is an exposure to a GSE. Notwithstanding the foregoing, a [BANK] must assign an 8.0 percent specific risk-weighting factor to preferred stock issued by a GSE.

(iv) *Depository institution, foreign bank, and credit union debt positions.* (A) Except as provided in paragraph (b)(2)(iv)(B) of this section, a [BANK] must assign a specific risk-weighting factor to a debt position that is an exposure to a depository institution, a foreign bank, or a credit union using the specific risk-weighting factor that corresponds to that entity's home country and, as applicable, the remaining contractual maturity of the position, in accordance with table 3 of this section.

TABLE 3—SPECIFIC RISK-WEIGHTING FACTORS FOR DEPOSITORY INSTITUTIONS, FOREIGN BANK, AND CREDIT UNION DEBT PENSIONS

		Specific risk-weighting factor	Percent
Sovereign CRC	0–2	Remaining contractual maturity of 6 months or less	0.25
		Remaining contractual maturity of greater than 6 and up to and including 24 months.	1.0
		Remaining contractual maturity exceeds 24 months	1.6
	3		8.0
	4–7		12.0
No CRC			8.0
Default by the Sovereign Entity			12.0

(B) A [BANK] must assign a specific risk-weighting factor of 8.0 percent to a debt position that is an exposure to a depository institution or a foreign bank that is includable in the depository institution's or foreign bank's regulatory capital and that is not subject to deduction as a reciprocal holding under § ___.22.

(C) A [BANK] must assign a 12.0 percent specific risk-weighting factor to a debt position that is an exposure to a foreign bank immediately upon determination that a default by the foreign bank's home country has occurred or if a default by the foreign bank's home country has occurred within the previous five years.

(v) *PSE debt positions.* (A) Except as provided in paragraph (b)(2)(v)(B) of this section, a [BANK] must assign a specific risk-weighting factor to a debt position that is an exposure to a PSE based on the specific risk-weighting factor that corresponds to the PSE's home country and to the position's categorization as a general obligation or revenue obligation and, as applicable, the remaining contractual maturity of the position, as set forth in tables 4 and 5 of this section.

(B) A [BANK] may assign a lower specific risk-weighting factor than would otherwise apply under tables 4 and 5 of this section to a debt position that is an exposure to a foreign PSE if:

(*1*) The PSE's home country allows banks under its jurisdiction to assign a lower specific risk-weighting factor to such position; and

(*2*) The specific risk-weighting factor is not lower than the risk weight that corresponds to the PSE's home country in accordance with tables 4 and 5 of this section.

(C) A [BANK] must assign a 12.0 percent specific risk-weighting factor to a PSE debt position immediately upon determination that a default by the PSE's home country has occurred or if a default by the PSE's home country has occurred within the previous five years.

TABLE 4—SPECIFIC RISK-WEIGHTING FACTORS FOR PSE GENERAL OBLIGATION DEBT POSITIONS

		General obligations specific risk-weighting factor	Percent
Sovereign CRC	0–2	Remaining contractual maturity of 6 months or less	0.25
		Remaining contractual maturity of greater than 6 and up to and including 24 months.	1.0
		Remaining contractual maturity exceeds 24 months	1.6
	3		8.0
	4–7		12.0
No CFR			8.0
Default by the Sovereign Entity			12.0

TABLE 5—SPECIFIC RISK-WEIGHTING FACTORS FOR PSE REVENUE OBLIGATION DEBT POSITIONS

		Revenue obligation specific risk-weighting factor	Percent
Sovereign CRC	0–1	Remaining contractual maturity of 6 months or less	0.25
		Remaining contractual maturity of greater than 6 and up to and including 24 months.	1.0
		Remaining contractual maturity exceeds 24 months	1.6
	2–3		8.0
	4–7		12.0
No CFR			8.0
Default by the Sovereign Entity			12.0

(vi) *Corporate debt positions.* Except as otherwise provided in paragraph (b)(2)(vi)(B) of this section, a [BANK] must assign a specific risk-weighting factor to a corporate debt position in accordance with the investment grade methodology in paragraph (b)(2)(vi)(A) of this section.

(A) *Investment grade methodology.* (*1*) For corporate debt positions that are exposures to entities that have issued and outstanding publicly traded instruments, a [BANK] must assign a specific risk-weighting factor based on the category and remaining contractual maturity of the position, in accordance with table 6. For purposes of this paragraph (b)(2)(vi)(A)(*1*), the [BANK] must determine whether the position is in the investment grade or not investment grade category.

TABLE 6—SPECIFIC RISK-WEIGHTING FACTORS FOR CORPORATE DEBT POSITIONS UNDER THE INVESTMENT GRADE METHODOLOGY

Category	Remaining contractual maturity	Specific risk-weighting factor (in percent)
Investment Grade	6 months or less	0.50
	Greater than 6 and up to and including 24 months	2.00
	Greater than 24 months	4.00
Non-investment Grade		12.00

(*2*) A [BANK] must assign an 8.0 percent specific risk-weighting factor for corporate debt positions that are exposures to entities that do not have publicly traded instruments outstanding.

(B) *Limitations.* (*1*) A [BANK] must assign a specific risk-weighting factor of at least 8.0 percent to an interest-only mortgage-backed security that is not a securitization position.

(*2*) A [BANK] shall not assign a corporate debt position a specific risk-weighting factor that is lower than the specific risk-weighting factor that corresponds to the CRC of the issuer's home country in table 2 of this section.

(vii) *Securitization positions.* (A) General requirements. (*1*) A [BANK] that is not an advanced approaches bank must assign a specific risk-weighting factor to a securitization position using either the simplified supervisory formula approach (SSFA) in paragraph (b)(2)(vii)(C) of this section (and § ____.211) or assign a specific risk-weighting factor of 100 percent to the position.

(*2*) A [BANK] that is an advanced approaches bank must calculate a specific risk add-on for a securitization position in accordance with paragraph (b)(2)(vii)(B) of this section if the [BANK] and the securitization position each qualifies to use the SFA in § ____.143. A [BANK] that is an advanced approaches bank with a securitization position that does not qualify for the SFA under paragraph (b)(2)(vii)(B) of this section may assign a specific risk-weighting factor to the securitization position using the SSFA in accordance with paragraph (b)(2)(vii)(C) of this section or assign a specific risk-weighting factor of 100 percent to the position.

(*3*) A [BANK] must treat a short securitization position as if it is a long securitization position solely for calculation purposes when using the SFA in paragraph (b)(2)(vii)(B) of this section or the SSFA in paragraph (b)(2)(vii)(C) of this section.

(B) *SFA.* To calculate the specific risk add-on for a securitization position using the SFA, a [BANK] that is an advanced approaches bank must set the specific risk add-on for the position equal to the risk-based capital requirement as calculated under § ____.143.

(C) *SSFA.* To use the SSFA to determine the specific risk-weighting factor for a securitization position, a [BANK] must calculate the specific risk-weighting factor in accordance with § ____.211.

(D) *Nth-to-default credit derivatives.* A [BANK] must determine a specific risk add-on using the SFA in paragraph (b)(2)(vii)(B) of this section, or assign a specific risk-weighting factor using the SSFA in paragraph (b)(2)(vii)(C) of this section to an nth-to-default credit derivative in accordance with this paragraph (b)(2)(vii)(D), regardless of whether the [BANK] is a net protection buyer or net protection seller. A [BANK] must determine its position in the nth-to-default credit derivative as the largest notional dollar amount of all the underlying exposures.

(*1*) For purposes of determining the specific risk add-on using the SFA in paragraph (b)(2)(vii)(B) of this section or the specific risk-weighting factor for an nth-to-default credit derivative using the SSFA in paragraph (b)(2)(vii)(C) of this section the [BANK] must calculate the attachment point and detachment point of its position as follows:

(*i*) The attachment point (parameter A) is the ratio of the sum of the notional amounts of all underlying exposures that are subordinated to the [BANK]'s position to the total notional amount of all underlying exposures. For purposes of using the SFA in paragraph (b)(2)(vii)(B) of this section to calculate the specific add-on for its position in an nth-to-default credit derivative, parameter A must be set equal to *the credit enhancement level* (L) input to the SFA formula in section 143 of this subpart. In the case of a first-to-default credit derivative, there are no underlying exposures that are subordinated to the [BANK]'s position. In the case of a second-or-subsequent-to-default credit derivative, the smallest (n-1) notional amounts of the underlying exposure(s) are subordinated to the [BANK]'s position.

(*ii*) The detachment point (parameter D) equals the sum of parameter A plus the ratio of the notional amount of the [BANK]'s position in the nth-to-default credit derivative to the total notional amount of all underlying exposures. For purposes of using the SFA in paragraph (b)(2)(vii)(B) of this section to calculate the specific risk add-on for its position in an nth-to-default credit derivative, parameter D must be set to equal the L input plus the *thickness of tranche* T input to the SFA formula in § ____.143 of this subpart.

(*2*) A [BANK] that does not use the SFA in paragraph (b)(2)(vii)(B) of this section to determine a specific risk-add on, or the SSFA in paragraph (b)(2)(vii)(C) of this section to determine a specific risk-weighting factor for its position in an nth-to-default credit derivative must assign a specific risk-weighting factor of 100 percent to the position.

(c) *Modeled correlation trading positions.* For purposes of calculating the comprehensive risk measure for modeled correlation trading positions under either paragraph (a)(2)(i) or (a)(2)(ii) of § ____.209, the total specific risk add-on is the greater of:

(1) The sum of the [BANK]'s specific risk add-ons for each net long correlation trading position calculated under this section; or

(2) The sum of the [BANK]'s specific risk add-ons for each net short correlation trading position calculated under this section.

(d) *Non-modeled securitization positions.* For securitization positions that are not correlation trading positions and for securitizations that are correlation trading positions not modeled under § ____.209, the total specific risk add-on is the greater of:

(1) The sum of the [BANK]'s specific risk add-ons for each net long securitization position calculated under this section; or

(2) The sum of the [BANK]'s specific risk add-ons for each net short securitization position calculated under this section.

(e) *Equity positions.* The total specific risk add-on for a portfolio of equity positions is the sum of the specific risk add-ons of the individual equity positions, as computed under this section. To determine the specific risk add-on of individual equity positions, a [BANK] must multiply the absolute value of the current market value of each net long or net short equity position by the appropriate specific risk-weighting factor as determined under this paragraph:

(1) The [BANK] must multiply the absolute value of the current market value of each net long or net short equity position by a specific risk-weighting factor of 8.0 percent. For equity positions that are index contracts comprising a well-diversified portfolio of equity instruments, the absolute value of the current market value of each net long or net short position is multiplied by a specific risk-weighting factor of 2.0 percent.[3]

(2) For equity positions arising from the following futures-related arbitrage strategies, a [BANK] may apply a 2.0 percent specific risk-weighting factor to one side (long or short) of each position with the opposite side exempt from an additional capital requirement:

(i) Long and short positions in exactly the same index at different dates or in different market centers; or

[3] A portfolio is well-diversified if it contains a large number of individual equity positions, with no single position representing a substantial portion of the portfolio's total market value.

(ii) Long and short positions in index contracts at the same date in different, but similar indices.

(3) For futures contracts on main indices that are matched by offsetting positions in a basket of stocks comprising the index, a [BANK] may apply a 2.0 percent specific risk-weighting factor to the futures and stock basket positions (long and short), provided that such trades are deliberately entered into and separately controlled, and that the basket of stocks is comprised of stocks representing at least 90.0 percent of the capitalization of the index. A main index refers to the Standard & Poor's 500 Index, the FTSE All-World Index, and any other index for which the [BANK] can demonstrate to the satisfaction of the [AGENCY] that the equities represented in the index have liquidity, depth of market, and size of bid-ask spreads comparable to equities in the Standard & Poor's 500 Index and FTSE All-World Index.

(f) *Due diligence requirements.* (1) A [BANK] must demonstrate to the satisfaction of the [AGENCY] a comprehensive understanding of the features of a securitization position that would materially affect the performance of the position by conducting and documenting the analysis set forth in paragraph (f)(2) of this section. The [BANK]'s analysis must be commensurate with the complexity of the securitization position and the materiality of the position in relation to capital.

(2) A [BANK] must demonstrate its comprehensive understanding for each securitization position by:

(i) Conduct an analysis of the risk characteristics of a securitization position prior to acquiring the position and document such analysis within three business days after acquiring position, considering:

(A) Structural features of the securitization that would materially impact the performance of the position, for example, the contractual cash flow waterfall, waterfall-related triggers, credit enhancements, liquidity enhancements, market value triggers, the performance of organizations that service the position, and deal-specific definitions of default;

(B) Relevant information regarding the performance of the underlying credit exposure(s), for example, the percentage of loans 30, 60, and 90 days past due; default rates; prepayment rates; loans in foreclosure; property types; occupancy; average credit score or other measures of creditworthiness; average loan-to-value ratio; and industry and geographic diversification data on the underlying exposure(s);

(C) Relevant market data of the securitization, for example, bid-ask spreads, most recent sales price and historical price volatility, trading volume, implied market rating, and size, depth and concentration level of the market for the securitization; and

(D) For resecuritization positions, performance information on the underlying securitization exposures, for example, the issuer name and credit quality, and the characteristics and performance of the exposures underlying the securitization exposures; and

(ii) On an on-going basis (no less frequently than quarterly), evaluating, reviewing, and updating as appropriate the analysis required under paragraph (f)(1) of this section for each securitization position.

§ 211 Simplified supervisory formula approach (SSFA).

(a) *General requirements.* To use the SSFA to determine the specific risk-weighting factor for a securitization position, a [BANK] must have data that enables it to assign accurately the parameters described in paragraph (b) of this section. Data used to assign the parameters described in paragraph (b) of this section must be the most currently available data and no more than 91 calendar days old. A [BANK] that does not have the appropriate data to assign the parameters described in paragraph (b) of this section must assign a specific risk-weighting factor of 100 percent to the position.

(b) *SSFA parameters.* To calculate the specific risk-weighting factor for a securitization position using the SSFA, a [BANK] must have accurate information on the five inputs to the SSFA calculation described in paragraphs (b)(1) through (b)(5) of this section.

(1) K_G is the weighted-average (with unpaid principal used as the weight for each exposure) total capital requirement of the underlying exposures calculated using subpart D. K_G is expressed as a decimal value between zero and 1 (that is, an average risk weight of 100 percent represents a value of K_G equal to .08).

(2) Parameter W is expressed as a decimal value between zero and one. Parameter W is the ratio of the sum of the dollar amounts of any underlying exposures within the securitized pool that meet any of the criteria are set forth in paragraphs (i) through (vi) of this paragraph (b)(2) to the ending balance, measured in dollars, of underlying exposures:

(i) Ninety days or more past due;

(ii) Subject to a bankruptcy or insolvency proceeding;

(iii) In the process of foreclosure;

(iv) Held as real estate owned;

(v) Has contractually deferred interest payments for 90 days or more; or

(vi) Is in default.

(3) Parameter A is the attachment point for the position, which represents the threshold at which credit losses will first be allocated to the position. Parameter A equals the ratio of the current dollar amount of underlying exposures that are subordinated to the position of the [BANK] to the current dollar amount of underlying exposures. Any reserve account funded by the accumulated cash flows from the underlying exposures that is subordinated to the position that contains the [BANK]'s securitization exposure may be included in the calculation of parameter A to the extent that cash is present in the account. Parameter A is expressed as a decimal value between zero and one.

(4) Parameter D is the detachment point for the position, which represents the threshold at which credit losses of principal allocated to the position would result in a total loss of principal. Parameter D equals parameter A plus the ratio of the current dollar amount of the securitization positions that are *pari passu* with the position (that is, have equal seniority with respect to credit risk) to the current dollar amount of the underlying exposures. Parameter D is expressed as a decimal value between zero and one.

(5) A supervisory calibration parameter, p, is equal to 0.5 for securitization positions that are not resecuritization positions and equal to 1.5 for resecuritization positions.

(c) *Mechanics of the SSFA.* K_G and W are used to calculate K_A, the augmented value of K_G, which reflects the observed credit quality of the underlying pool of exposures. K_A is defined in paragraph (d) of this section. The values of parameters A and D, relative to K_A determine the specific risk-weighting factor assigned to a position as described in this paragraph and paragraph (d) of this section. The specific risk-weighting factor assigned to a securitization position, or portion of a position, as appropriate, is the larger of the specific risk-weighting factor determined in accordance with this paragraph and paragraph (d) of this section and a specific risk-weighting factor of 1.6 percent.

(1) When the detachment point, parameter D, for a securitization position is less than or equal to K_A, the position must be assigned a specific risk-weighting factor of 100 percent.

(2) When the attachment point, parameter A, for a securitization

position is greater than or equal to K_A, the [BANK] must calculate the specific risk-weighting factor in accordance with paragraph (d) of this section.

(3) When A is less than K_A and D is greater than K_A, the specific risk-weighting factor is a weighted-average of 1.00 and K_{SSFA} calculated under paragraphs (c)(3)(i) and (c)(3)(ii) of this section, but with the parameter A revised to be set equal to K_A. For the purpose of this calculation:

(i) The weight assigned to 1.00 equals $\frac{K_A - A}{D - A}$.

(ii) The weight assigned to K_{SSFA} equals $\frac{D - K_A}{D - A}$. The specific risk-weighting factor is equal to:

$$SRWF = 100 \times \left[\left(\frac{K_A - A}{D - A}\right) \times 1.00\right] + \left[\left(\frac{D - K_A}{D - A}\right) \times K_{SSFA}\right]$$

(d) SSFA equation. (1) The [BANK] must define the following parameters:

$$K_A = (1 - W) \cdot K_G + (0.5 \cdot W)$$

$$a = -\frac{1}{p \cdot K_A}$$

$$u = D - K_A$$

$$l = A - K_A$$

$e = 2.71828$, the base of the natural logarithms.

(2) Then the [BANK] must calculate K_{SSFA} according to the following formula:

$$K_{SSFA} = \frac{e^{a \cdot u} - e^{a \cdot l}}{a(u - l)}$$

(3) The specific risk-weighting factor for the position (expressed as a percent) is equal to $K_{SSFA} \times 100$.

§ ____.212 Market risk disclosures.

(a) *Scope.* A [BANK] must comply with this section unless it is a consolidated subsidiary of a bank holding company or a depository institution that is subject to these requirements or of a non-U.S. banking organization that is subject to comparable public disclosure requirements in its home jurisdiction. A [BANK] must make quantitative disclosures publicly each calendar quarter. If a significant change occurs, such that the most recent reporting amounts are no longer reflective of the [BANK]'s capital adequacy and risk profile, then a brief discussion of this change and its likely impact must be provided as soon as practicable thereafter. Qualitative disclosures that typically do not change each quarter may be disclosed annually, provided any significant changes are disclosed in the interim. If a [BANK] believes that disclosure of specific commercial or financial information would prejudice seriously its position by making public certain information that is either proprietary or confidential in nature, the [BANK] is not required to disclose these specific items, but must disclose more general information about the subject matter of the requirement, together with the fact that, and the reason why, the specific items of information have not been disclosed.

(b) *Disclosure policy.* The [BANK] must have a formal disclosure policy approved by the board of directors that addresses the [BANK]'s approach for determining its market risk disclosures. The policy must address the associated internal controls and disclosure controls and procedures. The board of directors and senior management must ensure that appropriate verification of the disclosures takes place and that effective internal controls and disclosure controls and procedures are maintained. One or more senior officers of the [BANK] must attest that the disclosures meet the requirements of this subpart, and the board of directors and senior management are responsible for establishing and maintaining an effective internal control structure over financial reporting, including the disclosures required by this section.

(c) *Quantitative disclosures.* (1) For each material portfolio of covered positions, the [BANK] must disclose publicly the following information at least quarterly:

(i) The high, low, and mean VaR-based measures over the reporting period and the VaR-based measure at period-end;

(ii) The high, low, and mean stressed VaR-based measures over the reporting period and the stressed VaR-based measure at period-end;

(iii) The high, low, and mean incremental risk capital requirements over the reporting period and the incremental risk capital requirement at period-end;

(iv) The high, low, and mean comprehensive risk capital requirements over the reporting period and the comprehensive risk capital requirement at period-end, with the period-end requirement broken down into appropriate risk classifications (for example, default risk, migration risk, correlation risk);

(v) Separate measures for interest rate risk, credit spread risk, equity price risk, foreign exchange risk, and commodity price risk used to calculate the VaR-based measure; and

(vi) A comparison of VaR-based estimates with actual gains or losses experienced by the [BANK], with an analysis of important outliers.

(2) In addition, the [BANK] must disclose publicly the following information at least quarterly:

(i) The aggregate amount of on-balance sheet and off-balance sheet securitization positions by exposure type; and

(ii) The aggregate amount of correlation trading positions.

(d) *Qualitative disclosures.* For each material portfolio of covered positions, the [BANK] must disclose publicly the following information at least annually, or more frequently in the event of material changes for each portfolio:

(1) The composition of material portfolios of covered positions;

(2) The [BANK]'s valuation policies, procedures, and methodologies for covered positions including, for securitization positions, the methods and key assumptions used for valuing such positions, any significant changes since the last reporting period, and the impact of such change;

(3) The characteristics of the internal models used for purposes of this subpart. For the incremental risk capital requirement and the comprehensive risk capital requirement, this must include:

(i) The approach used by the [BANK] to determine liquidity horizons;

(ii) The methodologies used to achieve a capital assessment that is consistent with the required soundness standard; and

(iii) The specific approaches used in the validation of these models;

(4) A description of the approaches used for validating and evaluating the accuracy of internal models and modeling processes for purposes of this subpart;

(5) For each market risk category (that is, interest rate risk, credit spread risk, equity price risk, foreign exchange risk, and commodity price risk), a description of the stress tests applied to the positions subject to the factor;

(6) The results of the comparison of the [BANK]'s internal estimates for purposes of this subpart with actual outcomes during a sample period not used in model development;

(7) The soundness standard on which the [BANK]'s internal capital adequacy assessment under this subpart is based, including a description of the methodologies used to achieve a capital adequacy assessment that is consistent with the soundness standard;

(8) A description of the [BANK]'s processes for monitoring changes in the credit and market risk of securitization positions, including how those processes differ for resecuritization positions; and

(9) A description of the [BANK]'s policy governing the use of credit risk mitigation to mitigate the risks of securitization and resecuritization positions.

End of Common Rule

List of Subjects

12 CFR Part 3

Administrative practices and procedure, Capital, National banks, Reporting and recordkeeping requirements, Risk.

12 CFR Part 217

Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

12 CFR Part 325

Administrative practice and procedure, Banks, banking, Capital Adequacy, Reporting and recordkeeping requirements, Savings associations, State non-member banks.

Adoption of Proposed Common Rule

The adoption of the proposed 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, the Office of the Comptroller of the Currency proposes to further amend part 3 of chapter I of title 12 of the Code of Federal Regulations is proposed to be amended elsewhere in this issue of the **Federal Register** under Docket ID OCC–2012–0008 and OCC–2012–0009, as follows:

PART 3—MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

1. The authority citation for part 3 continues to read as follows:

Authority: 12 U.S.C. 93a, 161, 1462, 1462a, 1463, 1464, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907 and 3909, and 5412(b)(2)(B).

2. Designate the text set forth at the end of the common preamble as part 3, subparts E and F.

3. Newly designated subparts E and F of part 3 are amended as set forth below:

i. Remove ''[AGENCY]'' and add ''OCC'' in its place, wherever it appears;

ii. Remove ''[BANK]'' and add ''national bank or Federal savings association'' in its place, wherever it appears;

iii. Remove ''[BANKS]'' and ''[BANK]s'' and add ''national banks and Federal savings associations'' in their places, wherever they appear;

iv. Remove ''[BANK]'s'' and add ''national bank's and Federal savings association's'' in its place, wherever it appears;

v. Remove ''[PART]'' and add ''Part 3'' in its place, wherever it appears; and

vi. Remove ''[Regulatory Reports]'' and add ''Call Report'' in its place, wherever it appears; and

vii. Remove ''[regulatory report]'' and add ''Call Reports'' in its place, wherever it appears.

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 217 of chapter II of title 12 of the Code of Federal

Regulations are proposed to be amended as follows:

PART 217—CAPITAL ADEQUACY OF BANK HOLDING COMPANIES, SAVINGS AND LOAN HOLDING COMPANIES, AND STATE MEMBER BANKS

1. The authority citation for part 217 continues to read as follows:

Authority: 12 U.S.C. 248(a), 321–338a, 481–486, 1462a, 1467a, 1818, 1828, 1831n, 1831o, 1831p–l, 1831w, 1835, 1844(b), 3904, 3906–3909, 4808, 5365, 5371.

Subpart E—Risk-Weighted Assets—Internal Ratings-Based and Advanced Measurement Approaches

Subpart F—Risk-weighted Assets—Market Risk

2. Designate the text set forth at the end of the common preamble as part 217, subparts E and F.

3. Part 217 is amended as set forth below:

a. Remove ''[AGENCY]'' and add ''Board'' in its place wherever it appears.

b. Remove ''[BANK]'' and add ''Board-regulated institution'' in its place wherever it appears.

c. Remove ''[PART]'' and add ''part'' in its place wherever it appears.

d. Remove ''[Regulatory Reports]'' and add in its place ''Consolidated Reports of Condition and Income (Call Report), for a state member bank, or Consolidated Financial Statements for Bank Holding Companies (FR Y–9C), for a bank holding company or savings and loan holding company, as applicable'' the first time it appears; and

e. Remove ''[regulatory report]'' and add in its place ''Call Report, for a state member bank or FR Y–9C, for a bank holding company or savings and loan holding company, as applicable''.

4. In § 217.100, revise paragraph (b)(1) to read as follows:

§ 217.100 Purpose, Applicability, and Principle of Conservatism.

* * * * *

(b) *Applicability.* (1) This subpart applies to:

(i) A top-tier bank holding company or savings and loan holding company domiciled in the United States that:

(A) Is not a consolidated subsidiary of another bank holding company or savings and loan holding company that uses 12 CFR part 217, subpart E, to calculate its risk-based capital requirements; and

(B) That:

(*1*) Has total consolidated assets (excluding assets held by an insurance underwriting subsidiary), as defined on schedule HC–K of the FR Y–9C, equal to $250 billion or more;

(*2*) Has consolidated total on-balance sheet foreign exposure at the most recent year-end equal to $10 billion (excluding exposures held by an insurance underwriting subsidiary). Total on-balance sheet foreign exposure equals total cross-border claims less claims with head office or guarantor located in another country plus redistributed guaranteed amounts to the country of head office or guarantor plus local country claims on local residents plus revaluation gains on foreign exchange and derivative products, calculated in accordance with the Federal Financial Institutions Examination Council (FFIEC) 009 Country Exposure Report); or

(*3*) Has a subsidiary depository institution that is required, or has elected, to use 12 CFR part 3, subpart E (OCC), 12 CFR part 217, subpart E (Board), or 12 CFR part 325, subpart E (FDIC) to calculate its risk-based capital requirements;

(ii) A state member bank that:

(A) Has total consolidated assets, as reported on the most recent year-end Consolidated Report of Condition and Income (Call Report), equal to $250 billion or more;

(B) Has consolidated total on-balance sheet foreign exposure at the most recent year-endequal to $10 billion or more (where total on-balance sheet foreign exposure equals total cross-border claims less claims with head office or guarantor located in another country plus redistributed guaranteed amounts to the country of head office or guarantor plus local country claims on local residents plus revaluation gains on foreign exchange and derivative products, calculated in accordance with the Federal Financial Institutions Examination Council (FFIEC) 009 Country Exposure Report);

(C) Is a subsidiary of a depository institution that uses 12 CFR part 3, subpart E (OCC), 12 CFR part 217, subpart E (Board), or 12 CFR part 325, subpart E (FDIC) to calculate its risk-based capital requirements; or

(D) Is a subsidiary of a bank holding company that uses 12 CFR part 217, subpart E, to calculate its risk-based capital requirements; and

(iii) Any Board-regulated institution that elects to use this subpart to calculate its risk-based capital requirements.

* * * * *

5. In § 217.121, revise paragraph (a) to read as follows:

* * * * *

§ 217.121 Qualification process.

(a) *Timing.* (1) A Board-regulated institution that is described in § 217.100(b)(1)(i) and (ii) must adopt a written implementation plan no later than six months after the date the Board-regulated institution meets a criterion in that section. The implementation plan must incorporate an explicit start date no later than 36 months after the date the Board-regulated institution meets at least one criterion under § 217.100(b)(1)(i) and (ii). The Board may extend the start date.

(2) A Board-regulated institution that elects to be subject to this subpart under § 217.101(b)(1)(iii) must adopt a written implementation plan.

* * * * *

6. In § 217.122(g), revise paragraph (g)(3)(ii) to read as follows:

§ ____.122 Qualification requirements.

* * * * *

(g) * * *

(3) * * *

(ii)(A) With the prior written approval of the Board, a state member bank may generate an estimate of its operational risk exposure using an alternative approach to that specified in paragraph (g)(3)(i) of this section. A state member bank proposing to use such an alternative operational risk quantification system must submit a proposal to the Board. In determining whether to approve a state member bank's proposal to use an alternative operational risk quantification system, the Board will consider the following principles:

(A) Use of the alternative operational risk quantification system will be allowed only on an exception basis, considering the size, complexity, and risk profile of the state member bank;

(B) The state member bank must demonstrate that its estimate of its operational risk exposure generated under the alternative operational risk quantification system is appropriate and can be supported empirically; and

(C) A state member bank must not use an allocation of operational risk capital requirements that includes entities other than depository institutions or the benefits of diversification across entities.

* * * * *

7. In § 217.131, revise paragraph (b) and paragraphs (e)(3)(i) and (ii), and add a new paragraph (e)(5) to read as follows:

§ 217.131 Mechanics for calculating total wholesale and retail risk-weighted assets.

* * * * *

(b) *Phase 1—Categorization.* The Board-regulated institution must determine which of its exposures are wholesale exposures, retail exposures, securitization exposures, or equity exposures. The Board-regulated institution must categorize each retail exposure as a residential mortgage exposure, a QRE, or an other retail exposure. The Board-regulated institution must identify which wholesale exposures are HVCRE exposures, sovereign exposures, OTC derivative contracts, repo-style transactions, eligible margin loans, eligible purchased wholesale exposures, cleared transactions, default fund contributions, and unsettled transactions to which § 217.136 applies, and eligible guarantees or eligible credit derivatives that are used as credit risk mitigants. The Board-regulated institution must identify any on-balance sheet asset that does not meet the definition of a wholesale, retail, equity, or securitization exposure, any non-material portfolio of exposures described in paragraph (e)(4) of this section, and for bank holding companies and savings and loan holding companies, any on-balance sheet asset that is held in a non-guaranteed separate account.

* * * * *

(e) * * *

(3) * * *

(i) A bank holding company or savings and loan holding company may assign a risk-weighted asset amount of zero to cash owned and held in all offices of subsidiary depository institutions or in transit; and for gold bullion held in a subsidiary depository institution's own vaults, or held in another depository institution's vaults on an allocated basis, to the extent the gold bullion assets are offset by gold bullion liabilities.

(ii) A state member bank may assign a risk-weighted asset amount to cash owned and held in all offices of the state member bank or in transit and for gold bullion held in the state member bank's own vaults, or held in another depository institution's vaults on an allocated basis, to the extent the gold bullion assets are offset by gold bullion liabilities.

* * * * *

(5) *Assets held in non-guaranteed separate accounts.* The risk-weighted asset amount for an on-balance sheet asset that is held in a non-guaranteed separate account is zero percent of the carrying value of the asset.

8. In § 217.142, revise paragraph (k)(1)(iv) to read as follows:

§ 217.142 Risk-based capital requirement for securitization exposures.

* * * * *

(k) * * *

(1) * * *

(iv) * * *

(A) In the case of a state member bank, the bank is well capitalized, as defined in 12 CFR 208.43. For purposes of determining whether a state member bank is well capitalized for purposes of this paragraph, the state member bank's capital ratios must be calculated without regard to the capital treatment for transfers of small-business obligations with recourse specified in paragraph (k)(1) of this section.

(B) In the case of a bank holding company or savings and loan holding company, the bank holding company or savings and loan holding company is well capitalized, as defined in 12 CFR 225.2. For purposes of determining whether a bank holding company or savings and loan holding company is well capitalized for purposes of this paragraph, the bank holding company or savings and loan holding company's capital ratios must be calculated without regard to the capital treatment for transfers of small-business obligations with recourse specified in paragraph (k)(1) of this section.

* * * * *

9. In § 217.152, revise paragraph (b)(3)(i) to read as follows:

§ 217.152 Simple risk weight approach (SRWA).

* * * * *

(b) * * *

(3) * * *

(i) *Community development equity exposures.* (A) For state member banks and bank holding companies, an equity exposure that qualifies as a community development investment under 12 U.S.C. 24 (Eleventh), excluding equity exposures to an unconsolidated small business investment company and equity exposures held through a consolidated small business investment company described in section 302 of the Small Business Investment Act of 1958 (15 U.S.C. 682).

(B) For savings and loan holding companies, an equity exposure that is designed primarily to promote community welfare, including the welfare of low- and moderate-income communities or families, such as by providing services or employment, and excluding equity exposures to an unconsolidated small business investment company and equity exposures held through a small business investment company described in section 302 of the Small Business Investment Act of 1958 (15 U.S.C. 682).

* * * * *

10. In § 217.201, revise paragraph (b)(1) introductory text to read as follows:

§ 271.201 Purpose, Applicability, and Reservation of Authority.

(b) *Applicability.* (1) This subpart applies to any Board-regulated institution with aggregate trading assets and trading liabilities (as reported in the Board-regulated institution's most recent quarterly Call Report, for a state member bank, or FR Y–9C, for a bank holding company or savings and loan holding company, as applicable, any savings and loan holding company that does not file the FR Y–9C should follow the instructions to the FR Y–9C), equal to:

* * * * *

11. In § 217.202, amend paragraph (b) by revising paragraph (1) of the definition of ''Covered position'' to read as follows:

§ ____.202 Definitions.

* * * * *

Covered position means the following positions:

(1) A trading asset or trading liability (whether on- or off-balance sheet),[1] as reported on Schedule RC–D of the Call Report or Schedule HC–D of the FR Y–9C (any savings and loan holding companies that do not file the FR Y–9C should follow the instructions to the FR Y–9C)), that meets the following conditions:

* * * * *

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the common preamble, the Federal Deposit Insurance Corporation proposes to amend part 324 of chapter III of title 12 of the Code of Federal Regulations as follows:

PART 324—CAPITAL ADEQUACY

1. The authority citation for part 324 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819 (Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 1835, 3907, 3909, 4808; 5371; 5412; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, 2355, as amended by Pub. L. 103–325, 108 Stat. 2160, 2233 (12

[1] Securities subject to repurchase and lending agreements are included as if they are still owned by the lender.

U.S.C. 1828 note); Pub. L. 102–242, 105 Stat. 2236, 2386, as amended by Pub. L. 102–550, 106 Stat. 3672, 4089 (12 U.S.C. 1828 note); Pub. L. 111–203, 124 Stat. 1376, 1887 (15 U.S.C. 78o–7 note).

2. Subparts E and F are added as set forth at the end of the common preamble.

3. Subparts E and F are amended as set forth below:

a. Remove ''[AGENCY]'' and add ''FDIC'' in its place, wherever it appears;

b. Remove ''[Agency]'' and add ''FDIC'' in its place, wherever it appears;

c. Remove ''[12 CFR 3.12, 12 CFR 263.202, 12 CFR 325.6(c), 12 CFR 567.3(d)]'' and add ''12 CFR 325.6'' in its place, wherever it appears;

d. Remove ''[BANK]'' and add ''bank or state savings association'' in its place, wherever it appears in the phrases ''A [BANK]'', ''a [BANK]'', ''The [BANK]'', or ''the [BANK]'';

e. Remove ''[BANK]'' and add ''bank and state savings association'' in its place, wherever it appears in the phrases ''Each [BANK]'' or ''each [BANK]'';

f. Remove ''[BANKS]'' and ''[BANK]s'' and add ''banks and state savings associations'' in their place, wherever they appear;

g. Remove ''[PART]'' and add ''Part 324'' in its place, wherever it appears;

h. Remove ''[Regulatory Reports]'' and add ''Consolidated Report of Condition and Income (Call Report)'' in its place;

i. Remove ''of 12 CFR part 3 (OCC), 12 CFR part 208 (Board), or 12 CFR part 325 (FDIC)'' and add ''of 12 CFR part 324'' in its place, wherever it appears;

j. Remove ''[prompt corrective action regulation]'' and add ''Subpart H of this part'' in its place, wherever it appears;

k. Remove ''banking organization'' and add ''bank and/or state savings associations, as''

l. Remove ''[Regulatory Reports]'' and add ''Consolidated Report of Condition and Income (Call Report)'' in its place; and

m. Remove ''[regulatory report]'' and add ''Call Report'' in its place wherever it appears; and

PART 325—CAPITAL MAINTENANCE

4. The authority citation for part 325 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819 (Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 1835, 3907, 3909, 4808; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, 2355, as amended by Pub. L. 103–325, 108 Stat. 2160, 2233 (12 U.S.C. 1828 note); Pub. L. 102–242, 105 Stat. 2236, 2386, as amended by Pub. L. 102–550, 106 Stat. 3672, 4089 (12 U.S.C. 1828 note).

Appendix D to Part 325—[Removed and reserved]

5. Appendix D to part 325 is removed and reserved.

Dated: June 11, 2012.

Thomas J. Curry,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, July 3, 2012.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, this 12th day of June, 2012.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2012–16761 Filed 8–10–12; 8:45 am]

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Part V

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Part 3

Federal Reserve System

12 CFR Parts 208 and 225

Federal Deposit Insurance Corporation

12 CFR Part 325

Risk-Based Capital Guidelines: Market Risk; Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket ID: OCC–2012–0002]

RIN 1557–AC99

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Regulations H and Y; Docket No. R–1401]

RIN 7100–AD61

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

RIN 3064–AD70

Risk-Based Capital Guidelines: Market Risk

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: Joint final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), and Federal Deposit Insurance Corporation (FDIC) are revising their market risk capital rules to better capture positions for which the market risk capital rules are appropriate; reduce procyclicality; enhance the rules' sensitivity to risks that are not adequately captured under current methodologies; and increase transparency through enhanced disclosures. The final rule does not include all of the methodologies adopted by the Basel Committee on Banking Supervision for calculating the standardized specific risk capital requirements for debt and securitization positions due to their reliance on credit ratings, which is impermissible under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. Instead, the final rule includes alternative methodologies for calculating standardized specific risk capital requirements for debt and securitization positions.

DATES: The final rule is effective January 1, 2013.

FOR FURTHER INFORMATION CONTACT:

OCC: Roger Tufts, Senior Economic Advisor, Capital Policy Division, (202) 874–4925, or Ron Shimabukuro, Senior Counsel, or Carl Kaminski, Senior Attorney, Legislative and Regulatory Activities Division, (202) 874–5090, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219.

Board: Anna Lee Hewko, Assistant Director, (202) 530–6260, Connie Horsley, Manager, (202) 452–5239, Tom Boemio, Manager, (202) 452–2982, Dwight Smith, Senior Supervisory Financial Analyst, (202) 452–2773, or Jennifer Judge, Supervisory Financial Analyst, (202) 452–3089, Capital and Regulatory Policy, Division of Banking Supervision and Regulation; or Benjamin W. McDonough, Senior Counsel, (202) 452–2036, or April C. Snyder, Senior Counsel, (202) 452–3099, Legal Division. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), (202) 263–4869.

FDIC: Karl Reitz, Chief, Capital Markets Strategies Section, *kreitz@fdic.gov*; Bobby R. Bean, Associate Director, *bbean@fdic.gov*; Ryan Billingsley, Chief, Capital Policy Section, *rbillingsley@fdic.gov*; David Riley, Senior Policy Analyst, *dariley@fdic.gov*, Capital Markets Branch, Division of Risk Management Supervision, (202) 898–6888; or Mark Handzlik, Counsel, *mhandzlik@fdic.gov*, Michael Phillips, Counsel, *mphillips@fdic.gov*, Greg Feder, Counsel, *gfeder@fdic.gov*, or Ryan Clougherty, Senior Attorney, *rclougherty@fdic.gov*; Supervision Branch, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The first international capital framework for banks [1] entitled *International Convergence of Capital Measurement and Capital Standards* (1988 Capital Accord) was developed by the Basel Committee on Banking Supervision (BCBS) [2] and endorsed by the G–10 central bank governors in 1988. The OCC, the Board, and the FDIC (collectively, the agencies) implemented the 1988 Capital Accord in 1989 through the issuance of the general risk-based capital rules.[3] In 1996, the BCBS amended the 1988 Capital Accord to require banks to measure and hold capital to cover their exposure to market risk associated with foreign exchange and commodity positions and positions located in the trading account (the Market Risk Amendment (MRA) or market risk framework).[4] The agencies

[1] For simplicity, and unless otherwise indicated, the preamble to this final rule uses the term ''bank'' to include banks and bank holding companies (BHCs). The terms ''bank holding company'' and ''BHC'' refer only to bank holding companies regulated by the Board.

[2] The BCBS is a committee of banking supervisory authorities, which was established by the central bank governors of the G–10 countries in 1975. It consists of senior representatives of bank supervisory authorities and central banks from Argentina, Australia, Belgium, Brazil, Canada, China, France, Germany, Hong Kong SAR, India, Indonesia, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, Russia, Saudi Arabia, Singapore, South Africa, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States. Documents issued by the BCBS are available through the Bank for International Settlements Web site at *http://www.bis.org*.

[3] The agencies' general risk-based capital rules are at 12 CFR part 3, appendix A and 12 CFR part 167 (OCC); 12 CFR parts 208 and 225, appendix A (Board); and 12 CFR part 325, appendix A (FDIC).

[4] In 1997, the BCBS modified the MRA to remove a provision pertaining to the specific risk capital requirement under the internal models approach (*see http://www.bis.org/press/p970918a.htm*).

implemented the MRA with an effective date of January 1, 1997 (market risk capital rule).[5]

In June 2004, the BCBS issued a document entitled *International Convergence of Capital Measurement and Capital Standards: A Revised Framework* (Basel II), which was intended for use by individual countries as the basis for national consultation and implementation. Basel II sets forth a ''three-pillar'' framework that includes (1) Risk-based capital requirements for credit risk, market risk, and operational risk (Pillar 1); (2) supervisory review of capital adequacy (Pillar 2); and (3) market discipline through enhanced public disclosures (Pillar 3).

Basel II retained much of the MRA; however, after its release, the BCBS announced that it would develop improvements to the market risk framework, especially with respect to the treatment of specific risk, which refers to the risk of loss on a position due to factors other than broad-based movements in market prices. As a result, in July 2005, the BCBS and the International Organization of Securities Commissions (IOSCO) jointly published *The Application of Basel II to Trading Activities and the Treatment of Double Default Effects* (the 2005 revisions). The BCBS incorporated the 2005 revisions into the June 2006 comprehensive version of Basel II and followed its ''three-pillar'' structure. Specifically, the Pillar 1 changes narrow the types of positions that are subject to the market risk framework and revise modeling standards and procedures for calculating minimum regulatory capital requirements. The Pillar 2 changes require banks to conduct internal assessments of their capital adequacy with respect to market risk, taking into account the output of their internal models, valuation adjustments, and stress tests. The Pillar 3 changes require banks to disclose certain quantitative and qualitative information, including their valuation techniques for covered positions, the soundness standard used for modeling purposes, and their internal capital adequacy assessment methodologies.

The BCBS began work on significant changes to the market risk framework in 2007 and developed reforms aimed at addressing issues highlighted by the financial crisis. These changes were published in the BCBS's *Revisions to the Basel II Market Risk Framework, Guidelines for Computing Capital for Incremental Risk in the Trading Book,* and *Enhancements to the Basel II Framework* (collectively, the 2009 revisions).

The 2009 revisions place additional prudential requirements on banks' internal models for measuring market risk and require enhanced qualitative and quantitative disclosures, particularly with respect to banks' securitization activities. The revisions also introduce an incremental risk capital requirement to capture default and credit quality migration risk for non-securitization credit products. With respect to securitizations, the 2009 revisions require banks to apply a standardized measurement method for specific risk to these positions, except for ''correlation trading'' positions (described further below), for which banks may choose to model all material price risks. The 2009 revisions also add a stressed Value-at-Risk (VaR)-based capital requirement to banks' existing general VaR-based capital requirement. In June 2010, the BCBS published additional revisions to the market risk framework including a floor on the risk-based capital requirement for modeled correlation trading positions (2010 revisions).[6]

Both the 2005 and 2009 revisions include provisions that reference credit ratings. The 2005 revisions also expanded the ''government'' category of debt positions to include all sovereign debt and changed the standardized specific risk-weighting factor for sovereign debt from zero percent to a range of zero to 12.0 percent based on the credit rating of the obligor and the remaining contractual maturity of the debt position.[7]

The 2009 revisions include changes to the specific risk-weighting factors for rated and unrated securitization positions. For rated securitization positions, the revisions assign a specific risk-weighting factor based on the credit rating of a position, and whether such rating represents a long-term credit rating or a short-term credit rating. In addition, the 2009 revisions provide for the application of higher specific risk-weighting factors to rated resecuritization positions relative to similarly-rated securitization exposures. Under the 2009 revisions, unrated securitization positions were to be deducted from total capital, except when the unrated position was held by a bank that had approval and ability to use the supervisory formula approach (SFA) to determine the specific risk add-on for the unrated position. Finally, under *Basel III: A Global Regulatory Framework for More Resilient Banks and Banking Systems* (Basel III), published by the BCBS in December 2010, and revised in June 2011, certain items, including certain securitization positions, that had been deducted from total capital are assigned a risk weight of 1,250 percent.

On January 11, 2011, the agencies issued a joint notice of proposed rulemaking (January 2011 proposal) that sought public comment on revisions to the agencies' market risk capital rules to implement the 2005, 2009, and 2010 revisions.[8] The key objectives of the proposal were to enhance the rule's sensitivity to risks not adequately captured, including default and credit migration; enhance modeling requirements in a manner that is consistent with advances in risk management since the agencies' initial implementation of the MRA; modify the definition of ''covered position'' to better capture positions for which treatment under the rule is appropriate; address shortcomings in the modeling of certain risks; address procyclicality; and increase transparency through enhanced disclosures. The objective of enhancing the risk sensitivity of the market risk capital rule is particularly important because of banks' increased exposures to traded credit and other structured products, such as credit default swaps (CDSs) and asset-backed securities, and exposures to less liquid products. Generally, the risks of these products have not been fully captured by VaR models that rely on a 10-business-day, one-tail, 99.0 percent confidence level soundness standard.

When publishing the January 2011 proposal, the agencies did not propose to implement those aspects of the 2005 and 2009 revisions that rely on the use of credit ratings due to certain provisions of the Dodd-Frank Wall

[5] 61 FR 47358 (September 6, 1996). In 1996, the Office of Thrift Supervision did not implement the market risk framework for savings associations and savings and loan holding companies. However, also included in today's **Federal Register**, the agencies are proposing to expand the scope of their market risk capital rules to apply to Federal and state savings associations as well as savings and loan holding companies. Therefore, the market risk rule would not apply to savings associations or savings and loan holding companies until such times as the agencies' were to finalize their proposal to expand the scope of their market risk capital rules. The agencies' market risk capital rules are at 12 CFR part 3, appendix B (OCC); 12 CFR parts 208 and 225, appendix E (Board); and 12 CFR part 325, appendix C (FDIC).

[6] The June 2010 revisions can be found in their entirety at *http://bis.org/press/p100618/annex.pdf.*

[7] In the context of the market risk capital rules, the specific risk-weighting factor is a scaled measure that is similar to the ''risk weights'' used in the general risk-based capital rules (e.g., the zero, 20 percent, 50 percent, and 100 percent risk weights) for determining risk-weighted assets. The measure for market risk is multiplied by 12.5 to convert it to market risk equivalent assets, which are then added to the denominator of the risk-based capital ratios.

[8] 76 FR 1890 (January 11, 2011).

Street Reform and Consumer Protection Act (the Dodd-Frank Act).[9] The January 2011 proposal did not include new specific risk add-ons but included as an interim solution the treatment under the agencies' current market risk capital rules. Subsequently, after developing and considering alternative standards of creditworthiness, the agencies issued in December 2011 a joint notice of proposed rulemaking (NPR) that amended the January 2011 proposal (December 2011 amendment) to include alternative methodologies for calculating the specific risk capital requirements for covered debt and securitization positions under the market risk capital rules, consistent with section 939A of the Dodd-Frank Act. The agencies are now adopting a final rule, which incorporates comments received on both the January 2011 proposal and December 2011 amendment and includes aspects of the BCBS's 2005, 2009, and 2010 revisions (collectively, the MRA revisions) to the market risk framework.

II. Overview of Comments

The agencies received six comment letters on the January 2011 proposal and 30 comment letters on the December 2011 amendment from banking organizations, trade associations representing the banking or financial services industry, and other interested parties. This section of the preamble highlights commenters' main concerns and briefly describes how the agencies have responded to comments received in the final rule. A more detailed discussion of comments on specific provisions of the final rule is provided in section III of this preamble.

1. Comments on the January 2011 Proposal

While commenters expressed general support for the proposed revisions to the agencies' market risk capital rules, many noted that the BCBS's market risk framework required further improvement in certain areas. For example, some commenters expressed concern about certain duplications in the capital requirements, such as the requirement for both a VaR-based measure and a stressed VaR-based measure, because such redundancies would result in excessive capital requirements and distortions in risk management. A different commenter noted that the use of numerous risk measures with different time horizons and conceptual approaches may encourage excessive risk taking.

Although commenters characterized the conceptual overlap of certain provisions of the January 2011 proposal as resulting in duplicative capital requirements, the agencies believe that these provisions provide a prudent level of conservatism in the market risk capital rule.

One commenter noted that the rule's VaR-based measure has notable shortcomings because it may encourage procyclical behavior and regulatory arbitrage. This commenter also asserted that because marked-to-market assets can experience significant price volatility, the proposal's required capital levels may not be sufficient to address this volatility. The agencies are concerned about these issues but believe that the January 2011 proposal addressed these concerns, for example, through the addition of a stressed VaR-based measure.

Commenters generally encouraged the agencies to continue work on the fundamental review of the market risk framework recently published as a consultative document through the BCBS, and one asserted that the agencies should wait until this work is completed before revising the agencies' market risk capital rules.[10] While the agencies are committed to continued improvement of the market risk framework, they believe that the proposed modifications to the market risk capital rules are necessary to address current significant shortcomings in banks' measurement and capitalization of market risk.

Commenters also expressed concern that the January 2011 proposal differs from the 2005 and 2009 revisions in some respects, such as excluding from the definition of covered position a hedge that is not within the scope of the bank's hedging strategy, providing a more restrictive definition of two-way market, and establishing a surcharge for correlation trading position equal to 15 percent of the specific risk capital requirements for such positions. Commenters expressed concern that such differences could place U.S. banks at a competitive disadvantage to certain foreign banking organizations. In response to commenters' concerns, the agencies have revised the definition of two-way market and adjusted the surcharge as discussed more fully in sections II.3 and II.12, respectively, of this preamble.

2. Comments on the December 2011 Amendment

While many commenters responding to the December 2011 amendment commended the agencies' efforts to develop viable alternatives to credit ratings, most commenters indicated that the amendment did not strike a reasonable balance between accurate measurement of risk and implementation burden. Commenters' general concerns with the December 2011 amendment include its overall lack of risk sensitivity and its complexity. The agencies have incorporated a number of changes into the final rule based on feedback received from commenters, including modifications to the approaches for determining capital requirements for corporate debt positions and securitization positions proposed in the December 2011 amendment. These changes are intended to increase the risk sensitivity of the approaches as well as simplify and reduce the difficulty of implementing the approaches.

A few commenters asserted that the proposal exceeded the intent of the Dodd-Frank Act because the Dodd-Frank Act was limited to the replacement of credit ratings and did not include provisions that, in their estimation, would significantly increase capital requirements and thus negatively affect the economy. While the agencies acknowledge that capital requirements may generally increase under the final rule, the agencies also believe that the approach provides a prudent level of conservatism to address factors such as modeling uncertainties and that changes to the current rules are necessary to address significant shortcomings in the measurement and capitalization of market risk.

One commenter suggested that the agencies allow banks a transition period of at least one year to implement the market risk capital rule after incorporation of alternatives to credit ratings. The agencies believe that a one-year transition period is not necessary for banks to implement the credit ratings alternatives in the final rule. The agencies have determined based on comments and discussions with commenters that the information required for calculation of capital requirements under the final rule will

[9] Public Law 111–203, 124 Stat. 1376 (July 21, 2010). Section 939A(a) of the Dodd-Frank Act provides that not later than 1 year after the date of enactment, each Federal agency shall: (1) Review any regulation issued by such agency that requires the use of an assessment of the credit-worthiness of a security or money market instrument; and (2) any references to or requirements in such regulations regarding credit ratings. Section 939A further provides that each such agency ''shall modify any such regulations identified by the review under subsection (a) to remove any reference to or requirement of reliance on credit ratings and to substitute in such regulations such standard of credit-worthiness as each respective agency shall determine as appropriate for such regulations.'' *See* 15 U.S.C. 78o–7 note.

[10] The consultative document is available at *http://www.bis.org/publ/bcbs219.htm.*

be available to banks. Other commenters indicated that the proposal would be burdensome for community banks if the agencies used the proposed approaches to address the use of credit ratings in the general risk-based capital rules. The agencies believe that it is important to align the methodologies for calculating specific risk-weighting factors for debt positions and securitization positions in the market risk capital rules with methodologies for assigning risk weights under the agencies' other capital rules. Such alignment reduces the potential for regulatory arbitrage between rules. The agencies are proposing similar credit rating alternatives in the three notices of proposed rulemaking for the risk-based capital requirements that are published elsewhere in today's **Federal Register**.

Several commenters requested extensions of the comment period citing the complexity of the December 2011 amendment and resulting difficulty of assessing its impact in the time period given as well as the considerable burden faced by banks in evaluating various regulations related to the Dodd-Frank Act within similar time periods. The agencies considered these requests but believe that sufficient time was provided between the agencies' announcement of the proposed amendment on December 7, 2011, and the close of the comment period on February 3, 2012, to allow for adequate analysis of the proposal. The agencies also met with a number of industry participants during the comment period and thereafter in order to clarify the intent of the comments. Accordingly, the agencies chose not to extend the comment period on the December 2011 amendment.

III. Description of the Final Market Risk Capital Rule

1. Scope

The market risk capital rule supplements both the agencies' general risk-based capital rules and the advanced capital adequacy guidelines (advanced approaches rules) (collectively, the credit risk capital rules) [11] by requiring any bank subject to the market risk capital rule to adjust its risk-based capital ratios to reflect the market risk in its trading activities. The agencies did not propose to amend the scope of application of the market risk capital rule, which applies to any bank with aggregate trading assets and trading liabilities equal to 10 percent or more of total assets or $1 billion or more. One commenter stated that the $1 billion threshold for the application of the market risk capital rule is not a particularly risk-sensitive means for determining the applicability of the rule. This commenter also expressed concern that the proposed threshold is too low, and recommended an adjustment to recognize the relative risk of exposures, calculated by offsetting trading assets and liabilities. The agencies believe that the current scope of application of the market risk requirements reasonably identifies banks with significant levels of trading activity and therefore have retained the existing threshold criteria. While the agencies are concerned about placing undue burden on banks, the agencies believe that the thresholds provided in the final rule are reasonable given the risk profile of banks identified by the current scope of application.

Consistent with the January 2011 proposal, under the final rule, the primary federal supervisor of a bank that does not meet the threshold criteria would be still be able to apply the market risk capital rule to a bank. Conversely, the primary federal supervisor may exclude a bank from application of the rule if the supervisor were to deem it necessary or appropriate given the level of market risk of the bank or to ensure safe and sound banking practices.

2. Reservation of Authority

The January 2011 proposal contained a reservation of authority that affirmed the authority of a bank's primary federal supervisor to require the bank to hold an overall amount of capital greater than would otherwise be required under the rule if that supervisor determined that the bank's capital requirement for market risk under the rule was not commensurate with the market risk of the bank's covered positions. In addition, the agencies anticipated that there may be instances when the January 2011 proposal would generate a risk-based capital requirement for a specific covered position or portfolio of covered positions that is not commensurate with the risks of the covered position or portfolio. In these circumstances, a bank's primary federal supervisor could require the bank to assign a different risk-based capital requirement to the covered position or portfolio of covered positions that more accurately reflects the risk of the position or portfolio. The January 2011 proposal also provided authority for a bank's primary federal supervisor to require the bank to calculate capital requirements for specific positions or portfolios using either the market risk capital rule or the credit risk capital rules, depending on which outcome more appropriately reflected the risks of the positions. The agencies did not receive any comment on the proposed reservation of authority and have adopted it without change in the final rule.

3. Definition of Covered Position

The January 2011 proposal modified the definition of a covered position to include trading assets or trading liabilities (as reported on schedule RC–D of the Call Report or Schedule HC–D of the Consolidated Financial Statements for Bank Holding Companies) that are trading positions. The January 2011 proposal defined a trading position as a position that is held by the bank for the purpose of short-term resale or with the intent of benefiting from actual or expected short-term price movements or to lock in arbitrage profits. Therefore, the characterization of an asset or liability as ''trading'' for purposes of U.S. Generally Accepted Accounting Principles (U.S. GAAP) would not on its own determine whether the asset or liability is a ''trading position'' for purposes of the January 2011 proposal. That is, being reported as a trading asset or trading liability on the regulatory reporting schedules is a necessary, but not sufficient, condition for meeting this aspect of the covered position definition under the January 2011 proposal. Such a position would also need to be either a trading position or hedge another covered position. In addition, the trading asset or trading liability must be free of any restrictive covenants on its tradability or the bank must be able to hedge the material risk elements of the position in a two-way market.

One commenter was concerned that this and other references to a two-way market in the January 2011 proposal could be construed to require that there be a two-way market for every covered position. The January 2011 proposal did not require that there be a two-way market for every covered position but did use that standard for defining some covered positions, such as certain correlation trading positions. Rather, in identifying its trading positions, a bank's policies and procedures must take into account the extent to which a position, or a hedge of its material risks, can be marked-to-market daily by reference to a two-way market.

[11] The agencies' advanced approaches rules are at 12 CFR part 3, appendix C (OCC); 12 CFR part 208, appendix F, and 12 CFR part 225, appendix G (Board); and 12 CFR part 325, appendix D (FDIC). For purposes of this preamble, the term ''credit risk capital rules'' refers to the general risk-based capital rules and the advanced approaches rules (that also include operational risk capital requirements), as applicable to the bank using the market risk capital rule.

The January 2011 proposal defined a two-way market as a market where there are independent bona fide offers to buy and sell so that a price reasonably related to the last sales price or current bona fide competitive bid and offer quotations can be determined within one day and settled at that price within five business days. Commenters expressed concern about the proposed definition of a two-way market including a requirement for settlement within five business days because it would automatically exclude a number of markets where settlement periods are longer than this time frame. In light of commenters' concerns, the agencies have modified this aspect of the definition in the final rule to require settlement within a ''relatively short time frame conforming to trade custom.''

Another commenter requested clarification regarding whether securities held as available for sale under U.S. GAAP may be treated as covered positions under the rule. This commenter also indicated that a narrow reading of the definitions of trading position and covered position could be interpreted to require banks to move positions between treatment under the market risk and the credit risk capital rules during periods of market stress. In particular, the commenter expressed concern about changes in capital treatment due to changes in a bank's short-term trading intent or the lack of a two-way market during periods of market stress that might be temporary. The commenter suggested that a bank should be able to continue to treat a position as a covered position if it met the definitional requirements when the position was established, notwithstanding changes in markets that led to a longer than expected time horizon for sale or hedging.

The agencies note that under section 3 of the final rule, as under the proposed rule, a bank must have clearly defined policies and procedures that determine which of its positions are trading positions. With respect to the frequency of movement of positions, consistent with the requirements under U.S. GAAP, the agencies generally would expect re-designations of positions as trading or non-trading to be rare. Thus, in general, the agencies would not expect temporary market movements as described by the commenter to result in re-designations. In those limited circumstances where a bank re-designates a covered position, the bank should document the reasons for such action.

Commenters suggested allowing a bank to treat as a covered position any hedge that is outside of the bank's hedging strategy. The proposed definition of covered position included hedges that offset the risk of trading positions. The agencies are concerned that a bank could craft its hedging strategies to recognize as covered positions certain non-trading positions that are more appropriately treated under the credit risk capital rules. For example, mortgage-backed securities that are not held with the intent to trade, but are hedged with interest rate swaps, would not be covered positions. The agencies will review a bank's hedging strategies to ensure that they are not being manipulated in an inappropriate manner. Consistent with the concerns raised above, the agencies continue to believe that a position that hedges a trading position must be within the scope of a bank's hedging strategy as described in the rule. Thus, the final rule retains the treatment that hedges outside of a bank's hedging strategy as described in the final rule are not covered positions.

Other commenters sought clarification as to whether an internal hedge (between a banking unit and a trading unit of the same bank) could be treated as a covered position if it materially or completely offset the risk of a non-covered position or set of positions, provided the hedge meets the definition of a covered position. The agencies note that internal hedges are not recognized for regulatory capital purposes because they are eliminated in consolidation.

Commenters inquired as to whether the phrase ''restrictive covenants on its tradability,'' in the covered position definition, applies to securities transferable only to qualified institutional buyers as required under Rule 144A of the Securities Act of 1933. The agencies do not believe an instrument's designation as a 144A security in and of itself would preclude the instrument from meeting the definition of covered position. Another commenter asked whether level 3 securities could be treated as covered positions.[12] The agencies note that there is no explicit exclusion of level 3 securities from being designated as covered positions, as long as they meet the requirements of the covered position definition.

[12] *See* Financial Accounting Standards Board Statement 157. This statement defines fair value, establishes a framework for measuring fair value in U.S. GAAP and expands disclosures about fair value measurement. The fair value hierarchy gives the highest priority to quoted prices (unadjusted) in active markets for identical assets or liabilities (Level 1) and the lowest priority to unobservable inputs (Level 3). Level 3 securities are those for which inputs are unobservable in the market.

One commenter requested clarification as to whether the rule would permit a bank to determine at the portfolio level whether a set of positions satisfies the definition of covered position, provided the bank is able to demonstrate a sufficiently robust process for making this determination. Another commenter found it confusing and operationally challenging that the definition of covered position had requirements both at the position level, for example, specific exclusions, and at the portfolio level, in regard to hedging strategies. The commenter felt that many of the definitional requirements are better suited to assessment at a portfolio level based on robust policies and procedures. The agencies require that the covered position determination be made at the individual position level. The requirements for policies and procedures for identifying trading positions, defining hedging strategies, and management of covered positions are requirements for application of the market risk capital rule broadly.

The January 2011 proposal included within the definition of a covered position any foreign exchange or commodity position, regardless of whether it is a trading asset or trading liability. With prior supervisory approval, a bank could exclude from its covered positions any structural position in a foreign currency, which was defined as a position that is not a trading position and that is (1) Subordinated debt, equity, or minority interest in a consolidated subsidiary that is denominated in a foreign currency; (2) capital assigned to a foreign branch that is denominated in a foreign currency; (3) a position related to an unconsolidated subsidiary or another item that is denominated in a foreign currency and that is deducted from the bank's tier 1 and tier 2 capital; or (4) a position designed to hedge a bank's capital ratios or earnings against the effect of adverse exchange rate movements on (1), (2), or (3).

Also, the proposed definition of covered position had several explicit exclusions. It explicitly excluded any position that, in form or substance, acts as a liquidity facility that provides support to asset-backed commercial paper, as well as all intangible assets, including servicing assets. Intangible assets were excluded because their risks are explicitly addressed in the credit risk capital rules, often through a deduction from capital. The agencies received no comment on these exclusions and have incorporated them into the final rule.

The definition of covered positions also excluded any hedge of a trading position that the bank's primary federal supervisor determines is outside the scope of a bank's hedging strategy. One commenter objected to that exclusion; however, the agencies believe that sound risk management should be guided by explicit strategies subject to appropriate oversight by bank management and, therefore, have retained this provision in the final rule.

Under the final rule and as proposed, the covered position definition excludes any equity position that is not publicly traded, other than a derivative that references a publicly traded equity; any direct real estate holding; and any position that a bank holds with the intent to securitize. Equity positions that are not publicly traded include private equity investments, most hedge fund investments, and other such closely-held and non-liquid investments that are not easily marketable. Direct real estate holdings include real estate for which the bank holds title, such as ''other real estate owned'' held from foreclosure activities, and bank premises used by a bank as part of its ongoing business activities. With respect to such real estate holdings, the determination of marketability and liquidity can be difficult or even impractical because the assets are an integral part of the bank's ongoing business. Indirect investments in real estate, such as through real estate investment trusts or special purpose vehicles, must meet the definition of a trading position to be a covered position. One commenter sought clarification that indirect real estate holdings (such as an exposure to a real estate investment trust) could qualify as a covered position. The agencies note that such an indirect investment may qualify, provided the position otherwise meets the definition of a covered position.

Commenters requested clarification regarding whether hedge fund exposures that hedge a covered position are within the scope of a bank's hedging strategy qualify for inclusion in the definition of a covered position. Generally, hedge fund exposures are not covered positions because they typically are equity positions (as defined under the final rule) that are not publicly traded. The fact that a bank has a hedging strategy for excluded equity positions would not alone qualify such positions to be treated as covered positions under the rule.

Positions that a bank holds with the intent to securitize include a ''pipeline'' or ''warehouse'' of loans being held for securitization. The agencies do not view the intent to securitize these positions as synonymous with the intent to trade them. Consistent with the 2009 revisions, the agencies believe the positions excluded from the covered position definition have significant constraints in terms of a bank's ability to liquidate them readily and value them reliably on a daily basis.

The covered position definition also excludes a credit derivative that a bank recognizes as a guarantee for purposes of calculating its risk-weighted assets under the agencies' credit risk capital rules if the credit derivative is used to hedge a position that is not a covered position (for example, a credit derivative hedge of a loan that is not a covered position). This treatment requires the bank to include the credit derivative in its risk-weighted assets for credit risk and exclude it from its VaR-based measure for market risk. This treatment of a credit derivative hedge avoids the mismatch that arises when the hedged position (for example, a loan) is not a covered position and the credit derivative hedge is a covered position. This mismatch has the potential to overstate the VaR-based measure of market risk because only one side of the transaction would be reflected in that measure. Accordingly, the final rule adopts this aspect of the proposed definition of covered position without change.

Under the January 2011 proposal, in addition to commodities and foreign exchange positions, a covered position includes debt positions, equity positions, and securitization positions. Consistent with the January 2011 proposal, the final rule defines a debt position as a covered position that is not a securitization position or a correlation trading position and that has a value that reacts primarily to changes in interest rates or credit spreads. Examples of debt positions include corporate and government bonds, certain nonconvertible preferred stock, certain convertible bonds, and derivatives (including written and purchased options) for which the underlying instrument is a debt position.

The final rule defines an equity position as a covered position that is not a securitization position or a correlation trading position and that has a value that reacts primarily to changes in equity prices. Examples of equity positions include voting or nonvoting common stock, certain convertible bonds, commitments to buy or sell equity instruments, equity indices, and a derivative for which the underlying instrument is an equity position.

Under the final rule as under the January 2011 proposal, a securitization is defined as a transaction in which (1) All or a portion of the credit risk of one or more underlying exposures is transferred to one or more third parties; (2) the credit risk associated with the underlying exposures has been separated into at least two tranches that reflect different levels of seniority; (3) performance of the securitization exposures depends upon the performance of the underlying exposures; (4) all or substantially all of the underlying exposures are financial exposures (such as loans, commitments, credit derivatives, guarantees, receivables, asset-backed securities, mortgage-backed securities, other debt securities, or equity securities); (5) for non-synthetic securitizations, the underlying exposures are not owned by an operating company; [13] (6) the underlying exposures are not owned by a small business investment company described in section 302 of the Small Business Investment Act of 1958 (15 U.S.C. 682); and (7) the underlying exposures are not owned by a firm an investment in which qualifies as a community development investment under 12 U.S.C. 24 (Eleventh).

Under the final rule, a bank's primary federal supervisor may determine that a transaction in which the underlying exposures are owned by an investment firm that exercises substantially unfettered control over the size and composition of its assets, liabilities, and off-balance sheet exposures is not a securitization based on the transaction's leverage, risk profile, or economic substance. Generally, the agencies would consider investment firms that can easily change the size and composition of their capital structure, as well as the size and composition of their assets and off-balance sheet exposures, as eligible for exclusion from the securitization definition.

Based on a particular transaction's leverage, risk profile, or economic substance, a bank's primary federal supervisor may also deem an exposure to a transaction to be a securitization exposure, even if the exposure does not meet the criteria in provisions (5), (6), or (7) above. A securitization position is a covered position that is (1) an on-balance sheet or off-balance sheet credit exposure (including credit-enhancing representations and warranties) that arises from a securitization (including a resecuritization) or (2) an exposure that directly or indirectly references a

[13] In a synthetic securitization, a company uses credit derivatives or guarantees to transfer a portion of the credit risk of one or more underlying exposures to third-party protection providers. The credit derivative or guarantee may be collateralized or uncollateralized.

securitization exposure described in (1) above.

Under the final rule as under the January 2011 proposal, a securitization position includes nth-to-default credit derivatives and resecuritization positions. The rule defines an nth-to-default credit derivative as a credit derivative that provides credit protection only for the nth-defaulting reference exposure in a group of reference exposures. In addition, a resecuritization is defined as a securitization in which one or more of the underlying exposures is a securitization exposure. A resecuritization position is (1) an on- or off-balance sheet exposure to a resecuritization or (2) an exposure that directly or indirectly references a resecuritization exposure described in (1).

Some commenters expressed the desire to align the proposed definition of securitization in the market risk capital rule with the Basel II definition. For instance, one commenter suggested excluding from the definition of a securitization exposures that do not resemble what is customarily thought of as a securitization. The agencies note that the proposed definition is consistent with the definition contained in the agencies' advanced approaches rules and believe that remaining consistent is important in order to reduce regulatory capital arbitrage opportunities across the rules.

The January 2011 proposal and the final rule define a correlation trading position as (1) a securitization position for which all or substantially all of the value of the underlying exposures is based on the credit quality of a single company for which a two-way market exists, or on commonly traded indices based on such exposures for which a two-way market exists on the indices; or (2) a position that is not a securitization position and that hedges a position described in (1) above. Under this definition, a correlation trading position does not include a resecuritization position, a derivative of a securitization position that does not provide a pro rata share in the proceeds of a securitization tranche, or a securitization position for which the underlying assets or reference exposures are retail exposures, residential mortgage exposures, or commercial mortgage exposures. Correlation trading positions may include collateralized debt obligation (CDO) index tranches, bespoke CDO tranches, and nth-to-default credit derivatives. Standardized CDS indices and single-name CDSs are examples of instruments used to hedge these positions. While banks typically hedge correlation trading positions, hedging frequently does not reduce a bank's net exposure to a position because the hedges often do not perfectly match the position. The agencies are adopting the definition of a debt, equity, securitization, and correlation trading position in the final rule as proposed.

The agencies note that certain aspects of the final rule, including the definition of ''covered position,'' are substantially similar to the definitions of similar terms used in the agencies' proposed rule that would implement section 619 of the Dodd-Frank Act, familiarly referred to as the ''Volcker rule.'' The agencies intend to promote consistency across regulations employing similar concepts to increase regulatory effectiveness and reduce unnecessary burden.

Section 619 of the Dodd-Frank Act contains certain prohibitions and restrictions on the ability of a bank (or nonbank financial company supervised by the Board under Title I of the Dodd-Frank Act) to engage in proprietary trading and have certain interests in, or relationships with, a covered fund as defined under section 619 of the Dodd-Frank Act and applicable regulations or private equity fund. Section 619 defines proprietary trading to mean engaging as a principal for the trading account, as defined under section 619(h)(6), of a bank (or relevant nonbank) in the purchase or sale of securities and other financial instruments.

In November 2011, the agencies, together with the SEC sought comment on an NPR that would implement section 619 of the Dodd-Frank Act (the Volcker NPR). The Volcker NPR includes in the definition of ''trading account'' all exposures of a bank subject to the market risk capital rule that fall within the definition of ''covered position,'' except for certain foreign exchange and commodity positions, unless they otherwise are in an account that meets the other prongs of the Volcker NPR ''trading account'' definition. Those prongs focus on determining whether a banking entity subject to section 619 of the Dodd-Frank Act is acquiring or taking a position in securities or other covered instruments principally for the purpose of short-term trading. Specifically, the definition of ''trading account'' under the Volcker NPR would include any account that is used by a bank to acquire or take one or more covered financial positions for the purpose of (1) Short-term resale, (2) benefitting from actual or expected short-term price movements, (3) realizing short-term arbitrage profits, or (4) hedging one or more such positions.

These standards correspond with the definition of ''trading position'' under the final market risk capital rule and are generally the type of positions to which the proprietary trading restrictions of section 13 of the BHC Act, which implements section 619 of the Dodd-Frank Act, were intended to apply. Thus, the Volcker NPR would cover all positions of a bank that receive trading position treatment under the final market risk capital rule because they meet a nearly identical standard regarding short-term trading intent, thereby eliminating the potential for inconsistency or regulatory arbitrage in which a bank might characterize a position as ''trading'' for regulatory capital purposes but not for purposes of the Volcker NPR.

Covered positions generally would be subject to the Volcker NPR unless they are foreign exchange or commodity positions that would not otherwise fall into the definition of ''trading account'' under the Volcker NPR or would otherwise be eligible for one of the exemptions to the prohibitions under the Volcker NPR and section 619 of the Dodd-Frank Act.

4. Requirements for the Identification of Trading Positions and Management of Covered Positions

Section 3 of the January 2011 proposal introduced new requirements for the identification of trading positions and the management of covered positions. These new requirements would enhance prudent capital management to address the issues that arise when banks include more credit risk-related, less liquid, and less actively traded products in their covered positions. The risks of these positions may not be fully reflected in the requirements of the market risk capital rule and may be more appropriately captured under credit risk capital rules.

Consistent with the January 2011 proposal, the final rule requires a bank to have clearly defined policies and procedures for determining which of its trading assets and trading liabilities are trading positions as well as which of its trading positions are correlation trading positions. In determining the scope of trading positions, the bank must consider (1) the extent to which a position (or a hedge of its material risks) can be marked to market daily by reference to a two-way market; and (2) possible impairments to the liquidity of a position or its hedge.

In addition, a bank must have clearly defined trading and hedging strategies. The bank's trading and hedging strategies for its trading positions must be approved by senior management. The trading strategy must articulate the expected holding period of, and the market risk associated with, each portfolio of trading positions. The hedging strategy must articulate for each portfolio the level of market risk the bank is willing to accept and must detail the instruments, techniques, and strategies the bank will use to hedge the risk of the portfolio. The hedging strategy should be applied at the level at which trading positions are risk managed at the bank (for example, trading desk, portfolio levels).

Also consistent with the January 2011 proposal, the final rule requires a bank to have clearly defined policies and procedures for actively managing all covered positions. In the context of non-traded commodities and foreign exchange positions, active management includes managing the risks of those positions within the bank's risk limits. For all covered positions, these policies and procedures, at a minimum, must require (1) Marking positions to market or model on a daily basis; (2) assessing on a daily basis the bank's ability to hedge position and portfolio risks and the extent of market liquidity; (3) establishment and daily monitoring of limits on positions by a risk control unit independent of the trading business unit; (4) daily monitoring by senior management of the information described in (1) through (3) above; (5) at least annual reassessment by senior management of established limits on positions; and (6) at least annual assessments by qualified personnel of the quality of market inputs to the valuation process, the soundness of key assumptions, the reliability of parameter estimation in pricing models, and the stability and accuracy of model calibration under alternative market scenarios.

The January 2011 proposal introduced new requirements for the prudent valuation of covered positions, including maintaining policies and procedures for valuation, marking positions to market or to model, independent price verification, and valuation adjustments or reserves. Under the proposal, a bank's valuation of covered positions would be required to consider, as appropriate, unearned credit spreads, close-out costs, early termination costs, investing and funding costs, future administrative costs, liquidity, and model risk. These valuation requirements reflect the agencies' concerns about deficiencies in banks' valuation of less liquid trading positions, especially in light of the prior focus of the market risk capital rule on a 10-business-day time horizon and a one-tail, 99.0 percent confidence level, which has proven at times to be inadequate in reflecting the full extent of the market risk of less liquid positions.

Several commenters expressed concern about including consideration of future administrative costs in the valuation process because they believe calculation of this estimate would be difficult and arbitrary and would result in only a minor increase in total costs. In response to commenters' concern, the agencies removed this requirement from the final rule. In all other respects, the agencies are adopting the proposed requirements for the valuation of covered positions.

5. General Requirements for Internal Models

Model Approval and Ongoing Use Requirements. The January 2011 proposal would have required a bank to receive the prior written approval of its primary federal supervisor before using any internal model to calculate its market risk capital requirement. Also, a bank would be required to promptly notify its primary federal supervisor when the bank plans to extend the use of a model that the primary federal supervisor has approved to an additional business line or product type. The agencies consider these requirements to be appropriate and are adopting them in the final rule.

One commenter on the January 2011 proposal inquired as to whether models used by the bank, but developed by parties outside of the bank (commonly referred to as vendor models), are permissible for calculating market risk capital requirements given approval from the bank's primary federal supervisor. The agencies believe that a vendor model may be acceptable for purposes of calculating a bank's risk-based capital requirements if it otherwise meets the requirements of the rule and is properly understood and implemented by the bank.

The final rule, consistent with the January 2011 proposal, requires a bank to notify its primary federal supervisor promptly if it makes any change to an internal model that would result in a material change in the amount of risk-weighted assets for a portfolio of covered positions or when the bank makes any material change to its modeling assumptions. The bank's primary federal supervisor may rescind its approval, in whole or in part, of the use of any internal model and determine an appropriate regulatory capital requirement for the covered positions to which the model would apply, if it determines that the model no longer complies with the market risk capital rule or fails to reflect accurately the risks of the bank's covered positions. For example, if adverse market events or other developments reveal that a material assumption in an approved model is flawed, the bank's primary federal supervisor may require the bank to revise its model assumptions and resubmit the model specifications for review. In the final rule, the agencies made minor modifications to this provision in section 3(c)(3) to improve clarity and correct a cross-reference.

Financial markets evolve rapidly, and internal models that were state-of-the-art at the time they were approved for use in risk-based capital calculations can become less effective as the risks of covered positions evolve and as the industry develops more sophisticated modeling techniques that better capture material risks. Therefore, under the final rule, as under the January 2011 proposal, a bank must review its internal models periodically, but no less frequently than annually, in light of developments in financial markets and modeling technologies, and to enhance those models as appropriate to ensure that they continue to meet the agencies' standards for model approval and employ risk measurement methodologies that are, in the bank's judgment, most appropriate for the bank's covered positions. It is essential that a bank continually review, and as appropriate, make adjustments to its models to help ensure that its market risk capital requirement reflects the risk of the bank's covered positions. A bank's primary federal supervisor will closely review the bank's model review practices as a matter of safety and soundness. The agencies are adopting these requirements in the final rule.

Risks Reflected in Models. The final rule requires a bank to incorporate its internal models into its risk management process and integrate the internal models used for calculating its VaR-based measure into its daily risk management process. The level of sophistication of a bank's models must be commensurate with the complexity and amount of its covered positions. To measure its market risk, a bank's internal models may use any generally accepted modeling approach, including but not limited to variance-covariance models, historical simulations, or Monte Carlo simulations. A bank's internal models must properly measure all material risks in the covered positions to which they are applied. Consistent with the January 2011 proposal, the final rule requires that risks arising from less liquid positions and positions with limited price transparency be modeled conservatively under realistic market scenarios. The January 2011 proposal also would require a bank to have a rigorous process for re-estimating, re-evaluating, and updating its models to ensure continued applicability and relevance. The final rule retains these proposed requirements for internal models.

Control, Oversight, and Validation Mechanisms. The final rule, consistent with the January 2011 proposal, requires a bank to have a risk control unit that reports directly to senior management and that is independent of its business trading units. In addition, the final rule provides specific model validation standards similar to those in the advanced approaches rules. Specifically, the final rule requires a bank to validate its internal models initially and on an ongoing basis. The validation process must be independent of the internal models' development, implementation, and operation, or the validation process must be subjected to an independent review of its adequacy and effectiveness. The review personnel do not necessarily have to be external to the bank in order to achieve the required independence. A bank should ensure that individuals who perform the review are not biased in their assessment due to their involvement in the development, implementation, or operation of the models.

Also consistent with the January 2011 proposal, the final rule requires validation to include an evaluation of the conceptual soundness of the internal models. This should include an evaluation of empirical evidence and documentation supporting the methodologies used; important model assumptions and their limitations; adequacy and robustness of empirical data used in parameter estimation and model calibration; and evidence of a model's strengths and weaknesses.

Validation also must include an ongoing monitoring process that includes a review of all model processes and verification that these processes are functioning as intended and the comparison of the bank's model outputs with relevant internal and external data sources or estimation techniques. The results of this comparison provide a valuable diagnostic tool for identifying potential weaknesses in a bank's models. As part of this comparison, the bank should investigate the source of any differences between the model estimates and the relevant internal or external data or estimation techniques and whether the extent of the differences is appropriate.

Validation of internal models must include an outcomes analysis process that includes backtesting. Consistent with the 2009 revisions, the January 2011 proposal required a bank's validation process for internal models used to calculate its VaR-based measure to include an outcomes analysis process that includes a comparison of the changes in the bank's portfolio value that would have occurred were end-of-day positions to remain unchanged (therefore, excluding fees, commissions, reserves, net interest income, and intraday trading) with VaR-based measures during a sample period not used in model development.

The final rule, consistent with the January 2011 proposal, requires a bank to stress test the market risk of its covered positions at a frequency appropriate to each portfolio and in no case less frequently than quarterly. The stress tests must take into account concentration risk, illiquidity under stressed market conditions, and other risks arising from the bank's trading activities that may not be captured adequately in the bank's internal models. For example, it may be appropriate for a bank to include in its stress testing large price movements, one-way markets, nonlinear or deep out-of-the-money products, jumps-to-default, and significant changes in correlation. Relevant types of concentration risk include concentration by name, industry, sector, country, and market. Market concentration occurs when a bank holds a position that represents a concentrated share of the market for a security and thus requires a longer than usual liquidity horizon to liquidate the position without adversely affecting the market. A bank's primary federal supervisor will evaluate the robustness and appropriateness of any bank stress tests required under the final rule through the supervisory review process.

One commenter advocated an exemption from the proposed backtesting requirements for vendor models, and stated that banks using the same vendor model would be duplicating their efforts. The agencies believe that each bank must be responsible for ensuring that its market risk capital requirement reflects the risks of its covered positions. Each bank generally customizes some aspects of a vendor model and has a unique trading profile. Therefore, effective backtesting of either a vendor-provided or internally-developed model requires reference to a bank's experience with its own positions, which is consistent with guidance issued by the OCC and the Board with respect to the use of internal and third-party models.[14]

Consistent with the January 2011 proposal, the final rule requires a bank to have an internal audit function independent of business-line management that at least annually assesses the effectiveness of the controls supporting the bank's market risk measurement systems, including the activities of the business trading units and independent risk control unit, compliance with policies and procedures, and the calculation of the bank's measure for market risk. The internal audit function should review the bank's validation processes, including validation procedures, responsibilities, results, timeliness, and responsiveness to findings. Further, the internal audit function should evaluate the depth, scope, and quality of the risk management system review process and conduct appropriate testing to ensure that the conclusions of these reviews are well-founded. At least annually, the internal audit function must report its findings to the bank's board of directors (or a committee thereof). The final rule adopts the January 2011 proposal's requirements pertaining to control, oversight, and validation mechanisms.

Internal Assessment of Capital Adequacy. The final rule, consistent with the January 2011 proposal, requires a bank to have a rigorous process for assessing its overall capital adequacy in relation to its market risk. This assessment must take into account market concentration and liquidity risks under stressed market conditions as well as other risks that may not be captured fully in the VaR-based measure.

Documentation. The final rule also adopts as proposed the requirement that a bank document adequately all material aspects of its internal models; the management and valuation of covered positions; its control, oversight, validation and review processes and results; and its internal assessment of capital adequacy. This documentation will facilitate the supervisory review process as well as the bank's internal audit or other review procedures.

6. Capital Requirement for Market Risk

Consistent with the January 2011 proposal, the final rule requires a bank to calculate its risk-based capital ratio denominator as the sum of its adjusted risk-weighted assets and market risk equivalent assets. However, the agencies are making changes to this calculation

[14] *See* Supervisory Guidance on Model Risk Management, issued by the OCC and Federal Reserve (April 4, 2011).

in the final rule for banks subject to the advanced approaches rules (as amended in June 2011 to implement certain provisions in section 171 of the Dodd-Frank Act).[15] Under the advanced approaches rules, a bank is required to calculate its risk-based capital requirements under the general risk-based capital rules and the advanced approaches rules for purposes of determining compliance with minimum regulatory capital requirements. Thus, a bank subject to the advanced approaches rules is required to calculate both a general risk-based capital ratio denominator based on the general risk-based capital rules and an advanced risk-based capital ratio denominator based on the advanced approaches rules, each supplemented by the market risk capital rules as appropriate.[16] Consequently, a bank subject to the advanced approaches rules and the market risk capital rules is also required to calculate both general adjusted risk-weighted assets and advanced adjusted risk-weighted assets under the market risk capital rules as the starting point to determine its risk-based capital ratio denominators. The agencies have revised the mechanics of section 4 of the final rule to be consistent with the risk-based capital ratio calculation requirements under the advanced approaches rules.

To calculate general market risk equivalent assets, a bank must multiply its general measure for market risk by 12.5. A bank subject to the advanced approaches rules also must calculate its advanced market risk equivalent assets by multiplying its advanced measure for market risk by 12.5. The final rule requires a bank's general and advanced measures for market risk to equal the sum of its VaR-based capital requirement, its stressed VaR-based capital requirement, specific risk add-ons, incremental risk capital requirement, comprehensive risk capital requirement, and capital requirement for *de minimis* exposures, each calculated according to defined applicable requirements. The components of the two measures for market risk described above are the same except for a potential difference stemming from the specific risk add-ons component. This difference arises because a bank may not use the SFA (discussed further below) to calculate its general measure for market risk for securitization positions while it must use the SFA, provided the bank has sufficient information, to calculate its advanced measure for market risk for the same positions. Consistent with the proposal, under the final rule, no adjustments are permitted to address potential double counting among any of the components of a bank's measure(s) for market risk.

The final rule requires a bank to include in its measure for market risk any specific risk add-on as required under section 7 of the rule, determined using the standardized measurement methods described in section 10 of the rule. For a bank subject to the advanced approaches rules, these standardized measurement methods may include the SFA for securitization positions as discussed further below, where both the securitization position and the bank would meet the requirements to use the SFA. Such a bank must use the SFA in all instances where possible to calculate specific risk add-ons for its securitization positions. The agencies expect banks to use the SFA rather than the simplified supervisory formula approach (SSFA) in all instances where the data to calculate the SFA is available. The agencies expect a bank to apply the SFA on a consistent basis for a given position. For instance, if a bank is able to calculate a specific risk add-on for a securitization position using the SFA, the agencies would expect the bank to continue to have access to the information needed to perform this calculation on an ongoing basis for that position. If the bank were to change the methodology it used for calculating the specific risk add-on for such a securitization position, it should be able to explain and justify the change in approach (e.g., based on data availability) to its primary federal supervisor.

As described above, a bank subject to the advanced approaches rules must calculate two market risk equivalent asset amounts: a general measure for market risk and an advanced measure for market risk. A bank subject to the advanced approaches rules may not use the SFA to calculate its general measure for market risk, because this methodology is not available under the general risk-based capital rules.

The final rule requires a bank to include in both its general measure for market risk and its advanced measure for market risk its capital requirement for *de minimis* exposures. Specifically, a bank must add to its general and advanced measures for market risk the absolute value of the market value of those *de minimis* exposures that are not captured in the bank's VaR-based measure unless the bank has obtained prior written approval from its primary federal supervisor to calculate a capital requirement for the *de minimis* exposures using alternative techniques that appropriately measure the market risk associated with those exposures. The agencies have made conforming changes to the proposed requirements for a bank to calculate its risk-based capital ratio denominator under the final rule. With regard to a bank's total risk-based capital numerator, the final rule, like the January 2011 proposal, eliminates tier 3 capital and the associated allocation methodologies.

As proposed, the final rule requires a bank's VaR-based capital requirement to equal the greater of (1) the previous day's VaR-based measure, or (2) the average of the daily VaR-based measures for each of the preceding 60 business days multiplied by three, or such higher multiplication factor required based on backtesting results determined according to section 4 of the rule and as discussed further below. Similarly, the final rule requires a bank's stressed VaR-based capital requirement to equal the greater of (1) the most recent stressed VaR-based measure; or (2) the average of the weekly stressed VaR-based measures for each of the preceding 12 weeks multiplied by three, or such higher multiplication factor as required based on backtesting results determined according to section 4 of the rule. The multiplication factor applicable to the stressed-VaR based measure for purposes of this calculation is based on the backtesting results for the bank's VaR-based measure; there is no separate backtesting requirement for the stressed VaR-based measure for purposes of calculating a bank's measure for market risk.

Determination of the Multiplication Factor. Consistent with the January 2011 proposal, the final rule requires a bank, each quarter, to compare each of its most recent 250 business days of trading losses (excluding fees, commissions, reserves, net interest income, and intraday trading) with the corresponding daily VaR-based measure calibrated to a one-day holding period and at a one-tail, 99.0 percent confidence level. The excluded components of trading profit and loss

[15] 76 FR 37620 (June 28, 2011).

[16] Section 171 of the Dodd-Frank Act (12 U.S.C. 5371) requires the agencies to establish consolidated minimum risk-based capital requirements for depository institutions, bank holding companies, savings and loan holding companies, and nonbank financial companies supervised by the Board that are not less than the capital requirements the agencies establish under section 38 of the Federal Deposit Insurance Act to apply to insured depository institutions, regardless of total asset size or foreign financial exposure (generally applicable risk-based capital requirements). Currently, the general risk-based capital rules (supplemented by the market risk capital rule) are the generally applicable risk-based capital rules for purposes of section 171 of the Dodd-Frank Act. 12 U.S.C. 5371.

are usually not modeled as part of the VaR-based measure. Therefore, excluding them from the regulatory backtesting framework will improve the accuracy of the backtesting and provide a better assessment of the bank's internal model.

The agencies sought comment on any challenges banks may face in formulating the proposed measure of trading loss, particularly whether any excluded components described above would present difficulties and the nature of those difficulties. Commenters expressed concern about challenges in calculating trading loss net of the above excluded components, noting that many banks only have trading gain and loss data which includes these components. According to commenters, because historical data are not always available for the components excluded from trading losses, it would be difficult to immediately create historical trading gains and losses that exclude these components. Commenters also indicated that banks will need to make changes to their systems to support this requirement. Because of these concerns, commenters requested additional time to come into compliance with the new requirement.

The agencies acknowledge these implementation concerns and recognize that banks may not be able to immediately implement the new backtesting requirements. Therefore, the agencies have specified in the final rule that banks will be allowed up to one year after the later of either January 1, 2013, or the date on which a bank becomes subject to the rule, to begin backtesting as required under the final rule. In the interim, consistent with safety and soundness principles, a bank subject to the rule as of January 1, 2013, should continue to follow their current regulatory backtesting procedures, in accordance with its primary federal supervisor's expectations.

One commenter expressed concern with the proposed backtesting requirements. In particular, the commenter described the frequency of calculations required for determining the number of exceptions as burdensome and unnecessary. The agencies believe that the comparison of daily trading loss to the corresponding daily VaR-based measure is a critical part of a bank's ongoing risk management. Such comparisons improve a bank's ability to make prompt adjustment to its market risk management to address factors such as changing market conditions and model deficiencies. A high number of exceptions could indicate modeling issues and warrants an increase in capital requirements by a higher multiplication factor. Accordingly, the agencies believe the multiplication factor and associated backtesting requirements provide appropriate incentives for banks to regularly update their VaR-based models and have adopted the proposed approach for determining the number of daily backtesting exceptions. With the exception of the timing consideration discussed above for calculating daily trading losses, the final rule retains the proposed backtesting requirements.

7. VaR-Based Capital Requirement

Consistent with the January 2011 proposal, section 5 of the final rule requires a bank to use one or more internal models to calculate a daily VaR-based measure that reflects general market risk for all covered positions. The daily VaR-based measure also may reflect the bank's specific risk for one or more portfolios of debt or equity positions and must reflect the specific risk for any portfolios of correlation trading positions that are modeled under section 9 of the rule. The rule defines general market risk as the risk of loss that could result from broad market movements, such as changes in the general level of interest rates, credit spreads, equity prices, foreign exchange rates, or commodity prices. Specific risk is the risk of loss on a position that could result from factors other than broad market movements and includes event and default risk as well as idiosyncratic risk.[17] Like the January 2011 proposal, the final rule also allows a bank to include term repo-style transactions in its VaR-based measure even though these positions may not meet the definition of a covered position, provided the bank includes all such term repo-style transactions consistently over time.

Under the final rule, a term repo-style transaction is defined as a repurchase or reverse repurchase transaction, or a securities borrowing or securities lending transaction, including a transaction in which the bank acts as agent for a customer and indemnifies the customer against loss, that has an original maturity in excess of one business day, provided that it meets certain requirements, including being based solely on liquid and readily marketable securities or cash and subject to daily marking-to-market and daily margin maintenance requirements.[18] While repo-style transactions typically are close adjuncts to trading activities, U.S. GAAP traditionally has not permitted companies to report them as trading assets or trading liabilities. Repo-style transactions included in the VaR-based measure will continue to be subject to the requirements under the credit risk capital rules for calculating capital requirements for counterparty credit risk.

As in the January 2011 proposal, the final rule adds credit spread risk to the list of risk categories to be captured in a bank's VaR-based measure (that is, in addition to interest rate risk, equity price risk, foreign exchange rate risk, and commodity price risk). The VaR-based measure may incorporate empirical correlations within and across risk categories, provided the bank validates its models and justifies the reasonableness of its process for measuring correlations. If the VaR-based measure does not incorporate empirical correlations across market risk categories, the bank must add the separate measures from its internal models used to calculate the VaR-based measure to determine the bank's aggregate VaR-based measure. The final rule, as proposed, requires models to include risks arising from the nonlinear price characteristics of option positions or positions with embedded optionality.

Consistent with the 2009 revisions and the proposed rule, the final rule requires a bank to be able to justify to the satisfaction of its primary federal supervisor the omission of any risk factors from the calculation of its VaR-based measure that the bank includes in its pricing models. In addition, a bank must demonstrate to the satisfaction of its primary federal supervisor the appropriateness of any proxies used to capture the risks of the actual positions for which such proxies are used.

Quantitative Requirements for VaR-based Measure. Like the January 2011 proposal, the final rule does not change the existing quantitative requirements for the daily VaR-based measure. These include a one-tail, 99.0 percent confidence level, a ten-business-day holding period, and a historical observation period of at least one year. To calculate VaR-based measures using a 10-day holding period, the bank may calculate 10-business-day measures directly or may convert VaR-based

[17] Default risk is the risk of loss on a position that could result from the failure of an obligor to make timely payments of principal or interest on its debt obligation and the risk of loss that could result from bankruptcy, insolvency, or similar proceeding. For credit derivatives, default risk means the risk of loss on a position that could result from the default of the reference name or exposure(s). Idiosyncratic risk is the risk of loss in the value of a position that arises from changes in risk factors unique to that position.

[18] *See* section 2 of the final rule for a complete definition of a term repo-style transaction.

measures using holding periods other than 10 business days to the equivalent of a 10-business-day holding period. A bank that converts its VaR-based measure in this manner must be able to justify the reasonableness of its approach to the satisfaction of its primary federal supervisor. For example, a bank that computes its VaR-based measure by multiplying a daily VaR amount by the square root of 10 (that is, using the square root of time) should demonstrate that daily changes in portfolio value do not exhibit significant mean reversion, autocorrelation, or volatility clustering.[19]

Consistent with the January 2011 proposal, the final rule requires a bank's VaR-based measure to be based on data relevant to the bank's actual exposures and of sufficient quality to support the calculation of its risk-based capital requirements. The bank must update its data sets at least monthly or more frequently as changes in market conditions or portfolio composition warrant. For banks that use a weighting scheme or other method to identify the appropriate historical observation period, the bank must either (1) use an effective observation period of at least one year in which the average time lag of the observations is at least six months or (2) demonstrate to its primary federal supervisor that the method used is more effective than that described in (1) at representing the volatility of the bank's trading portfolio over a full business cycle. In the latter case, a bank must update its data more frequently than monthly and in a manner appropriate for the type of weighting scheme. In general, a bank using a weighting scheme should update its data daily. Because the most recent observations typically are the most heavily weighted, it is important for a bank to include these observations in its VaR-based measure.

Also consistent with the January 2011 proposal, the final rule requires a bank to retain and make available to its primary federal supervisor model performance information on significant subportfolios. Taking into account the value and composition of a bank's covered positions, the subportfolios must be sufficiently granular to inform a bank and its supervisor about the ability of the bank's VaR-based model to reflect risk factors appropriately. A bank's primary federal supervisor must approve the number of significant subportfolios the bank uses for subportfolio backtesting. While the final rule does not prescribe the basis for determining significant subportfolios, the primary federal supervisor may consider the bank's evaluation of factors such as trading volume, product types and number of distinct traded products, business lines, and number of traders or trading desks.

The final rule, consistent with the January 2011 proposal, requires a bank to retain and make available to its primary federal supervisor, with no more than a 60-day lag, information for each subportfolio for each business day over the previous two years (500 business days) that includes (1) A daily VaR-based measure for the subportfolio calibrated to a one-tail, 99.0 percent confidence level; (2) the daily profit or loss for the subportfolio (that is, the net change in price of the positions held in the portfolio at the end of the previous business day); and (3) the p-value of the profit or loss on each day (that is, the probability of observing a profit less than or a loss greater than reported in (2) above, based on the model used to calculate the VaR-based measure described in (1) above).

Daily information on the probability of observing a loss greater than that which occurred on any given day is a useful metric for banks and supervisors to assess the quality of a bank's VaR model. For example, if a bank that used a historical simulation VaR model using the most recent 500 business days experienced a loss equal to the second worst day of the 500, it would assign a probability of 0.004 (2/500) to that loss based on its VaR model. Applying this process many times over a long interval provides information about the adequacy of the VaR model's ability to characterize the entire distribution of losses, including information on the size and number of backtesting exceptions. The requirement to create and retain this information at the subportfolio level may help identify particular products or business lines for which the model does not adequately measure risk.

The agencies solicited comment on whether the proposed subportfolio backtesting requirements would present any challenges and, if so, the specific nature of such challenges. In addition, the agencies sought comment on how to determine an appropriate number of subportfolios for purposes of these requirements. The agencies also requested comment on whether the p-value is a useful statistic for evaluating the efficacy of the VaR model in gauging market risk, as well as whether the agencies should consider other statistics and, if so, why.

Several commenters urged the agencies to provide discretion and flexibility in identifying significant subportfolios. In particular, the commenters asked the agencies to allow banks to identify subportfolios based on the internal management structure of the bank. Notwithstanding these comments, the agencies believe the final rule, like the January 2011 proposal, provides an appropriate level of flexibility, as it does not prescribe a specific basis or parameters for determining significant subportfolios. Some commenters urged the agencies to be sensitive to the operational challenges associated with meeting subportfolio backtesting requirements that would be caused by organizational changes and model enhancements. The agencies recognize the operational challenges involved in meeting these requirements and will consider them as part of the ongoing evaluation of a bank's compliance with the backtesting requirements. Some commenters stated that the p-value statistic does not add sufficient explanatory power to warrant the calculation effort, and instead recommended the use of ''band breaks'' to detect VaR model deficiencies.

The agencies believe that the p-value statistic adds significant explanatory power and will facilitate a more appropriate evaluation of the VaR models by both banks and supervisors. The agencies believe that the so-called band-break methodology generally fails to recognize modeling deficiencies comprehensively and view the p-value as an improvement over this methodology. VaR models and the break-band methodology evaluate only one statistic at the tail of the profit and loss distribution while the p-values provide information to banks and supervisors regarding the appropriateness of the entire profit and loss distribution. The agencies have thus decided to adopt the proposed subportfolio backtesting requirements in the final rule as proposed.

8. Stressed VaR-Based Capital Requirement

Like the January 2011 proposal, section 6 of the final rule requires a bank to calculate at least weekly a stressed VaR-based measure using the same internal model(s) used to calculate its VaR-based measure. The stressed VaR-based measure supplements the VaR-based measure, which, due to inherent limitations, proved inadequate in producing capital requirements appropriate to the level of losses incurred at many banks during the financial market crisis that began in mid-2007. The stressed VaR-based

[19] Using the square root of time assumes that daily portfolio returns are independent and identically distributed. When this assumption is violated, the square root of time approximation is not appropriate.

measure mitigates the procyclicality of the minimum capital requirements for market risk and contributes to a more appropriate measure of the risks of a bank's covered positions.

Quantitative Requirements for Stressed VaR-based Measure. To determine the stressed VaR-based measure, the final rule, consistent with the January 2011 proposal, requires a bank to use the same model(s) used to calculate its VaR-based measure but with model inputs calibrated to reflect historical data from a continuous 12-month period that reflects a period of significant financial stress appropriate to the bank's current portfolio. The stressed VaR-based measure must be calculated at least weekly and be no less than the bank's VaR-based measure. The agencies generally expect that a bank's stressed VaR-based measure will be substantially greater than its VaR-based measure.

One commenter pointed out that one interpretation of the January 2011 proposal could be inconsistent with a BCBS interpretation, which appears to indicate that a weighting scheme should not be used for the stressed VaR-based measure. The final rule requires a bank to use the same internal model for its VaR-based measure and its stressed VaR-based measure. In general, if a bank chooses to use a weighting scheme for its VaR-based measure, the agencies expect this weighting scheme to also be used for its stressed VaR-based measure. Where there is not consistent use of weighting schemes across both measures, the bank should document and be able to explain its approach to its primary federal supervisor.

The final rule also requires a bank to have policies and procedures that describe how it determines the period of significant financial stress used to calculate the bank's stressed VaR-based measure and to be able to provide empirical support for the period used. These policies and procedures must address (1) how the bank links the period of significant financial stress used to calculate the stressed VaR-based measure to the composition and directional bias of the bank's current portfolio; and (2) the bank's process for selecting, reviewing, and updating the period of significant financial stress used to calculate the stressed VaR-based measure and for monitoring the appropriateness of the 12-month period in light of the bank's current portfolio. The bank must obtain the prior approval of its primary federal supervisor for these policies and procedures and must notify its primary federal supervisor if the bank makes any material changes to them. A bank's primary federal supervisor may require it to use a different period of significant financial stress in the calculation of the bank's stressed VaR-based measure. The final rule retains the proposed quantitative requirements for the stressed VaR-based measure.

9. Modeling Standards for Specific Risk

Consistent with the January 2011 proposal, the final rule allows a bank to use one or more internal models to measure the specific risk of a portfolio of debt or equity positions with specific risk. A bank is required to use one or more internal models to measure the specific risk of a portfolio of correlation trading positions with specific risk that are modeled under section 9 of the final rule. However, a bank is not permitted to model the specific risk of securitization positions that are not modeled under section 9 of the rule. This treatment addresses regulatory arbitrage concerns as well as deficiencies in the modeling of securitization positions that became more evident during the course of the financial market crisis that began in mid-2007.

Under the final rule and consistent with the January 2011 proposal, the internal models for specific risk are required to explain the historical price variation in the portfolio, be responsive to changes in market conditions, be robust to an adverse environment, and capture all material aspects of specific risk for debt and equity positions. Specifically, the final rule requires that a bank's internal models capture event risk and idiosyncratic risk; capture and demonstrate sensitivity to material differences between positions that are similar but not identical, and to changes in portfolio composition and concentrations. If a bank calculates an incremental risk measure for a portfolio of debt or equity positions under section 8 of the proposed rule, the bank is not required to capture default and credit migration risks in its internal models used to measure the specific risk of those portfolios.

Commenters asked for guidance or examples regarding the types of events captured by the definition of ''event risk.'' In response, the agencies have clarified the definition of event risk in the final rule as the risk of loss on equity or hybrid equity positions as a result of a financial event, such as the announcement or occurrence of a company merger, acquisition, spin-off or dissolution.

The January 2011 proposal required a bank that does not have an approved internal model that captures all material aspects of specific risk for a particular portfolio of debt, equity, or correlation trading positions to use the standardized measurement method to calculate a specific risk add-on for that portfolio. This requirement was intended to provide banks with incentive to model specific risk more robustly. However, due to concerns about the ability of a bank to model the specific risk of certain securitization positions, the January 2011 proposal required a bank to calculate a specific risk add-on using the standardized measurement method for all of its securitization positions that are not correlation trading positions modeled under section 9 of the proposed rule. The agencies note that not all debt, equity, or securitization positions (for example, certain interest rate swaps) have specific risk. Therefore, there would be no specific risk capital requirement for positions without specific risk. A bank should have clear policies and procedures for determining whether a position has specific risk.

While the January 2011 proposal continued to provide for flexibility and a combination of approaches to measure market risk, including the use of different models to measure the general market risk and the specific risk of one or more portfolios of debt and equity positions, the agencies strongly encourage banks to develop and implement VaR-based models for both general market risk and specific risk. A bank's use of a combination of approaches is subject to supervisory review to ensure that the overall capital requirement for market risk is commensurate with the risks of the bank's covered positions. Except for the revision to the definition of event risk described above, the final rule retains the proposed requirements pertaining to modeling standards for specific risk.

10. Standardized Specific Risk Capital Requirement

The final rule, like the January 2011 proposal, requires a bank to calculate a total specific risk add-on for each portfolio of debt and equity positions for which the bank's VaR-based measure does not capture all material aspects of specific risk and for all of its securitization positions that is not modeled under section 9 of the rule. The final rule requires a bank to calculate each specific risk add-on in accordance with the requirements of the final rule and add the total specific risk add-on for each portfolio to the applicable measure(s) for market risk.

Some commenters asserted that the capital requirement for a given covered position should not exceed the maximum loss a bank could incur on that position and requested that the agencies revise the rule accordingly to clarify this limitation. The agencies agree with the principle of limiting a bank's capital requirement for a covered position to its maximum possible loss. For long positions, this amount is the loss of all remaining value of the instrument, assuming no recovery. For short debt and securitization positions, this amount is the loss associated with the position becoming risk free. In some contexts (for example, equity positions), the maximum loss may be unbounded and not constrain the amount of capital to be held. The agencies have clarified in the final rule that the specific risk add-on for an individual debt or securitization position that represents purchased credit protection is capped at the current market value of the transaction, plus the absolute value of the present value of all remaining payments to the protection seller under the transaction where the sum is equal to the value of the protection leg of the transaction. The agencies have also clarified in the final rule that the specific risk add-on for an individual debt or securitization position that represents sold credit protection is capped at the effective notional amount of the credit derivative contract.

For debt, equity, and securitization positions that are derivatives with linear payoffs (for example, futures and equity swaps), the final rule, consistent with the January 2011 proposal, requires a bank to apply a specific risk-weighting factor that is included in the calculation of a specific risk add-on to the market value of the effective notional amount of the underlying instrument or index portfolio (except where a bank would instead directly calculate a specific risk add-on for the position using the SFA). For debt, equity, and securitization positions that are derivatives with nonlinear payoffs (for example, options, interest rate caps, tranched positions), a bank must risk-weight the market value of the effective notional amount of the underlying instrument or instruments multiplied by the derivative's delta (that is, the change of the derivative's value relative to changes in the price of the underlying instrument or instruments). For a standard interest rate derivative, the effective notional amount refers to the apparent or stated notional principal amount. If the contract contains a multiplier or other leverage enhancement, the apparent or stated notional principal amount must be adjusted to reflect the effect of the multiplier or leverage enhancement in order to determine the effective notional amount.

A swap must be included as an effective notional position in the underlying debt, equity, or securitization instrument or portfolio, with the receiving side treated as a long position and the paying side treated as a short position. A bank may net long and short positions (including derivatives) in identical issues or identical indices. A bank may also net positions in depository receipts against an opposite position in an identical equity in different markets, provided that the bank includes the costs of conversion.

Like the January 2011 proposal, the final rule expands the recognition of credit derivative hedging effects for debt and securitization positions. A set of transactions consisting of either a debt position and its credit derivative hedge or a securitization position and its credit derivative hedge has a specific risk add-on of zero if the debt or securitization position is fully hedged by a total return swap (or similar instrument where there is a matching of swap payments and changes in market value of the position) and there is an exact match between the reference obligation, the maturity, and the currency of the swap and the debt or securitization position.

The agencies are clarifying in the final rule that in cases where a total return swap references a portfolio of positions with different maturity dates, the total return swap maturity date must match the maturity date of the underlying asset in that portfolio that has the latest maturity date.

The January 2011 proposal also specified that if a set of transactions consisting of either a debt position and its credit derivative hedge or a securitization position and its credit derivative hedge does not meet the criteria for no specific risk add-on described above, the specific risk add-on for the set of transactions is equal to 20.0 percent of the specific risk add-on for the side of the transaction with the higher specific risk add-on, provided that: (1) The credit risk of the position is fully hedged by a credit default swap (or similar instrument); (2) there is an exact match between the reference obligation and currency of the credit derivative hedge and the debt or securitization position; and (3) there is an exact match between the maturity date of the credit derivative hedge and the maturity date of the debt or securitization position.

A commenter noted that credit derivatives are traded on market conventions based on standard maturity dates, whereas debt or securitization instruments may not have standard maturity dates. In response, in the final rule the agencies provide clarification regarding the circumstances under which a bank could consider a credit derivative hedge with a standard maturity date and the debt or securitization position that the credit derivative hedges to have matched maturity dates. In particular, the maturity date of the credit derivative hedge must be within 30 business days of the maturity date of the debt or securitization position in the case of sold credit protection. In the case of purchased credit protection, the maturity date of the credit derivative hedge must be later than the maturity date of the debt or securitization position, but no later than the standard maturity date for that instrument that immediately follows the maturity date of the debt or securitization position. In this case, the maturity date of the credit derivative hedge may not exceed the maturity date of the debt or securitization position by more than 90 calendar days.

Some commenters asked for clarification regarding whether the 20.0 percent add-on treatment described above would apply to a credit derivative that fully hedges the credit risk of a debt or securitization position, provided there is an exact match as to the obligor or issuer but not necessarily an exact match as to the specific security or obligation. The agencies note that a credit derivative may allow delivery of more than one reference obligation in the event of default of an obligor. In that case, for purposes of determining the specific risk add-on, the criteria of an exact match in reference obligation is satisfied if the debt or securitization position is included among the deliverable obligations provided in the credit derivative documentation.

For a set of transactions that consists of either a debt position and its credit derivative hedge or a securitization position and its credit derivative hedge that does not meet the criteria for full offset or the 80.0 percent offset described above (for example, there is a mismatch in the maturity of the credit derivative hedge and that of the debt or securitization position), but in which all or substantially all of the price risk has been hedged, the specific risk add-on is equal to the specific risk add-on for the side of the transaction with the higher specific risk add-on.

With respect to calculating the specific risk add-on for securitization products under the standardized measurement method of section 10 of the January 2011 proposal, commenters indicated that a bank should be permitted to de-construct the components of tranched securitization products in an index in order to give effect to the netting of long and short positions and hedges. Such an approach would mean, for example, that the exposure of various tranches that have some common issuers in otherwise different underlying portfolios would be calculated on an issuer basis and net exposure would be evaluated by aggregating across tranches at the issuer level. The agencies note that netting is allowed under the final rule, consistent with the proposal, for long and short securitization positions in identical issues or indices but not across positions in different issues or indices. Different tranches on the same underlying issue or index also do not qualify for netting. With regard to offsetting treatment, the agencies note that hedging offsets are available under certain conditions as discussed above. For instance, the hedge must have the identical underlying issue or index as the risk position and meet other criteria. A hedge with similar but different underlying issues or indices would not be a sufficient match for offsetting treatment. It is extremely unlikely that a hedge that is a different tranche from the securitization position would match changes in market value, fully hedge the credit risk, or even hedge substantially all the market risk of the securitization position. Therefore this matching of positions would not meet the definition of a hedge in the final rule, which requires a position or positions to offset all, or substantially all, of one or more material risk factors of another position.

A commenter indicated that the agencies should permit banks to use a look-through approach for untranched indices that would allow netting at the individual issuer level of index positions against individual issuer credit derivative exposures. The agencies believe such treatment is appropriate in this case as netting of exposures between the individual issuer level and the index is possible, as changes in the market value of certain components of an index can be matched with individual issuer exposures. However, matching of positions at the individual issuer level with tranched index positions is difficult, as it is unlikely that changes in market value of the tranched index would reasonably match market value changes in tranched index positions. Therefore, the matching of such positions would also not meet the definition of a hedge under the final rule.

Another commenter suggested specific treatments for various permutations of cash, synthetic, tranched, and untranched positions with different offsetting considerations. The agencies decided not to modify the final rule to accommodate these variations and believe the netting benefits and treatment of credit derivative hedges of debt and securitization positions as provided for in the final rule are consistent with the MRA.

One commenter noted that a pay-as-you-go CDS should receive the same full hedge recognition as a total return swap for purposes of determining the specific risk add-on under the January 2011 proposal's standardized measurement method. While pay-as-you-go CDSs share several characteristics with total return swaps, the agencies do not believe the swap payments are sufficiently aligned with the changes in the market value of associated debt or securitization positions to warrant full offsetting treatment. If a credit derivative hedge does not have payments that match changes in the market value of the debt or securitization position, then it does not meet the criteria for no specific risk add-on. However, this hedge still may meet the criteria for a partial offset if it fully hedges the credit risk of the debt or securitization position.

Another commenter suggested permitting banks to measure the specific risk of non-securitization positions that hedge securitization positions by using internal models rather than requiring use of the standardized measurement method for specific risk for these hedge positions. The commenter also requested that the agencies clarify whether securitization positions and their hedges or correlation trading positions and their hedges should be evaluated collectively or separately with regard to specific risk treatment under the January 2011 proposal.

In the case of a non-securitization position that hedges a securitization position that is not a correlation trading position, a bank is permitted to measure the specific risk of the hedge using either an approved internal model or the standardized measurement method. For the securitization position itself, a bank is required to use the standardized measurement method to calculate the specific risk add-on. Thus, in this case, the securitization position and its hedge are not necessarily treated collectively for purposes of measuring specific risk. In the case of a non-securitization position that hedges a correlation trading position, this same treatment applies to the extent the bank is not using a comprehensive risk model to measure the price risk of these positions. However, if a bank is using a comprehensive risk model for a portfolio of correlation trading positions, then the bank must use models to measure the specific risk of positions in that portfolio, inclusive of any hedges. That is, the portfolio is treated collectively when a bank is using a comprehensive risk model. The bank must also determine the total specific risk add-on for all positions in the portfolio using the standardized measurement method for purposes of determining the comprehensive risk measure. The final rule clarifies that a position that is a correlation trading position under paragraph (2) of that definition and that otherwise meets the definition of a debt position or an equity position shall be considered a debt position or an equity position, respectively, for purposes of section 10 of the final rule.

Another commenter suggested permitting a bank the option of not using a derivative's delta to determine the effective notional amount of a derivative with a nonlinear payoff. The agencies expect an institution engaged in such derivatives activity to be able to calculate a delta and therefore have retained the delta calculation requirement in the final rule. The agencies believe this requirement provides the appropriate factor to convert the reference notional amount into an effective notional amount. While the final rule does not require supervisory approval to use the standardized measurement method, the model used to generate the delta value is subject to the model validation requirements under the final rule.

Debt and Securitization Positions. In the December 2011 amendment, the agencies proposed alternative creditworthiness standards for certain positions, consistent with section 939A of the Dodd-Frank Act, as described above. In developing these alternative standards, the agencies strove to establish capital requirements comparable to those published in the 2005 and 2009 revisions to ensure international consistency and competitive equity. At the same time, the agencies sought to develop alternatives that incorporated relevant policy considerations, including risk sensitivity, transparency, consistency in application, and reduced opportunity for regulatory capital arbitrage.

The proposed alternative standards would set specific risk-weighting factors for various covered positions, including positions that are exposures to sovereign entities, depository institutions, public sector entities (PSEs), financial and non-financial companies, and securitization transactions. Each proposed standard (including alternatives to the proposed standards that the agencies requested comment on in the December 2011 amendment) and the final rule provisions with respect to each standard, are discussed in detail in this section.

Sovereign Debt Positions. Under the December 2011 amendment, a sovereign debt position was defined as a direct exposure to a sovereign entity. The proposal defined a sovereign entity as a central government or an agency, department, ministry, or central bank of a central government. A sovereign entity would not include commercial enterprises owned by the central government engaged in activities involving trade, commerce, or profit, which are generally conducted or performed in the private sector. The agencies have retained these definitions in the final rule.

Under the December 2011 amendment, a bank would determine specific risk-weighting factors for sovereign debt positions based on the Organization for Economic Co-operation and Development (OECD) Country Risk Classifications (CRCs).[20] The OECD's CRCs are used for transactions covered by the OECD arrangement on export credits in order to provide a basis under the arrangement for participating countries to calculate the premium interest rate to be charged to cover the risk of non-repayment of export credits.

The CRC methodology was established in 1999 and classifies countries into categories based on the application of two basic components (1) the country risk assessment model (CRAM), which is an econometric model that produces a quantitative assessment of country credit risk; and (2) the qualitative assessment of the CRAM results, which integrates political risk and other risk factors not fully captured by the CRAM. The two components of the CRC methodology are combined and result in countries being classified into one of eight risk categories (0–7), with countries assigned to the 0 category having the lowest possible risk assessment and countries assigned to the 7 category having the highest. The OECD regularly updates CRCs for over 150 countries. Also, CRCs are recognized by the BCBS as an alternative to credit ratings.[21]

In the December 2011 amendment, the agencies proposed to assign specific risk-weighting factors to CRCs in a manner consistent with the assignment of risk weights to CRCs under the Basel II standardized framework, as set forth in table 1.

TABLE 1—MAPPING OF CRC TO RISK WEIGHTS UNDER THE BASEL ACCORD

CRC classification	Risk weight (in percent)
0–1	0
2	20
3	50
4 to 6	100
7	150
No classification assigned	100

Similar to the 2005 revisions, the proposed specific risk-weighting factors for sovereign debt positions would range from zero percent for those assigned a CRC of 0 or 1 to 12.0 percent for sovereign debt positions assigned a CRC of 7. Sovereign debt positions that are backed by the full faith and credit of the United States are to be treated as having a CRC of zero. Also similar to the 2005 revisions, the specific risk-weighting factor for certain sovereigns that are deemed to be of low credit risk based on their CRC would vary depending on the remaining contractual maturity of the position. The specific risk-weighting factors for sovereign debt positions are shown in table 2.

TABLE 2—SPECIFIC RISK-WEIGHTING FACTORS FOR SOVEREIGN DEBT POSITIONS

		Specific risk-weighting factor	Percent
CRC of Sovereign	0–1		0.0
	2–3	Remaining contractual maturity of 6 months or less	0.25
		Remaining contractual maturity of greater than 6 and up to and including 24 months.	1.0
		Remaining contractual maturity exceeds 24 months	1.6
	4–6		8.0
	7		12.0
No CRC			8.0
Default by the Sovereign Entity			12.0

Consistent with the general risk-based capital rules, in the December 2011 amendment the agencies proposed to permit banks to assign a sovereign debt position a specific risk-weighting factor that is lower than the applicable specific risk-weighting factor in table 2 if the position is denominated in the sovereign entity's currency, the bank has at least an equivalent amount of liabilities in that currency and the sovereign entity allows banks under its jurisdiction to assign the lower specific risk-weighting factor to the same exposure to the sovereign entity. The agencies have included these provisions in the final rule. As a supplement to the CRC methodology, to ensure that current sovereign defaults and sovereign defaults in the recent past are treated appropriately under the market risk capital rule, the agencies proposed applying a 12.0 percent specific risk-weighting factor to sovereign debt positions in the event the sovereign has defaulted during the previous five years, regardless of its CRC. The agencies proposed to define default by a sovereign entity as noncompliance with its external debt service obligations or its inability or unwillingness to service an existing obligation according to its terms, as evidenced by failure to make

[20] For more information on the OECD country risk classification methodology, *see http://www.oecd.org/document/49/0,3343,en_2649_34169_1901105_1_1_1_1,00.html.*

[21] *See* ''Basel II,'' paragraph 55.

full and timely payments of principal and interest, arrearages, or restructuring. In order to better capture restructuring of an obligation in the definition, the final rule defines default by a sovereign entity as noncompliance by the sovereign entity with its external debt service obligations or the inability or unwillingness of a sovereign entity to service an existing obligation according to its original contractual terms, as evidenced by failure to pay principal and interest timely and fully, arrearages, or restructuring. A default would include a voluntary or involuntary restructuring that results in a sovereign entity not servicing an existing obligation in accordance with the obligation's original terms. A bank must assign a specific risk-weighting factor of 8.0 percent to a sovereign debt position if the sovereign does not have a CRC assigned to it, unless the sovereign is in default.

The December 2011 amendment also discussed the potential use of two market-based indicators, in particular CDS spreads or bond spreads, as alternatives or possible supplements to the proposed CRC methodology. The agencies indicated that CDS spreads for a given sovereign could be used to assign specific risk-weighting factors, with higher CDS spreads resulting in assignments of higher specific risk-weighting factors. Similarly, the agencies indicated that sovereign bond spreads could be used to assign specific risk-weighting factors, with higher bond credit spreads for a given sovereign resulting in higher specific risk-weighting factors. The agencies described potential difficulties in implementing each of these market-based alternatives and solicited comment regarding potential solutions to these limitations.

A number of commenters criticized the agencies' proposal to use CRCs for assigning specific risk-weighting factors, questioning the accuracy, reliability, and transparency of the CRC methodology. Two commenters raised policy concerns with respect to the purpose of section 939A around using measurements produced by the CRCs. One of these commenters expressed concern about the OECD having its own political and economic agenda. The other commenter noted that CRC ratings provide the most favorable rating to OECD members that are designated as high-income countries, without differentiating the varying risks among these countries.

Commenters also suggested that the CRC methodology was not created by the OECD as sovereign risk classifications and should not be used for the purpose of measuring sovereign credit risk because they measure irrelevant factors such as transfer and convertibility risk. Others noted the technical challenges in using the CRC methodology as a result of its limited history that make correlation and probability of default difficult to calculate. Several commenters questioned the logic of replacing one third-party ratings system with another that has shortcomings, such as a lack of risk sensitivity. A few commenters also suggested that the increase in the specific risk-weighting factor due to default would not sufficiently address the lack of risk sensitivity of CRC ratings.

Several commenters encouraged the agencies to further develop the market-based alternatives to the CRC methodology the agencies discussed in the proposal. One commenter indicated that either of the market-based indicators would be superior to the CRC approach and should be developed further. Another commenter suggested an approach using CDS spreads in place of, or as a supplement to, the CRC methodology. One commenter indicated that sovereign bond spreads are not a reliable basis for the purpose of assigning specific risk-weighting factors because they can be affected by factors other than credit risk.

While recognizing that CRCs have certain limitations, the agencies consider CRCs to be a reasonable alternative to credit ratings and to be a more granular measure of risk than the current treatment based on OECD membership. The proposed definition of default by a sovereign entity was in part meant to address concerns regarding a lack of differentiation among the OECD ''high-income'' countries. In addition, more than 10 years of historical data is available for CRCs, which the agencies believe is a sufficient basis to evaluate this information. While the two market-based indicators have some conceptual merit, as noted by certain commenters the application of either would require considerably more evaluation in order to mitigate potential CDS or bond spread volatility and other major operational difficulties. As the agencies believe practical application of these market-based indicators would require further study before they could be used in a prudential framework such as a final rule, the agencies are adopting the proposed CRC-based methodology in the final rule.

In the final rule, the agencies made technical changes to section 10(b)(2)(i) in order to improve clarity regarding when sovereign default will result in assignment of a 12.0 percent specific risk-weighting factor. The language ''immediately upon determination that the sovereign entity has defaulted on any outstanding sovereign debt position'' has been replaced with ''immediately upon determination that a default has occurred.'' The language ''if the sovereign entity has defaulted on any sovereign debt position during the previous five years'' has been replaced with ''if a default has occurred within the previous five years.''

Also, because the specific risk-weighting factors for debt positions that are exposures to a PSE, depository institution, foreign bank or credit union are tied to the CRC of the sovereign, the agencies have made clarifying and conforming changes to the specific risk-weighting factor tables for these exposures. A bank must assign an 8.0 percent specific risk-weighting factor to a sovereign debt position if the sovereign entity does not have a CRC assigned to it, unless the sovereign debt position must otherwise be assigned a higher specific risk-weighting factor. For each table, the agencies have added a ''Default by the Sovereign Entity'' category with a corresponding 12.0 percent specific risk-weighting factor.

Exposures to Certain Supranational Entities and Multilateral Development Banks

The December 2011 amendment proposed assigning a specific risk-weighting factor of zero to exposures to certain supranational entities and multilateral development banks. Consistent with the December 2011 amendment, the final rule defines an MDB to include the International Bank for Reconstruction and Development, the Multilateral Investment Guarantee Agency, the International Finance Corporation, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the European Bank for Reconstruction and Development, the European Investment Bank, the European Investment Fund, the Nordic Investment Bank, the Caribbean Development Bank, the Islamic Development Bank, the Council of Europe Development Bank, and any other multilateral lending institution or regional development bank in which the U.S. government is a shareholder or contributing member or which the bank's primary federal supervisor determines poses comparable credit risk.

Consistent with the treatment of exposures to certain supranational entities under Basel II, the final rule assigns a zero percent specific risk-weighting factor to debt positions that are exposures to the Bank for International Settlements, the European Central Bank, the European Commission, and the International Monetary Fund.

Also, generally consistent with the Basel framework, debt positions that are exposures to MDBs as defined in the final rule receive a zero percent specific risk-weighting factor under the final rule. This treatment is based on these MDBs' generally high-credit quality, strong shareholder support, and a shareholder structure comprised of a significant proportion of sovereign entities with strong creditworthiness.

Debt positions that are exposures to other regional development banks and multilateral lending institutions that do not meet these requirements would generally be treated as corporate debt positions and would be subject to the methodology described below. The agencies received no comments on the proposed treatment of MDBs and are adopting the proposed treatment in the final rule.

Exposures to Government-sponsored Entities. Under the December 2011 amendment, a government-sponsored entity (GSE) was defined as an agency or corporation originally established or chartered by the U.S. government to serve public purposes specified by the U.S. Congress but whose obligations are not explicitly guaranteed by the full faith and credit of the U.S. government. Under the December 2011 amendment, debt positions that are exposures to GSEs would be assigned a specific risk-weighting factor of 1.6 percent. GSE equity exposures, including preferred stock, were assigned a specific risk-weighting factor of 8.0 percent.

A few commenters suggested that the agencies treat debt positions that are exposures to GSEs as explicitly backed by the full faith and credit of the United States and assign them the same specific risk-weighting factor as sovereign debt positions backed by the full faith and credit of the United States, which is zero. Although Fannie Mae and Freddie Mac are currently in government conservatorship and have certain capital support commitments from the U.S. Treasury, GSE obligations are not explicitly backed by the full faith and credit of the United States. Therefore, the agencies have adopted the proposed treatment of exposures to GSEs without change.

Debt Positions that are Exposures to Depository Institutions, Foreign Banks, and Credit Unions. Under the December 2011 amendment, specific risk-weighting factors would be applied to debt positions that are exposures to depository institutions, foreign banks, or credit unions based on the applicable specific risk-weighting factor of the entity's sovereign of incorporation, as shown in table 3. The term ''sovereign of incorporation'' refers to the country where an entity is incorporated, chartered, or similarly established. If a relevant entity's sovereign of incorporation is assigned to the 8.0 percent specific risk-weighting factor because of a lack of a CRC rating, then a debt position that is an exposure to that entity also would be assigned an 8.0 percent specific risk-weighting factor.

TABLE 3—SPECIFIC RISK-WEIGHTING FACTORS FOR DEPOSITORY INSTITUTION, FOREIGN BANK, AND CREDIT UNION DEBT POSITIONS

		Specific risk-weighting factor	Percent
CRC of Sovereign	0–2	Remaining contractual maturity of 6 months or less	0.25
		Remaining contractual maturity of greater than 6 and up to and including 24 months.	1.0
		Remaining contractual maturity exceeds 24 months	1.6
	3		8.0
	4–7		12.0
No CRC			8.0
Default by the Sovereign Entity			12.0

Consistent with the treatment under the general risk-based capital rules, debt positions that are exposures to a depository institution or foreign bank that are includable in the regulatory capital of that entity but that are not subject to deduction as a reciprocal holding would be assigned a specific risk-weighting factor of at least 8.0 percent.

A few commenters discussed the use of the CRC-based methodology to assign specific risk-weighting factors to positions that are exposures to depository institutions, foreign banks, and credit unions. Some of these commenters expressed concern that the CRC approach does not recognize differences in relative risk between individual entities under a given sovereign. One commenter suggested using a CDS spread methodology to increase risk sensitivity and decrease procyclicality, or where CDS spread data are unavailable, using asset swap or bond spreads as a proxy. Although there is a lack of risk differentiation among these entities in a given sovereign of incorporation, this approach allows for a consistent, standardized application of capital requirements to these positions and, like the Basel capital framework and the current market risk capital rule, links the ultimate credit risk associated with these entities to that of the sovereign entity. In contrast to the current treatment, however, the CRC-based methodologies allow for greater differentiation of risk among exposures. Also, market-based methodologies proposed for depository institutions would require further study to determine feasibility. Therefore, the agencies are adopting the CRC-based methodology as proposed.

In addition, as discussed above, the agencies are clarifying in the final rule that a bank must assign a 12.0 percent specific risk-weighting factor to a debt position that is an exposure to a foreign bank either upon determination that an event of sovereign default has occurred in the foreign bank's sovereign of incorporation, or if a sovereign default has occurred in the foreign bank's sovereign of incorporation within the previous five years.

Exposures to Public Sector Entities. The December 2011 amendment would define a PSE as a state, local authority, or other governmental subdivision below the level of a sovereign entity. This definition does not include a commercial company owned by a government that engages in activities involving trade, commerce, or profit, which are generally conducted or performed in the private sector. In the December 2011 amendment, the specific risk-weighting factor assigned to a debt position that is an exposure to a PSE would be based on the CRC assigned to the sovereign of incorporation of the PSE as well as whether the position is a general obligation or a revenue obligation of the PSE. This methodology is similar to the approach under the Basel II standardized approach for credit risk, which allows a bank to assign a risk weight to a PSE based on the credit rating of the PSE's sovereign of incorporation.

Under the December 2011 amendment, a general obligation would be defined as a bond or similar obligation that is guaranteed by the full faith and credit of a state or other political subdivisions of a sovereign entity. A revenue obligation would be defined as a bond or similar obligation that is an obligation of a state or other political subdivision of a sovereign entity but which the government entity is committed to repay with revenues from a specific project or activity versus general tax funds.

The proposed specific risk-weighting factors for debt positions that are exposures to general obligations and revenue obligations of PSEs, based on the PSE's sovereign of incorporation, are shown in tables 4 and 5, respectively.

TABLE 4—SPECIFIC RISK-WEIGHTING FACTORS FOR PSE GENERAL OBLIGATION DEBT POSITIONS

		General obligation specific risk-weighting factor	Percent
CRC of Sovereign	0–2	Remaining contractual maturity is 6 months or less	0.25
		Remaining contractual maturity is greater than 6 and up to and including 24 months.	1.0
		Remaining contractual maturity exceeds 24 months	1.6
	3		8.0
	4–7		12.0
No CRC			8.0
Default by the Sovereign Entity			12.0

TABLE 5—SPECIFIC RISK-WEIGHTING FACTORS FOR PSE REVENUE OBLIGATION DEBT POSITIONS

		General obligation specific risk-weighting factor	Percent
CRC of Sovereign	0–1	Remaining contractual maturity is 6 months or less	0.25
		Remaining contractual maturity is greater than 6 and up to and including 24 months.	1.0
		Remaining contractual maturity exceeds 24 months	1.6
	2–3		8.0
	4–7		12.0
No CRC			8.0
Default by the Sovereign Entity			12.0

In certain cases, the agencies have allowed a bank to use specific risk-weighting factors assigned by a foreign banking supervisor to debt positions that are exposures to PSEs in that supervisor's home country. Therefore, the agencies proposed to allow a bank to assign a specific risk-weighting factor to a debt position that is an exposure to a foreign PSE according to the specific risk-weighting factor that the foreign banking supervisor assigns. In no event, however, would the specific risk-weighting factor for such a position be lower than the lowest specific risk-weighting factor assigned to that PSE's sovereign of incorporation. The agencies have made a conforming change to the final rule, to more clearly indicate that the above treatment regarding exposures to PSEs in a supervisor's home country applies to both PSE general obligation and revenue obligation debt positions.

Few commenters expressed views related to the treatment of positions that are exposures to PSEs. Several commenters expressed concern with the proposed approach noting that the methodology does not recognize differences in the relative risks of PSEs of the same sovereign. These commenters expressed support for the use of either CDS or bond spreads instead of the CRC-based approach. For the reasons discussed above with respect to the CRC methodology generally, the agencies have decided to finalize the proposed specific risk-weighting factors for PSEs. In addition, as for depository institutions, foreign banks and credit unions, the agencies are clarifying that a bank must assign a 12.0 percent specific risk-weighting factor to a debt position that is an exposure to a PSE either upon determination that an event of sovereign default has occurred in the PSE's sovereign of incorporation, or if a sovereign default has occurred in the PSE's sovereign of incorporation within the previous five years.

Corporate Debt Positions. The December 2011 amendment proposed to define a corporate debt position as a debt position that is an exposure to a company that is not a sovereign entity, the Bank for International Settlements, the European Central Bank, the European Commission, the International Monetary Fund, a multilateral development bank, a depository institution, a foreign bank, a credit union, a PSE, a GSE, or a securitization.

In the December 2011 amendment, the agencies proposed to allow a bank to assign specific risk-weighting factors to corporate debt positions using a methodology that incorporates market-based information and historical accounting information (indicator-based methodology) to assign specific risk-weighting factors to corporate debt positions that are exposures to publicly-traded entities that are not financial institutions, and to assign a specific risk-weighting factor of 8.0 percent to all other corporate debt positions. Financial institutions were categorized separately from other entities because of the differences in their balance sheet structures. As an alternative to this methodology, the agencies proposed a simple methodology under which a bank would assign an 8.0 percent specific risk-weighting factor to all its corporate debt positions.

In developing the December 2011 amendment, the agencies considered a number of alternatives to credit ratings for assigning specific risk-weighting factors to debt positions that are exposures to financial institutions. However, each of these alternatives was viewed as either having significant drawbacks or as not being sufficiently developed to propose. Thus, the agencies proposed to assign a specific risk-weighting factor of 8.0 percent to all corporate debt positions that are exposures to financial institutions.

In the December 2011 amendment, the agencies requested comment on using bond spreads as an alternative approach to assign specific risk-weighting factors to both financial and non-financial corporate debt positions. This type of approach would be forward-looking and may be useful for assigning specific risk-weighting factors to financial institutions.

Another alternative that the agencies discussed in the December 2011 amendment would permit banks to determine a specific risk-weighting factor for a corporate debt position based on whether the position is ''investment grade,'' which would be defined in a manner generally consistent with the OCC's proposed revisions to its regulations at 12 CFR 1.2(d). The OCC proposed to revise its investment securities regulations to remove references to Nationally Recognized Statistical Rating Organization credit ratings, consistent with section 939A of the Dodd-Frank Act.[22] Under the OCC's proposed revisions, a security would be ''investment grade'' if the issuer of the security has an adequate capacity to meet financial commitments under the security for the projected life of the security. To meet this new standard, national banks would have to determine that the risk of default by the obligor is low and the full and timely repayment of principal and interest is expected. When determining whether a particular issuer has an adequate capacity to meet financial commitments under a security for the projected life of the security, the national banks would be required to consider a number of factors, which may include external credit ratings, internal risk ratings, default statistics, and other sources of information as appropriate for the particular security. While external credit ratings and assessments would remain a source of information and provide national banks with a standardized credit risk indicator, banks would be expected to supplement this information with due diligence processes and analyses appropriate for the bank's risk profile and for the size and complexity of the debt instrument. Under the OCC's approach, it would be possible for a security rated in the top four rating categories by a credit rating agency not to satisfy the proposed revised investment grade standard.

Several commenters expressed concerns that the proposed indicator-based methodology for non-financial publicly traded company debt positions is over-simplified, not risk sensitive, and procyclical. These commenters indicated that the methodology does not distinguish risks across different industries nor does it reflect detailed debt characteristics that could affect creditworthiness, such as term structure. These commenters also stated that the methodology is excessively conservative and results in much higher capital requirements for corporate debt positions with minimal credit risk than required by the MRA. Several commenters also noted that the indicators tend to be backward-looking when capital requirements are intended to protect against the risk of possible future events.

Some commenters supported the agencies' use of market data in assigning specific risk-weighting factors to corporate debt positions but also acknowledged that alternatives based on market data would require further study and refinement. These commenters suggested modifications to the proposed alternatives to be used to calculate specific risk capital requirements for corporate debt positions, such as recalibrating the indicator-based methodology, or using an approach based on relative CDS or bond spreads. Commenters acknowledged the agencies' concerns with using CDS or bond spreads and agreed that these approaches are imperfect but viewed these alternatives with refinement as potentially superior to the proposed indicator-based methodology.

Specifically, several commenters suggested that a number of shortcomings of the proposed alternatives the agencies discussed in the December 2011 amendment could be addressed through technical modifications. These modifications include using rolling averages of CDS or bond spreads to reduce volatility, placing less reliance on inputs with illiquid underlying instruments, normalizing spreads against a more suitable benchmark, and possibly reducing the buckets to a binary ''low risk'' and ''high risk'' distinction to improve stability over time.

With respect to assigning specific risk-weighting factors based on the OCC's investment grade approach, a few commenters expressed reservations about such an approach. While acknowledging that the approach would be simpler than the proposed indicator-based methodology, commenters noted that this approach would be subjective and could result in different banks arriving at different assessments of creditworthiness for similar exposures.

The agencies continue to have significant reservations with the market-based alternatives, as bond markets may sometimes misprice risk and bond spreads may reflect factors other than credit risk. The agencies also are concerned that such an approach could introduce undue volatility into the risk-based capital requirements. The agencies have not identified a market-based alternative that they believe would provide sufficient risk sensitivity, transparency, and feasibility as a methodology for assigning specific risk-weighting factors to corporate debt positions. While certain suggested modifications of proposed alternatives

[22] 76 FR 73526 (Nov. 29, 2011).

may provide some meaningful improvement, such modifications would require further study to determine appropriateness.

The agencies have considered the commenters' concerns regarding the indicator-based methodology. The agencies have concluded that concerns about the feasibility and efficacy of the indicator-based methodology, as expressed by commenters, outweigh policy considerations for implementing it and have decided not to include the approach in the final rule. Instead, the agencies have adopted in the final rule an investment grade methodology for assigning specific risk-weighting factors to all corporate debt positions of entities that have issued and outstanding public debt instruments, revised to include a maturity factor consistent with the current rules. Adoption of the investment grade methodology is in response to the significant shortcomings of the indicator- and market-based methodologies noted by commenters, and the need for an alternative that is reasonably risk sensitive and simple to implement. Banks must apply the investment grade methodology to all applicable corporate debt positions as described below. Additionally, the agencies have not included the proposed ''simple methodology,'' which would assign a specific risk-weighting factor of 8.0 percent to all corporate debt positions, in the final rule. This alternative was introduced to allow banks an option that would mitigate calculation burden, but the agencies have determined that it is not necessary to include it in the final rule, as discussed below.

The agencies acknowledge concerns regarding potential disparity between banks in their investment grade designation for similar corporate debt positions. However, the agencies believe that ongoing regulatory supervision of banks' credit risk assessment practices should address such disparities and that, on balance, the investment grade methodology would allow banks to calculate a more risk sensitive specific risk capital requirement for corporate debt positions, including those that are exposures to non-depository financial institutions. The agencies observe that this approach should be straightforward to implement because many banks would already be required to make similar investment grade determinations based on the OCC's revised investment permissibility standards. In addition, the agencies believe that concerns regarding potential disparate treatment would be addressed through ongoing supervision of bank's credit risk assessment practices.

Under the final rule, except as provided below, for corporate debt positions of entities that have issued and outstanding publicly traded instruments, a bank will first need to determine whether or not a given corporate debt position meets the definition of investment grade. To be considered investment grade under the final rule, the entity to which the bank is exposed through a loan or security, or the reference entity (with respect to a credit derivative), must have adequate capacity to meet financial commitments for the projected life of the asset or exposure. An entity is considered to have adequate capacity to meet financial commitments if the risk of its default is low and the full and timely repayment of principal and interest is expected. Corporations with issued and outstanding public instruments generally have to meet significant public disclosure requirements which should facilitate a bank's ability to obtain information necessary to make an investment grade determination for such entities. In contrast, banks are less likely to have access to such information for an entity with no issued and outstanding public instruments. Therefore, banks will not be allowed to use the investment grade methodology for the positions of such ''private'' corporations, and positions that are exposures to such corporations will be assigned an 8.0 percent specific risk-weighting factor.

Based on the bank's determination of whether a corporate debt position eligible for treatment under the investment grade methodology is investment grade, the bank must assign a specific risk-weighting factor based on the category and remaining contractual maturity of the position, in accordance with table 6 below. In general, there is a positive correlation between relative credit risk and the length of a corporate debt position's remaining contractual maturity. Therefore, corporate debt positions deemed investment grade with a shorter remaining contractual maturity are generally assigned a lower specific risk-weighting factor. Corporate debt positions not deemed investment grade must be assigned a specific risk-weighting factor of 12.0 percent.

TABLE 6—SPECIFIC RISK-WEIGHTING FACTORS FOR CORPORATE DEBT POSITIONS UNDER THE INVESTMENT GRADE METHODOLOGY

Category	Remaining contractual maturity	Specific risk-weighting factor (in percent)
Investment Grade	6 months or less	0.50
	Greater than 6 and up to and including 24 months	2.00
	Greater than 24 months	4.00
Not investment Grade		12.00

Consistent with the proposed rule, under the final rule, a bank must assign a specific risk-weighting factor of at least 8.0 percent to an interest-only mortgage-backed security that is not a securitization position. Also, because the ultimate economic condition of corporations is significantly dependent upon the economic conditions of their sovereign of incorporation, a bank shall not assign a corporate debt position a specific risk-weighting factor that is lower than the specific risk-weighting factor that corresponds to the CRC of the issuer's sovereign of incorporation.

Securitization Positions. In the December 2011 amendment, the agencies proposed to allow banks to use a simplified version of the Basel II advanced approaches supervisory formula approach, referred to in the proposal as the SSFA, to assign specific risk-weighting factors to securitization and resecuritization positions. Additionally, the agencies proposed that a bank that either could not use the SSFA or chose not to use the SSFA must assign a specific risk-weighting factor of 100 percent to a securitization position, (equivalent to a 1,250 percent risk weight).

Similar to the SFA, the proposed SSFA is a formula that starts with a baseline capital requirement derived from the capital requirements that apply to all exposures underlying a securitization and then assigns specific risk-weighting factors based on the subordination level of a position. The proposed SSFA was designed to apply relatively higher capital requirements to the more risky junior tranches of a securitization that are the first to absorb losses, and relatively lower requirements to the most senior positions. As proposed in the December 2011 amendment, the SSFA makes use of a parameter ''K_G,'' which is the weighted-average risk weight of the underlying exposures calculated using the agencies' general risk-based capital rules. In addition, the proposed SSFA required as inputs the attachment and detachment points of a particular securitization position and the amount of cumulative losses experienced by the underlying exposures of the securitization.

The SSFA as proposed would apply a 100 percent specific risk-weighting factor (equivalent to a 1,250 percent risk weight) to securitization positions that absorb losses up to the amount of capital that would be required for the underlying exposures under the agencies' general risk-based capital rules had those exposures been held directly by a bank.

In addition, the December 2011 amendment proposed a supervisory specific risk-weighting factor floor (flexible floor) that would have increased from 1.6 percent to as high as 100 percent when cumulative losses on the underlying assets of the securitization exceeded 150 percent of K_G. Thus, at the inception of a securitization, the SSFA as proposed would require more capital on a transaction-wide basis than would be required if the pool of assets had not been securitized. That is, if the bank held every tranche of a securitization, its overall capital charge would be greater than if the bank held the underlying assets in portfolio. The agencies believe this overall outcome is important in reducing the likelihood of regulatory capital arbitrage through securitizations.

The agencies received significant comment on the proposed SSFA. Most commenters criticized the SSFA as proposed. Some commenters asserted that the application of the SSFA would result in prohibitively high capital requirements, which could lead to restricted credit access and place U.S. banks at a competitive disadvantage relative to non-U.S. banks. Commenters also stated that excessively high capital requirements for residential and commercial mortgage securitizations would stifle the growth of private residential mortgage-backed securitization and commercial real estate markets.

Many commenters expressed concerns that the SSFA inputs lacked risk sensitivity. In particular, commenters stated that K_G allowed for only two distinctions based on the type of underlying asset; residential mortgages and all other assets. Also, commenters asserted that the proposed SSFA would not consider structural features or enhancements (for example, trigger mechanisms and reserve accounts) that may mitigate the risk of a given securitization.

In order to maintain uniform treatment between the final rule and the general risk-based capital rules, and minimize capital arbitrage, the agencies have maintained the definition of K_G as the weighted-average total capital requirement of the underlying exposures calculated using the general risk-based capital rules. In terms of enhancements, the agencies note that the relative seniority of the position as well as all cash funded enhancements are recognized as part of the SSFA calculation.

Commenters were concerned particularly with the flexible floor, which, as explained above, would increase the minimum specific risk-weighting factor for a securitization position if losses on the underlying exposures reached certain levels. Several commenters noted that the proposed flexible floor would not take into consideration the lag between rapidly rising delinquencies and realized losses, which may lead to underestimation of market risk capital required to protect a bank against the actual risk of a position. In its place, commenters suggested using more forward-looking indicators, such as the level of delinquencies of a securitization's underlying exposures. Commenters also noted that in combination with a risk-insensitive K_G, the flexible floor approach would lead to a situation in which relatively small losses may result in large increases in a senior tranche's capital requirements. Some commenters indicated that, in certain circumstances, the proposed approach could result in a high quality portfolio receiving a higher floor requirement than a lower quality portfolio with the same level of losses.

Commenters also requested that the agencies clarify the definition of attachment point, because the proposed rule indicated that the attachment point may include a reserve account to the extent that cash is present in the account, but the preamble to the proposal indicated that credit enhancements, such as excess spread would not be recognized. In addition, commenters stated that the attachment point should recognize the carrying value of a securitization position if the position is held at a discount from par, because the cushion created by such a discount should be an important factor in determining the amount of risk-based capital a bank must hold against a securitization position. The agencies have considered whether discounts from par should be recognized as credit enhancement. The agencies are concerned about the uncertainty of valuing securitization positions and as a result have decided not to recognize discounts from par as credit enhancements for purposes of calculating specific risk add-ons for these positions.

Commenters also stated that the proposed 20 percent absolute floor for specific risk-weighting factors assigned to securitization positions would be out of alignment with international standards and could place U.S. banks at a competitive disadvantage relative to non-U.S. banks. The agencies believe that a 20 percent floor is reasonably prudent given recent performance of securitization structures during times of stress and have retained this floor in the final rule.

Some commenters suggested that instead of applying the SSFA, the agencies should allow banks to ''look through'' senior-most securitization positions and use the risk weight applicable to the underlying assets of the securitization under the general risk-based capital rules. Given the considerable variability of tranche thickness for any given securitization, the agencies believe there is an opportunity for regulatory capital arbitrage with respect to the other approaches specified in the final rule. Therefore, the agencies have not included this alternative in the final rule.

In order to improve the risk sensitivity of the SSFA, several commenters proposed replacing the flexible floor with an adjustment to K_G, based on either cumulative losses or delinquencies of a given securitization's underlying assets. To make the SSFA more risk sensitive and more forward-looking, the agencies have included in the final rule a modification to the SSFA, replacing the flexible floor with an adjustment of K_G, based on delinquencies of the underlying assets of the securitization position. Specifically, the parameter K_G is modified and translated into a parameter K_A, which is set equal to the weighted average of the K_G value, plus the multiple of a fixed parameter equal to 0.5 and the weighting variable W, described below.

$$K_A = (1 - W) \cdot K_G + (0.5 \cdot W)$$

As noted above, in the final rule, K_G is the weighted-average total capital requirement of the underlying exposures calculated using the general risk-based capital rules. The agencies believe it is important to calibrate specific risk-weighting factors for securitization exposures around the risk associated with the underlying assets of the securitization. This calibration also reduces the potential for arbitrage between the market risk and credit risk capital rules. The agencies therefore have maintained in the final rule the link between K_G and the risk weights in the general risk-based capital rules and no additional distinctions based on the type of underlying assets has been added for determination of K_G. The agencies believe that the SSFA as modified provides for more appropriate and risk-sensitive capital requirements for securitization positions.

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In the final rule, K_G is expressed as a decimal value between zero and 1 (that is, an average risk weight of 100 percent means that K_G would equal 0.08). The important difference between this revision in the final rule and the December 2011 amendment is the addition of the weighting variable, W, which is the ratio of the sum of the dollar amounts of any underlying exposures within the securitized pool that are "delinquent" to the ending balance, measured in dollars, of underlying exposures. Delinquent exposures are those that are 90 days or more past due, subject to a bankruptcy or insolvency proceeding, in the process of foreclosure, held as real estate owned, have contractually deferred interest payments for 90 days or more, or are in default.

The agencies believe that the overall capital requirement will be sufficiently responsive and prudent to ensure sufficient capital for pools that demonstrate credit weakness. Therefore, Table 7 of the December 2011 amendment has been removed and, as noted above, the flexible floor has been replaced by an approach that uses K_A. Given this change, the specification of the SSFA in the final rule is as follows:

$$K_{SSFA} = \frac{e^{a \cdot u} - e^{a \cdot l}}{a(u - l)}$$

K_{SSFA} is the specific risk-weighting factor for the securitization position and is a function of three variables, labeled a, u, and l. The constant e is the base of the natural logarithms (which equals 2.71828). The variables a, u, and l have the following definitions:

$$a = -\frac{1}{p \cdot K_A}$$

$$u = D - K_A$$

$$l = A - K_A$$

The values of A and D denote the attachment and detachment points, respectively, for the position. Specifically, A is the attachment point for the position that represents the threshold at which credit losses will first be allocated to the position. This input is the ratio, expressed as a decimal value between zero and one, of the current dollar amount of the underlying exposures that are subordinated to the bank's position to the current dollar amount of underlying exposures. Any reserve account funded by the accumulated cash flows from the underlying exposures that is subordinated to the position that contains the bank's securitization exposure may be included in the calculation of _A_ to the extent that cash is present in the account. D is the detachment point for the position that represents the threshold at which credit losses of principal allocated to the position would result in a total loss of principal. This input, which is a decimal value between zero and one, equals the value of _A_ plus the ratio of the current dollar amount of the securitization positions that are _pari passu_ (that is, have equal seniority with respect to credit risk) with the position to the current dollar amount of the underlying exposures. The SSFA specification is completed by the supervisory calibration parameter p , which is set equal to 0.5 for securitization positions that are not resecuritizations and 1.5 for resecuritization positions and the variable K_A, which is described above.

Commenters expressed concern that the December 2011 amendment was unclear regarding how the SSFA can be applied to certain securitization structures, in particular resecuritizations. For example, commenters noted that the SSFA methodology was unclear as to the appropriate method for calculating the weighted-average risk weight for a pool of securitized assets when the pool included securitization positions. Under these circumstances, the agencies expect banks to use either the SSFA or, where appropriate, the SFA to measure that asset's contribution to K_G. For example, consider a hypothetical securitization tranche that has an attachment point at 0.06 and a detachment point at 0.07. Then assume that 90 percent of the underlying exposures were mortgage loans that qualified for a 50 percent risk weight and that the remaining 10 percent of the underlying exposures was a single tranche of a prior securitization (where those underlying mortgages also qualified for a 50 percent weight), thus qualifying the position as a resecuritization. Next, assume that the attachment point A of the securitization that is the 10 percent share of the resecuritization is 0.06 and the detachment point D is 0.08. Finally, assume that there are zero delinquent exposures in both the securitization and resecuritization pools.

The value of K_G for the resecuritization exposure would equal the weighted average of the two distinct K_G values. For the mortgages that qualify for the 50 percent risk weight and represent 90 percent of the resecuritization, K_G equals 0.04 (i.e., 50 percent of the 8 percent risk-based capital standard).

$$K_{G,resecuritization} = (0.9 \cdot 0.04) + (0.1 \cdot K_{G,securitization})$$

To calculate the value of $K_{G,securitization}$ a bank would use the attachment and detachment points of 0.06 and 0.08, respectively. Applying those input parameters to the SSFA (together with p = 0.5 and K_G = 0.04) results in a $K_{G,securitization}$ equal to 0.2325.

Substituting this value into the equation yields:

$$K_{G,resecuritization} = (0.9 \cdot 0.04) + (0.1 \cdot 0.2325) = 0.05925$$

This value of 0.05925 for $K_{G,resecuritization}$, would then be used in the calculation of the specific risk-weighting factor for the tranche of the resecuritization (where $A = 0.06$, $B = 0.07$, and $p = 1.5$). The result is a specific risk-weighting factor of 0.938 percent for the tranche that runs from 0.06 to 0.07. In this case, given that the attachment point is very close to the value of $K_{G,resecuritization}$, the capital requirement is nearly equal to dollar-for-dollar.

In the December 2011 amendment, the agencies described several possible alternative approaches to, or modifications of, the SSFA. These included alternative calibrations for the SSFA, a concentration ratio, a credit spread approach, a third-party vendor approach, and the use of the SFA for banks subject to the advanced approaches rules to calculate the specific risk-weighting factors for their securitization positions under the market risk capital rule. The agencies also requested comment on possible alterations to certain parameters in the SSFA, to better align specific risk-weighting factors produced by the SSFA with the specific risk-weighting factors that would otherwise be generated by the Basel Committee's market risk framework.

Several commenters did not support adoption of the alternative market-based approaches or the vendor approach described in the December 2011 amendment, and stated that an analytical assessment of creditworthiness such as the SSFA would be preferable. In addition, several commenters strongly supported using the SFA as permitted under the advanced approaches rules, particularly for correlation trading positions.

The agencies also have concerns about using a credit spread-based measure. These concerns relate particularly to the significant technical obstacles that would need to be overcome to make use of market based alternatives. The agencies therefore have decided to not include such measures as part of the final rule. Also, the agencies believe the vendor approach would require further study in order to implement it as part of a prudential framework.

However, in response to favorable comments regarding inclusion of the SFA, the agencies are incorporating the SFA into the final rule.[23] As discussed above, a bank that uses the advanced approaches rules and that qualifies for, and has a securitization position that qualifies for the SFA must use the SFA to calculate the specific risk add-on for the securitization position. The bank must calculate the specific risk add-on using the SFA as set forth in the advanced approaches rules and in accordance with section 10 of the final rule.[24] As mentioned above, a bank may not use the SFA for the purpose of calculating its general risk-based capital ratio denominator. If the bank or the securitization position does not qualify for the SFA, the bank may assign a specific risk-weighting factor to the securitization position using the SSFA or assign a 100 percent specific risk-weighting factor to the position. The agencies have established this hierarchy in order to provide flexibility to banks that have already implemented the SFA but also to avoid potential capital arbitrage by requiring uniform treatment of securitizations according to which approach is feasible for a bank, and not allowing selective use of the SFA or the SSFA for any given position.

Nth-to-default credit derivatives. Under the January 2011 proposal, the total specific risk add-on for a portfolio of nth-to-default credit derivatives would be calculated as the sum of the specific risk add-ons for individual nth-to-default credit derivatives, as computed therein. A bank would need

[23] When using the SFA, a bank must meet minimum requirements under the Basel II internal ratings-based approach to estimate probability of default and loss given default for the underlying exposures. Under the U.S. risk-based capital rules, the SFA is available only to banks that have been approved to use the advanced approaches rules. *See* 12 CFR part 3, appendix C, section 45 (OCC); 12 CFR part 208, appendix F, section 45, and 12 CFR part 225, appendix G, section 45 (Board); 12 CFR part 325, appendix D, section 45 (FDIC).

[24] *See* id.

to calculate a specific risk add-on for each nth-to-default credit derivative position regardless of whether the bank is a net protection buyer or net protection seller.

For first-to-default credit derivatives, the specific risk add-on would be the lesser of (1) the sum of the specific risk add-ons for the individual reference credit exposures in the group of reference exposures and (2) the maximum possible credit event payment under the credit derivative contract. Where a bank has a risk position in one of the reference credit exposures underlying a first-to-default credit derivative and the credit derivative hedges the bank's risk position, the bank would be allowed to reduce both the specific risk add-on for the reference credit exposure and that part of the specific risk add-on for the credit derivative that relates to the reference credit exposure such that its specific risk add-on for the pair reflects the bank's net position in the reference credit exposure. Where a bank has multiple risk positions in reference credit exposures underlying a first-to-default credit derivative, this offset would be allowed only for the underlying exposure having the lowest specific risk add-on.

For second-or-subsequent-to-default credit derivatives, the specific risk add-on would be the lesser of (1) the sum of the specific risk add-ons for the individual reference credit exposures in the group of reference exposures but disregarding the (n-1) obligations with the lowest specific risk add-ons; or (2) the maximum possible credit event payment under the credit derivative contract. For second-or-subsequent-to-default credit derivatives, no offset of the specific risk add-on with an underlying exposure would have been allowed under the proposed rule.

Nth-to-default derivatives meet the definition of securitizations. To simplify the overall framework for securitizations while maintaining similar risk sensitivity and to provide for a more uniform capital treatment of all securitizations including nth-to-default derivatives the final rule requires that a bank determine a specific risk add-on using the SFA for, or assign a specific risk-weighting factor using the SSFA to an nth-to-default credit derivative. A bank that does not use the SFA or SSFA for its positions in an nth-to-default credit derivative must assign a specific risk-weighting factor of 100 percent to the position. A bank must either calculate a specific risk add-on or assign a specific risk-weighting factor to an nth-to-default derivative, irrespective of whether the bank is a net protection buyer or seller. A bank must determine its position in the nth-to-default credit derivative as the largest notional dollar amount of all the underlying exposure. This treatment should reduce the complexity of calculating specific risk capital requirements across a banking organization's securitization positions while aligning these requirements with the market risk of the positions in a consistent manner.

When applying the SFA or the SSFA to nth-to-default derivatives, the attachment point (parameter A) is the ratio of the sum of the notional amounts of all underlying exposures that are subordinated to the bank's position to the total notional amount of all underlying exposures. For purposes of using the SFA to calculate the specific risk add-on for the bank's position in an nth-to-default derivative, parameter A must be set equal to the *credit enhancement level* (*L*) input to the SFA formula. In the case of a first-to-default credit derivative, there are no underlying exposures that are subordinated to the bank's position. In the case of a second-or-subsequent-to default credit derivative, the smallest (n-1) underlying exposure(s) are subordinated to the bank's position.

For the SFA and the SSFA, the detachment point (parameter *D*) is the sum of parameter *A* plus the ratio of the notional amount of the bank's position in the nth-to-default credit derivative to the total notional amount of the underlying exposures. For purposes of using the SFA to calculate the specific risk add-on for the bank's position in an nth-to-default derivative, parameter *D* must be set to equal the *L* input plus the *thickness of tranche* (*T*) input to the SFA formula.

Treatment under the Standardized Measurement Method for Specific Risk for Modeled Correlation Trading Positions and Non-modeled Securitization Positions. The December 2011 amendment specified the following treatment for the determination of the total specific risk add-on for a portfolio of modeled correlation trading positions and for non-modeled securitization positions. For purposes of a bank calculating its comprehensive risk measure with respect to either the surcharge or floor calculation for a portfolio of correlation trading positions modeled under section 9 of the rule, the total specific risk add-on would be the greater of: (1) The sum of the bank's specific risk add-ons for each net long correlation trading position calculated using the standardized measurement method, or (2) the sum of the bank's specific risk add-ons for each net short correlation trading position calculated using the standardized measurement method.

For a bank's securitization positions that are not correlation trading positions and for securitization positions that are correlation trading positions not modeled under section 9 of the final rule, the total specific risk add-on would be the greater of: (1) The sum of the bank's specific risk add-ons for each net long securitization position calculated using the standardized measurement method, or (2) the sum of the bank's specific risk add-ons for each net short securitization position calculated using the standardized measurement method. This treatment would be consistent with the BCBS's revisions to the market risk framework and has been adopted in the final rule as proposed. With respect to securitization positions that are not correlation trading positions, the BCBS's June 2010 revisions provided a transitional period for this treatment. The agencies anticipate potential reconsideration of this provision at a future date.

Equity Positions. Under the final rule and consistent with the January 2011 proposal, the total specific risk add-on for a portfolio of equity positions is the sum of the specific risk add-ons of the individual equity positions, which are determined by multiplying the absolute value of the current market value of each net long or short equity position by an appropriate risk-weighting factor.

Consistent with the 2009 revisions, the final rule requires a bank to multiply the absolute value of the current market value of each net long or short equity position by a risk-weighting factor of 8.0 percent. For equity positions that are index contracts comprising a well-diversified portfolio of equity instruments, the absolute value of the current market value of each net long or short position is multiplied by a risk-weighting factor of 2.0 percent. A portfolio is well-diversified if it contains a large number of individual equity positions, with no single position representing a substantial portion of the portfolio's total market value.

The final rule, like the proposal retains the specific risk treatment in the current market risk capital rule for equity positions arising from futures-related arbitrage strategies where long and short positions are in exactly the same index at different dates or in different market centers or where long and short positions are in index contracts at the same date in different but similar indices. The final rule also retains the current treatment for futures contracts on main indices that are matched by offsetting positions in a basket of stocks comprising the index.

Due Diligence Requirements for Securitization Positions. Like the proposed rule, the final rule requires banks to perform due diligence on all securitization positions. These due diligence requirements emphasize the need for banks to conduct their own due diligence of borrower creditworthiness, in addition to any use of third-party assessments, and not place undue reliance on external credit ratings.

In order to meet the proposed due diligence requirements, a bank must be able to demonstrate, to the satisfaction of its primary federal supervisor, a comprehensive understanding of the features of a securitization position that would materially affect its performance by conducting and documenting the analysis described below of the risk characteristics of each securitization position. The bank's analysis must be commensurate with the complexity of the securitization position and the materiality of the position in relation to the bank's capital.

The final rule requires a bank to conduct and document an analysis of the risk characteristics of each securitization position prior to acquiring the position, considering (1) Structural features of the securitization that would materially impact performance, for example, the contractual cash flow waterfall, waterfall-related triggers, credit enhancements, liquidity enhancements, market value triggers, the performance of organizations that service the position, and deal-specific definitions of default; (2) relevant information regarding the performance of the underlying credit exposure(s), for example, the percentage of loans 30, 60, and 90 days past due; default rates; prepayment rates; loans in foreclosure; property types; occupancy; average credit score or other measures of creditworthiness; average loan-to-value ratio; and industry and geographic diversification data on the underlying exposure(s); (3) relevant market data of the securitization, for example, bid-ask spreads, most recent sales price and historical price volatility, trading volume, implied market rating, and size, depth and concentration level of the market for the securitization; and (4) for resecuritization positions, performance information on the underlying securitization exposures, for example, the issuer name and credit quality, and the characteristics and performance of the exposures underlying the securitization exposures. On an ongoing basis, but no less frequently than quarterly, the bank must also evaluate, review, and update as appropriate the analysis required above for each securitization position.

The agencies sought comment on the challenges involved in meeting the proposed due diligence requirements and how the agencies might address these challenges while ensuring that a bank conducts an appropriate level of due diligence commensurate with the risks of its securitization positions. Several commenters agreed with the underlying purpose of the proposed due diligence requirements, which is to avoid undue reliance on credit ratings. However, they also stated that banks should still be allowed to consider credit ratings as a factor in the due diligence process. The agencies note that the rule does not preclude banks from considering the credit rating of a position as part of its due diligence. However, reliance on credit ratings alone is insufficient and not consistent with the expectations of the due diligence requirements.

One commenter criticized the proposed requirements as excessive for ''low risk'' securitizations, and others requested clarification as to whether the extent of due diligence would be determined by the relative risk of a position. Other commenters expressed concern that the proposed requirement to document the bank's analysis of the position would be very difficult to accomplish prior to acquisition of a position. As an alternative, some commenters suggested revising the documentation requirements to require completion by the end of the day, except for newly originated securities where banks should be allowed up to three days to satisfy the documentation requirement. Other commenters suggested a transition period for implementation of the proposed due diligence requirements, together with a provision that grandfathers positions acquired prior to the rule's effective date. The agencies appreciate these concerns and have revised the final rule to allow banks up to three business days after the acquisition of a securitization position to document its due diligence. Positions acquired before the final rule becomes effective will not be subject to this documentation requirement, but the agencies expect each bank to understand and actively manage the risks associated with all of its positions.

Aside from changes noted above, the agencies have adopted in the final rule the due diligence requirements for securitizations as proposed.

11. Incremental Risk Capital Requirement

Consistent with the proposed rule, under section 8 of the final rule, a bank that measures the specific risk of a portfolio of debt positions using internal models must calculate an incremental risk measure for that portfolio using an internal model (incremental risk model). Incremental risk consists of the default risk and credit migration risk of a position. Default risk means the risk of loss on a position that could result from the failure of an obligor to make timely payments of principal or interest on its debt obligation, and the risk of loss that could result from bankruptcy, insolvency, or similar proceeding. Credit migration risk means the price risk that arises from significant changes in the underlying credit quality of the position. With the prior approval of its primary federal supervisor, a bank may also include portfolios of equity positions in its incremental risk model, provided that it consistently includes such equity positions in a manner that is consistent with how the bank internally measures and manages the incremental risk for such positions at the portfolio level. For purposes of the incremental risk capital requirement, default is deemed to occur with respect to an equity position that is included in the bank's incremental risk model upon the default of any debt of the issuer of the equity position. A bank may not include correlation trading positions or securitization positions in its incremental risk model.

Under the final rule, a bank's incremental risk model must meet certain requirements and be approved by the bank's primary federal supervisor before the bank may use it to calculate its risk-based capital requirement. The model must measure incremental risk over a one-year time horizon and at a one-tail, 99.9 percent confidence level, under the assumption of either a constant level of risk or of constant positions.

The liquidity horizon of a position is the time that would be required for a bank to reduce its exposure to, or hedge all of the material risks of, the position in a stressed market. The liquidity horizon for a position may not be less than the shorter of three months or the contractual maturity of the position.

A position's liquidity horizon is a key risk attribute for purposes of calculating the incremental risk measure under the assumption of a constant level of risk because it puts into context a bank's overall risk exposure to an actively managed portfolio. A constant level of risk assumption assumes that the bank rebalances, or rolls over, its trading positions at the beginning of each liquidity horizon over a one-year horizon in a manner that maintains the bank's initial risk level. The bank must determine the rebalancing frequency in a manner consistent with the liquidity horizons of the positions in the portfolio. Positions with longer (that is, less liquid) liquidity horizons are more difficult to hedge and result in more exposure to both default and credit migration risk over any fixed time horizon. In particular, two positions with differing liquidity horizons but exactly the same amount of default risk if held in a static portfolio over a one-year horizon may exhibit significantly different amounts of default risk if held in a dynamic portfolio in which hedging can occur in response to observable changes in credit quality. The position with the shorter liquidity horizon can be hedged more rapidly and with less cost in the event of a change in credit quality, which leads to a different exposure to default risk over a one-year horizon than the position with the longer liquidity horizon.

Several commenters expressed concern that the proposed liquidity horizon of the shorter of three months or the contractual maturity of the position for the incremental risk measure would be excessively long for certain highly liquid exposures, including sovereign debt. A three-month horizon is the minimum standard established by the BCBS for exposures with longer or no contractual maturities, and the agencies believe that it is important to establish a minimum liquidity horizon to address risks associated with stressed market conditions. Therefore, the agencies have not modified this requirement in the final rule.

Under the January 2011 proposal, a bank could instead calculate the incremental risk measure under the assumption of constant positions. A constant position assumption assumes that a bank maintains the same set of positions throughout the one-year horizon. If a bank uses this assumption, it must do so consistently across all portfolios for which it models incremental risk. A bank has flexibility in whether it chooses to use a constant risk or constant position assumption in its incremental risk model; however, the agencies expect that the assumption will remain fairly constant once selected. As with any material change to modeling assumptions, the proposed rule would require a bank to promptly notify its primary federal supervisor if it changes from a constant risk to a constant position assumption or vice versa. Further, to the extent a bank estimates a comprehensive risk measure under section 9 of the proposed rule, the bank's selection of a constant position or a constant risk assumption must be consistent between the bank's incremental risk model and comprehensive risk model. Similarly, the bank's treatment of liquidity horizons must be consistent between a bank's incremental risk model and comprehensive risk model. The final rule adopts these aspects of the proposal without change.

Consistent with the proposal, the final rule requires a bank's incremental risk model to recognize the impact of correlations between default and credit migration events among obligors. In particular, the presumption of the existence of a macro-economically driven credit cycle implies some degree of correlation between default and credit migration events across different issuers. The degree of correlation between default and credit migration events of different issuers may also depend on issuer attributes such as industry sector or region of domicile. The model must also reflect the effect of issuer and market concentrations, as well as concentrations that can arise within and across product classes during stressed conditions.

A bank's incremental risk model must reflect netting only of long and short positions that reference the same financial instrument and must also reflect any material mismatch between a position and its hedge. Examples of such mismatches include maturity mismatches as well as mismatches between an underlying position and its hedge (for example, the use of an index position to hedge a single name security).

A bank's incremental risk model must also recognize the effect that liquidity horizons have on dynamic hedging strategies. In such cases, the bank must (1) Choose to model the rebalancing of the hedge consistently over the relevant set of trading positions; (2) demonstrate that inclusion of rebalancing results in more appropriate risk measurement; (3) demonstrate that the market for the hedge is sufficiently liquid to permit rebalancing during periods of stress; and (4) capture in the incremental risk model any residual risks arising from such hedging strategies.

An incremental risk model must reflect the nonlinear impact of options and other positions with material nonlinear behavior with respect to default and credit migration changes. In light of the one-year horizon of the incremental risk measure and the extremely high confidence level required, it is important that nonlinearities be explicitly recognized. Price changes resulting from defaults or credit migrations can be large and the resulting nonlinear behavior of the position can be material. The bank's incremental risk model also must be consistent with the bank's internal risk management methodologies for identifying, measuring, and managing risk.

A bank that calculates an incremental risk measure under section 8 of the rule must calculate its incremental risk capital requirement at least weekly. This capital requirement is the greater of (1) the average of the incremental risk measures over the previous 12 weeks and (2) the most recent incremental risk measure. The final rule adopts the proposed requirements for incremental risk without change.

12. Comprehensive Risk Capital Requirement

Consistent with the January 2011 proposal, section 9 of the final rule permits a bank that has received prior approval from its primary federal supervisor, to measure all material price risks of one or more portfolios of correlation trading positions (comprehensive risk measure) using an internal model (comprehensive risk model). If the bank uses a comprehensive risk model for a portfolio of correlation trading positions, the bank must also measure the specific risk of that portfolio using internal models that meet the requirements in section 7(b) of the final rule. If the bank does not use a comprehensive risk model to calculate the price risk of a portfolio of correlation trading positions, it must calculate a specific risk add-on for the portfolio as would be required under section 7(c) of the final rule, determined using the standardized measurement method for specific risk described in section 10 of the final rule.

A bank's comprehensive risk model must meet several requirements. The model must measure comprehensive risk (that is, all price risk) consistent with a one-year time horizon and at a one-tail, 99.9 percent confidence level, under the assumption either of a constant level of risk or of constant positions. As noted above, while a bank has flexibility in whether it chooses to use a constant risk or constant position assumption, the agencies expect that the assumption will remain fairly constant once selected. The bank's selection of a constant position assumption or a constant risk assumption must be consistent between the bank's comprehensive risk model and its incremental risk model. Similarly, the bank's treatment of liquidity horizons must be consistent between the bank's comprehensive risk model and its incremental risk model.

The final rule requires a bank's comprehensive risk model to capture all material price risk, including, but not limited to (1) The risk associated with the contractual structure of cash flows of the position, its issuer, and its underlying exposures (for example, the risk arising from multiple defaults, including the ordering of defaults, in tranched products); (2) credit spread risk, including nonlinear price risks; (3) volatility of implied correlations, including nonlinear price risks such as the cross-effect between spreads and correlations; (4) basis risks (for example, the basis between the spread of an index and the spread on its constituents and the basis between implied correlation of an index tranche and that of a bespoke tranche); (5) recovery rate volatility as it relates to the propensity for recovery rates to affect tranche prices; and (6) to the extent the comprehensive risk measure incorporates benefits from dynamic hedging, the static nature of the hedge over the liquidity horizon.

The risks above have been identified as particularly important for correlation trading positions. However, the comprehensive risk model is intended to capture all material price risks related to those correlation trading positions that are included in the comprehensive risk model. Accordingly, additional risks that are not explicitly discussed above but are a material source of price risk must be included in the comprehensive risk model.

The final rule also requires a bank to have sufficient market data to ensure that it fully captures the material price risks of the correlation trading positions in its comprehensive risk measure. Moreover, the bank must be able to demonstrate that its model is an appropriate representation of comprehensive risk in light of the historical price variation of its correlation trading positions. The agencies will scrutinize the positions a bank identifies as correlation trading positions and will also review whether the correlation trading positions have sufficient market data available to support reliable modeling of material risks. If there is insufficient market data to support reliable modeling for certain positions (such as new products), the agencies may require the bank to exclude these positions from the comprehensive risk model and, instead, require the bank to calculate specific risk add-ons for these positions under the standardized measurement method for specific risk. The final rule also requires a bank to promptly notify its primary federal supervisor if the bank plans to extend the use of a model that has been approved by the supervisor to an additional business line or product type.

A bank approved to measure comprehensive risk for one or more portfolios of correlation trading positions must calculate at least weekly a comprehensive risk measure. Under the January 2011 proposal, the comprehensive risk measure was equal to the sum of the output from the bank's approved comprehensive risk model plus a surcharge on the bank's modeled correlation trading positions. The agencies proposed setting the surcharge equal to 15.0 percent of the total specific risk add-on that would apply to the bank's modeled correlation trading positions under the standardized measurement method for specific risk in section 10 of the rule but have modified the surcharge in the final rule as described below.

Under the final rule, a bank must initially calculate the comprehensive risk measure under the surcharge approach while banks and supervisors gain experience with the banks' comprehensive risk models. Over time, with approval from its primary federal supervisor, a bank may be permitted to use a floor approach to calculate its comprehensive risk measure as the greater of (1) the output from the bank's approved comprehensive risk model; or (2) 8.0 percent of the total specific risk add-on that would apply to the bank's modeled correlation trading positions under the standardized measurement method for specific risk, provided that certain conditions are met. These conditions are that the bank has met the comprehensive risk modeling requirements in the final rule for a period of at least one year and can demonstrate the effectiveness of its comprehensive risk model through the results of ongoing validation efforts, including robust benchmarking. Such results may incorporate a comparison of the bank's internal model results to those from an alternative model for certain portfolios and other relevant data. The agencies may also consider a benchmarking approach that uses banks' internal models to determine capital requirements for a portfolio specified by the supervisors to allow for a relative assessment of models across banks. A bank's primary federal supervisor will monitor the appropriateness of the floor approach on an ongoing basis and may rescind its approval of this approach if it determines that the bank's comprehensive risk model does not sufficiently reflect the risks of the bank's modeled correlation trading positions.

One commenter criticized the interim surcharge approach. The commenter stated that it is excessive, risk insensitive, and inconsistent with what the commenter viewed as a more customary practice of phasing in capital charges over time. The commenter, therefore, recommended that the agencies eliminate the surcharge provision and only adopt the floor approach discussed above. Several commenters also noted that the floor approach could eliminate a bank's incentive to hedge its risks, to the extent the floor is a binding constraint. Commenters suggested clarifications and modifications to the treatment of correlation trading positions, including applying a floor that is consistent with the MRA and recognizing hedges to avoid situations where unhedged positions are subjected to lower capital requirements than hedged positions.

Notwithstanding these concerns, many banks have limited ability to perform robust validation of their comprehensive risk model using standard backtesting methods. Accordingly, the agencies believe it is appropriate to include a surcharge as an interim prudential measure until banks are better able to validate their comprehensive risk models and as an incentive for a bank to make ongoing model improvements. Accordingly, the agencies will maintain a surcharge in the rule but at a lower level of 8 percent. The agencies believe that a surcharge at this level helps balance the concerns raised by commenters regarding the proposed 15 percent surcharge and concerns about deficiencies in comprehensive risk models as mentioned above. Commenters also requested clarification as to whether multiple correlation trading portfolios can be treated on a combined basis for purposes of the comprehensive risk measure and floor calculations. The final rule clarifies that the floor applies to the aggregate comprehensive risk measure of all modeled portfolios.

In addition to these requirements, the final rule, consistent with the proposal, requires a bank to at least weekly apply to its portfolio of correlation trading positions a set of specific, supervisory stress scenarios that capture changes in default rates, recovery rates, and credit spreads; correlations of underlying exposures; and correlations of a correlation trading position and its hedge. A bank must retain and make available to its primary federal supervisor the results of the supervisory stress testing, including comparisons with the capital requirements generated by the bank's comprehensive risk model. A bank also must promptly report to its primary federal supervisor any instances where the stress tests indicate any material deficiencies in the comprehensive risk model.

The agencies included various options for stress scenarios in the preamble to the proposed rule, including an approach that involved specifying stress scenarios based on credit spread shocks to certain correlation trading positions (for example, single-name CDSs, CDS indices, index tranches), which may replicate historically observed spreads. Another approach would require a bank to calibrate its existing valuation model to certain specified stress periods by adjusting credit-related risk factors to reflect a given stress period. The credit-related risk factors, as adjusted, would then be used to revalue the bank's correlation trading portfolio under one or more stress scenarios.

The agencies sought comment on the benefits and drawbacks of the supervisory stress scenario requirements described above, and suggestions for possible specific stress scenario approaches for the correlation trading portfolio. One commenter suggested providing more specific requirements for the supervisory stress scenarios in the rule, particularly with regard to the time periods used to benchmark the shocks and candidate risk factors for banks to use in specifying the scenarios. This commenter believed that use of the same specifications across banks would improve supervisory benchmarking capabilities.

Other commenters encouraged banks and supervisors to continue to work together to enhance stress test standards and approaches. These commenters also suggested that supervisors allow banks flexibility in stress testing their portfolios of correlation trading positions and recommended more benchmarking exercises through the use of so-called ''test portfolio'' exercises.

The agencies believe that benchmarking across banks is a worthwhile exercise, but wish to retain the proposed rule's level of specificity because appropriate factors, such as time periods and particular shock events, will likely vary over time and may be more appropriately specified through a different mechanism. The agencies appreciate the need to work with banks to improve stress testing, and expect to do so as part of the ongoing supervisory process. The agencies have evaluated the appropriate bases for supervisory stress scenarios to be applied to a bank's portfolio of correlation trading positions. There are inherent difficulties in prescribing stress scenarios that would be universally applicable and relevant across all banks and across all products contained in banks' correlation trading portfolios. The agencies believe a level of comparability is important for assessing the sufficiency and appropriateness of banks' comprehensive risk models, but also recognize that specific scenarios may not be relevant for certain products or for certain modeling approaches. The agencies have considered these comments and have retained the proposed stress testing requirements for the comprehensive risk measure in the final rule. Therefore, the final rule does not include supervisory stress scenarios.

Several commenters expressed concern regarding how comprehensive risk models will be assessed by supervisors. One commenter expressed concern that it would be very difficult to benchmark against actual results of a comprehensive risk model, given that it is designed to capture ''deep tail loss'' over a relatively long time horizon. Instead, the commenter suggested comparing the distribution of shocks that produce the comprehensive risk measure to historical experiences or evaluating the pricing or market risk factor technique to determine if there is any reason to think that a deeper tail or longer horizon of the comprehensive risk measure is not supportable. The agencies believe that the techniques described by the commenter should be part of a robust benchmarking process. The agencies may use various methods including standard supervisory examinations, benchmarking exercises using test portfolios, and other relevant techniques to evaluate the models. The agencies recognize that backtesting models calibrated to long time horizons and higher percentiles is less informative than backtesting of standard VaR models. As a result, banks likely will need to use indirect model validation methods, such as stress tests, scenario analysis or other methods to assess their models.

As under the proposal, under the final rule a bank that calculates a comprehensive risk measure under section 9 of the final rule is required to calculate its comprehensive risk capital requirement at least weekly. This capital requirement is the greater of (1) the average of the comprehensive risk measures over the previous 12 weeks or (2) the most recent comprehensive risk measure.

13. Disclosure Requirements

Like the January 2011 proposal, the final rule adopts disclosure requirements designed to increase transparency and improve market discipline on the top-tier consolidated legal entity that is subject to the market risk capital rule. The disclosure requirements include a breakdown of certain components of a bank's market risk capital requirement, information on a bank's modeling approaches, and qualitative and quantitative disclosures relating to a bank's securitization activities.

Consistent with the approach taken in the agencies' advanced approaches rules, the final rule requires a bank to comply with the disclosure requirements under section 12 of the rule unless it is a consolidated subsidiary of another depository institution or bank holding company that is subject to the disclosure requirements. A bank subject to section 12 is required to adopt a formal disclosure policy approved by its board of directors that addresses the bank's approach for determining the disclosures it makes. The policy must address the associated internal controls and disclosure controls and procedures. The board of directors and senior management must ensure that appropriate verification of the bank's disclosures takes place and that effective internal controls and disclosure controls and procedures are maintained. One or more senior officers must attest that the disclosures meet the requirements, and the board of directors and senior management are responsible for establishing and maintaining an effective internal control structure over financial reporting, including the information required under section 12 of the final rule.

The proposed rule would have required a bank, at least quarterly, to disclose publicly for each material portfolio of covered positions (1) The high, low, and mean VaR-based measures over the reporting period and the VaR-based measure at period-end; (2) the high, low, and mean stressed VaR-based measures over the reporting period and the stressed VaR-based measure at period-end; (3) the high, low, and mean incremental risk capital requirements over the reporting period and the incremental risk capital requirement at period-end; (4) the high, low, and mean comprehensive risk capital requirements over the reporting period and the comprehensive risk capital requirement at period-end; (5) separate measures for interest rate risk, credit spread risk, equity price risk, foreign exchange rate risk, and commodity price risk used to calculate the VaR-based measure; and (6) a comparison of VaR-based measures with actual results and an analysis of important outliers. In addition, a bank would have been required to publicly disclose the following information at least quarterly (1) the aggregate amount of on-balance sheet and off-balance sheet securitization positions by exposure type and (2) the aggregate amount of correlation trading positions.

The proposed rule also would have required a bank to make qualitative disclosures at least annually, or more frequently in the event of material changes, of the following information for each material portfolio of covered positions (1) The composition of material portfolios of covered positions; (2) the bank's valuation policies, procedures, and methodologies for covered positions including, for securitization positions, the methods and key assumptions used for valuing such positions, any significant changes since the last reporting period, and the impact of such change; (3) the characteristics of its internal models, including, for the bank's incremental risk capital requirement and the comprehensive risk capital requirement, the approach used by the bank to determine liquidity horizons; the methodologies used to achieve a capital assessment that is consistent with the required soundness standard; and the specific approaches used in the validation of these models; (4) a description of its approaches for validating the accuracy of its internal models and modeling processes; (5) a description of the stress tests applied to each market risk category; (6) the results of a comparison of the bank's internal estimates with actual outcomes during a sample period not used in model development; (7) the soundness standard on which its internal capital adequacy assessment is based, including a description of the methodologies used to achieve a capital adequacy assessment that is consistent with the soundness standard and the requirements of the market risk capital rule; (8) a description of the bank's processes for monitoring changes in the credit and market risk of securitization positions, including how those processes differ for resecuritization positions; and (9) a description of the bank's policy governing the use of credit risk mitigation to mitigate the risks of securitization and resecuritization positions.

Several commenters expressed concerns that certain disclosure requirements, and in particular the requirement to disclose the median for various risk measures, exceeded those required under the 2009 revisions. Upon consideration of such concerns, the agencies have removed this disclosure requirement from the final rule.

Some commenters also asked for clarification as to whether banks have flexibility to determine or identify what constitutes a ''portfolio'' and determine and disclose risk measures most meaningful for these portfolios. The final rule clarifies that the disclosure requirements apply to each material portfolio of covered positions. The market risk capital calculations should generally be the basis for disclosure content. A bank should provide further disclosure as needed for material portfolios or relevant risk measures.

Some commenters also expressed concern that the proposed requirement to disclose information regarding stress test scenarios and their results could lead to the release of proprietary information. In response, the agencies note that the final rule, like the proposed rule, would allow a bank to withhold from disclosure any information that is proprietary or confidential if the bank believes that disclosure of specific commercial or financial information would prejudice seriously its position. Instead, the bank must disclose more general information about the subject matter of the requirement, together with the fact that, and the reason why, the specific items of information have not been disclosed. In implementing this requirement, the agencies will work with banks on a case-by-case basis to address any questions about the types of more general information that would satisfy the final rule.

Another commenter supported strengthening disclosure requirements regarding validation procedures and the stressed VaR-based measure, particularly correlation and valuation assumptions. The commenter believed such enhancements would provide the market more detailed information to assess a given bank's relative risk. The agencies recognize the importance of market discipline in encouraging sound risk management practices and fostering financial stability. However, requirements for greater information disclosure need to be balanced with the burden it places on banks providing the information. The agencies believe the rule's disclosure requirements (in alignment with the 2009 revisions) strike a reasonable balance in this respect.

Some commenters expressed concern that certain disclosures would not improve transparency. Specifically, some commenters noted that the proposed requirement to report separate VaR-based measures for covered positions for market risk capital purposes and for public accounting standards is likely to cause market confusion. Another commenter believed that certain types of disclosures, particularly those relating to model outputs, will not necessarily lead to greater understanding of positions and risks, as they are either overly superficial or difficult to compare accurately between banks. Commenters also expressed concern that the timing of the proposal's required disclosures does not align with the timing of required disclosures under the advanced approaches rules and believed that the two disclosure regimes should become effective at the same time.

The agencies believe that public disclosures allow the market to better understand the risks of a given bank and encourage banks to provide sufficient information to provide appropriate context to their public disclosures. In terms of the timing of market risk capital rule disclosures aligning with those required under the advanced approaches rules, the agencies note that certain banks subject to the market risk capital rule are not subject to the advanced approaches rules. Further, the implementation framework under the advanced approaches rules varies sufficiently from that of the market risk capital rule that required disclosures under the market risk capital rule could be unnecessarily delayed depending on a bank's implementation status under the advanced approaches rules. For these reasons, the agencies have not aligned the timing of the disclosure requirements across the rules.

Except for the removal of the median measures in the quantitative disclosure requirements, described above, the final rule retains the proposed disclosure requirements. Many of the disclosure requirements reflect information already disclosed publicly by the banking industry. Banks are encouraged, but not required, to provide access to these disclosures in a central location on their Web sites.

IV. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), generally requires that, in connection with a notice of proposed rulemaking, an agency prepare and make available for public comment a final regulatory flexibility analysis that describes the impact of a final rule on small entities.[25] The regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if an agency certifies that the 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** along with its rule. Under regulations issued by the Small

[25] *See* 5 U.S.C. 603(a).

Business Administration,[26] a small entity includes a commercial bank or bank holding company with assets of $175 million or less (a small banking organization). As of December 31, 2011, there were approximately 2,385 small bank holding companies, 607 small national banks, 386 small state member banks, and 2,466 small state nonmember banks. No comments on the effect of small entities were received in response to the notice of proposed rulemaking.

As discussed above, the final rule applies only if a bank holding company or bank has aggregated trading assets and trading liabilities equal to 10 percent or more of quarter-end total assets or $1 billion or more. No small bank holding companies or banks satisfy these criteria. Therefore, no small entities would be subject to this rule.

V. OCC Unfunded Mandates Reform Act of 1995 Determination

The Unfunded Mandates Reform Act of 1995 (UMRA) requires federal agencies to 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 annually for inflation) in any one year. The current inflation-adjusted expenditure threshold is $126.4 million. If a budgetary impact statement is required, section 205 of the UMRA also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule.

In conducting the regulatory analysis, UMRA requires each federal agency to provide:

- The text of the draft regulatory action, together with a reasonably detailed description of the need for the regulatory action and an explanation of how the regulatory action will meet that need;
- An assessment of the potential costs and benefits of the regulatory action, including an explanation of the manner in which the regulatory action is consistent with a statutory mandate and, to the extent permitted by law, promotes the President's priorities and avoids undue interference with State, local, and tribal governments in the exercise of their governmental functions;
- An assessment, including the underlying analysis, of benefits anticipated from the regulatory action (such as, but not limited to, the promotion of the efficient functioning of the economy and private markets, the enhancement of health and safety, the protection of the natural environment, and the elimination or reduction of discrimination or bias) together with, to the extent feasible, a quantification of those benefits;
- An assessment, including the underlying analysis, of costs anticipated from the regulatory action (such as, but not limited to, the direct cost both to the government in administering the regulation and to businesses and others in complying with the regulation, and any adverse effects on the efficient functioning of the economy, private markets (including productivity, employment, and competitiveness), health, safety, and the natural environment), together with, to the extent feasible, a quantification of those costs; and
- An assessment, including the underlying analysis, of costs and benefits of potentially effective and reasonably feasible alternatives to the planned regulation, identified by the agencies or the public (including improving the current regulation and reasonably viable nonregulatory actions), and an explanation why the planned regulatory action is preferable to the identified potential alternatives.
- An estimate of any disproportionate budgetary effects of the federal mandate upon any particular regions of the nation or particular State, local, or tribal governments, urban or rural or other types of communities, or particular segments of the private sector.
- An estimate of the effect the rulemaking action may have on the national economy, if the OCC determines that such estimates are reasonably feasible and that such effect is relevant and material.

A. The Need for Regulatory Action

Federal banking law directs federal banking agencies including the Office of the Comptroller of the Currency (OCC) to require banking organizations to hold adequate capital. The law authorizes federal banking agencies to set minimum capital levels to ensure that banking organizations maintain adequate capital. The law gives banking agencies broad discretion with respect to capital regulation by authorizing them to use other methods that they deem appropriate to ensure capital adequacy. As the primary supervisor of national banks and federally chartered savings associations, the OCC oversees the capital adequacy of national banks, federally chartered thrifts, and federal branches of foreign banking organizations (hereafter collectively referred to as "banks"). If banks under the OCC's supervision fail to maintain adequate capital, federal law authorizes the OCC to take enforcement action up to and including placing the bank in receivership, conservatorship, or requiring its sale, merger, or liquidation.

In 1996, the Basel Committee on Banking Supervision amended its risk-based capital standards to include a requirement that banks measure and hold capital to cover their exposure to market risk associated with foreign exchange and commodity positions and positions located in the trading account. The OCC (along with the Federal Reserve Board and the FDIC) implemented this market risk amendment (MRA) effective January 1, 1997.[27]

The Final Rule

The final rule would modify the current market risk capital rule by adjusting the minimum risk-based capital calculation, introducing new measures of creditworthiness for purposes of determining appropriate risk weights, and adding public disclosure requirements. The final rule would also (1) Modify the definition of covered positions to include assets that are in the trading book and held with the intent to trade; (2) introduce new requirements for the identification of trading positions and the management of covered positions; and (3) require banks to have clearly defined policies and procedures for actively managing all covered positions, for the prudent valuation of covered positions and for specific internal model validation standards. The final rule will generally apply to any bank with aggregate trading assets and liabilities that are at least 10 percent of total assets or at least $1 billion. These thresholds are the same as those currently used to determine applicability of the market risk rule.

Under current risk-based capital rules, a banking organization that is subject to the market risk capital guidelines must hold capital to support its exposure to general market risk arising from fluctuations in interest rates, equity prices, foreign exchange rates, and commodity prices, as well as its exposure to specific risk associated with certain debt and equity positions. Under current rules, covered positions include all positions in a bank's trading account

[26] *See* 13 CFR 121.201.

[27] *See* Beverly J. Hirtle, "What Market Risk Capital Reporting Tells Us about Bank Risk," *Economic Policy Review,* Federal Reserve Bank of New York, Sep. 2003, for a discussion of the role of market risk capital standards and an analysis of the information content of market risk capital levels. The author finds some evidence that market risk capital provides new information about an individual institution's risk exposure over time. In particular, a change in an institution's market risk capital is a strong predictor of change in future trading revenue volatility.

and all foreign exchange and commodity positions, whether or not in the trading account. The current rule covers assets held in the trading book, regardless of whether they are held with the intent to trade. The final rule would modify the definition of covered positions to include assets that are in the trading book and held with the intent to trade. The new covered positions would include trading assets and trading liabilities that are trading positions, *i.e.,* held for the purpose of short-term resale, to lock in arbitrage profits, to benefit from actual or expected short-term price movements, or to hedge covered positions. In addition to commodities and foreign exchange positions, covered positions under the final rule would include certain debt positions, equity positions and securitization positions.

The final rule also introduces new requirements for the identification of trading positions and the management of covered positions. The final rule would require banks to have clearly defined policies and procedures for actively managing all covered positions, for the prudent valuation and stress testing of covered positions and for specific internal model validation standards. Banks must also have clearly defined trading and hedging strategies. The final rule also requires banks to have a risk control unit that is independent of its trading units and that reports directly to senior management. Under the final rule, banks must also document all material aspects of its market risk modeling and management, and publicly disclose various measures of market risk for each material portfolio of covered positions.

To be adequately capitalized, banks subject to the market risk capital guidelines must maintain an overall minimum 8.0 percent ratio of total qualifying capital (the sum of tier 1 capital and tier 2 capital, net of all deductions) to the sum of risk-weighted assets and market risk equivalent assets. Market risk equivalent assets equal the bank's measure for market risk multiplied by 12.5.

Under current rules, the measure for market risk is as follows:[28]

Market Risk Measure = (Value-at-Risk based capital requirement) + (Specific risk capital requirement) + (Capital requirement for de minimis exposures)

Under the final rule, the new market risk measure would be as follows (new risk measure components are italicized):

New Market Risk Measure = (Value-at-Risk based capital requirement) + (*Stressed Value-at-Risk based capital requirement*) + (Specific risk capital charge) + (*Incremental risk capital requirement*) + (*Comprehensive risk capital requirement*) + (Capital charge for de minimis exposures)

The Basel Committee and the federal banking agencies designed the new components of the market risk measure to capture key risks overlooked by the current market risk measure. The incremental risk requirement gathers in default risk and migration risk for unsecuritized items in the trading book. The comprehensive risk charge considers correlation trading activities and the stressed value-at-risk (VaR) component requires banks to include a VaR assessment that is calibrated to historical data from a 12-month period that reflects a period of significant financial stress.

Alternative Creditworthiness Standards

In addition to introducing several new components into the formula for the market risk measure, the final rule will also introduce new creditworthiness standards to meet the requirements of Section 939A of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank). Section 939A requires federal agencies to remove references to credit ratings from regulations and replace credit ratings with appropriate alternatives. Institutions subject to the market risk rule will use the alternative measures of creditworthiness described below to determine appropriate risk-weighting factors within the specific risk component of the market risk measure.

Alternative Measure for Securitization Positions

The alternative measure for securitization positions is a simplified version of the Basel II advanced approaches supervisory formula approach. The simplified supervisory formula approach (SSFA) applies a 100 percent risk-weighting factor to the junior-most portion of a securitization structure. This 100 percent factor applies to tranches that fall below the amount of capital that a bank would have to hold if it retained the entire pool on its balance sheet. For the remaining portions of the securitization pool, the SSFA uses an exponential decay function to assign a marginal capital charge per dollar of a tranche. Securitization positions for which a bank does not use the SSFA would be subject to a 100 percent risk-weighting factor. The final rule would also adjust the calibration of the SSFA based on the historical credit performance of the pool of securitized assets.

Alternative Measure for Corporate Debt Positions

The alternative measure for corporate exposures will apply capital requirements to exposures to publicly traded corporate entities based on the remaining maturity of an exposure and whether the exposure is ''investment grade,'' which is defined without reference to credit ratings, consistent with the OCC's definition of ''investment grade'' as that term has been defined for purposes of Part 1.

Alternative Measure for Exposures to Sovereign Entities

The final rule would assign specific risk capital requirements to sovereign exposures based on OECD Country Risk Classifications (CRCs). The final rule would also apply a risk-weighting factor of 12 percent to sovereigns that have defaulted on any exposure during the previous five years. Default would include a restructure (whether voluntary or involuntary) that results in a sovereign entity not servicing an obligation according to its terms prior to the restructuring. Exposures to the United States government and its agencies would always carry a zero percent risk-weighting factor. Sovereign entities that have no CRC would carry an 8 percent risk-weighting factor. For sovereign exposures with a CRC rating of 2 or 3, the risk-weighting factor would also depend on the exposure's remaining maturity.

The final rule would also apply risk-weighting factors of zero percent to exposures to supranational entities and multilateral development banks. International organizations that would receive a zero percent risk-weighting factor include the Bank for International Settlements, the European Central Bank, the European Commission, and the International Monetary Fund. The final rule would apply a zero percent risk-weighting factor to exposures to 13 named multilateral development banks and any multilateral lending institution or regional development bank in which the U.S. government is a shareholder or member, or if the bank's primary federal supervisor determines that the entity poses comparable credit risk.

[28] The following are the components of the current Market Risk Measure. Value-at-Risk (VaR) is an estimate of the maximum amount that the value of one or more positions could decline due to market price or rate movements during a fixed holding period within a stated confidence interval. Specific risk is the risk of loss on a position that could result from factors other than broad market movements and includes event risk, default risk, and idiosyncratic risk. There may also be a capital requirement for *de minimis* exposures, if any, that are not included in the bank's VaR models.

Other Positions

Government Sponsored Entities (GSEs): The proposal would apply a 1.6 percent risk-weighting factor for GSE debt positions. GSE equity exposures would receive an 8 percent risk-weighting factor.

Depository Institutions, Foreign Banks, and Credit Unions: Generally, the rule would apply a risk-weighting factor that is linked to the sovereign entity risk-weighting factor. Exposures to depository institutions with a sovereign CRC rating between zero and two would receive a risk-weighting factor between 0.25 percent and 1.6 percent depending on the remaining maturity. Depository institutions with no CRC sovereign rating or a sovereign CRC rating of 3 would receive an eight percent risk-weighting factor, and depository institutions where a sovereign default has occurred in the past five years or the sovereign CRC rating is between four and seven would receive a 12 percent risk-weighting factor.

Public Sector Entities (PSEs): A PSE is a state, local authority, or other governmental subdivision below the level of a sovereign entity. The final rule would assign a risk-weighting factor to a PSE based on the PSE's sovereign risk-weighting factor. One risk-weighting factor schedule would apply to general obligation claims and another schedule would apply to revenue obligations.

B. Cost-Benefit Analysis of the Final Rule

1. Organizations Affected by the Final Rule [29]

According to December 31, 2011 Call Report data, 208 FDIC-insured institutions had trading assets or trading liabilities. Of these 208 institutions, 25 institutions had trading assets and liabilities that are at least 10 percent of total assets or at least $1 billion. Aggregated to the highest holding company there are 25 banking organizations, of which, 14 are national banking organizations. One federally chartered thrift holding company also meets the market risk threshold, but it is a subsidiary of one of the 14 national banking organizations.[30] Table 1 shows the total assets, trading assets, trading liabilities, market risk equivalent assets, and the market risk measure for these 14 OCC-regulated institutions as of December 31, 2011. The market risk measure is used to determine market risk equivalent assets, which are added to the denominator with adjusted risk-weighted assets to determine a bank's risk-based capital ratio.

TABLE 1—TRADING BOOK MEASURES OF OCC-REGULATED ORGANIZATIONS AFFECTED BY THE MARKET RISK RULE

[Call Reports as of December 31, 2011, $ in billions]

Measure	Amount ($ billions)
Total Assets	7,697.3
Trading Assets	651.3
Trading Liabilities	282.7
Consolidated Trading Activity: (Trading Assets + Trading Liabilities)	934.0
Market Risk Equivalent Assets	197.9
Market Risk Measure	15.8

2. Impact of the Final Rule

The key qualitative benefits of the final rule are the following:

- Makes required regulatory capital more sensitive to market risk,
- Enhances modeling requirements consistent with advances in risk management,
- Better captures trading positions for which market risk capital treatment is appropriate,
- Increases transparency through enhanced market disclosures,
- Increased market risk capital should lower the probability of catastrophic losses to the bank occurring because of market risk,
- Modified requirements should reduce the procyclicality of market risk capital.

We derive our estimates of the final rule's effect on the market risk measure from the third trading book impact study conducted by the Basel Committee on Banking Supervision in 2009 and an analysis conducted by the Federal Reserve and the OCC.[31] Based on these two assessments, we estimate that the market risk measure will increase 200 percent on average. Because the market risk measure is equal to 8 percent of market risk equivalent assets, the market risk measure itself provides one estimate of the amount of regulatory capital required for an adequately capitalized bank. Thus, tripling the market risk measure suggests that minimum required capital would be approximately $47.4 billion under the final rule, which would represent an increase of $31.6 billion.[32]

To estimate the cost to banks of this new capital requirement, we examine the effect of this requirement on capital structure and the overall cost of capital.[33] The cost of financing a bank or any firm is the weighted average cost of its various financing sources, which amounts to a weighted average cost of the many different types of debt and equity financing. Because interest payments on debt are tax deductible, a more leveraged capital structure reduces corporate taxes, thereby lowering after-tax funding costs, and the weighted average cost of financing tends to decline as leverage marginally increases. Thus, an increase in required equity capital would force a bank to deleverage and—all else equal—would increase the cost of capital for that bank.

This increased cost would be tax benefits forgone: the capital requirement ($31.6 billion), multiplied by the interest rate on the debt displaced and by the effective marginal tax rate for the banks affected by the final rule. The effective marginal corporate tax rate is affected not only by the statutory federal and state rates, but also by the probability of positive earnings (since there is no tax benefit when earnings are negative), and for the offsetting effects of personal taxes on required bond yields. Graham (2000) considers these factors and estimates a median marginal tax benefit of $9.40 per $100 of interest. So, using an estimated interest rate on debt of 6 percent, we estimate that the annual tax benefits foregone on $31.6 billion of capital switching from debt to equity is approximately $31.6 billion * 0.06 (interest rate) * 0.094 (median marginal tax savings) = $178 million.[34]

[29] Unless otherwise noted, the population of banks used in this analysis consists of all FDIC-insured national banks and uninsured national bank and trust companies. Banking organizations are aggregated to the top holding company level.

[30] A national banking organization is any bank holding company with a subsidiary national bank. Federally chartered savings associations did not report comparable trading assets and trading liabilities data on the Thrift Financial Report, but began reporting this information with March 2012 Call Reports. According to March 31, 2012 Call Report data, no OCC-regulated thrift meets the threshold for the Market Risk rule to apply.

[31] The report, ''Analysis of the third trading book impact study'', is available at *www.bis.org/publ/bcbs163.htm*. The study gathered data from 43 banks in 10 countries, including six banks from the United States.

[32] An alternative estimate comparing adequate capital amounts under current and new market risk rules for each affected bank suggests that the capital increase would be approximately $31.7 billion. Using capital levels reported in December 31, 2011 Call Reports, affected banks would remain adequately capitalized under either estimate.

[33] *See* Merton H. Miller, (1995), ''Do the M & M propositions apply to banks?'' *Journal of Banking & Finance,* Vol. 19, pp. 483–489.

[34] *See* John R. Graham, (2000), *How Big Are the Tax Benefits of Debt?, Journal of Finance,* Vol. 55, No. 5, pp. 1901–1941. Graham points out that ignoring the offsetting effects of personal taxes would increase the median marginal tax rate to $31.5 per $100 of interest.

In addition to the revised market risk measure, the final rule includes new disclosure requirements. We estimate that the new disclosure requirements and implementation of calculations for the new market risk measures may involve some additional system costs. Because the proposed market risk rule only applies to 14 national bank holding companies and will only affect institutions already subject to the current market risk rule, we expect these additional system costs to be *de minimis.*[35] We do not anticipate that the final rule will create significant additional administrative costs for the OCC.[36]

Estimated Costs of Credit Rating Alternatives

The final rule will also require institutions to (1) establish systems to determine risk-weighting factors using the alternative measures of creditworthiness described in the proposal, and (2) apply these alternative measures to the bank's trading portfolio. We believe that the principal costs of this component of the rule will involve the costs of gathering and updating the information necessary to calculate the relevant risk-weighting factors, and establishing procedures and maintaining the programs that perform the calculations.

In particular, the final rule would require each affected institution to:

1. Establish and maintain a system to implement the simplified supervisory formula approach (SSFA) for securitization positions.
2. Establish and maintain a system to determine risk-weighting factors for corporate debt positions.
3. Establish and maintain a system to assign risk-weighting factors to sovereign exposures.
4. Establish and maintain systems to assign risk-weighting factors to public sector entities, depository institutions, and other positions.

Listed below are the variables banks will need to gather to calculate the risk-weighting factors under the final rule:

Securitization Positions:

1. Weighted average risk-weighting factor of assets in the securitized pool as determined under generally applicable risk-based capital rules
2. The attachment point of the relevant tranche
3. The detachment point of the relevant tranche
4. Cumulative losses

Corporate Debt Positions:

1. Investment grade determination
2. Remaining contractual maturity

Sovereign Entity Debt Positions:

1. Organization for Economic Co-operation and Development Country Risk Classifications (CRC) Score
2. Remaining contractual maturity

Table 2 shows our estimate of the number of hours required to perform the various activities necessary to meet the requirements of the final rule. We base these estimates on the scope of work required by the final rule and the extent to which these requirements extend current business practices. Although the total cost of gathering the new variables will depend on the size of the institution's consolidated trading activity, we believe that the costs of establishing systems to match variables with exposures and calculate the appropriate risk-weighting factor will account for most of the expenses associated with the credit rating alternatives. Once a bank establishes a system, we expect the marginal cost of calculating the risk-weighting factor for each additional asset in a particular category, *e.g.,* securitizations and corporate exposures, to be relatively small.

We estimate that financial institutions covered by the final rule will spend approximately 1,300 hours during the first year the rule is in effect. In subsequent years, we estimate that financial institutions will spend approximately 180 hours per year on activities related to determining risk-weighting factors using the alternative measures of creditworthiness in the final rule.

Table 3 shows our overall cost estimate tied to developing alternative measures of creditworthiness under the market risk rule. Our estimate of the compliance cost of the final rule is the product of our estimate of the hours required per institution, our estimate of the number of institutions affected by the rule, and an estimate of hourly wages. To estimate hours necessary per activity, we estimate the number of employees each activity is likely to need and the number of days necessary to assess, implement, and perfect the required activity. To estimate hourly wages, we reviewed data from May 2010 for wages (by industry and occupation) from the U.S. Bureau of Labor Statistics (BLS) for depository credit intermediation (NAICS 522100). To estimate compensation costs associated with the final rule, we use $85 per hour, which is based on the average of the 90th percentile for seven occupations (*i.e.,* accountants and auditors, compliance officers, financial analysts, lawyers, management occupations, software developers, and statisticians) plus an additional 33 percent to cover inflation and private sector benefits.[37] As shown in table 3, we estimate that the cost of the alternative measures of creditworthiness in the first year of implementation will be approximately $1.5 million.

We also recognize that risk-weighting factors, and hence, market risk capital requirements may change as a result of these new measures of creditworthiness. We expect that the largest capital impact of the new risk-weighting factors will occur with securitizations, corporate debt positions, and exposures to sovereigns. The increased sensitivity to risk of the alternative measures of creditworthiness implies that specific risk capital requirements may go down for some trading assets and up for others. For those assets with a higher specific risk capital charge under the final rule, however, that increase may be large, in some instances requiring a dollar-for-dollar capital charge.

At this time we are not able to estimate the capital impact of the alternative measures of creditworthiness with any degree of precision. While we know that the impact on U.S. Treasury Securities will be zero, the impact on the other asset categories is less clear. For instance, while anecdotal evidence suggests that roughly half of ''other debt securities'' is corporate debt and half is non-U.S. government securities, the actual capital impact will depend on the quality of these assets as determined by the measures of creditworthiness. While we anticipate that this impact could be large, we lack information on the composition and quality of the trading portfolio that would allow us to accurately estimate a likely capital charge. The actual impact on market risk capital requirements will also depend on the extent to which institutions model specific risk.

Combining capital costs ($178 million) with the costs of applying the alternative measures of creditworthiness ($1.5 million), we estimate that the total

[35] We estimate that these additional costs will be close to zero because institutions that are subject to the current market risk rule have the systems in place to calculate the current market risk measure. These existing systems should be able to accommodate the new components of the revised market risk measure. Also, items affected by the new disclosure requirements are primarily byproducts of the management of market risk and the calculation of the market risk measure.

[36] Discussion with the Director of the Market Risk Analysis Division indicated that the division would be able to accommodate the proposed revisions to the market risk rule with current staffing levels.

[37] According to the BLS' employer costs of employee benefits data, thirty percent represents the average private sector costs of employee benefits.

cost of the final rule will be $179.5 million per year in 2012 dollars.

TABLE 2—ESTIMATED ANNUAL HOURS FOR CREDITWORTHINESS MEASUREMENT ACTIVITIES FOR INSTITUTIONS SUBJECT TO THE MARKET RISK RULE

Trading position	Activity	Estimated hours per institution
Securitization	System development	480
	Data acquisition	240
	Calculation, verification, and training	120
Corporate Debt	System development	60
	Data acquisition	50
	Calculation, verification, and training	10
Sovereign Debt	System development	80
	Data acquisition	30
	Calculation, verification, and training	60
Other Positions Combined	System development	80
	Data acquisition	30
	Calculation, verification, and training	60
Total Hours		1,300

TABLE 3—ESTIMATED COSTS OF CREDIT RATING ALTERNATIVES TO THE MARKET RISK RULE

Institution	Number of institutions	Estimated hours per institution	Estimated cost per institution	Estimated cost
National banking organizations	14	1,300	$110,500	$1,547,000

3. Additional Costs and Benefits of the Final Rule

As the Basel Committee on Banking Supervision points out in the July 2009 paper that recommends revisions to the market risk framework, the trading book proved to be an important source of losses during the financial crisis that began in mid-2007 and an important source of the buildup of leverage that preceded the crisis.[38] These concerns find some echo in empirical evidence. Stiroh (2004) studies the potential diversification benefits from various types of noninterest income and finds that trading activities are associated with lower risk-adjusted returns and higher risk.[39]

C. Comparison Between Final Rule and Baseline

Under the baseline scenario, the current market risk rule would continue to apply. Because the final rule affects the same institutions as the current rule, table 1 reflects the current baseline. Thus, under the baseline, required market risk capital would remain at current levels and there would be no additional cost associated with adding capital. However, the final rule's qualitative benefits of making required regulatory capital more sensitive to market risk, increased transparency, and the improved targeting of trading positions would be lost under the baseline scenario.

D. Comparison Between Final Rule and Alternatives

UMRA requires a comparison between the final rule and reasonable alternatives when the impact assessment exceeds the inflation-adjusted expenditure threshold. In this regulatory impact analysis, we compare the final rule with two alternatives that modify the size thresholds for the rule. The baseline provides a comparison between the rule and the economic environment with no modifications to the current market risk measure. For Alternative A, we assess the impact of a rule with various size thresholds. For Alternative B, we assess the impact of a rule that changes the conditional statement of the rule's thresholds from ''or'' to ''and''. Thus, alternative B assesses the impact of a market risk rule that applies to banks with trading assets and liabilities greater than $1 billion *and* a trading book to assets ratio of at least 10 percent.

Assessment of Alternative A

Under Alternative A, we consider a rule that has the same provisions as the final rule, but we alter the rule's trading book size threshold. In our analysis of alternative A, we do not alter the 10 percent threshold for the trading book to asset ratio. Rather, we only vary the $1 billion trading book threshold. Table 4 shows how changing the dollar threshold changes the number of institutions affected by the rule and the estimated cost of the rule, continuing to assume that market risk capital will increase by 200 percent. The results for the final rule are shown in bold.

[38] Basel Committee on Banking Supervision, ''Revisions to the Basel II market risk framework,'' July 2009, available at *www.bis.org.*

[39] *See* Kevin J. Stiroh, ''Diversification in Banking: Is Noninterest Income the Answer?'' *Journal of Money, Credit, and Banking,* Vol. 36, No. 5, October 2004.

TABLE 4—ALTERNATIVE A: IMPACT OF VARIATIONS IN TRADING BOOK SIZE THRESHOLD

[December 31, 2011 Call Reports]

Size threshold	Number of institutions affected	Trading book ($billions)	Increase in market risk measure ($billions)	Estimated cost of additional capital ($millions)
$5 billion	7	$921.7	$31.4	$177
$4 billion	7	921.7	31.4	177
$3 billion	7	921.7	31.4	177
$2 billion	9	926.3	31.4	177
$1 billion	14	933.9	31.6	178
$500 million	18	937.3	31.6	178
$250 million	21	938.3	32.0	180

Because trading assets and liabilities are concentrated in relatively few institutions, modest changes in the size thresholds have little impact on the dollar volume of trading assets affected by the market risk rule and thus little impact on the estimated cost of the rule. Changing the size threshold does affect the number of institutions affected by the rule. Table 4 suggests that the banking agencies' systemic concerns could play a role in determining the appropriate size threshold for applicability of the market risk rule. The banking agencies may select a size threshold that ensures that the market risk rule applies to appropriate institutions as this choice has little impact on aggregate costs. The banking agencies' decision to use the same threshold as applies under current rules makes sense as implementation costs could be significant for individual institutions not already subject to the market risk rule.[40]

Assessment of Alternative B

Under Alternative B, we consider a rule that has the same provisions as the final rule, but we change the condition of the size thresholds from ''or'' to ''and''. With this change, the final rule would apply to institutions that have $1 billion or more in trading assets and liabilities *and* a trading book to asset ratio of at least 10 percent. Table 5 shows the effect of changing the rule so that an institution must meet both thresholds for the market risk rule to apply. Again, we assume that the provisions of the final rule lead to a 200 percent increase in the market risk measure.

As Table 5 shows, making the applicability of the market risk rule contingent on meeting both size thresholds would reduce the number of banks affected by the rule to three using the current thresholds of $1 billion and 10 percent. Not surprisingly, as this alternative affects some institutions with larger trading books, the estimated cost of the rule does decrease with the number of institutions affected by the rule.

TABLE 5—ALTERNATIVE B: IMPACT OF VARIATIONS IN SIZE THRESHOLD CONDITIONS

[December 31, 2011 Call Reports]

Thresholds	Number of institutions affected	Trading book ($ billions)	Increase in market risk measure ($ billions)	Estimated cost of additional capital ($ millions)
$1 billion or 10 percent	14	$933.9	$31.6	$178
$2 billion and 10 percent	3	715.6	21.8	123
$1 billion and 10 percent	3	715.6	21.8	123
$500 million and 10 percent	3	715.6	21.8	123
$2 billion and 5 percent	5	903.2	30.6	173
$1 billion and 5 percent	6	904.9	30.8	174
$500 million and 5 percent	6	904.9	30.8	174
$2 billion and 1 percent	9	926.3	31.4	177
$1 billion and 1 percent	13	932.2	31.6	178
$500 million and 1 percent	16	934.5	31.6	178

E. Overall Impact of Final Rule, Baseline, and Alternatives

Under our baseline scenario, which reflects the current application of the market risk rule, a market risk capital charge of approximately $15.8 billion applies to 14 national banks. Under the final rule, this capital charge would continue to apply to the same 14 banks but the capital charge would likely triple. We estimate that the cost of the additional capital would be approximately $178 million per year. Our overall estimate of the cost of the final market risk rule is $179.5 million, which reflects capital costs and compliance costs associated with implementing the alternative measures of creditworthiness.[41]

[40] We estimate that these start-up costs could range between $0.5 million and $2 million depending on the size and complexity of the trading book. These start-up costs include new system costs, acquisition of expertise, training and compliance costs.

[41] Our capital estimate reflects the amount of capital banks would need to accumulate to meet the eight percent minimum capital requirement after implementation of the final market risk rule relative to the eight percent minimum capital requirement under the current rule. Because the banks affected by the rule are currently well capitalized, our estimates suggest that they could remain adequately capitalized under the final rule even if they keep capital at current levels. The availability of this reservoir of capital offsets the need for banks to incur the cost of accumulating further capital to

Our alternatives examine the impact of a market risk rule that uses different size thresholds in order to determine which institutions are subject to the rule. With alternative A we consider altering the $1 billion trading book threshold used currently and maintained under the final rule. Although varying the size threshold changed the number of institutions affected by the rule, the overall capital cost of the rule did not change significantly. This reflects the high concentration of trading assets and liabilities in a relatively small number of banks. As long as the final rule applies to these institutions, the additional required capital and its corresponding cost will not change considerably.

Alternative B did affect both the number of institutions subject to the final rule and the cost of the final rule by limiting the market risk rule to institutions that meet both size criteria, *i.e.,* a $1 billion trading book and a trading book to asset ratio of at least 10 percent. Only three national banks currently meet both of these criteria, and applying the final rule to these institutions would require an additional $21.8 billion in market risk capital at a cost of approximately $123 million per year. Clearly, the estimated cost of the final rule would fall if the size thresholds determining applicability of the market risk rule were to increase. However, the current size thresholds, which continue to apply under the final rule, capture those institutions that the regulatory agencies believe should be subject to market risk capital rules.

The final rule changes covered positions, disclosure requirements, and methods relating to calculating the market risk measure. These changes achieve the important objectives of making required regulatory capital more sensitive to market risk, increases transparency of the trading book and market risk, and better captures trading positions for which market risk capital treatment is appropriate. The final rule carries over the current thresholds used to determine the applicability of the market risk rule. The banking agencies have determined that these size thresholds capture the appropriate institutions; those most exposed to market risk.

The large increase in required market risk capital, which we estimate to be approximately $31.6 billion under the final rule, will provide a considerable buttress to the capital position of institutions subject to the market risk rule. This additional capital should dramatically lower the likelihood of catastrophic losses from market risk occurring at these institutions, which will enhance the safety and soundness of these institutions, the banking system, and world financial markets. Although there is some concern regarding the burden of the proposed increase in market risk capital and the effect this could have on bank lending,[42] in the OCC's opinion, the final rule offers a better balance between costs and benefits than either the baseline or the alternatives.

The OCC does not expect the revised risk-based capital guidelines to have any disproportionate budgetary effect on any particular regions of the nation or particular State, local, or tribal governments, urban or rural or other types of communities, or particular segments of the private sector.

VI. Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), 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 Office of Management and Budget (OMB) control number. The OMB control number for the OCC and the FDIC will be assigned and the OMB control number for the Board will be 7100–0314. In conjunction with the January 2011 notice of proposed rulemaking, the OCC and the FDIC submitted the information collection requirements contained therein to OMB for review. In response, OMB filed comments with the OCC and FDIC in accordance with 5 CFR 1320.11(c) withholding PRA approval. The agencies subsequently determined that there were no additional information collection requirements in the December 2011 Amendment and, therefore, the agencies made no PRA filing in conjunction with it. In addition, this final rule contains no additional information collection requirements. The OCC and the FDIC have submitted the information collection requirements in the final rule to OMB for review and approval under 44 U.S.C. 3506 and 5 CFR part 1320. The Board reviewed the final rule under the authority delegated to the Board by OMB. The final rule contains requirements subject to the PRA. The information collection requirements are found in sections 3, 4, 5, 6, 7, 8, 9, 10, and 13 of the final rule.

No comments concerning PRA were received in response to the notice of proposed rulemaking. Therefore, the hourly burden estimates for respondents noted in the proposed rule have not changed. The burden in the proposed rule for section 10(d), which requires documentation quarterly for analysis of risk characteristics of each securitization position it holds, has been renumbered to 10(f). The burden in the proposed rule for section 11, which requires quarterly quantitative disclosures, annual qualitative disclosures, and a formal disclosure policy approved by the board of directors that addresses the bank's approach for determining the market risk disclosures it makes, has been renumbered to 13. The agencies have an ongoing interest in your comments.

Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) The accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

VII. Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The agencies invited comment on whether the proposed rule was written plainly and clearly or whether there were ways the agencies could make the rule easier to understand. The agencies received no comments on these matters and believe that the final rule is written plainly and clearly in conjunction with the agencies' risk-based capital rules.

meet the requirements of the final market risk rule. The extent to which they use current capital to offset the new market risk capital requirement is up to the banks. Should they elect to acquire the full $31.6 billion in minimum capital required by the final rule, we estimate that cost at $178 million.

[42] When financial institutions are strong and financial markets are robust, raising new capital or adjusting capital funding sources poses little difficulty for the financial institution. As financial markets weaken, factors affecting a bank's financing may have spillover effects that may affect bank operational decisions such as lending.

Text of the Common Rules (All Agencies)

The text of the common rules appears below:

Appendix __ to Part ____—Risk-Based Capital Guidelines; Market Risk

Section 1 Purpose, Applicability, and Reservation of Authority
Section 2 Definitions
Section 3 Requirements for Application of the Market Risk Capital Rule
Section 4 Adjustments to the Risk-Based Capital Ratio Calculations
Section 5 VaR-based Measure
Section 6 Stressed VaR-based Measure
Section 7 Specific Risk
Section 8 Incremental Risk
Section 9 Comprehensive Risk
Section 10 Standardized Measurement Method for Specific Risk
Section 11 Simplified Supervisory Formula Approach
Section 12 Market Risk Disclosures

Section 1. Purpose, Applicability, and Reservation of Authority

(a) *Purpose.* This appendix establishes risk-based capital requirements for [banks] with significant exposure to market risk and provides methods for these [banks] to calculate their risk-based capital requirements for market risk. This appendix supplements and adjusts the risk-based capital calculations under [the general risk-based capital rules] and [the advanced capital adequacy framework] and establishes public disclosure requirements.

(b) *Applicability.* (1) This appendix applies to any [bank] with aggregate trading assets and trading liabilities (as reported in the [bank]'s most recent quarterly [regulatory report]), equal to:

(i) 10 percent or more of quarter-end total assets as reported on the most recent quarterly [Call Report or FR Y–9C]; or

(ii) $1 billion or more.

(2) The [Agency] may apply this appendix to any [bank] if the [Agency] deems it necessary or appropriate because of the level of market risk of the [bank] or to ensure safe and sound banking practices.

(3) The [Agency] may exclude a [bank] that meets the criteria of paragraph (b)(1) of this section from application of this appendix if the [Agency] determines that the exclusion is appropriate based on the level of market risk of the [bank] and is consistent with safe and sound banking practices.

(c) *Reservation of authority.* (1) The [Agency] may require a [bank] to hold an amount of capital greater than otherwise required under this appendix if the [Agency] determines that the [bank]'s capital requirement for market risk as calculated under this appendix is not commensurate with the market risk of the [bank]'s covered positions. In making determinations under paragraphs (c)(1) through (c)(3) of this section, the [Agency] will apply notice and response procedures generally in the same manner as the notice and response procedures set forth in [12 CFR 3.12, 12 CFR 263.202, 12 CFR 325.6(c), 12 CFR 567.3(d)].

(2) If the [Agency] determines that the risk-based capital requirement calculated under this appendix by the [bank] for one or more covered positions or portfolios of covered positions is not commensurate with the risks associated with those positions or portfolios, the [Agency] may require the [bank] to assign a different risk-based capital requirement to the positions or portfolios that more accurately reflects the risk of the positions or portfolios.

(3) The [Agency] may also require a [bank] to calculate risk-based capital requirements for specific positions or portfolios under this appendix, or under [the advanced capital adequacy framework] or [the general risk-based capital rules], as appropriate, to more accurately reflect the risks of the positions.

(4) Nothing in this appendix limits the authority of the [Agency] 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 capital levels, or violations of law.

Section 2. Definitions

For purposes of this appendix, the following definitions apply:

Affiliate with respect to a company means any company that controls, is controlled by, or is under common control with, the company.

Backtesting means the comparison of a [bank]'s internal estimates with actual outcomes during a sample period not used in model development. For purposes of this appendix, backtesting is one form of out-of-sample testing.

Bank holding company is defined in section 2(a) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(a)).

Commodity position means a position for which price risk arises from changes in the price of a commodity.

Company means a corporation, partnership, limited liability company, depository institution, business trust, special purpose entity, association, or similar organization.

Control A person or company controls a company if it:

(1) Owns, controls, or holds with power to vote 25 percent or more of a class of voting securities of the company; or

(2) Consolidates the company for financial reporting purposes.

Corporate debt position means a debt position that is an exposure to a company that is not a sovereign entity, the Bank for International Settlements, the European Central Bank, the European Commission, the International Monetary Fund, a multilateral development bank, a depository institution, a foreign bank, a credit union, a public sector entity, a government-sponsored entity, or a securitization.

Correlation trading position means:

(1) A securitization position for which all or substantially all of the value of the underlying exposures is based on the credit quality of a single company for which a two-way market exists, or on commonly traded indices based on such exposures for which a two-way market exists on the indices; or

(2) A position that is not a securitization position and that hedges a position described in paragraph (1) of this definition; and

(3) A correlation trading position does not include:

(i) A resecuritization position;

(ii) A derivative of a securitization position that does not provide a pro rata share in the proceeds of a securitization tranche; or

(iii) A securitization position for which the underlying assets or reference exposures are retail exposures, residential mortgage exposures, or commercial mortgage exposures.

Country risk classification (CRC) for a sovereign entity means the consensus CRC published from time to time by the Organization for Economic Cooperation and Development that provides a view of the likelihood that the sovereign entity will service its external debt.

Covered position means the following positions:

(1) A trading asset or trading liability (whether on- or off-balance sheet),[43] as reported on Schedule RC–D of the Call Report or Schedule HC–D of the FR Y–9C, that meets the following conditions:

(i) The position is a trading position or hedges another covered position;[44] and

(ii) The position is free of any restrictive covenants on its tradability or the [bank] is able to hedge the material risk elements of the position in a two-way market;

(2) A foreign exchange or commodity position, regardless of whether the position is a trading asset or trading liability (excluding any structural foreign currency positions that the [bank] chooses to exclude with prior supervisory approval); and

(3) Notwithstanding paragraphs (1) and (2) of this definition, a covered position does not include:

(i) An intangible asset, including any servicing asset;

(ii) Any hedge of a trading position that the [Agency] determines to be outside the scope of the [bank]'s hedging strategy required in paragraph (a)(2) of section 3 of this appendix;

(iii) Any position that, in form or substance, acts as a liquidity facility that provides support to asset-backed commercial paper;

(iv) A credit derivative the [bank] recognizes as a guarantee for risk-weighted asset amount calculation purposes under [the advanced capital adequacy framework] or [the general risk-based capital rules];

(v) Any equity position that is not publicly traded, other than a derivative that references a publicly traded equity;

(vi) Any position a [bank] holds with the intent to securitize; or

(vii) Any direct real estate holding.

Credit derivative means a financial contract executed under standard industry documentation that allows one party (the protection purchaser) to transfer the credit risk of one or more exposures (reference exposure(s)) to another party (the protection provider).

[43] Securities subject to repurchase and lending agreements are included as if they are still owned by the lender.

[44] A position that hedges a trading position must be within the scope of the bank's hedging strategy as described in paragraph (a)(2) of section 3 of this appendix.

Credit union means an insured credit union as defined under the Federal Credit Union Act (12 U.S.C. 1752).

Default by a sovereign entity means noncompliance by the sovereign entity with its external debt service obligations or the inability or unwillingness of a sovereign entity to service an existing obligation according to its original contractual terms, as evidenced by failure to pay principal and interest timely and fully, arrearages, or restructuring.

Debt position means a covered position that is not a securitization position or a correlation trading position and that has a value that reacts primarily to changes in interest rates or credit spreads.

Depository institution is defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

Equity position means a covered position that is not a securitization position or a correlation trading position and that has a value that reacts primarily to changes in equity prices.

Event risk means the risk of loss on equity or hybrid equity positions as a result of a financial event, such as the announcement or occurrence of a company merger, acquisition, spin-off, or dissolution.

Foreign bank means a foreign bank as defined in § 211.2 of the Federal Reserve Board's Regulation K (12 CFR 211.2), other than a depository institution.

Foreign exchange position means a position for which price risk arises from changes in foreign exchange rates.

General market risk means the risk of loss that could result from broad market movements, such as changes in the general level of interest rates, credit spreads, equity prices, foreign exchange rates, or commodity prices.

General obligation means a bond or similar obligation that is guaranteed by the full faith and credit of states or other political subdivisions of a sovereign entity.

Government-sponsored entity (GSE) means an entity established or chartered by the U.S. government to serve public purposes specified by the U.S. Congress but whose debt obligations are not explicitly guaranteed by the full faith and credit of the U.S. government.

Hedge means a position or positions that offset all, or substantially all, of one or more material risk factors of another position.

Idiosyncratic risk means the risk of loss in the value of a position that arises from changes in risk factors unique to that position.

Incremental risk means the default risk and credit migration risk of a position. Default risk means the risk of loss on a position that could result from the failure of an obligor to make timely payments of principal or interest on its debt obligation, and the risk of loss that could result from bankruptcy, insolvency, or similar proceeding. Credit migration risk means the price risk that arises from significant changes in the underlying credit quality of the position.

Investment grade means that the entity to which the [bank] is exposed through a loan or security, or the reference entity with respect to a credit derivative, has adequate capacity to meet financial commitments for the projected life of the asset or exposure. Such an entity or reference entity has adequate capacity to meet financial commitments if the risk of its default is low and the full and timely repayment of principal and interest is expected.

Market risk means the risk of loss on a position that could result from movements in market prices.

Multilateral development bank means the International Bank for Reconstruction and Development, the Multilateral Investment Guarantee Agency, the International Finance Corporation, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the European Bank for Reconstruction and Development, the European Investment Bank, the European Investment Fund, the Nordic Investment Bank, the Caribbean Development Bank, the Islamic Development Bank, the Council of Europe Development Bank, and any other multilateral lending institution or regional development bank in which the U.S. government is a shareholder or contributing member or which the [Agency] determines poses comparable credit risk.

Nth-to-default credit derivative means a credit derivative that provides credit protection only for the nth-defaulting reference exposure in a group of reference exposures.

Over-the-counter (OTC) derivative means a derivative contract that is not traded on an exchange that requires the daily receipt and payment of cash-variation margin.

Public sector entity (PSE) means a state, local authority, or other governmental subdivision below the sovereign entity level.

Publicly traded means traded on:

(1) Any exchange registered with the SEC as a national securities exchange under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f); or

(2) Any non-U.S.-based securities exchange that:

(i) Is registered with, or approved by, a national securities regulatory authority; and

(ii) Provides a liquid, two-way market for the instrument in question.

Qualifying securities borrowing transaction means a cash-collateralized securities borrowing transaction that meets the following conditions:

(1) The transaction is based on liquid and readily marketable securities;

(2) The transaction is marked-to-market daily;

(3) The transaction is subject to daily margin maintenance requirements; and

(4)(i) The transaction is a securities contract for the purposes of section 555 of the Bankruptcy Code (11 U.S.C. 555), a qualified financial contract for the purposes of section 11(e)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)), or a netting contract between or among financial institutions for the purposes of sections 401–407 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4401–4407) or the Board's Regulation EE (12 CFR part 231); or

(ii) If the transaction does not meet the criteria in paragraph (4)(i) of this definition, either:

(A) The [bank] has conducted sufficient legal review to reach a well-founded conclusion that:

(*1*) The securities borrowing agreement executed in connection with the transaction provides the [bank] the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set off collateral promptly upon an event of counterparty default, including in a bankruptcy, insolvency, or other similar proceeding of the counterparty; and

(*2*) Under applicable law of the relevant jurisdiction, its rights under the agreement are legal, valid, binding, and enforceable and any exercise of rights under the agreement will not be stayed or avoided; or

(B) The transaction is either overnight or unconditionally cancelable at any time by the [bank], and the [bank] has conducted sufficient legal review to reach a well-founded conclusion that:

(*1*) The securities borrowing agreement executed in connection with the transaction provides the [bank] the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set off collateral promptly upon an event of counterparty default; and

(*2*) Under the law governing the agreement, its rights under the agreement are legal, valid, binding, and enforceable.

Resecuritization means a securitization in which one or more of the underlying exposures is a securitization position.

Resecuritization position means a covered position that is:

(1) An on- or off-balance sheet exposure to a resecuritization; or

(2) An exposure that directly or indirectly references a resecuritization exposure in paragraph (1) of this definition.

Revenue obligation means a bond or similar obligation, including loans and leases, that is an obligation of a state or other political subdivision of a sovereign entity, but for which the government entity is committed to repay with revenues from the specific project financed rather than with general tax funds.

SEC means the U.S. Securities and Exchange Commission.

Securitization means a transaction in which:

(1) All or a portion of the credit risk of one or more underlying exposures is transferred to one or more third parties;

(2) The credit risk associated with the underlying exposures has been separated into at least two tranches that reflect different levels of seniority;

(3) Performance of the securitization exposures depends upon the performance of the underlying exposures;

(4) All or substantially all of the underlying exposures are financial exposures (such as loans, commitments, credit derivatives, guarantees, receivables, asset-backed securities, mortgage-backed securities, other debt securities, or equity securities);

(5) For non-synthetic securitizations, the underlying exposures are not owned by an operating company;

(6) The underlying exposures are not owned by a small business investment company described in section 302 of the

Small Business Investment Act of 1958 (15 U.S.C. 682); and

(7) The underlying exposures are not owned by a firm an investment in which qualifies as a community development investment under 12 U.S.C. 24 (Eleventh).

(8) The [Agency] may determine that a transaction in which the underlying exposures are owned by an investment firm that exercises substantially unfettered control over the size and composition of its assets, liabilities, and off-balance sheet exposures is not a securitization based on the transaction's leverage, risk profile, or economic substance.

(9) The [Agency] may deem an exposure to a transaction that meets the definition of a securitization, notwithstanding paragraph (5), (6), or (7) of this definition, to be a securitization based on the transaction's leverage, risk profile, or economic substance.

Securitization position means a covered position that is:

(1) An on-balance sheet or off-balance sheet credit exposure (including credit-enhancing representations and warranties) that arises from a securitization (including a resecuritization); or

(2) An exposure that directly or indirectly references a securitization exposure described in paragraph (1) of this definition.

Sovereign debt position means a direct exposure to a sovereign entity.

Sovereign entity means a central government (including the U.S. government) or an agency, department, ministry, or central bank of a central government.

Sovereign of incorporation means the country where an entity is incorporated, chartered, or similarly established.

Specific risk means the risk of loss on a position that could result from factors other than broad market movements and includes event risk, default risk, and idiosyncratic risk.

Structural position in a foreign currency means a position that is not a trading position and that is:

(1) Subordinated debt, equity, or minority interest in a consolidated subsidiary that is denominated in a foreign currency;

(2) Capital assigned to foreign branches that is denominated in a foreign currency;

(3) A position related to an unconsolidated subsidiary or another item that is denominated in a foreign currency and that is deducted from the [bank]'s tier 1 and tier 2 capital; or

(4) A position designed to hedge a [bank]'s capital ratios or earnings against the effect on paragraphs (1), (2), or (3) of this definition of adverse exchange rate movements.

Term repo-style transaction means a repurchase or reverse repurchase transaction, or a securities borrowing or securities lending transaction, including a transaction in which the [bank] acts as agent for a customer and indemnifies the customer against loss, that has an original maturity in excess of one business day, provided that:

(1) The transaction is based solely on liquid and readily marketable securities or cash;

(2) The transaction is marked-to-market daily and subject to daily margin maintenance requirements;

(3) The transaction is executed under an agreement that provides the [bank] the right to accelerate, terminate, and close-out the transaction on a net basis and to liquidate or set off collateral promptly upon an event of default (including bankruptcy, insolvency, or similar proceeding) of the counterparty, provided that, in any such case, any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions;[45] and

(4) The [bank] has conducted and documented sufficient legal review to conclude with a well-founded basis that the agreement meets the requirements of paragraph (3) of this definition and is legal, valid, binding, and enforceable under applicable law in the relevant jurisdictions.

Tier 1 capital is defined in [the general risk-based capital rules] or [the advanced capital adequacy framework], as applicable.

Tier 2 capital is defined in [the general risk-based capital rules] or [the advanced capital adequacy framework], as applicable.

Trading position means a position that is held by the [bank] for the purpose of short-term resale or with the intent of benefiting from actual or expected short-term price movements, or to lock in arbitrage profits.

Two-way market means a market where there are independent bona fide offers to buy and sell so that a price reasonably related to the last sales price or current bona fide competitive bid and offer quotations can be determined within one day and settled at that price within a relatively short time frame conforming to trade custom.

Underlying exposure means one or more exposures that have been securitized in a securitization transaction.

Value-at-Risk (VaR) means the estimate of the maximum amount that the value of one or more positions could decline due to market price or rate movements during a fixed holding period within a stated confidence interval.

Section 3. Requirements for Application of the Market Risk Capital Rule

(a) *Trading positions.* (1) *Identification of trading positions.* A [bank] must have clearly defined policies and procedures for determining which of its trading assets and trading liabilities are trading positions and which of its trading positions are correlation trading positions. These policies and procedures must take into account:

(i) The extent to which a position, or a hedge of its material risks, can be marked-to-market daily by reference to a two-way market; and

(ii) Possible impairments to the liquidity of a position or its hedge.

(2) *Trading and hedging strategies.* A [bank] must have clearly defined trading and hedging strategies for its trading positions that are approved by senior management of the [bank].

(i) The trading strategy must articulate the expected holding period of, and the market risk associated with, each portfolio of trading positions.

(ii) The hedging strategy must articulate for each portfolio of trading positions the level of market risk the [bank] is willing to accept and must detail the instruments, techniques, and strategies the [bank] will use to hedge the risk of the portfolio.

(b) *Management of covered positions.* (1) *Active management.* A [bank] must have clearly defined policies and procedures for actively managing all covered positions. At a minimum, these policies and procedures must require:

(i) Marking positions to market or to model on a daily basis;

(ii) Daily assessment of the [bank]'s ability to hedge position and portfolio risks, and of the extent of market liquidity;

(iii) Establishment and daily monitoring of limits on positions by a risk control unit independent of the trading business unit;

(iv) Daily monitoring by senior management of information described in paragraphs (b)(1)(i) through (b)(1)(iii) of this section;

(v) At least annual reassessment of established limits on positions by senior management; and

(vi) At least annual assessments by qualified personnel of the quality of market inputs to the valuation process, the soundness of key assumptions, the reliability of parameter estimation in pricing models, and the stability and accuracy of model calibration under alternative market scenarios.

(2) *Valuation of covered positions.* The [bank] must have a process for prudent valuation of its covered positions that includes policies and procedures on the valuation of positions, marking positions to market or to model, independent price verification, and valuation adjustments or reserves. The valuation process must consider, as appropriate, unearned credit spreads, close-out costs, early termination costs, investing and funding costs, liquidity, and model risk.

(c) *Requirements for internal models.* (1) A [bank] must obtain the prior written approval of the [Agency] before using any internal model to calculate its risk-based capital requirement under this appendix.

(2) A [bank] must meet all of the requirements of this section on an ongoing basis. The [bank] must promptly notify the [Agency] when:

(i) The [bank] plans to extend the use of a model that the [Agency] has approved under this appendix to an additional business line or product type;

(ii) The [bank] makes any change to an internal model approved by the [Agency] under this appendix that would result in a material change in the [bank]'s risk-weighted asset amount for a portfolio of covered positions; or

(iii) The [bank] makes any material change to its modeling assumptions.

(3) The [Agency] may rescind its approval of the use of any internal model (in whole

[45] This requirement is met where all transactions under the agreement are (i) executed under U.S. law and (ii) constitute ''securities contracts'' or ''repurchase agreements'' under section 555 or 559, respectively, of the Bankruptcy Code (11 U.S.C. 555 or 559), qualified financial contracts under section 11(e)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)), or netting contracts between or among financial institutions under sections 401–407 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4407), or the Federal Reserve Board's Regulation EE (12 CFR part 231).

or in part) or of the determination of the approach under section 9(a)(2)(ii) of this appendix for a [bank]'s modeled correlation trading positions and determine an appropriate capital requirement for the covered positions to which the model would apply, if the [Agency] determines that the model no longer complies with this appendix or fails to reflect accurately the risks of the [bank]'s covered positions.

(4) The [bank] must periodically, but no less frequently than annually, review its internal models in light of developments in financial markets and modeling technologies, and enhance those models as appropriate to ensure that they continue to meet the [Agency]'s standards for model approval and employ risk measurement methodologies that are most appropriate for the [bank]'s covered positions.

(5) The [bank] must incorporate its internal models into its risk management process and integrate the internal models used for calculating its VaR-based measure into its daily risk management process.

(6) The level of sophistication of a [bank]'s internal models must be commensurate with the complexity and amount of its covered positions. A [bank]'s internal models may use any of the generally accepted approaches, including but not limited to variance-covariance models, historical simulations, or Monte Carlo simulations, to measure market risk.

(7) The [bank]'s internal models must properly measure all the material risks in the covered positions to which they are applied.

(8) The [bank]'s internal models must conservatively assess the risks arising from less liquid positions and positions with limited price transparency under realistic market scenarios.

(9) The [bank] must have a rigorous and well-defined process for re-estimating, re-evaluating, and updating its internal models to ensure continued applicability and relevance.

(10) If a [bank] uses internal models to measure specific risk, the internal models must also satisfy the requirements in paragraph (b)(1) of section 7 of this appendix.

(d) *Control, oversight, and validation mechanisms.* (1) The [bank] must have a risk control unit that reports directly to senior management and is independent from the business trading units.

(2) The [bank] must validate its internal models initially and on an ongoing basis. The [bank]'s validation process must be independent of the internal models' development, implementation, and operation, or the validation process must be subjected to an independent review of its adequacy and effectiveness. Validation must include:

(i) An evaluation of the conceptual soundness of (including developmental evidence supporting) the internal models;

(ii) An ongoing monitoring process that includes verification of processes and the comparison of the [bank]'s model outputs with relevant internal and external data sources or estimation techniques; and

(iii) An outcomes analysis process that includes backtesting. For internal models used to calculate the VaR-based measure, this process must include a comparison of the changes in the [bank]'s portfolio value that would have occurred were end-of-day positions to remain unchanged (therefore, excluding fees, commissions, reserves, net interest income, and intraday trading) with VaR-based measures during a sample period not used in model development.

(3) The [bank] must stress test the market risk of its covered positions at a frequency appropriate to each portfolio, and in no case less frequently than quarterly. The stress tests must take into account concentration risk (including but not limited to concentrations in single issuers, industries, sectors, or markets), illiquidity under stressed market conditions, and risks arising from the [bank]'s trading activities that may not be adequately captured in its internal models.

(4) The [bank] must have an internal audit function independent of business-line management that at least annually assesses the effectiveness of the controls supporting the [bank]'s market risk measurement systems, including the activities of the business trading units and independent risk control unit, compliance with policies and procedures, and calculation of the [bank]'s measures for market risk under this appendix. At least annually, the internal audit function must report its findings to the [bank]'s board of directors (or a committee thereof).

(e) *Internal assessment of capital adequacy.* The [bank] must have a rigorous process for assessing its overall capital adequacy in relation to its market risk. The assessment must take into account risks that may not be captured fully in the VaR-based measure, including concentration and liquidity risk under stressed market conditions.

(f) *Documentation.* The [bank] must adequately document all material aspects of its internal models, management and valuation of covered positions, control, oversight, validation and review processes and results, and internal assessment of capital adequacy.

Section 4. Adjustments to the Risk-Based Capital Ratio Calculations

(a) *Risk-based capital ratio denominators.* A [bank] must calculate its general risk-based capital ratio denominator by following the steps described in paragraphs (a)(1) through (a)(4) of this section. A [bank] subject to [the advanced capital adequacy framework] must use its general risk-based capital ratio denominator for purposes of determining its total risk-based capital ratio and its tier 1 risk-based capital ratio under section 3(a)(2)(ii) and section 3(a)(3)(ii), respectively, of [the advanced capital adequacy framework], provided that the [bank] may not use the supervisory formula approach (SFA) in section 10(b)(2)(vii)(B) of this appendix for purposes of this calculation. A [bank] subject to [the advanced capital adequacy framework] also must calculate an advanced risk-based capital ratio denominator by following the steps in paragraphs (a)(1) through (a)(4) of this section for purposes of determining its total risk-based capital ratio and its tier 1 risk-based capital ratio under sections 3(a)(2)(i) and section 3(a)(3)(i), respectively, of [the advanced capital adequacy framework].

(1) *Adjusted risk-weighted assets.* (i) The [bank] must calculate:

(A) General adjusted risk-weighted assets, which equals risk-weighted assets as determined in accordance with [the general risk-based capital rules] with the adjustments in paragraphs (a)(1)(ii) and, if applicable, (a)(1)(iii) of this section; and

(B) For a [bank] subject to [the advanced capital adequacy framework], advanced adjusted risk-weighted assets, which equal risk-weighted assets as determined in accordance with [the advanced capital adequacy framework] with the adjustments in paragraph (a)(1)(ii) of this section.

(ii) For purposes of calculating its general and advanced adjusted risk-weighted assets under paragraphs (a)(1)(i)(A) and (a)(1)(i)(B) of this section, respectively, the [bank] must exclude the risk-weighted asset amounts of all covered positions (except foreign exchange positions that are not trading positions and over-the-counter derivative positions).

(iii) For purposes of calculating its general adjusted risk-weighted assets under paragraph (a)(1)(i)(A) of this section, a [bank] may exclude receivables that arise from the posting of cash collateral and are associated with qualifying securities borrowing transactions to the extent the receivable is collateralized by the market value of the borrowed securities.

(2) *Measure for market risk.* The [bank] must calculate the general measure for market risk (except, as provided in paragraph (a) of this section, that the [bank] may not use the SFA in section 10(b)(2)(vii)(B) of this appendix for purposes of this calculation), which equals the sum of the VaR-based capital requirement, stressed VaR-based capital requirement, specific risk add-ons, incremental risk capital requirement, comprehensive risk capital requirement, and capital requirement for *de minimis* exposures all as defined under this paragraph (a)(2). A [bank] subject to [the advanced capital adequacy framework] also must calculate the advanced measure for market risk, which equals the sum of the VaR-based capital requirement, stressed VaR-based capital requirement, specific risk add-ons, incremental risk capital requirement, comprehensive risk capital requirement, and capital requirement for *de minimis* exposures as defined under this paragraph (a)(2).

(i) *VaR-based capital requirement.* A [bank]'s VaR-based capital requirement equals the greater of:

(A) The previous day's VaR-based measure as calculated under section 5 of this appendix; or

(B) The average of the daily VaR-based measures as calculated under section 5 of this appendix for each of the preceding 60 business days multiplied by three, except as provided in paragraph (b) of this section.

(ii) *Stressed VaR-based capital requirement.* A [bank]'s stressed VaR-based capital requirement equals the greater of:

(A) The most recent stressed VaR-based measure as calculated under section 6 of this appendix; or

(B) The average of the stressed VaR-based measures as calculated under section 6 of this appendix for each of the preceding 12 weeks multiplied by three, except as provided in paragraph (b) of this section.

(iii) *Specific risk add-ons.* A [bank]'s specific risk add-ons equal any specific risk add-ons that are required under section 7 of this appendix and are calculated in accordance with section 10 of this appendix.

(iv) *Incremental risk capital requirement.* A [bank]'s incremental risk capital requirement equals any incremental risk capital requirement as calculated under section 8 of this appendix.

(v) *Comprehensive risk capital requirement.* A [bank]'s comprehensive risk capital requirement equals any comprehensive risk capital requirement as calculated under section 9 of this appendix.

(vi) *Capital requirement for de minimis exposures.* A [bank]'s capital requirement for *de minimis* exposures equals:

(A) The absolute value of the market value of those *de minimis* exposures that are not captured in the [bank]'s VaR-based measure or under paragraph (a)(2)(vi)(B) of this section; and

(B) With the prior written approval of the [Agency], the capital requirement for any *de minimis* exposures using alternative techniques that appropriately measure the market risk associated with those exposures.

(3) *Market risk equivalent assets.* The [bank] must calculate general market risk equivalent assets as the general measure for market risk (as calculated in paragraph (a)(2) of this section) multiplied by 12.5. A [bank] subject to [the advanced capital adequacy framework] also must calculate advanced market risk equivalent assets as the advanced measure for market risk (as calculated in paragraph (a)(2) of this section) multiplied by 12.5.

(4) *Denominator calculation.* (i) The [bank] must add general market risk equivalent assets (as calculated in paragraph (a)(3) of this section) to general adjusted risk-weighted assets (as calculated in paragraph (a)(1)(i) of this section). The resulting sum is the [bank]'s general risk-based capital ratio denominator.

(ii) A [bank] subject to [the advanced capital adequacy framework] must add advanced market risk equivalent assets (as calculated in paragraph (a)(3) of this section) to advanced adjusted risk-weighted assets (as calculated in paragraph (a)(1)(i) of this section). The resulting sum is the [bank]'s advanced risk-based capital ratio denominator.

(b) *Backtesting.* A [bank] must compare each of its most recent 250 business days' trading losses (excluding fees, commissions, reserves, net interest income, and intraday trading) with the corresponding daily VaR-based measures calibrated to a one-day holding period and at a one-tail, 99.0 percent confidence level. A [bank] must begin backtesting as required by this paragraph no later than one year after the later of January 1, 2013, and the date on which the [bank] becomes subject to this appendix. In the interim, consistent with safety and soundness principles, a [bank] subject to this appendix as of its effective date should continue to follow backtesting procedures in accordance with the [Agency]'s supervisory expectations.

(1) Once each quarter, the [bank] must identify the number of exceptions (that is, the number of business days for which the actual daily net trading loss, if any, exceeds the corresponding daily VaR-based measure) that have occurred over the preceding 250 business days.

(2) A [bank] must use the multiplication factor in table 1 of this appendix that corresponds to the number of exceptions identified in paragraph (b)(1) of this section to determine its VaR-based capital requirement for market risk under paragraph (a)(2)(i) of this section and to determine its stressed VaR-based capital requirement for market risk under paragraph (a)(2)(ii) of this section until it obtains the next quarter's backtesting results, unless the [Agency] notifies the [bank] in writing that a different adjustment or other action is appropriate.

TABLE 1—MULTIPLICATION FACTORS BASED ON RESULTS OF BACKTESTING

Number of exceptions	Multiplication factor
4 or fewer	3.00
5	3.40
6	3.50
7	3.65
8	3.75
9	3.85
10 or more	4.00

Section 5. VaR-Based Measure

(a) *General requirement.* A [bank] must use one or more internal models to calculate daily a VaR-based measure of the general market risk of all covered positions. The daily VaR-based measure also may reflect the [bank]'s specific risk for one or more portfolios of debt and equity positions, if the internal models meet the requirements of paragraph (b)(1) of section 7 of this appendix. The daily VaR-based measure must also reflect the [bank]'s specific risk for any portfolio of correlation trading positions that is modeled under section 9 of this appendix. A [bank] may elect to include term repo-style transactions in its VaR-based measure, provided that the [bank] includes all such term repo-style transactions consistently over time.

(1) The [bank]'s internal models for calculating its VaR-based measure must use risk factors sufficient to measure the market risk inherent in all covered positions. The market risk categories must include, as appropriate, interest rate risk, credit spread risk, equity price risk, foreign exchange risk, and commodity price risk. For material positions in the major currencies and markets, modeling techniques must incorporate enough segments of the yield curve—in no case less than six—to capture differences in volatility and less than perfect correlation of rates along the yield curve.

(2) The VaR-based measure may incorporate empirical correlations within and across risk categories, provided the [bank] validates and demonstrates the reasonableness of its process for measuring correlations. If the VaR-based measure does not incorporate empirical correlations across risk categories, the [bank] must add the separate measures from its internal models used to calculate the VaR-based measure for the appropriate market risk categories (interest rate risk, credit spread risk, equity price risk, foreign exchange rate risk, and/or commodity price risk) to determine its aggregate VaR-based measure.

(3) The VaR-based measure must include the risks arising from the nonlinear price characteristics of options positions or positions with embedded optionality and the sensitivity of the market value of the positions to changes in the volatility of the underlying rates, prices, or other material risk factors. A [bank] with a large or complex options portfolio must measure the volatility of options positions or positions with embedded optionality by different maturities and/or strike prices, where material.

(4) The [bank] must be able to justify to the satisfaction of the [Agency] the omission of any risk factors from the calculation of its VaR-based measure that the [bank] uses in its pricing models.

(5) The [bank] must demonstrate to the satisfaction of the [Agency] the appropriateness of any proxies used to capture the risks of the [bank]'s actual positions for which such proxies are used.

(b) *Quantitative requirements for VaR-based measure.* (1) The VaR-based measure must be calculated on a daily basis using a one-tail, 99.0 percent confidence level, and a holding period equivalent to a 10-business-day movement in underlying risk factors, such as rates, spreads, and prices. To calculate VaR-based measures using a 10-business-day holding period, the [bank] may calculate 10-business-day measures directly or may convert VaR-based measures using holding periods other than 10 business days to the equivalent of a 10-business-day holding period. A [bank] that converts its VaR-based measure in such a manner must be able to justify the reasonableness of its approach to the satisfaction of the [Agency].

(2) The VaR-based measure must be based on a historical observation period of at least one year. Data used to determine the VaR-based measure must be relevant to the [bank]'s actual exposures and of sufficient quality to support the calculation of risk-based capital requirements. The [bank] must update data sets at least monthly or more frequently as changes in market conditions or portfolio composition warrant. For a [bank] that uses a weighting scheme or other method for the historical observation period, the [bank] must either:

(i) Use an effective observation period of at least one year in which the average time lag of the observations is at least six months; or

(ii) Demonstrate to the [Agency] that its weighting scheme is more effective than a weighting scheme with an average time lag of at least six months representing the volatility of the [bank]'s trading portfolio over a full business cycle. A [bank] using this option must update its data more frequently than monthly and in a manner appropriate for the type of weighting scheme.

(c) A [bank] must divide its portfolio into a number of significant subportfolios approved by the [Agency] for subportfolio backtesting purposes. These subportfolios must be sufficient to allow the [bank] and the [Agency] to assess the adequacy of the VaR model at the risk factor level; the [Agency] will evaluate the appropriateness of these subportfolios relative to the value and composition of the [bank]'s covered positions. The [bank] must retain and make available to the [Agency] the following information for each subportfolio for each business day over the previous two years (500 business days), with no more than a 60-day lag:

(1) A daily VaR-based measure for the subportfolio calibrated to a one-tail, 99.0 percent confidence level;

(2) The daily profit or loss for the subportfolio (that is, the net change in price of the positions held in the portfolio at the end of the previous business day); and

(3) The p-value of the profit or loss on each day (that is, the probability of observing a profit that is less than, or a loss that is greater than, the amount reported for purposes of paragraph (c)(2) of this section based on the model used to calculate the VaR-based measure described in paragraph (c)(1) of this section).

Section 6. Stressed VaR-Based Measure

(a) *General requirement.* At least weekly, a [bank] must use the same internal model(s) used to calculate its VaR-based measure to calculate a stressed VaR-based measure.

(b) *Quantitative requirements for stressed VaR-based measure.* (1) A [bank] must calculate a stressed VaR-based measure for its covered positions using the same model(s) used to calculate the VaR-based measure, subject to the same confidence level and holding period applicable to the VaR-based measure under section 5 of this appendix, but with model inputs calibrated to historical data from a continuous 12-month period that reflects a period of significant financial stress appropriate to the [bank]'s current portfolio.

(2) The stressed VaR-based measure must be calculated at least weekly and be no less than the [bank]'s VaR-based measure.

(3) A [bank] must have policies and procedures that describe how it determines the period of significant financial stress used to calculate the [bank]'s stressed VaR-based measure under this section and must be able to provide empirical support for the period used. The [bank] must obtain the prior approval of the [Agency] for, and notify the [Agency] if the [bank] makes any material changes to, these policies and procedures. The policies and procedures must address:

(i) How the [bank] links the period of significant financial stress used to calculate the stressed VaR-based measure to the composition and directional bias of its current portfolio; and

(ii) The [bank]'s process for selecting, reviewing, and updating the period of significant financial stress used to calculate the stressed VaR-based measure and for monitoring the appropriateness of the period to the [bank]'s current portfolio.

(4) Nothing in this section prevents the [Agency] from requiring a [bank] to use a different period of significant financial stress in the calculation of the stressed VaR-based measure.

Section 7. Specific Risk

(a) *General requirement.* A [bank] must use one of the methods in this section to measure the specific risk for each of its debt, equity, and securitization positions with specific risk.

(b) *Modeled specific risk.* A [bank] may use models to measure the specific risk of covered positions as provided in paragraph (a) of section 5 of this appendix (therefore, excluding securitization positions that are not modeled under section 9 of this appendix). A [bank] must use models to measure the specific risk of correlation trading positions that are modeled under section 9 of this appendix.

(1) *Requirements for specific risk modeling.* (i) If a [bank] uses internal models to measure the specific risk of a portfolio, the internal models must:

(A) Explain the historical price variation in the portfolio;

(B) Be responsive to changes in market conditions;

(C) Be robust to an adverse environment, including signaling rising risk in an adverse environment; and

(D) Capture all material components of specific risk for the debt and equity positions in the portfolio. Specifically, the internal models must:

(*1*) Capture event risk and idiosyncratic risk;

(*2*) Capture and demonstrate sensitivity to material differences between positions that are similar but not identical and to changes in portfolio composition and concentrations.

(ii) If a [bank] calculates an incremental risk measure for a portfolio of debt or equity positions under section 8 of this appendix, the [bank] is not required to capture default and credit migration risks in its internal models used to measure the specific risk of those portfolios.

(2) *Specific risk fully modeled for one or more portfolios.* If the [bank]'s VaR-based measure captures all material aspects of specific risk for one or more of its portfolios of debt, equity, or correlation trading positions, the [bank] has no specific risk add-on for those portfolios for purposes of paragraph (a)(2)(iii) of section 4 of this appendix.

(c) *Specific risk not modeled.*

(1) If the [bank]'s VaR-based measure does not capture all material aspects of specific risk for a portfolio of debt, equity, or correlation trading positions, the [bank] must calculate a specific-risk add-on for the portfolio under the standardized measurement method as described in section 10 of this appendix.

(2) A [bank] must calculate a specific risk add-on under the standardized measurement method as described in section 10 of this appendix for all of its securitization positions that are not modeled under section 9 of this appendix.

Section 8. Incremental Risk

(a) *General requirement.* A [bank] that measures the specific risk of a portfolio of debt positions under section 7(b) of this appendix using internal models must calculate at least weekly an incremental risk measure for that portfolio according to the requirements in this section. The incremental risk measure is the [bank]'s measure of potential losses due to incremental risk over a one-year time horizon at a one-tail, 99.9 percent confidence level, either under the assumption of a constant level of risk, or under the assumption of constant positions. With the prior approval of the [Agency], a [bank] may choose to include portfolios of equity positions in its incremental risk model, provided that it consistently includes such equity positions in a manner that is consistent with how the [bank] internally measures and manages the incremental risk of such positions at the portfolio level. If equity positions are included in the model, for modeling purposes default is considered to have occurred upon the default of any debt of the issuer of the equity position. A [bank] may not include correlation trading positions or securitization positions in its incremental risk measure.

(b) *Requirements for incremental risk modeling.* For purposes of calculating the incremental risk measure, the incremental risk model must:

(1) Measure incremental risk over a one-year time horizon and at a one-tail, 99.9 percent confidence level, either under the assumption of a constant level of risk, or under the assumption of constant positions.

(i) A constant level of risk assumption means that the [bank] rebalances, or rolls over, its trading positions at the beginning of each liquidity horizon over the one-year horizon in a manner that maintains the [bank]'s initial risk level. The [bank] must determine the frequency of rebalancing in a manner consistent with the liquidity horizons of the positions in the portfolio. The liquidity horizon of a position or set of positions is the time required for a [bank] to reduce its exposure to, or hedge all of its material risks of, the position(s) in a stressed market. The liquidity horizon for a position or set of positions may not be less than the shorter of three months or the contractual maturity of the position.

(ii) A constant position assumption means that the [bank] maintains the same set of positions throughout the one-year horizon. If a [bank] uses this assumption, it must do so consistently across all portfolios.

(iii) A [bank]'s selection of a constant position or a constant risk assumption must be consistent between the [bank]'s incremental risk model and its comprehensive risk model described in section 9 of this appendix, if applicable.

(iv) A [bank]'s treatment of liquidity horizons must be consistent between the [bank]'s incremental risk model and its comprehensive risk model described in section 9 of this appendix, if applicable.

(2) Recognize the impact of correlations between default and migration events among obligors.

(3) Reflect the effect of issuer and market concentrations, as well as concentrations that can arise within and across product classes during stressed conditions.

(4) Reflect netting only of long and short positions that reference the same financial instrument.

(5) Reflect any material mismatch between a position and its hedge.

(6) Recognize the effect that liquidity horizons have on dynamic hedging strategies. In such cases, a [bank] must:

(i) Choose to model the rebalancing of the hedge consistently over the relevant set of trading positions;

(ii) Demonstrate that the inclusion of rebalancing results in a more appropriate risk measurement;

(iii) Demonstrate that the market for the hedge is sufficiently liquid to permit rebalancing during periods of stress; and

(iv) Capture in the incremental risk model any residual risks arising from such hedging strategies.

(7) Reflect the nonlinear impact of options and other positions with material nonlinear behavior with respect to default and migration changes.

(8) Maintain consistency with the [bank]'s internal risk management methodologies for identifying, measuring, and managing risk.

(c) *Calculation of incremental risk capital requirement.* The incremental risk capital requirement is the greater of:

(1) The average of the incremental risk measures over the previous 12 weeks; or

(2) The most recent incremental risk measure.

Section 9. Comprehensive Risk

(a) *General requirement.* (1) Subject to the prior approval of the [Agency], a [bank] may use the method in this section to measure comprehensive risk, that is, all price risk, for one or more portfolios of correlation trading positions.

(2) A [bank] that measures the price risk of a portfolio of correlation trading positions using internal models must calculate at least weekly a comprehensive risk measure that captures all price risk according to the requirements of this section. The comprehensive risk measure is either:

(i) The sum of:

(A) The [bank]'s modeled measure of all price risk determined according to the requirements in paragraph (b) of this section; and

(B) A surcharge for the [bank]'s modeled correlation trading positions equal to the total specific risk add-on for such positions as calculated under section 10 of this appendix multiplied by 8.0 percent; or

(ii) With approval of the [Agency] and provided the [bank] has met the requirements of this section for a period of at least one year and can demonstrate the effectiveness of the model through the results of ongoing model validation efforts including robust benchmarking, the greater of:

(A) The [bank]'s modeled measure of all price risk determined according to the requirements in paragraph (b) of this section; or

(B) The total specific risk add-on that would apply to the bank's modeled correlation trading positions as calculated under section 10 of this appendix multiplied by 8.0 percent.

(b) *Requirements for modeling all price risk.* If a [bank] uses an internal model to measure the price risk of a portfolio of correlation trading positions:

(1) The internal model must measure comprehensive risk over a one-year time horizon at a one-tail, 99.9 percent confidence level, either under the assumption of a constant level of risk, or under the assumption of constant positions.

(2) The model must capture all material price risk, including but not limited to the following:

(i) The risks associated with the contractual structure of cash flows of the position, its issuer, and its underlying exposures;

(ii) Credit spread risk, including nonlinear price risks;

(iii) The volatility of implied correlations, including nonlinear price risks such as the cross-effect between spreads and correlations;

(iv) Basis risk;

(v) Recovery rate volatility as it relates to the propensity for recovery rates to affect tranche prices; and

(vi) To the extent the comprehensive risk measure incorporates the benefits of dynamic hedging, the static nature of the hedge over the liquidity horizon must be recognized. In such cases, a [bank] must:

(A) Choose to model the rebalancing of the hedge consistently over the relevant set of trading positions;

(B) Demonstrate that the inclusion of rebalancing results in a more appropriate risk measurement;

(C) Demonstrate that the market for the hedge is sufficiently liquid to permit rebalancing during periods of stress; and

(D) Capture in the comprehensive risk model any residual risks arising from such hedging strategies;

(3) The [bank] must use market data that are relevant in representing the risk profile of the [bank]'s correlation trading positions in order to ensure that the [bank] fully captures the material risks of the correlation trading positions in its comprehensive risk measure in accordance with this section; and

(4) The [bank] must be able to demonstrate that its model is an appropriate representation of comprehensive risk in light of the historical price variation of its correlation trading positions.

(c) *Requirements for stress testing.*

(1) A [bank] must at least weekly apply specific, supervisory stress scenarios to its portfolio of correlation trading positions that capture changes in:

(i) Default rates;

(ii) Recovery rates;

(iii) Credit spreads;

(iv) Correlations of underlying exposures; and

(v) Correlations of a correlation trading position and its hedge.

(2) Other requirements. (i) A [bank] must retain and make available to the [Agency] the results of the supervisory stress testing, including comparisons with the capital requirements generated by the [bank]'s comprehensive risk model.

(ii) A [bank] must report to the [Agency] promptly any instances where the stress tests indicate any material deficiencies in the comprehensive risk model.

(d) *Calculation of comprehensive risk capital requirement.* The comprehensive risk capital requirement is the greater of:

(1) The average of the comprehensive risk measures over the previous 12 weeks; or

(2) The most recent comprehensive risk measure.

Section 10. Standardized Measurement Method for Specific Risk

(a) *General requirement.* A [bank] must calculate a total specific risk add-on for each portfolio of debt and equity positions for which the [bank]'s VaR-based measure does not capture all material aspects of specific risk and for all securitization positions that are not modeled under section 9 of this appendix. A [bank] must calculate each specific risk add-on in accordance with the requirements of this section. Notwithstanding any other definition or requirement in this appendix, a position that would have qualified as a debt position or an equity position but for the fact that it qualifies as a correlation trading position under paragraph (2) of the definition of correlation trading position, shall be considered a debt position or an equity position, respectively, for purposes of this section 10.

(1) The specific risk add-on for an individual debt or securitization position that represents sold credit protection is capped at the notional amount of the credit derivative contract. The specific risk add-on for an individual debt or securitization position that represents purchased credit protection is capped at the current market value of the transaction plus the absolute value of the present value of all remaining payments to the protection seller under the transaction. This sum is equal to the value of the protection leg of the transaction.

(2) For debt, equity, or securitization positions that are derivatives with linear payoffs, a [bank] must assign a specific risk-weighting factor to the market value of the effective notional amount of the underlying instrument or index portfolio, except for a securitization position for which the [bank] directly calculates a specific risk add-on using the SFA in paragraph (b)(2)(vii)(B) of this section. A swap must be included as an effective notional position in the underlying instrument or portfolio, with the receiving side treated as a long position and the paying side treated as a short position. For debt, equity, or securitization positions that are derivatives with nonlinear payoffs, a [bank] must risk weight the market value of the effective notional amount of the underlying instrument or portfolio multiplied by the derivative's delta.

(3) For debt, equity, or securitization positions, a [bank] may net long and short positions (including derivatives) in identical issues or identical indices. A [bank] may also net positions in depositary receipts against an opposite position in an identical equity in different markets, provided that the [bank] includes the costs of conversion.

(4) A set of transactions consisting of either a debt position and its credit derivative hedge or a securitization position and its credit derivative hedge has a specific risk add-on of zero if:

(i) The debt or securitization position is fully hedged by a total return swap (or similar instrument where there is a matching of swap payments and changes in market value of the debt or securitization position);

(ii) There is an exact match between the reference obligation of the swap and the debt or securitization position;

(iii) There is an exact match between the currency of the swap and the debt or securitization position; and

(iv) There is either an exact match between the maturity date of the swap and the maturity date of the debt or securitization position; or, in cases where a total return swap references a portfolio of positions with different maturity dates, the total return swap maturity date must match the maturity date of the underlying asset in that portfolio that has the latest maturity date.

(5) The specific risk add-on for a set of transactions consisting of either a debt position and its credit derivative hedge or a securitization position and its credit derivative hedge that does not meet the criteria of paragraph (a)(4) of this section is equal to 20.0 percent of the capital requirement for the side of the transaction with the higher specific risk add-on when:

(i) The credit risk of the position is fully hedged by a credit default swap or similar instrument;

(ii) There is an exact match between the reference obligation of the credit derivative hedge and the debt or securitization position;

(iii) There is an exact match between the currency of the credit derivative hedge and the debt or securitization position; and

(iv) There is either an exact match between the maturity date of the credit derivative hedge and the maturity date of the debt or securitization position; or, in the case where the credit derivative hedge has a standard maturity date:

(A) The maturity date of the credit derivative hedge is within 30 business days of the maturity date of the debt or securitization position; or

(B) For purchased credit protection, the maturity date of the credit derivative hedge is later than the maturity date of the debt or securitization position, but is no later than the standard maturity date for that instrument that immediately follows the maturity date of the debt or securitization position. The maturity date of the credit derivative hedge may not exceed the maturity date of the debt or securitization position by more than 90 calendar days.

(6) The specific risk add-on for a set of transactions consisting of either a debt position and its credit derivative hedge or a securitization position and its credit derivative hedge that does not meet the criteria of either paragraph (a)(4) or (a)(5) of this section, but in which all or substantially all of the price risk has been hedged, is equal to the specific risk add-on for the side of the transaction with the higher specific risk add-on.

(b) *Debt and securitization positions.* (1) The total specific risk add-on for a portfolio of debt or securitization positions is the sum of the specific risk add-ons for individual debt or securitization positions, as computed under this section. To determine the specific risk add-on for individual debt or securitization positions, a [bank] must multiply the absolute value of the current market value of each net long or net short debt or securitization position in the portfolio by the appropriate specific risk-weighting factor as set forth in paragraphs (b)(2)(i) through (b)(2)(vii) of this section.

(2) For the purpose of this section, the appropriate specific risk-weighting factors include:

(i) *Sovereign debt positions.* (A) *In general.* A [bank] must assign a specific risk-weighting factor to a sovereign debt position based on the CRC applicable to the sovereign entity and, as applicable, the remaining contractual maturity of the position, in accordance with table 2. Sovereign debt positions that are backed by the full faith and credit of the United States are treated as having a CRC of 0.

TABLE 2—SPECIFIC RISK-WEIGHTING FACTORS FOR SOVEREIGN DEBT POSITIONS

		Specific risk-weighting factor	Percent
CRC of Sovereign	0–1		0.0
	2–3	Remaining contractual maturity of 6 months or less	0.25
		Remaining contractual maturity of greater than 6 and up to and including 24 months.	1.0
		Remaining contractual maturity exceeds 24 months	1.6
	4–6		8.0
	7		12.0
No CRC			8.0
Default by the Sovereign Entity			12.0

(B) Notwithstanding paragraph (b)(2)(i)(A) of this section, a [bank] may assign to a sovereign debt position a specific risk-weighting factor that is lower than the applicable specific risk-weighting factor in table 2 if:

(*1*) The position is denominated in the sovereign entity's currency;

(*2*) The [bank] has at least an equivalent amount of liabilities in that currency; and

(*3*) The sovereign entity allows banks under its jurisdiction to assign the lower specific risk-weighting factor to the same exposures to the sovereign entity.

(C) A [bank] must assign a 12.0 percent specific risk-weighting factor to a sovereign debt position immediately upon determination that a default has occurred; or if a default has occurred within the previous five years.

(D) A [bank] must assign an 8.0 percent specific risk-weighting factor to a sovereign debt position if the sovereign entity does not have a CRC assigned to it, unless the sovereign debt position must be assigned a higher specific risk-weighting factor under paragraph (b)(2)(i)(C) of this section.

(ii) *Certain supranational entity and multilateral development bank debt positions.* A [bank] may assign a 0.0 percent specific risk-weighting factor to a debt position that is an exposure to the Bank for International Settlements, the European Central Bank, the European Commission, the International Monetary Fund, or an MDB.

(iii) *GSE debt positions.* A [bank] must assign a 1.6 percent specific risk-weighting factor to a debt position that is an exposure to a GSE. Notwithstanding the foregoing, a [bank] must assign an 8.0 percent specific risk-weighting factor to preferred stock issued by a GSE.

(iv) *Depository institution, foreign bank, and credit union debt positions.* (A) Except as provided in paragraph (b)(2)(iv)(B) of this section, a [bank] must assign a specific risk-weighting factor to a debt position that is an exposure to a depository institution, a foreign bank, or a credit union using the specific risk-weighting factor that corresponds to that entity's sovereign of incorporation and, as applicable, the remaining contractual maturity of the position, in accordance with table 3.

TABLE 3—SPECIFIC RISK-WEIGHTING FACTORS FOR DEPOSITORY INSTITUTION, FOREIGN BANK, AND CREDIT UNION DEBT POSITIONS

		Specific risk-weighting factor	Percent
CRC of Sovereign	0–2	Remaining contractual maturity of 6 months or less	0.25
		Remaining contractual maturity of greater than 6 and up to and including 24 months.	1.0
		Remaining contractual maturity exceeds 24 months	1.6
	3		8.0
	4–7		12.0
No CRC			8.0
Default by the Sovereign Entity			12.0

(B) A [bank] must assign a specific risk-weighting factor of 8.0 percent to a debt position that is an exposure to a depository institution or a foreign bank that is includable in the depository institution's or foreign bank's regulatory capital and that is not subject to deduction as a reciprocal holding under the [general risk-based capital rules].

(C) A [bank] must assign a 12.0 percent specific risk-weighting factor to a debt position that is an exposure to a foreign bank immediately upon determination that a default by the foreign bank's sovereign of incorporation has occurred or if a default by the foreign bank's sovereign of incorporation has occurred within the previous five years.

(v) *PSE debt positions.* (A) Except as provided in paragraph (b)(2)(v)(B) of this section, a [bank] must assign a specific risk-weighting factor to a debt position that is an exposure to a PSE based on the specific risk-weighting factor that corresponds to the PSE's sovereign of incorporation and to the position's categorization as a general obligation or revenue obligation and, as applicable, the remaining contractual maturity of the position, as set forth in tables 4 and 5.

(B) A [bank] may assign a lower specific risk-weighting factor than would otherwise apply under tables 4 and 5 to a debt position that is an exposure to a foreign PSE if:

(*1*) The PSE's sovereign of incorporation allows banks under its jurisdiction to assign a lower specific risk-weighting factor to such position; and

(*2*) The specific risk-weighting factor is not lower than the risk weight that corresponds to the PSE's sovereign of incorporation in accordance with tables 4 and 5.

(C) A [bank] must assign a 12.0 percent specific risk-weighting factor to a PSE debt position immediately upon determination that a default by the PSE's sovereign of incorporation has occurred or if a default by the PSE's sovereign of incorporation has occurred within the previous five years.

TABLE 4—SPECIFIC RISK-WEIGHTING FACTORS FOR PSE GENERAL OBLIGATION DEBT POSITIONS

		General obligation specific risk-weighting factor (in percent)	Percent
CRC of Sovereign	0–2	Remaining contractual maturity of 6 months or less	0.25
		Remaining contractual maturity of greater than 6 and up to and including 24 months.	1.0
		Remaining contractual maturity exceeds 24 months	1.6
	3		8.0
	4–7		12.0
No CRC			8.0
Default by the Sovereign Entity			12.0

TABLE 5—SPECIFIC RISK-WEIGHTING FACTORS FOR PSE REVENUE OBLIGATION DEBT POSITIONS

		Revenue obligation specific risk-weighting factor	Percent
CRC of Sovereign	0–1	Remaining contractual maturity of 6 months or less	0.25
		Remaining contractual maturity of greater than 6 and up to and including 24 months.	1.0
		Remaining contractual maturity exceeds 24 months	1.6
	2–3		8.0
	4–7		12.0

TABLE 5—SPECIFIC RISK-WEIGHTING FACTORS FOR PSE REVENUE OBLIGATION DEBT POSITIONS—Continued

No CRC		8.0
Default by the Sovereign Entity		12.0

(vi) *Corporate debt positions.* Except as otherwise provided in paragraph (b)(2)(vi)(B), a [bank] must assign a specific risk-weighting factor to a corporate debt position in accordance with the investment grade methodology in paragraph (b)(2)(vi)(A) of this section.

(A) *Investment grade methodology.* (*1*) For corporate debt positions that are exposures to entities that have issued and outstanding publicly traded instruments, a [bank] must assign a specific risk-weighting factor based on the category and remaining contractual maturity of the position, in accordance with table 6. For purposes of this paragraph (A), the [bank] must determine whether the position is in the investment grade or not investment grade category.

TABLE 6—SPECIFIC RISK-WEIGHTING FACTORS FOR CORPORATE DEBT POSITIONS UNDER THE INVESTMENT GRADE METHODOLOGY

Category	Remaining contractual maturity	Specific risk-weighting factor (in percent)
Investment Grade	6 months or less	0.50
	Greater than 6 and up to and including 24 months	2.00
	Greater than 24 months	4.00
Not-investment Grade		12.00

(*2*) A [bank] must assign an 8.0 percent specific risk-weighting factor for corporate debt positions that are exposures to entities that do not have publicly traded instruments outstanding.

(B) *Limitations.* (*1*) A [bank] must assign a specific risk-weighting factor of at least 8.0 percent to an interest-only mortgage-backed security that is not a securitization position.

(*2*) A [bank] shall not assign a corporate debt position a specific risk-weighting factor that is lower than the specific risk-weighting factor that corresponds to the CRC of the issuer's sovereign of incorporation in table 1.

(vii) *Securitization positions.* (A) *General requirements.* (*1*) A [bank] that does not use the [advanced capital adequacy framework] must assign a specific risk-weighting factor to a securitization position using either the simplified supervisory formula approach (SSFA) in accordance with section 11 of this appendix or assign a specific risk-weighting factor of 100 percent to the position.

(*2*) A [bank] that uses the [advanced capital adequacy framework] must calculate a specific risk add-on for a securitization position using the SFA in section 45 of [the advanced capital adequacy framework] and in accordance with paragraph (b)(2)(vii)(B) of this section if the [bank] and the securitization position each qualifies to use the SFA under the [advanced capital adequacy framework]. A [bank] that uses the [advanced capital adequacy framework] and that has a securitization position that does not qualify for the SFA may assign a specific risk-weighting factor to the securitization position using the SSFA in accordance with section 11 of this appendix or assign a specific risk-weighting factor of 100 percent to the position.

(*3*) A [bank] must treat a short securitization position as if it is a long securitization position solely for calculation purposes when using the SFA in paragraph (b)(2)(vii)(B) or the SSFA in section 11 of this appendix.

(B) *SFA.* To calculate the specific risk add-on for a securitization position using the SFA, a [bank] that is subject to [the advanced capital adequacy framework] must set the specific risk add-on for the position equal to the risk-based capital requirement, calculated under section 45 of [the advanced capital adequacy framework].

(C) *SSFA.* To use the SSFA to determine the specific risk-weighting factor for a securitization position, a [bank] must calculate the specific risk-weighting factor in accordance with section 11 of this appendix.

(D) *Nth-to-default credit derivatives.* A [bank] must determine a specific risk add-on using the SFA in paragraph (b)(2)(vii)(B), or assign a specific risk-weighting factor using the SSFA in section 11 of this appendix to an nth-to-default credit derivative in accordance with this paragraph (D), irrespective of whether the [bank] is a net protection buyer or net protection seller. A [bank] must determine its position in the nth-to-default credit derivative as the largest notional dollar amount of all the underlying exposures.

(*1*) For purposes of determining the specific risk add-on using the SFA in paragraph (b)(2)(vii)(B) or the specific risk-weighting factor for an nth-to-default credit derivative using the SSFA in section 11 of this appendix, the [bank] must calculate the attachment point and detachment point of its position as follows:

(*i*) The attachment point (parameter A) is the ratio of the sum of the notional amounts of all underlying exposures that are subordinated to the [bank]'s position to the total notional amount of all underlying exposures. For purposes of using the SFA to calculate the specific add-on for its position in an nth-to-default credit derivative, parameter A must be set equal to *the credit enhancement level* (L) input to the SFA formula. In the case of a first-to-default credit derivative, there are no underlying exposures that are subordinated to the [bank]'s position. In the case of a second-or-subsequent-to-default credit derivative, the smallest (n-1) notional amounts of the underlying exposure(s) are subordinated to the [bank]'s position.

(*ii*) The detachment point (parameter D) equals the sum of parameter A plus the ratio of the notional amount of the [bank]'s position in the nth-to-default credit derivative to the total notional amount of all underlying exposures. For purposes of using the SFA to calculate the specific risk add-on for its position in an nth-to-default credit derivative, parameter D must be set to equal L plus the *thickness of tranche* (T) input to the SFA formula.

(*2*) A [bank] that does not use the SFA to determine a specific risk-add on, or the SSFA to determine a specific risk-weighting factor for its position in an nth-to-default credit derivative must assign a specific risk-weighting factor of 100 percent to the position.

(c) *Modeled correlation trading positions.* For purposes of calculating the comprehensive risk measure for modeled correlation trading positions under either paragraph (a)(2)(i) or (a)(2)(ii) of section 9 of this appendix, the total specific risk add-on is the greater of:

(1) The sum of the [bank]'s specific risk add-ons for each net long correlation trading position calculated under this section; or

(2) The sum of the [bank]'s specific risk add-ons for each net short correlation trading position calculated under this section.

(d) *Non-modeled securitization positions.* For securitization positions that are not correlation trading positions and for securitizations that are correlation trading positions not modeled under section 9 of this appendix, the total specific risk add-on is the greater of:

(1) The sum of the [bank]'s specific risk add-ons for each net long securitization position calculated under this section; or

(2) The sum of the [bank]'s specific risk add-ons for each net short securitization position calculated under this section.

(e) *Equity positions.* The total specific risk add-on for a portfolio of equity positions is the sum of the specific risk add-ons of the individual equity positions, as computed under this section. To determine the specific risk add-on of individual equity positions, a [bank] must multiply the absolute value of the current market value of each net long or net short equity position by the appropriate specific risk-weighting factor as determined under this paragraph:

(1) The [bank] must multiply the absolute value of the current market value of each net long or net short equity position by a specific risk-weighting factor of 8.0 percent. For equity positions that are index contracts comprising a well-diversified portfolio of equity instruments, the absolute value of the current market value of each net long or net short position is multiplied by a specific risk-weighting factor of 2.0 percent.[46]

(2) For equity positions arising from the following futures-related arbitrage strategies, a [bank] may apply a 2.0 percent specific risk-weighting factor to one side (long or short) of each position with the opposite side exempt from an additional capital requirement:

(i) Long and short positions in exactly the same index at different dates or in different market centers; or

(ii) Long and short positions in index contracts at the same date in different, but similar indices.

(3) For futures contracts on main indices that are matched by offsetting positions in a basket of stocks comprising the index, a [bank] may apply a 2.0 percent specific risk-weighting factor to the futures and stock basket positions (long and short), provided that such trades are deliberately entered into and separately controlled, and that the basket of stocks is comprised of stocks representing at least 90.0 percent of the capitalization of the index. A main index refers to the Standard & Poor's 500 Index, the FTSE All-World Index, and any other index for which the [bank] can demonstrate to the satisfaction of the [Agency] that the equities represented in the index have liquidity, depth of market, and size of bid-ask spreads comparable to equities in the Standard & Poor's 500 Index and FTSE All-World Index.

(f) *Due diligence requirements.* (1) A [bank] must demonstrate to the satisfaction of the [Agency] a comprehensive understanding of the features of a securitization position that would materially affect the performance of the position by conducting and documenting the analysis set forth in paragraph (f)(2) of this section. The [bank]'s analysis must be commensurate with the complexity of the securitization position and the materiality of the position in relation to capital.

(2) To support the demonstration of its comprehensive understanding, for each securitization position a [bank] must:

(i) Conduct an analysis of the risk characteristics of a securitization position prior to acquiring the position and document such analysis within three business days after acquiring the position, considering:

(A) Structural features of the securitization that would materially impact the performance of the position, for example, the contractual cash flow waterfall, waterfall-related triggers, credit enhancements, liquidity enhancements, market value triggers, the performance of organizations that service the position, and deal-specific definitions of default;

(B) Relevant information regarding the performance of the underlying credit exposure(s), for example, the percentage of loans 30, 60, and 90 days past due; default rates; prepayment rates; loans in foreclosure; property types; occupancy; average credit score or other measures of creditworthiness; average loan-to-value ratio; and industry and geographic diversification data on the underlying exposure(s);

(C) Relevant market data of the securitization, for example, bid-ask spreads, most recent sales price and historical price volatility, trading volume, implied market rating, and size, depth and concentration level of the market for the securitization; and

(D) For resecuritization positions, performance information on the underlying securitization exposures, for example, the issuer name and credit quality, and the characteristics and performance of the exposures underlying the securitization exposures; and

(ii) On an on-going basis (no less frequently than quarterly), evaluate, review, and update as appropriate the analysis required under paragraph (f)(1) of this section for each securitization position.

Section 11. Simplified Supervisory Formula Approach

(a) *General requirements.* To use the SSFA to determine the specific risk-weighting factor for a securitization position, a [bank] must have data that enables it to assign accurately the parameters described in paragraph (b) of this section. Data used to assign the parameters described in paragraph (b) of this section must be the most currently available data and no more than 91 calendar days old. A [bank] that does not have the appropriate data to assign the parameters described and defined, for purposes of this section, in paragraph (b) of this section must assign a specific risk-weighting factor of 100 percent to the position.

(b) *SSFA parameters.* To calculate the specific risk-weighting factor for a securitization position using the SSFA, a [bank] must have accurate information on the five inputs to the SSFA calculation described in paragraphs (b)(1) through (b)(5) of this section:

(1) K_G is the weighted-average (with unpaid principal used as the weight for each exposure) total capital requirement of the underlying exposures calculated using the [general risk-based capital rules]. K_G is expressed as a decimal value between zero and 1 (that is, an average risk weight of 100 percent represents a value of K_G equal to .08).

(2) Parameter W is expressed as a decimal value between zero and one. Parameter W is the ratio of the sum of the dollar amounts of any underlying exposures within the securitized pool that meet any of the criteria as set forth in paragraphs (i) through (vi) of this paragraph (b)(2) to the ending balance, measured in dollars, of underlying exposures:

(i) Ninety days or more past due;

(ii) Subject to a bankruptcy or insolvency proceeding;

(iii) In the process of foreclosure;

(iv) Held as real estate owned;

(v) Has contractually deferred interest payments for 90 days or more; or

(vi) Is in default.

(3) Parameter A is the attachment point for the position, which represents the threshold at which credit losses will first be allocated to the position. Parameter A equals the ratio of the current dollar amount of underlying exposures that are subordinated to the position of the [bank] to the current dollar amount of underlying exposures. Any reserve account funded by the accumulated cash flows from the underlying exposures that is subordinated to the position that contains the [bank]'s securitization exposure may be included in the calculation of parameter A to the extent that cash is present in the account. Parameter A is expressed as a decimal value between zero and one.

(4) Parameter D is the detachment point for the position, which represents the threshold at which credit losses of principal allocated to the position would result in a total loss of principal. Parameter D equals parameter A plus the ratio of the current dollar amount of the securitization positions that are *pari passu* with the position (that is, have equal seniority with respect to credit risk) to the current dollar amount of the underlying exposures. Parameter D is expressed as a decimal value between zero and one.

(5) A supervisory calibration parameter, p, is equal to 0.5 for securitization positions that are not resecuritization positions and equal to 1.5 for resecuritization positions.

(c) *Mechanics of the SSFA.* K_G and W are used to calculate K_A, the augmented value of K_G, which reflects the observed credit quality of the underlying pool of exposures. K_A is defined in paragraph (d) of this section. The values of parameters A and D, relative to K_A determine the specific risk-weighting factor assigned to a position as described in this paragraph and paragraph (d) of this section. The specific risk-weighting factor assigned to a securitization position, or portion of a position, as appropriate, is the larger of the specific risk-weighting factor determined in accordance with this paragraph and paragraph (d) of this section and a specific risk-weighting factor of 1.6 percent.

(1) When the detachment point, parameter D, for a securitization position is less than or equal to K_A, the position must be assigned a specific risk-weighting factor of 100 percent.

(2) When the attachment point, parameter A, for a securitization position is greater than or equal to K_A, the [bank] must calculate the specific risk-weighting factor in accordance with paragraph (d) of this section.

[46] A portfolio is well-diversified if it contains a large number of individual equity positions, with no single position representing a substantial portion of the portfolio's total market value.

(3) When A is less than K_A and D is greater than K_A, the specific risk-weighting factor is a weighted-average of 1.00 and K_{SSFA} calculated in accordance with paragraph (d) of this section, but with the parameter A revised to be set equal to K_A. For the purpose of this weighted-average calculation:

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(i) The weight assigned to 1.00 equals $\frac{K_A - A}{D - A}$.

(ii) The weight assigned to K_{SSFA} equals $\frac{D - K_A}{D - A}$. The specific risk-weighting factor will be set equal to:

$$SRWF = 100 \times \left[\left(\frac{K_A - A}{D - A}\right) \times 1.00\right] + \left[\left(\frac{D \quad K_A}{D - A}\right) \times K_{SSFA}\right]$$

(d) <u>SSFA equation</u>. (1) The [bank] must define the following parameters:

$$K_A = (1 - W) \cdot K_G + (0.5 \cdot W)$$

$$a = -\frac{1}{p \cdot K_A}$$

$$u = D - K_A$$

$$l = A - K_A$$

$e = 2.71628$, the base of the natural logarithms.

(2) Then the [bank] must calculate K_{SSFA} according to the following equation:

$$K_{SSFA} = \frac{e^{a \cdot u} - e^{a \cdot l}}{a(u - l)}$$

(3) The specific risk-weighting factor for the position (expressed as a percent) is equal to $K_{SSFA} \times 100$.

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Section 12. Market Risk Disclosures

(a) *Scope.* A [bank] must comply with this section unless it is a consolidated subsidiary of a bank holding company or a depository institution that is subject to these requirements or of a non-U.S. banking organization that is subject to comparable public disclosure requirements in its home jurisdiction. A [bank] must make quantitative disclosures publicly each calendar quarter. If a significant change occurs, such that the most recent reporting amounts are no longer reflective of the [bank]'s capital adequacy and risk profile, then a brief discussion of this change and its likely impact must be provided as soon as practicable thereafter. Qualitative disclosures that typically do not change each quarter may be disclosed annually, provided any significant changes are disclosed in the interim. If a [bank] believes that disclosure of specific commercial or financial information would prejudice seriously its position by making public certain information that is either proprietary or confidential in nature, the [bank] is not required to disclose these specific items, but must disclose more general information about the subject matter of the requirement, together with the fact that, and the reason why, the specific items of information have not been disclosed.

(b) *Disclosure policy.* The [bank] must have a formal disclosure policy approved by the board of directors that addresses the [bank]'s approach for determining its market risk disclosures. The policy must address the associated internal controls and disclosure controls and procedures. The board of directors and senior management must ensure that appropriate verification of the disclosures takes place and that effective internal controls and disclosure controls and procedures are maintained. One or more senior officers of the [bank] must attest that the disclosures meet the requirements of this appendix, and the board of directors and senior management are responsible for establishing and maintaining an effective internal control structure over financial reporting, including the disclosures required by this section.

(c) *Quantitative disclosures.*

(1) For each material portfolio of covered positions, the [bank] must disclose publicly the following information at least quarterly:

(i) The high, low, and mean VaR-based measures over the reporting period and the VaR-based measure at period-end;

(ii) The high, low, and mean stressed VaR-based measures over the reporting period and the stressed VaR-based measure at period-end;

(iii) The high, low, and mean incremental risk capital requirements over the reporting period and the incremental risk capital requirement at period-end;

(iv) The high, low, and mean comprehensive risk capital requirements over the reporting period and the comprehensive risk capital requirement at period-end, with the period-end requirement broken down into appropriate risk classifications (for example, default risk, migration risk, correlation risk);

(v) Separate measures for interest rate risk, credit spread risk, equity price risk, foreign exchange risk, and commodity price risk used to calculate the VaR-based measure; and

(vi) A comparison of VaR-based estimates with actual gains or losses experienced by the [bank], with an analysis of important outliers.

(2) In addition, the [bank] must disclose publicly the following information at least quarterly:

(i) The aggregate amount of on-balance sheet and off-balance sheet securitization positions by exposure type; and

(ii) The aggregate amount of correlation trading positions.

(d) *Qualitative disclosures.* For each material portfolio of covered positions, the [bank] must disclose publicly the following information at least annually, or more frequently in the event of material changes for each portfolio:

(1) The composition of material portfolios of covered positions;

(2) The [bank]'s valuation policies, procedures, and methodologies for covered positions including, for securitization positions, the methods and key assumptions used for valuing such positions, any significant changes since the last reporting period, and the impact of such change;

(3) The characteristics of the internal models used for purposes of this appendix. For the incremental risk capital requirement and the comprehensive risk capital requirement, this must include:

(i) The approach used by the [bank] to determine liquidity horizons;

(ii) The methodologies used to achieve a capital assessment that is consistent with the required soundness standard; and

(iii) The specific approaches used in the validation of these models;

(4) A description of the approaches used for validating and evaluating the accuracy of internal models and modeling processes for purposes of this appendix;

(5) For each market risk category (that is, interest rate risk, credit spread risk, equity price risk, foreign exchange risk, and commodity price risk), a description of the stress tests applied to the positions subject to the factor;

(6) The results of the comparison of the [bank]'s internal estimates for purposes of this appendix with actual outcomes during a sample period not used in model development;

(7) The soundness standard on which the [bank]'s internal capital adequacy assessment under this appendix is based, including a description of the methodologies used to achieve a capital adequacy assessment that is consistent with the soundness standard;

(8) A description of the [bank]'s processes for monitoring changes in the credit and market risk of securitization positions, including how those processes differ for resecuritization positions; and

(8) A description of the [bank]'s policy governing the use of credit risk mitigation to mitigate the risks of securitization and resecuritization positions.

[End of Common Text]

List of Subjects

12 CFR Part 3

Administrative practices and procedure, Capital, National banks, Reporting and recordkeeping requirements, Risk.

12 CFR Part 208

Confidential business information, Crime, Currency, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Securities.

12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

12 CFR Part 325

Administrative practice and procedure, Banks, banking, Capital Adequacy, Reporting and recordkeeping requirements, Savings associations, State non-member banks.

Adoption of Common Rule

The adoption of the final 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 3 of chapter I of title 12 of the Code of Federal Regulations are amended as follows:

PART 3—MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

■ 1. The authority citation for part 3 continues to read as follows:

Authority: 12 U.S.C. 93a, 161, 1818, 3907 and 3909.

■ 2. Appendix B to part 3 is revised to read as set forth at the end of the common preamble.

Appendix B to Part 3—Risk-Based Capital Guidelines; Market Risk

■ 3. Appendix B to part 3 is further amended by:

■ a. Removing ''[the advanced capital adequacy framework]'' wherever it appears and adding in its place ''Appendix C to this part'';

■ b. Removing ''[Agency]'' wherever it appears and adding in its place ''OCC'';

■ c. Removing ''[Agency's]'' wherever it appears and adding in its place ''OCC's'';

■ d. Removing ''[bank]'' wherever it appears and adding in its place ''bank'';

■ e. Removing ''[banks]'' wherever it appears and adding in its place ''banks'';

■ f. Removing ''[Call Report or FR Y–9C]'' wherever it appears and adding in its place ''Call Report'';

■ g. Removing ''[regulatory report]'' wherever it appears and adding in its place ''Consolidated Reports of Condition and Income (Call Report)'';

■ h. Removing ''[the general risk-based capital rules]'' wherever it appears and adding in its place ''Appendix A to 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, parts 208 and 225 of chapter II of title 12 of the Code of Federal Regulations are amended as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

■ 4. The authority citation for part 208 continues to read as follows:

Authority: 12 U.S.C. 24, 36, 92a, 93a, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1816, 1818, 1820(d)(9), 1833(j), 1828(o), 1831, 1831o, 1831p–1, 1831r–1, 1831w, 1831x, 1835a, 1882, 2901–2907, 3105, 3310, 3331–3351, and 3905–3909; 15 U.S.C. 78b, 78I(b), 78l(i), 780–4(c)(5), 78q, 78q–1, and 78w, 1681s, 1681w, 6801, and 6805; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106 and 4128.

■ 5. Appendix E to part 208 is revised to read as set forth at the end of the common preamble.

Appendix E to Part 208—Capital Adequacy Guidelines for State Member Banks: Market Risk

■ 6. Appendix E to part 208 is amended by:

■ a. Removing ''[the advanced capital adequacy framework]'' wherever it appears and adding in its place ''Appendix F to this part'';

■ b. Removing ''[bank]'' wherever it appears and adding in its place ''bank'';

■ c. Removing ''[banks]'' wherever it appears and adding in its place ''banks'';

■ d. Removing ''[Call Report or FR Y–9C]'' wherever it appears and adding in its place ''Call Report'';

■ e. Removing ''[regulatory report]'' wherever it appears and adding in its place ''Consolidated Reports of Condition and Income (Call Report)'';

■ f. Removing ''[the general risk-based capital rules]'' wherever it appears and adding in its place ''Appendix A to this part''.

■ g. Removing ''[Agency]'' wherever it appears in section 1 and adding in its place ''Board'';

■ h. Removing ''[Agency]'' in the definition of covered position in section 2 and adding in its place ''Board or the appropriate Reserve Bank, with concurrence of the Board,'';

■ i. Removing ''[Agency]'' in the definitions of multilateral development bank and securitization in section 2 and adding in its place ''Board'';

■ j. Removing ''[Agency]'' in the definition of covered position in section 2 and adding in its place ''Board or the appropriate Reserve Bank, with concurrence of the Board,'';

■ k. Revising section 3(c) to read as follows:

Section 3. Requirements for Application of the Market Risk Capital Rule

* * * * *

(c) *Requirements for internal models.* (1) A bank must obtain the prior written approval of the Board or the appropriate Reserve Bank, with concurrence of the Board, before using any internal model to calculate its risk-based capital requirement under this appendix.

(2) A bank must meet all of the requirements of this section on an ongoing basis. The bank must promptly notify the Board and the appropriate Reserve Bank when:

(i) The bank plans to extend the use of a model that the Board or the appropriate Reserve Bank, with concurrence of the Board, has approved under this appendix to an additional business line or product type;

(ii) The bank makes any change to an internal model approved by the Board or the appropriate Reserve Bank, with concurrence of the Board, under this appendix that would result in a material change in the bank's risk-weighted asset amount for a portfolio of covered positions; or

(iii) The bank makes any material change to its modeling assumptions.

(3) The Board or the appropriate Reserve Bank, with concurrence of the Board, may rescind its approval of the use of any internal model (in whole or in part) or of the determination of the approach under section 9(a)(2)(ii) of this appendix for a bank's modeled correlation trading positions and determine an appropriate capital requirement for the covered positions to which the model would apply, if the Board or the appropriate Reserve Bank, with concurrence of the Board, determines that the model no longer complies with this appendix or fails to reflect accurately the risks of the bank's covered positions.

* * * * *

■ l. Removing ''[Agency]'' in section 3(e)(4) and adding in its place ''Board'';

■ m. Removing ''[Agency]'' in the section 4(a)(2)(vi)(B) and adding in its place ''Board or the appropriate Reserve Bank, with concurrence of the Board,'';

■ n. Revising section (4)(b) to read as follows:

Section 4. Adjustments to the Risk-Based Capital Ratio Calculations

* * * * *

(b) *Backtesting.* A bank must compare each of its most recent 250 business days' trading losses (excluding fees, commissions, reserves, net interest income, and intraday trading) with the corresponding daily VaR-based measures calibrated to a one-day holding period and at a one-tail, 99.0 percent confidence level. A bank must begin backtesting as required by this paragraph no later than one year after the later of January 1, 2013 and the date on which the bank becomes subject to this appendix. In the interim, consistent with safety and soundness principles, a bank subject to this appendix as of its effective date should continue to follow backtesting procedures in accordance with the supervisory expectations of the Board or the appropriate Reserve Bank.

* * * * *

■ o. Removing ''[Agency]'' in section 4(b)(2) and adding in its place ''Board or the appropriate Reserve Bank, with the concurrence of the Board,'';

■ p. Removing ''[Agency]'' in sections 5(a)(4) and 5(a)(5) and adding in its place ''Board or the appropriate Reserve Bank, with concurrence of the Board,'';

■ q. Removing ''[Agency]'' in sections 5(b)(1) and 5(b)(2)(ii) and adding in its place ''Board or the appropriate Reserve Bank, with concurrence of the Board,'';

* * * * *

■ r. Revising section 5(c) to read as follows:

Section 5. VaR-Based Measure

* * * * *

(c) A bank must divide its portfolio into a number of significant subportfolios approved by the Board or the appropriate Reserve Bank, with concurrence of the Board, for subportfolio backtesting purposes. These subportfolios must be sufficient to allow the bank and the Board or the appropriate Reserve Bank, with concurrence of the Board, to assess the adequacy of the VaR model at the risk factor level; the Board or the appropriate Reserve Bank, with concurrence of the Board, will evaluate the appropriateness of these subportfolios relative to the value and composition of the bank's covered positions. The bank must retain and make available to the Board and the appropriate Reserve Bank the following information for each subportfolio for each business day over the previous two years (500 business days), with no more than a 60-day lag:

* * * * *

■ s. Revising section 6(b)(3) to read as follows:

* * * * *

(3) A bank must have policies and procedures that describe how it determines the period of significant financial stress used to calculate the bank's stressed VaR-based measure under this section and must be able to provide empirical support for the period used. The bank must obtain the prior approval of the Board or the appropriate Reserve Bank, with concurrence of the Board, for, and notify the Board and the appropriate Reserve Bank if the bank makes any material changes to, these policies and procedures. The policies and procedures must address:

* * * * *

■ t. Removing ''[Agency]'' in section 6(b)(4) and adding in its place ''Board or the appropriate Reserve Bank, with concurrence of the Board,'';

■ u. Removing ''[Agency]'' in section 8(a) and adding in its place ''Board or the appropriate Reserve Bank, with concurrence of the Board,'';

■ v. Removing ''[Agency]'' in sections 9(a)(1) and 9(a)(2)(ii) and adding in its place ''Board or the appropriate Reserve Bank, with concurrence of the Board,'';

■ w. Removing ''[Agency]'' in sections 9(c)(2)(i) and (ii) wherever it appears and adding in its place ''Board and the appropriate Reserve Bank'';

■ x. Removing ''[Agency]'' in sections 10(e) and (f) and adding in its place ''Board or the appropriate Reserve Bank, with concurrence of the Board,'';

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

■ 7. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3310, 3331–3351, 3907, and 3909; 15 U.S.C. 1681s, 1681w, 6801 and 6805.

■ 8. Appendix E to part 225 is revised to read as set forth at the end of the common preamble.

Appendix E to Part 225—Capital Adequacy Guidelines for Bank Holding Companies: Market Risk

■ 9. Appendix E is amended by:

■ a. Removing ''[the advanced capital adequacy framework]'' wherever it appears and adding in its place ''Appendix G to this part'';

■ b. Removing ''[bank]'' wherever it appears and adding in its place ''bank holding company'';

■ c. Removing ''[banks]'' wherever it appears and adding in its place ''bank holding companies'';

■ d. Removing ''[Call Report or FR Y–9C]'' wherever it appears and adding in its place ''FR Y–9C'';

■ e. Removing ''[regulatory report]'' wherever it appears and adding in its place ''Consolidated Financial Statements for Bank Holding Companies (FR Y–9C)''; and

■ f. Removing ''[the general risk-based capital rules]'' wherever it appears and adding in its place ''Appendix A to this part''.

■ g. Removing ''[Agency]'' wherever it appears in section 1 and adding in its place ''Board'';

■ h. Removing ''[Agency]'' in the definition of covered position in section 2 and adding in its place ''Board or the appropriate Reserve Bank, with concurrence of the Board'';

■ i. Removing ''[Agency]'' in the definitions of multilateral development bank and securitization in section 2 and adding in its place ''Board'';

■ j. Removing ''[Agency]'' in the definition of covered position in section 2 and adding in its place ''Board or the appropriate Reserve Bank, with concurrence of the Board'';

■ k. Revising section 3(c) to read as follows:

Section 3. Requirements for Application of the Market Risk Capital Rule

* * * * *

(c) *Requirements for internal models.* (1) A bank holding company must obtain the prior written approval of the Board or the appropriate Reserve Bank, with concurrence of the Board, before using any internal model to calculate its risk-based capital requirement under this appendix.

(2) A bank holding company must meet all of the requirements of this section on an ongoing basis. The bank holding company must promptly notify the Board and the appropriate Reserve Bank when:

(i) The bank holding company plans to extend the use of a model that the Board or the appropriate Reserve Bank, with concurrence of the Board has approved under this appendix to an additional business line or product type;

(ii) The bank holding company makes any change to an internal model approved by the Board or the appropriate Reserve Bank, with concurrence of the Board, under this appendix that would result in a material change in the bank holding company's risk-weighted asset amount for a portfolio of covered positions; or

(iii) The bank holding company makes any material change to its modeling assumptions.

(3) The Board or the appropriate Reserve Bank, with concurrence of the Board, may rescind its approval of the use of any internal model (in whole or in part) or of the determination of the approach under section 9(a)(2)(ii) of this appendix for a bank holding company's modeled correlation trading positions and determine an appropriate capital requirement for the covered positions to which the model would apply, if the Board or the appropriate Reserve Bank, with concurrence of the Board, determines that the model no longer complies with this appendix or fails to reflect accurately the risks of the bank holding company's covered positions.

* * * * *

■ l. Removing ''[Agency]'' in section 3(e)(4) and adding in its place ''Board'';

■ m. Removing ''[Agency]'' in the section 4(a)(2)(vi)(B) and adding in its place ''Board or the appropriate Reserve Bank, with concurrence of the Board'';

■ n. Revising section (4)(b) to read as follows:

Section 4. Adjustments to the Risk-Based Capital Ratio Calculations

* * * * *

(b) *Backtesting.* A bank holding company must compare each of its most recent 250 business days' trading losses (excluding fees, commissions, reserves, net interest income, and intraday trading) with the corresponding daily VaR-based measures calibrated to a one-day holding period and at a one-tail, 99.0 percent confidence level. A bank holding company must begin backtesting as required by this paragraph no later than one year after the later of January 1, 2013 and the date on which the bank holding company becomes subject to this appendix. In the interim, consistent with safety and soundness principles, a bank holding company subject to this appendix as of its effective date should continue to follow backtesting procedures in accordance with the supervisory expectations of the Board or the appropriate Reserve Bank.

* * * * *

■ o. Removing ''[Agency]'' in section 4(b)(2) and adding in its place ''Board or the appropriate Reserve Bank, with the concurrence of the Board'';

■ p. Removing ''[Agency]'' in sections 5(a)(4) and 5(a)(5) and adding in its place ''Board or the appropriate Reserve Bank, with concurrence of the Board'';

■ q. Removing ''[Agency]'' in sections 5(b)(1) and 5(b)(2)(ii) and adding in its place ''Board or the appropriate Reserve Bank, with concurrence of the Board'';

■ r. Revising section 5(c) to read as follows:

Section 5. VaR-based Measure

* * * * *

(c) A bank holding company must divide its portfolio into a number of significant subportfolios approved by the Board or the appropriate Reserve Bank, with concurrence of the Board, for subportfolio backtesting purposes. These subportfolios must be sufficient to allow the bank holding company and the Board or the appropriate Reserve Bank, with concurrence of the Board, to assess the adequacy of the VaR model at the risk factor level; the Board or the appropriate Reserve Bank, with concurrence of the Board, will evaluate the appropriateness of these subportfolios relative to the value and composition of the bank holding company's covered positions. The bank holding company must retain and make available to the Board and the appropriate Reserve Bank the following information for each subportfolio for each business day over the previous two years (500 business days), with no more than a 60-day lag:

* * * * *

■ s. Revising section 6(b)(3) to read as follows:

* * * * *

(3) A bank holding company must have policies and procedures that describe how it determines the period of significant financial stress used to calculate the bank holding company's stressed VaR-based measure under this section and must be able to provide empirical support for the period used. The bank holding company must obtain the prior approval of the Board or the appropriate Reserve Bank, with concurrence of the Board, for, and notify the Board and the appropriate Reserve Bank if the bank holding company makes any material changes to, these policies and procedures. The policies and procedures must address:

* * * * *

■ t. Removing ''[Agency]'' in section 6(b)(4) and adding in its place ''Board or the appropriate Reserve Bank, with concurrence of the Board'';

■ u. Removing ''[Agency]'' in section 8(a) and adding in its place ''Board or the appropriate Reserve Bank, with concurrence of the Board'';

■ v. Removing ''[Agency]'' in sections 9(a)(1) and 9(a)(2)(ii) and adding in its place ''Board or the appropriate Reserve Bank, with concurrence of the Board'';

■ w. Removing ''[Agency]'' in sections 9(c)(2)(i) and (ii) wherever it appears and adding in its place ''Board and the appropriate Reserve Bank'';

■ x. Removing ''[Agency]'' in sections 10(e) and (f) and adding in its place ''Board or the appropriate Reserve Bank, with concurrence of the Board,'';

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the common preamble, part 325 of chapter III of title 12 of the Code of Federal Regulations is amended as follows:

PART 325—CAPITAL MAINTENANCE

■ 10. The authority citation for part 325 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 1835, 3907, 3909, 4808; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, 2355, as amended by Pub. L. 103–325, 108 Stat. 2160, 2233 (12 U.S.C. 1828 note); Pub. L. 102–242, 105 Stat. 2236, 2386, as amended by Pub. L. 102–550, 106 Stat. 3672, 4089 (12 U.S.C. 1828 note).

■ 11. Appendix C to part 325 is revised to read as set forth at the end of the common preamble.

Appendix C to Part 325—Risk-Based Capital for State Nonmember Banks: Market Risk

■ 12. Appendix C is further amended by:

■ a. Removing ''[Agency]'' wherever it appears and adding in its place ''FDIC'';

■ b. Removing ''[Agency's]'' wherever it appears and adding in its place ''FDIC's'';

■ c. Removing ''[bank]'' wherever it appears and adding in its place ''bank'';

■ d. Removing ''[banks]'' wherever it appears and adding in its place ''banks'';

■ e. Removing [Call Report or FR Y–9C] wherever it appears and adding in its place ''Call Report'';

■ f. Removing ''[the advanced capital adequacy framework]'' wherever it appears and adding in its place ''Appendix D to this part'';

■ g. Removing ''[regulatory report]'' wherever it appears and adding in its place ''Consolidated Reports of Condition and Income (Call Report)'';

■ h. Removing ''[the general risk-based capital rules]'' wherever it appears and adding in its place ''Appendix A to this part''.

Dated: June 11, 2012.

Thomas J. Curry,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, July 3, 2012.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, this 12th day of June, 2012.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2012–16759 Filed 8–10–12; 8:45 am]

BILLING CODE 4810–33–P; 6714–10–P

FEDERAL REGISTER

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Part VI

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Final Frameworks for Early-Season Migratory Bird Hunting Regulations; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

[Docket No. FWS–R9–MB–2012–0005: FF09M21200–123–FXMB1231099BPP0L2]

RIN 1018–AX97

Migratory Bird Hunting; Final Frameworks for Early-Season Migratory Bird Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes final early-season frameworks from which the States, Puerto Rico, and the Virgin Islands may select season dates, limits, and other options for the 2012–13 migratory bird hunting seasons. Early seasons are those that generally open prior to October 1, and include seasons in Alaska, Hawaii, Puerto Rico, and the Virgin Islands. The effect of this final rule is to facilitate the selection of hunting seasons by the States and Territories to further the annual establishment of the early-season migratory bird hunting regulations.

DATES: This rule takes effect on August 30, 2012.

ADDRESSES: States and Territories should send their season selections to: Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, ms MBSP–4107–ARLSQ, 1849 C Street NW., Washington, DC 20240. You may inspect comments during normal business hours at the Service's office in room 4107, 4501 N. Fairfax Drive, Arlington, Virginia, or at *http://www.regulations.gov* at Docket No. FWS–R9–MB–2012–0005.

FOR FURTHER INFORMATION CONTACT: Ron W. Kokel, U.S. Fish and Wildlife Service, Department of the Interior, MS MBSP–4107–ARLSQ, 1849 C Street NW., Washington, DC 20240; (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 2012

On April 17, 2012, we published in the **Federal Register** (77 FR 23094) a proposal to amend 50 CFR part 20. The proposal provided a background and overview of the migratory bird hunting regulations process, and addressed the establishment of seasons, limits, and other regulations for hunting migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. Major steps in the 2012–13 regulatory cycle relating to open public meetings and **Federal Register** notifications were also identified in the April 17 proposed rule. Further, we explained that all sections of subsequent documents outlining hunting frameworks and guidelines were organized under numbered headings. Subsequent documents will refer only to numbered items requiring attention. Therefore, it is important to note that we omit those items requiring no attention, and remaining numbered items might be discontinuous or appear incomplete.

On May 17, 2012, we published in the **Federal Register** (77 FR 29516) a second document providing supplemental proposals for early- and late-season migratory bird hunting regulations. The May 17 supplement also provided detailed information on the 2012–13 regulatory schedule and announced the Service Regulations Committee (SRC) and Flyway Council meetings.

On June 12, 2012, we published in the **Federal Register** (77 FR 34931) a third document revising our previously announced dates of the June 2012 SRC meetings.

On June 19 and 20, 2012, we held open meetings with the Flyway Council Consultants where the participants reviewed information on the current status of migratory shore and upland game birds and developed recommendations for the 2012–13 regulations for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the Virgin Islands; special September waterfowl seasons in designated States; special sea duck seasons in the Atlantic Flyway; and extended falconry seasons. In addition, we reviewed and discussed preliminary information on the status of waterfowl as it relates to the development and selection of the regulatory packages for the 2012–13 regular waterfowl seasons.

On July 20, 2012, we published in the **Federal Register** (77 FR 42920) a fourth document specifically dealing with the proposed frameworks for early-season regulations. We published the proposed frameworks for late-season regulations (primarily hunting seasons that start after October 1 and most waterfowl seasons not already established) in an August 17, 2012, **Federal Register** (77 FR 49868).

This document is the sixth in a series of proposed, supplemental, and final rulemaking documents. It establishes final frameworks from which States may select season dates, shooting hours, and daily bag and possession limits for the 2012–13 season. These selections will be published in the **Federal Register** as amendments to §§ 20.101 through 20.107, and § 20.109 of title 50 CFR part 20.

Population Status and Harvest

Information on the status of waterfowl and information on the status and harvest of migratory shore and upland game birds, including detailed information on methodologies and results, is available at the address indicated under **FOR FURTHER INFORMATION CONTACT** or from our Web site at *http://www.fws.gov/migratorybirds/NewsPublicationsReports.html.*

Review of Public Comments

The preliminary proposed rulemaking (April 17 **Federal Register**) opened the public comment period for migratory game bird hunting regulations and announced the proposed regulatory alternatives for the 2012–13 duck hunting season. Comments concerning early-season issues and the proposed alternatives are summarized below and numbered in the order used in the April 17 **Federal Register** document. Only the numbered items pertaining to early-seasons issues and the proposed regulatory alternatives for which we received written comments are included. Consequently, the issues do not follow in consecutive numerical or alphabetical order.

We received recommendations from all four Flyway Councils. Some recommendations supported continuation of last year's frameworks. Due to the comprehensive nature of the annual review of the frameworks performed by the Councils, support for continuation of last year's frameworks is assumed for items for which no recommendations were received. Council recommendations for changes in the frameworks are summarized below.

General

Written Comments: An individual commenter provided several comments protesting the entire migratory bird hunting regulations process, the killing of all migratory birds, and the lack of accepting electronic public comments.

Service Response: Our long-term objectives continue to include providing opportunities to harvest portions of certain migratory game bird populations and to limit harvests to levels compatible with each population's ability to maintain healthy, viable numbers. Having taken into account the zones of temperature and the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory birds, we believe that the hunting seasons provided for herein are compatible with the current status of migratory bird populations and long-term population goals. Additionally, we are obligated to, and do, give serious consideration to all information received as public comment. While there are problems inherent with any type of representative management of public-trust resources, we believe that the Flyway-Council system of migratory bird management has been a longstanding example of State-Federal cooperative management since its establishment in 1952. However, as always, we continue to seek new ways to streamline and improve the process.

Regarding the comment concerning our acceptance, or lack thereof, of electronic public comments, we do accept electronic comments submitted through the official Federal eRulemaking portal (*http://www.regulations.gov*). Public comment methods are identified in the **ADDRESSES** sections of the documents we published in the **Federal Register** on April 17, 2012 (77 FR 23094); May 17, 2012 (77 FR 29516); and July 20, 2012 (77 FR 42920).

1. Ducks

Categories used to discuss issues related to duck harvest management are: (A) General Harvest Strategy; (B) Regulatory Alternatives, including specification of framework dates, season lengths, and bag limits; (C) Zones and Split Seasons; and (D) Special Seasons/Species Management. The categories correspond to previously published issues/discussions, and only those containing substantial recommendations are discussed below.

D. Special Seasons/Species Management

i. Special Teal Seasons

Regarding the regulations for this year, utilizing the criteria developed for the teal season harvest strategy, this year's estimate of 9.2 million blue-winged teal from the traditional survey area indicates that a 16-day September teal season in the Atlantic, Central, and Mississippi Flyways is appropriate for 2012.

4. Canada Geese

A. Special Seasons

Council Recommendations: The Central Flyway Council recommended that we increase the daily bag limit framework from 8 to 15 for North Dakota and South Dakota during the special early Canada goose hunting season in September.

The Pacific Flyway Council recommended increasing the daily bag limit in the Pacific Flyway portion of Wyoming from two to three geese, and increasing the possession limit from four to six birds during the special September season.

Service Response: We agree with the Central Flyway Council's request to increase the Canada goose daily bag limit in North Dakota and South Dakota. Last year, we increased the daily bag limit in North Dakota from 5 to 8 geese in an effort to address increasing numbers of resident Canada geese (76 FR 54052, August 30, 2011). In 2010, we increased daily bag limits in South Dakota, Nebraska, Kansas, and Oklahoma during their special early Canada goose seasons (75 FR 52873, August 30, 2010). The Special Early Canada Goose hunting season is generally designed to reduce or control overabundant resident Canada geese populations. Increasing the daily bag limit from 8 to 15 geese may help both States reduce or control existing high populations of resident Canada geese, which greatly exceed population objectives. In 2012, the estimated spring population in the portion of Western Prairie and Great Plains Populations range included in the May Waterfowl Breeding Population and Habitat Survey (WBPHS) was 1.8 million geese. This estimate was 54 percent higher than last year's estimate of 1.17 million and has increased an average of 10 percent per year since 2003.

Regarding the increase in the daily bag limit in Wyoming, we agree. As the Pacific Flyway Council notes in their recommendation, the 2011 Rocky Mountain Population (RMP) breeding population index (BPI) was 120,363, with a 3-year average BPI of 139,298. Further, the 2012 RMP Midwinter Index (MWI) of 166,994 showed a 38 percent increase from the previous year's index and was the highest on record. All estimates exceed levels in the management plan which allow for harvest liberalization (80,000). An increase in the daily bag limit is expected to result in minimal increases in Canada goose harvest rates and allow Wyoming to address some localized goose depredation issues.

B. Regular Seasons

Council Recommendations: The Mississippi Flyway Council recommended that the framework opening date for all species of geese for the regular goose seasons in Michigan and Wisconsin be September 16, 2012.

Service Response: We concur. Michigan, beginning in 1998, and Wisconsin, beginning in 1989, have opened their regular Canada goose seasons prior to the Flyway-wide framework opening date to address resident goose management concerns in these States. As we have previously stated (73 FR 50678, August 27, 2008), we agree with the objective to increase harvest pressure on resident Canada geese in the Mississippi Flyway and will continue to consider the opening dates in both States as exceptions to the general Flyway opening date, to be reconsidered annually. We note that the most recent resident Canada goose estimate for the Mississippi Flyway was 1.76 million birds in 2012, which was 8 percent higher than the 2011 estimate, and well above the Flyway's population goal of 1.18 to 1.40 million birds.

9. Sandhill Cranes

Council Recommendations: The Central and Pacific Flyway Councils recommend using the 2012 Rocky Mountain Population (RMP) sandhill crane harvest allocation of 1,270 birds as proposed in the allocation formula described in the management plan for this population. The Pacific Flyway Council also recommended an expansion of the hunting area for RMP greater sandhill crane hunting in Arizona and the establishment of a new RMP sandhill crane hunt area in Idaho. (We note that Councils' recommendation to establish a new RMP sandhill crane hunt area in northwest Colorado, identified in the May 17 proposed rule, was withdrawn by both Councils at the June 19–20 SRC meetings.)

Written Comments: The Colorado Crane Conservation Coalition stated concerns about the harvest of RMP cranes, particularly those in proposed new hunt areas of Arizona, Colorado, and Idaho, and questioned the validity of the data we use to promulgate annual hunting regulations.

An individual believed that the data used to support crane harvest-management decisions were insufficient, and advocated that such decisions be allowed only after a thorough scientific review of the data and publication of peer-reviewed articles.

Service Response: We agree with the Central and Pacific Flyway Councils' recommendations on the RMP sandhill crane harvest allocation of 1,270 birds for the 2012–13 season, as outlined in the RMP sandhill crane management plan's harvest allocation formula. The objective for the RMP sandhill crane is to manage for a stable population index of 17,000–21,000 cranes determined by an average of the three most recent, reliable September (fall pre-migration) surveys. Additionally, the RMP sandhill crane management plan allows for the regulated harvest of cranes when the population index exceeds 15,000 cranes.

In 2011, 17,494 cranes were counted in the September survey and the most recent 3-year average for the RMP sandhill crane fall index is 19,626 birds. Both the new hunt area in Idaho and the expansion of the existing hunt area in Arizona are allowed under the management plan.

Regarding the comments concerning the harvest of RMP cranes and questioning the validity of the data we use to promulgate annual hunting regulations, RMP sandhill cranes have been hunted in one or more States since 1981. Although abundance surveys for the RMP have been in place since 1984, we have used a fall pre-migration survey in the States of Montana, Idaho, Utah, Wyoming, and Colorado to monitor the numbers of these birds since 1987. The fall 2011 count of the RMP was 17,494 birds, which is only slightly lower than the first official fall count of 18,036 birds in 1997, and 10 percent lower than the long-term average. Additionally, because counts from surveys conducted during migration periods can be variable, depending on annual phenology and weather events, we use a 3-year average count when developing harvest regulations. The most recent 3-year average is within the range (18,295 to 21,614 birds) of 3-year average counts since 1997. Thus, we believe there is no evidence of a sustained decline in the numbers of RMP cranes.

We recognize that counts from surveys during migration can be highly variable, particularly at small scales. Thus, we believe that analyzing trends at small scales from these types of surveys can lead to inappropriate conclusions about bird status. Rather, the overall status of the birds is of primary importance, and we believe the overall survey area for the RMP is sufficiently large to encompass most of the pre-migration staging areas and provides a good index to annual abundance of the RMP.

In addition to surveys to estimate abundance, we and our partners also annually monitor the harvest and recruitment of RMP cranes. All of this information is used in calculating an annual allowable harvest for these birds to ensure that hunting mortality is commensurate with their annual population status. Although not scientifically peer-reviewed, the management plan, data collection protocols, and harvest strategy were developed by professional wildlife biologists and managers and are designed to result in a sustainable harvest. Following the harvest strategy laid out in the management plan has not resulted in any detrimental impacts to the RMP since hunting was first allowed in 1981. The allowable annual harvest for the RMP is allocated to the States using an agreed-upon formula in the management plan. Addition, or removal, of hunt areas does not change the calculation of the annual allowable harvest. Although the allocation among and within States may change in response to modifying harvest areas, overall harvest on the population is not increased as new areas are added. Thus, the addition of proposed new hunt areas in Colorado (which was subsequently withdrawn and will not be implemented this year), Idaho, and Arizona should not impact the overall status of the RMP. States periodically change hunt areas to address changes in crane use of areas, depredation, and other issues to either increase or decrease numbers of cranes in certain areas. As a result, numbers of birds at smaller (e.g., State) scales may change. If such area-specific changes occur, the States can be more restrictive than the Federal regulations.

14. Woodcock

Last year, we implemented an interim harvest strategy for woodcock for a period of 5 years (2011–15) (76 FR 19876, April 8, 2011). The interim harvest strategy provides a transparent framework for making regulatory decisions for woodcock season length and bag limit while we work to improve monitoring and assessment protocols for this species. Utilizing the criteria developed for the interim strategy, the 3-year average for the Singing Ground Survey indices and associated confidence intervals fall within the ''moderate package'' for both the Eastern and Central Management Regions. As such, a ''moderate season'' for both management regions for the 2012–13 woodcock hunting season is appropriate for 2012. Specifics of the interim harvest strategy can be found at *http://www.fws.gov/migratorybirds/NewsPublicationsReports.html.*

15. Band-Tailed Pigeons

Written Comments: An individual commented that there should be no hunting season for the Pacific Coast population of band-tailed pigeons. The request was based on perceived wide-spread landscape changes, specifically the lack of food items in British Columbia, Washington, and Oregon resulting from current forest management practices (including use of herbicides), and in California resulting from fire and drought.

Service Response: Management of the Pacific Coast population band-tailed pigeons is detailed in a plan endorsed by the Pacific Flyway Council. The long-term objectives include providing opportunities to harvest portions of certain migratory bird populations and to limit harvests to levels compatible with each population's ability to maintain healthy, viable numbers. Based on the harvest strategy and current data, the prescribed regulatory alternative for the Pacific Coast States (California, Oregon, Washington, and Nevada) during the 2012–13 hunting season is the restrictive regulatory alternative. This represents no change from the previous year. While studies do indicate that food availability does appear to be a major determinant of band-tailed pigeon abundance, distribution, and productivity, two independent surveys provide little or no evidence that abundance of Pacific Coast pigeons decreased during the recent 8 or 10 years. Thus, we believe that the hunting seasons provided herein are consistent with current population status and long-term population goals for band-tailed pigeons.

16. Mourning Doves

Council Recommendations: The Atlantic and Mississippi Flyway Councils recommended use of the ''moderate'' season framework for States within the Eastern Management Unit population of mourning doves, resulting in a 70-day season and 15-bird daily bag limit. The daily bag limit could be composed of mourning doves and white-winged doves, singly or in combination.

The Mississippi and Central Flyway Councils recommend the use of the standard (or ''moderate'') season package of a 15-bird daily bag limit and a 70-day season for the 2012–13 mourning dove season in the States within the Central Management Unit. They also recommended that the Special White-winged Dove Area in Texas be expanded to Interstate Highway 37 in the 2013–14 season.

The Pacific Flyway Council recommended use of the ''moderate'' season framework for States in the Western Management Unit (WMU) population of doves, which represents no change from last year's frameworks.

Service Response: In 2008, we accepted and endorsed the interim harvest strategies for the Central, Eastern, and Western Management Units (73 FR 50678, August 27, 2008). As we stated then, the interim mourning dove harvest strategies are a step towards implementing the Mourning Dove National Strategic Harvest Plan (Plan) that was approved by all four Flyway Councils in 2003. The Plan represents a new, more informed means of decision-making for dove harvest management besides relying solely on traditional roadside counts of mourning doves as indicators of population trend. However, recognizing that a more comprehensive, national approach would take time to develop, we requested the development of interim harvest strategies, by management unit, until the elements of the Plan can be fully implemented. In 2009, the interim harvest strategies were successfully employed and implemented in all three Management Units (74 FR 36870, July 24, 2009).

This year, based on the interim harvest strategies and current population status, we agree with the recommended selection of the ''moderate'' season frameworks for doves in the Eastern, Central, and Western Management Units.

Regarding the Central Flyway Council's recommendation to expand the Special White-winged Dove Area in Texas, we support the Council's recommendation to provide additional hunting opportunities for white-winged doves. However, we believe an important tenet of special regulations is that harvest pressure be effectively directed primarily at target stocks. While we believe that the expanding white-winged dove population in Texas can support additional harvest, and support the geographic expansion of the Special White-winged Dove Area, we note that about 40 percent of the harvest in the current Special White-winged Dove Area is comprised of mourning doves. We believe this proportion is higher than that which should occur during a special season that targets white-winged doves. Therefore, to reduce the proportion of non-target species taken during this season, we will reduce the bag limit of mourning doves from 4 to 2 doves within the aggregate bag of 15 doves during this season throughout the Special White-winged Dove Area. The changes will take effect during the 2013–14 hunting season.

NEPA Consideration

NEPA considerations are covered by the programmatic document ''Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14),'' filed with the Environmental Protection Agency on June 9, 1988. We published a notice of availability in the **Federal Register** on June 16, 1988 (53 FR 22582). We published our Record of Decision on August 18, 1988 (53 FR 31341). In addition, an August 1985 environmental assessment entitled ''Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands'' is available from the address indicated under the caption **FOR FURTHER INFORMATION CONTACT.**

In a notice published in the September 8, 2005, **Federal Register** (70 FR 53376), we announced our intent to develop a new Supplemental Environmental Impact Statement (SEIS) for the migratory bird hunting program. Public scoping meetings were held in the spring of 2006, as detailed in a March 9, 2006, **Federal Register** (71 FR 12216). We released the draft SEIS on July 9, 2010 (75 FR 39577). The draft SEIS is available either by writing to the address indicated under **FOR FURTHER INFORMATION CONTACT** or by viewing our Web site at *http://www.fws.gov/migratorybirds.*

Endangered Species Act Consideration

Section 7 of the Endangered Species Act, as amended (16 U.S.C. 1531–1543; 87 Stat. 884), provides that, ''The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act'' (and) shall ''insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat * * *.'' Consequently, we conducted formal consultations to ensure that actions resulting from these regulations would not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations are included in a biological opinion, which concluded that the regulations are not likely to jeopardize the continued existence of any endangered or threatened species. Additionally, these findings may have caused modification of some regulatory measures previously proposed, and the final frameworks reflect any such modifications. Our biological opinions resulting from this section 7 consultation are public documents available for public inspection at the address indicated under **ADDRESSES**.

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is significant because it will have an annual effect of $100 million or more on the economy.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

An economic analysis was prepared for the 2008–09 season. This analysis was based on data from the 2006 National Hunting and Fishing Survey, the most recent year for which data are available (see discussion in Regulatory Flexibility Act section below). This analysis estimated consumer surplus for three alternatives for duck hunting (estimates for other species are not quantified due to lack of data). The alternatives are (1) Issue restrictive regulations allowing fewer days than those issued during the 2007–08 season, (2) Issue moderate regulations allowing more days than those in alternative 1, and (3) Issue liberal regulations identical to the regulations in the 2007–08 season. For the 2008–09 season, we chose alternative 3, with an estimated consumer surplus across all flyways of $205–$270 million. We also chose alternative 3 for the 2009–10 and the 2010–11 seasons. At this time, we are proposing no changes to the season frameworks for the 2011–12 season, and as such, we will again consider these three alternatives. However, final frameworks for waterfowl will be dependent on population status information available later this year. For these reasons, we have not conducted a new economic analysis, but the 2008–09 analysis is part of the record for this rule and is available at *http://www.fws.gov/migratorybirds/NewReportsPublications/SpecialTopics/SpecialTopics.html#HuntingRegs* or at *http://www.regulations.gov* at Docket No. FWS–R9–MB–2012–0005.

Regulatory Flexibility Act

The annual migratory bird hunting regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail as part of the 1981 cost-benefit analysis. This analysis was revised annually from 1990–95. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis), which was subsequently updated in 1996, 1998, 2004, and 2008. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The 2008 Analysis was based on the 2006 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend approximately $1.2 billion at small businesses in 2008. Copies of the Analysis are available upon request from the Division of Migratory Bird Management (see **ADDRESSES**) or from our Web site at *http://www.fws.gov/migratorybirds/NewReportsPublications/SpecialTopics/SpecialTopics.html#HuntingRegs* or at *http://www.regulations.gov* at Docket No. FWS–R9–MB–2012–0005.

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule will have an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we are not deferring the effective date under the exemption contained in 5 U.S.C. 808(1).

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, subpart K, are utilized in the formulation of migratory game bird hunting regulations. Specifically, the Office of Management and Budget (OMB) has approved the information collection requirements of our Migratory Bird Surveys and assigned control number 1018–0023 (expires 4/30/2014). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. OMB has also approved the information collection requirements of the Alaska Subsistence Household Survey, an associated voluntary annual household survey used to determine levels of subsistence take in Alaska, and assigned control number 1018–0124 (expires 4/30/2013). A Federal 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.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.,* that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this rule, has determined that this rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, this rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, this rule allows hunters to exercise otherwise unavailable privileges and, therefore, reduce restrictions on the use of private and public property.

Energy Effects—Executive Order 13211

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this rule is a significant regulatory action under Executive Order 12866, it is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally-recognized Indian tribes and have determined that there are no effects on Indian trust resources. However, in the April 17 **Federal Register**, we solicited proposals for special migratory bird hunting regulations for certain Tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands for the 2012–13 migratory bird hunting season. The resulting proposals were contained in a separate August 16, 2012, proposed rule (77 FR 49680). By virtue of these actions, we have consulted with Tribes affected by this rule.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections regarding the hunting of migratory birds, and we employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and tribes to determine which seasons meet their individual needs. Any State or Indian tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Regulations Promulgation

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, we intend that the public be given the greatest possible opportunity to comment. Thus, when the preliminary proposed rulemaking was published, we established what we believed were the longest periods possible for public comment. In doing this, we recognized that when the comment period closed, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, States would have insufficient time to select season dates and limits; to communicate those selections to us; and to establish and publicize the necessary regulations and procedures to implement their decisions. We therefore find that ''good cause'' exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these frameworks will, therefore, take effect immediately upon publication.

Therefore, under authority of the Migratory Bird Treaty Act (July 3, 1918), as amended (16 U.S.C. 703–711), we prescribe final frameworks setting forth the species to be hunted, the daily bag and possession limits, the shooting hours, the season lengths, the earliest opening and latest closing season dates, and hunting areas, from which State conservation agency officials will select hunting season dates and other options. Upon receipt of season selections from these officials, we will publish a final rulemaking amending 50 CFR part 20 to reflect seasons, limits, and shooting hours for the conterminous United States for the 2012–13 season.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 2012–13 hunting season are authorized under 16 U.S.C. 703–712 and 16 U.S.C. 742 a–j.

Dated: August 9, 2012.

Michael J. Bean,

Acting Assistant Secretary for Fish and Wildlife and Parks.

Final Regulations Frameworks for 2012–13 Early Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act and delegated authorities, the Department of the Interior approved the following frameworks, which prescribe season lengths, bag limits, shooting hours, and outside dates within which States may select hunting seasons for certain migratory game birds between September 1, 2012, and March 10, 2013.

General

Dates: All outside dates noted below are inclusive.

Shooting and Hawking (taking by falconry) Hours: Unless otherwise specified, from one-half hour before sunrise to sunset daily.

Possession Limits: Unless otherwise specified, possession limits are twice the daily bag limit.

Permits: For some species of migratory birds, the Service authorizes the use of permits to regulate harvest or monitor their take by sport hunters, or both. In many cases (e.g., tundra swans, some sandhill crane populations), the Service determines the amount of harvest that may be taken during hunting seasons during its formal regulations-setting process, and the States then issue permits to hunters at levels predicted to result in the amount of take authorized by the Service. Thus, although issued by States, the permits would not be valid unless the Service approved such take in its regulations.

These Federally authorized, State-issued permits are issued to individuals, and only the individual whose name and address appears on the permit at the time of issuance is authorized to take migratory birds at levels specified in the permit, in accordance with provisions of both Federal and State regulations governing the hunting season. The permit must be carried by the permittee when exercising its provisions and must be presented to any law enforcement officer upon request. The permit is not transferrable or assignable to another individual, and may not be sold, bartered, traded, or otherwise provided to another person. If the permit is altered or defaced in any way, the permit becomes invalid.

Flyways and Management Units

Waterfowl Flyways

Atlantic Flyway—includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Mississippi Flyway—includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

Central Flyway—includes Colorado (east of the Continental Divide), Kansas, Montana (Counties of Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except the Jicarilla Apache Indian Reservation), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

Pacific Flyway—includes Alaska, Arizona, California, Idaho, Nevada, Oregon, Utah, Washington, and those portions of Colorado, Montana, New Mexico, and Wyoming not included in the Central Flyway.

Management Units

Mourning Dove Management Units

Eastern Management Unit—All States east of the Mississippi River, and Louisiana.

Central Management Unit—Arkansas, Colorado, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming.

Western Management Unit—Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington.

Woodcock Management Regions

Eastern Management Region—Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Central Management Region—Alabama, Arkansas, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, and Wisconsin.

Other geographic descriptions are contained in a later portion of this document.

Definitions

Dark geese: Canada geese, white-fronted geese, brant (except in Alaska, California, Oregon, Washington, and the Atlantic Flyway), and all other goose species, except light geese.

Light geese: snow (including blue) geese and Ross's geese.

Waterfowl Seasons in the Atlantic Flyway

In the Atlantic Flyway States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Jersey, North Carolina, Pennsylvania, and Virginia, where Sunday hunting is prohibited Statewide by State law, all Sundays are closed to all take of migratory waterfowl (including mergansers and coots).

Special September Teal Season

Outside Dates: Between September 1 and September 30, an open season on all species of teal may be selected by the following States in areas delineated by State regulations:

Atlantic Flyway—Delaware, Florida, Georgia, Maryland, North Carolina, South Carolina, and Virginia.

Mississippi Flyway—Alabama, Arkansas, Illinois, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Ohio, and Tennessee.

Central Flyway—Colorado (part), Kansas, Nebraska (part), New Mexico (part), Oklahoma, and Texas.

Hunting Seasons and Daily Bag Limits: Not to exceed 16 consecutive hunting days in the Atlantic, Mississippi, and Central Flyways. The daily bag limit is 4 teal.

Shooting Hours:

Atlantic Flyway—One-half hour before sunrise to sunset, except in Maryland, where the hours are from sunrise to sunset.

Mississippi and Central Flyways—One-half hour before sunrise to sunset, except in the States of Arkansas, Illinois, Indiana, Missouri, and Ohio, where the hours are from sunrise to sunset.

Special September Duck Seasons

Florida, Kentucky and Tennessee: In lieu of a special September teal season, a 5-consecutive-day season may be selected in September. The daily bag limit may not exceed 4 teal and wood ducks in the aggregate, of which no more than 2 may be wood ducks.

Iowa: Iowa may hold up to 5 days of its regular duck hunting season in September. All ducks that are legal during the regular duck season may be taken during the September segment of the season. The September season segment may commence no earlier than the Saturday nearest September 20 (September 22). The daily bag and possession limits will be the same as those in effect last year but are subject to change during the late-season regulations process. The remainder of the regular duck season may not begin before October 10.

Special Youth Waterfowl Hunting Days

Outside Dates: States may select 2 days per duck-hunting zone, designated as ''Youth Waterfowl Hunting Days,'' in addition to their regular duck seasons. The days must be held outside any regular duck season on a weekend, holidays, or other non-school days when youth hunters would have the maximum opportunity to participate. The days may be held up to 14 days before or after any regular duck-season frameworks or within any split of a regular duck season, or within any other open season on migratory birds.

Daily Bag Limits: The daily bag limits may include ducks, geese, mergansers, coots, moorhens, and gallinules and will be the same as those allowed in the regular season. Flyway species and area restrictions will remain in effect.

Shooting Hours: One-half hour before sunrise to sunset.

Participation Restrictions: Youth hunters must be 15 years of age or younger. In addition, an adult at least 18 years of age must accompany the youth hunter into the field. This adult may not duck hunt but may participate in other seasons that are open on the special youth day.

Scoter, Eider, and Long-Tailed Ducks (Atlantic Flyway)

Outside Dates: Between September 15 and January 31.

Hunting Seasons and Daily Bag Limits: Not to exceed 107 days, with a daily bag limit of 7, singly or in the aggregate, of the listed sea duck species, of which no more than 4 may be scoters.

Daily Bag Limits During the Regular Duck Season: Within the special sea duck areas, during the regular duck season in the Atlantic Flyway, States may choose to allow the above sea duck limits in addition to the limits applying to other ducks during the regular duck season. In all other areas, sea ducks may be taken only during the regular open season for ducks and are part of the regular duck season daily bag (not to exceed 4 scoters) and possession limits.

Areas: In all coastal waters and all waters of rivers and streams seaward from the first upstream bridge in Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, and New York; in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 1 mile of open water from any shore, island, and emergent vegetation in New Jersey, South Carolina, and Georgia; and in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 800 yards of open water from any shore, island, and emergent vegetation in Delaware, Maryland, North Carolina, and Virginia; and provided that any such areas have been described, delineated, and designated as special sea duck hunting areas under the hunting regulations adopted by the respective States.

Special Early Canada Goose Seasons

Atlantic Flyway

General Seasons

Canada goose seasons of up to 15 days during September 1–15 may be selected for the Eastern Unit of Maryland. Seasons not to exceed 30 days during September 1–30 may be selected for Connecticut, Florida, Georgia, New Jersey, New York (Long Island Zone only), North Carolina, Rhode Island, and South Carolina. Seasons may not exceed 25 days during September 1–25 in the remainder of the Flyway. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Daily Bag Limits: Not to exceed 15 Canada geese.

Shooting Hours: One-half hour before sunrise to sunset, except that during any general season, shooting hours may extend to one-half hour after sunset if all other waterfowl seasons are closed in the specific applicable area.

Mississippi Flyway

General Seasons

Canada goose seasons of up to 15 days during September 1–15 may be selected, except in the Upper Peninsula in Michigan, where the season may not extend beyond September 10, and in Minnesota, where a season of up to 22 days during September 1–22 may be selected. The daily bag limit may not exceed 5 Canada geese. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

A Canada goose season of up to 10 consecutive days during September 1–10 may be selected by Michigan for Huron, Saginaw, and Tuscola Counties, except that the Shiawassee National Wildlife Refuge, Shiawassee River State Game Area Refuge, and the Fish Point Wildlife Area Refuge will remain closed. The daily bag limit may not exceed 5 Canada geese.

Shooting Hours: One-half hour before sunrise to sunset, except that during September 1–15 shooting hours may extend to one-half hour after sunset if all other waterfowl seasons are closed in the specific applicable area.

Central Flyway

General Seasons

In Kansas, Nebraska, Oklahoma, South Dakota, and Texas, Canada goose seasons of up to 30 days during September 1–30 may be selected. In Colorado, New Mexico, North Dakota, Montana, and Wyoming, Canada goose seasons of up to 15 days during September 1–15 may be selected. The daily bag limit may not exceed 5 Canada geese, except in Kansas, Nebraska, and Oklahoma, where the daily bag limit may not exceed 8 Canada geese and in North Dakota and South Dakota, where the daily bag limit may not exceed 15 Canada geese. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Shooting Hours: One-half hour before sunrise to sunset, except that during September 1–15 shooting hours may extend to one-half hour after sunset if all other waterfowl seasons are closed in the specific applicable area.

Pacific Flyway

General Seasons

California may select a 9-day season in Humboldt County during the period September 1–15. The daily bag limit is 2.

Colorado may select a 9-day season during the period of September 1–15. The daily bag limit is 4.

Oregon may select a special Canada goose season of up to 15 days during the period September 1–15. In addition, in the NW Goose Management Zone in Oregon, a 15-day season may be selected during the period September 1–20. Daily bag limits may not exceed 5 Canada geese.

Idaho may select a 7-day season during the period September 1–15. The daily bag limit is 2, and the possession limit is 4.

Washington may select a special Canada goose season of up to 15 days during the period September 1–15. Daily bag limits may not exceed 5 Canada geese.

Wyoming may select an 8-day season on Canada geese during the period September 1–15. This season is subject to the following conditions:

A. Where applicable, the season must be concurrent with the September portion of the sandhill crane season.

B. A daily bag limit of 3, with season and possession limits of 6, will apply to the special season.

Areas open to hunting of Canada geese in each State must be described, delineated, and designated as such in each State's hunting regulations.

Regular Goose Seasons

Regular goose seasons may open as early as September 16 in Wisconsin and Michigan. Season lengths, bag and possession limits, and other provisions will be established during the late-season regulations process.

Sandhill Cranes

Regular Seasons in the Mississippi Flyway

Outside Dates: Between September 1 and February 28.

Hunting Seasons: A season not to exceed 37 consecutive days may be selected in the designated portion of northwestern Minnesota (Northwest Goose Zone).

Daily Bag Limit: 2 sandhill cranes.

Permits: Each person participating in the regular sandhill crane season must have a valid Federal or State sandhill crane hunting permit.

Experimental Seasons in the Mississippi Flyway

Outside Dates: Between September 1 and January 31.

Hunting Seasons: A season not to exceed 30 consecutive days may be selected in Kentucky.

Daily Bag Limit: Not to exceed 2 daily and 2 per season.

Permits: Each person participating in the regular sandhill crane season must have a valid Federal or State sandhill crane hunting permit.

Other Provisions: Numbers of permits, open areas, season dates, protection plans for other species, and other provisions of seasons must be consistent with the management plan and approved by the Mississippi Flyway Council.

Regular Seasons in the Central Flyway

Outside Dates: Between September 1 and February 28.

Hunting Seasons: Seasons not to exceed 37 consecutive days may be selected in designated portions of North Dakota (Area 2) and Texas (Area 2). Seasons not to exceed 58 consecutive days may be selected in designated portions of the following States: Colorado, Kansas, Montana, North Dakota, South Dakota, and Wyoming. Seasons not to exceed 93 consecutive days may be selected in designated portions of the following States: New Mexico, Oklahoma, and Texas.

Daily Bag Limits: 3 sandhill cranes, except 2 sandhill cranes in designated portions of North Dakota (Area 2) and Texas (Area 2).

Permits: Each person participating in the regular sandhill crane season must have a valid Federal or State sandhill crane hunting permit.

Special Seasons in the Central and Pacific Flyways

Arizona, Colorado, Idaho, Montana, New Mexico, Utah, and Wyoming may select seasons for hunting sandhill cranes within the range of the Rocky Mountain Population (RMP) subject to the following conditions:

Outside Dates: Between September 1 and January 31.

Hunting Seasons: The season in any State or zone may not exceed 30 consecutive days.

Bag limits: Not to exceed 3 daily and 9 per season.

Permits: Participants must have a valid permit, issued by the appropriate State, in their possession while hunting.

Other Provisions: Numbers of permits, open areas, season dates, protection plans for other species, and other provisions of seasons must be consistent with the management plan and approved by the Central and Pacific Flyway Councils, with the following exceptions:

A. In Utah, 100 percent of the harvest will be assigned to the RMP quota;

B. In Arizona, monitoring the racial composition of the harvest must be conducted at 3-year intervals;

C. In Idaho, 100 percent of the harvest will be assigned to the RMP quota; and

D. In New Mexico, the season in the Estancia Valley is experimental, with a requirement to monitor the level and racial composition of the harvest; greater sandhill cranes in the harvest will be assigned to the RMP quota.

Common Moorhens and Purple Gallinules

Outside Dates: Between September 1 and the last Sunday in January (January 27) in the Atlantic, Mississippi, and Central Flyways. States in the Pacific Flyway have been allowed to select their hunting seasons between the outside dates for the season on ducks; therefore, they are late-season frameworks, and no frameworks are provided in this document.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 70 days in the Atlantic, Mississippi, and Central Flyways. Seasons may be split into 2 segments. The daily bag limit is 15 common moorhens and purple gallinules, singly or in the aggregate of the two species.

Zoning: Seasons may be selected by zones established for duck hunting.

Rails

Outside Dates: States included herein may select seasons between September 1 and the last Sunday in January (January 27) on clapper, king, sora, and Virginia rails.

Hunting Seasons: Seasons may not exceed 70 days, and may be split into 2 segments.

Daily Bag Limits:

Clapper and King Rails—In Rhode Island, Connecticut, New Jersey, Delaware, and Maryland, 10, singly or in the aggregate of the two species. In Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, and Virginia, 15, singly or in the aggregate of the two species.

Sora and Virginia Rails—In the Atlantic, Mississippi, and Central Flyways and the Pacific Flyway portions of Colorado, Montana, New Mexico, and Wyoming, 25 daily and 25 in possession, singly or in the aggregate of the two species. The season is closed in the remainder of the Pacific Flyway.

Common Snipe

Outside Dates: Between September 1 and February 28, except in Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, and Virginia, where the season must end no later than January 31.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 107 days and may be split into two segments. The daily bag limit is 8 snipe.

Zoning: Seasons may be selected by zones established for duck hunting.

American Woodcock

Outside Dates: States in the Eastern Management Region may select hunting seasons between October 1 and January 31. States in the Central Management Region may select hunting seasons between the Saturday nearest September 22 (September 22) and January 31.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 45 days in the Eastern Region and 45 days in the Central Region. The daily bag limit is 3. Seasons may be split into two segments.

Zoning: New Jersey may select seasons in each of two zones. The season in each zone may not exceed 36 days.

Band-Tailed Pigeons

Pacific Coast States (California, Oregon, Washington, and Nevada)

Outside Dates: Between September 15 and January 1.

Hunting Seasons and Daily Bag Limits: Not more than 9 consecutive days, with a daily bag limit of 2 band-tailed pigeons.

Zoning: California may select hunting seasons not to exceed 9 consecutive days in each of two zones. The season in the North Zone must close by October 3.

Four-Corners States (Arizona, Colorado, New Mexico, and Utah)

Outside Dates: Between September 1 and November 30.

Hunting Seasons and Daily Bag Limits: Not more than 30 consecutive days, with a daily bag limit of 5 band-tailed pigeons.

Zoning: New Mexico may select hunting seasons not to exceed 20 consecutive days in each of two zones. The season in the South Zone may not open until October 1.

Doves

Outside Dates: Between September 1 and January 15, except as otherwise provided, States may select hunting seasons and daily bag limits as follows:

Eastern Management Unit

Hunting Seasons and Daily Bag Limits: Not more than 70 days, with a daily bag limit of 15 mourning and white-winged doves in the aggregate.

Zoning and Split Seasons: States may select hunting seasons in each of two zones. The season within each zone may be split into not more than three periods. Regulations for bag and possession limits, season length, and shooting hours must be uniform within specific hunting zones.

Central Management Unit

For all States except Texas:

Hunting Seasons and Daily Bag Limits: Not more than 70 days, with a daily bag limit of 15 mourning and white-winged doves in the aggregate.

Zoning and Split Seasons: States may select hunting seasons in each of two zones. The season within each zone may be split into not more than three periods.

Texas:

Hunting Seasons and Daily Bag Limits: Not more than 70 days, with a daily bag limit of 15 mourning, white-winged, and white-tipped doves in the aggregate, of which no more than 2 may be white-tipped doves.

Zoning and Split Seasons: Texas may select hunting seasons for each of three zones subject to the following conditions:

A. The hunting season may be split into not more than two periods, except in that portion of Texas in which the special white-winged dove season is allowed, where a limited take of mourning and white-tipped doves may also occur during that special season (see Special White-winged Dove Area).

B. A season may be selected for the North and Central Zones between September 1 and January 25; and for the South Zone between the Friday nearest September 20 (September 21), but not earlier than September 17, and January 25.

C. Except as noted above, regulations for bag and possession limits, season length, and shooting hours must be uniform within each hunting zone.

Special White-winged Dove Area in Texas:

In addition, Texas may select a hunting season of not more than 4 days for the Special White-winged Dove Area of the South Zone between September 1 and September 19. The daily bag limit may not exceed 15 white-winged, mourning, and white-tipped doves in the aggregate, of which no more than 4 may be mourning doves and no more than 2 may be white-tipped doves.

Western Management Unit

Hunting Seasons and Daily Bag Limits:

Idaho, Nevada, Oregon, Utah, and Washington—Not more than 30 consecutive days, with a daily bag limit of 10 mourning and white-winged doves in the aggregate.

Arizona and California—Not more than 60 days, which may be split between two periods, September 1–15 and November 1–January 15. In Arizona, during the first segment of the season, the daily bag limit is 10 mourning and white-winged doves in the aggregate. During the remainder of the season, the daily bag limit is 10 mourning doves. In California, the daily bag limit is 10 mourning and white-winged doves in the aggregate.

Alaska

Outside Dates: Between September 1 and January 26.

Hunting Seasons: Alaska may select 107 consecutive days for waterfowl, sandhill cranes, and common snipe in each of 5 zones. The season may be split without penalty in the Kodiak Zone. The seasons in each zone must be concurrent.

Closures: The hunting season is closed on emperor geese, spectacled eiders, and Steller's eiders.

Daily Bag and Possession Limits:

Ducks—Except as noted, a basic daily bag limit of 7 and a possession limit of 21 ducks. Daily bag and possession limits in the North Zone are 10 and 30, and in the Gulf Coast Zone, they are 8 and 24. The basic limits may include no more than 1 canvasback daily and 3 in possession and may not include sea ducks.

In addition to the basic duck limits, Alaska may select sea duck limits of 10 daily, 20 in possession, singly or in the aggregate, including no more than 6 each of either harlequin or long-tailed ducks. Sea ducks include scoters, common and king eiders, harlequin ducks, long-tailed ducks, and common and red-breasted mergansers.

Light Geese—A basic daily bag limit of 4 and a possession limit of 8.

Dark Geese—A basic daily bag limit of 4 and a possession limit of 8.

Dark-goose seasons are subject to the following exceptions: A. In Units 5 and 6, the taking of Canada geese is permitted from September 28 through December 16.

B. On Middleton Island in Unit 6, a special, permit-only Canada goose season may be offered. A mandatory goose identification class is required. Hunters must check in and check out. The bag limit is 1 daily and 1 in possession. The season will close if incidental harvest includes 5 dusky Canada geese. A dusky Canada goose is any dark-breasted Canada goose (Munsell 10 YR color value five or less) with a bill length between 40 and 50 millimeters.

C. In Units 6–B, 6–C, and on Hinchinbrook and Hawkins Islands in Unit 6–D, a special, permit-only Canada goose season may be offered. Hunters must have all harvested geese checked and classified to subspecies. The daily bag limit is 4 daily and 8 in possession. The Canada goose season will close in all of the permit areas if the total dusky goose (as defined above) harvest reaches 40.

D. In Units 9, 10, 17, and 18, dark goose limits are 6 per day, 12 in possession.

Brant—A daily bag limit of 2 and a possession limit of 4.

Common snipe—A daily bag limit of 8.

Sandhill cranes—Bag and possession limits of 2 and 4, respectively, in the Southeast, Gulf Coast, Kodiak, and Aleutian Zones, and Unit 17 in the Northern Zone. In the remainder of the Northern Zone (outside Unit 17), bag and possession limits of 3 and 6, respectively.

Tundra Swans—Open seasons for tundra swans may be selected subject to the following conditions:

A. All seasons are by registration permit only.

B. All season framework dates are September 1–October 31.

C. In Game Management Unit (GMU) 17, no more than 200 permits may be issued during this operational season. No more than 3 tundra swans may be authorized per permit, with no more than 1 permit issued per hunter per season.

D. In Game Management Unit (GMU) 18, no more than 500 permits may be issued during the operational season. Up to 3 tundra swans may be authorized per permit. No more than 1 permit may be issued per hunter per season.

E. In GMU 22, no more than 300 permits may be issued during the operational season. Each permittee may be authorized to take up to 3 tundra swans per permit. No more than 1 permit may be issued per hunter per season.

F. In GMU 23, no more than 300 permits may be issued during the operational season. No more than 3 tundra swans may be authorized per permit, with no more than 1 permit issued per hunter per season.

Hawaii

Outside Dates: Between October 1 and January 31.

Hunting Seasons: Not more than 65 days (75 under the alternative) for mourning doves.

Bag Limits: Not to exceed 15 (12 under the alternative) mourning doves.

Note: Mourning doves may be taken in Hawaii in accordance with shooting hours and other regulations set by the State of Hawaii, and subject to the applicable provisions of 50 CFR part 20.

Puerto Rico

Doves and Pigeons

Outside Dates: Between September 1 and January 15.

Hunting Seasons: Not more than 60 days.

Daily Bag and Possession Limits: Not to exceed 20 Zenaida, mourning, and white-winged doves in the aggregate, of which not more than 10 may be Zenaida doves and 3 may be mourning doves. Not to exceed 5 scaly-naped pigeons.

Closed Seasons: The season is closed on the white-crowned pigeon and the plain pigeon, which are protected by the Commonwealth of Puerto Rico.

Closed Areas: There is no open season on doves or pigeons in the following areas: Municipality of Culebra, Desecheo Island, Mona Island, El Verde Closure Area, and Cidra Municipality and adjacent areas.

Ducks, Coots, Moorhens, Gallinules, and Snipe

Outside Dates: Between October 1 and January 31.

Hunting Seasons: Not more than 55 days may be selected for hunting ducks, common moorhens, and common snipe. The season may be split into two segments.

Daily Bag Limits:

Ducks—Not to exceed 6.

Common moorhens—Not to exceed 6.

Common snipe—Not to exceed 8.

Closed Seasons: The season is closed on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, and masked duck, which are protected by the Commonwealth of Puerto Rico. The season also is closed on the purple gallinule, American coot, and Caribbean coot.

Closed Areas: There is no open season on ducks, common moorhens, and common snipe in the Municipality of Culebra and on Desecheo Island.

Virgin Islands

Doves and Pigeons

Outside Dates: Between September 1 and January 15.

Hunting Seasons: Not more than 60 days for Zenaida doves.

Daily Bag and Possession Limits: Not to exceed 10 Zenaida doves.

Closed Seasons: No open season is prescribed for ground or quail doves or pigeons.

Closed Areas: There is no open season for migratory game birds on Ruth Cay (just south of St. Croix).

Local Names for Certain Birds: Zenaida dove, also known as mountain dove; bridled quail-dove, also known as Barbary dove or partridge; common ground-dove, also known as stone dove, tobacco dove, rola, or tortolita; scaly-naped pigeon, also known as red-necked or scaled pigeon.

Ducks

Outside Dates: Between December 1 and January 31.

Hunting Seasons: Not more than 55 consecutive days.

Daily Bag Limits: Not to exceed 6.

Closed Seasons: The season is closed on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, and masked duck.

Special Falconry Regulations

Falconry is a permitted means of taking migratory game birds in any State meeting Federal falconry standards in 50 CFR 21.29. These States may select an extended season for taking migratory game birds in accordance with the following:

Extended Seasons: For all hunting methods combined, the combined length of the extended season, regular season, and any special or experimental seasons must not exceed 107 days for any species or group of species in a geographical area. Each extended season may be divided into a maximum of 3 segments.

Framework Dates: Seasons must fall between September 1 and March 10.

Daily Bag and Possession Limits: Falconry daily bag and possession limits for all permitted migratory game birds must not exceed 3 and 6 birds, respectively, singly or in the aggregate, during extended falconry seasons, any special or experimental seasons, and regular hunting seasons in all States, including those that do not select an extended falconry season.

Regular Seasons: General hunting regulations, including seasons and hunting hours, apply to falconry in each State listed in 50 CFR 21.29. Regular season bag and possession limits do not apply to falconry. The falconry bag limit is not in addition to gun limits.

Area, Unit, and Zone Descriptions

Doves

Alabama

South Zone—Baldwin, Barbour, Coffee, Covington, Dale, Escambia, Geneva, Henry, Houston, and Mobile Counties.

North Zone—Remainder of the State.

California

White-winged Dove Open Areas—Imperial, Riverside, and San Bernardino Counties.

Florida

Northwest Zone—The Counties of Bay, Calhoun, Escambia, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Okaloosa, Santa Rosa, Walton, Washington, Leon (except that portion north of U.S. 27 and east of State Road 155), Jefferson (south of U.S. 27, west of State Road 59 and north of U.S. 98), and Wakulla (except that portion south of U.S. 98 and east of the St. Marks River).

South Zone—Remainder of State.

Louisiana

North Zone—That portion of the State north of a line extending east from the Texas border along State Highway 12 to U.S. Highway 190, east along U.S. 190 to Interstate Highway 12, east along Interstate 12 to Interstate Highway 10, then east along Interstate Highway 10 to the Mississippi border.

South Zone—The remainder of the State.

Mississippi

North Zone—That portion of the State north and west of a line extending west from the Alabama State line along U.S. Highway 84 to its junction with State Highway 35, then south along State Highway 35 to the Louisiana State line.

South Zone—The remainder of Mississippi.

Texas

North Zone—That portion of the State north of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to TX 20; west along TX 20 to TX 148; north along TX 148 to I–10 at Fort Hancock; east along I–10 to I–20; northeast along I–20 to I–30 at Fort Worth; northeast along I–30 to the Texas-Arkansas State line.

South Zone—That portion of the State south and west of a line beginning at the International Bridge south of Del Rio, proceeding east on U.S. 90 to State Loop 1604 west of San Antonio; then south, east, and north along Loop 1604 to Interstate Highway 10 east of San Antonio; then east on I–10 to Orange, Texas.

Special White-winged Dove Area in the South Zone—That portion of the State south and west of a line beginning at the International Bridge south of Del Rio, proceeding east on U.S. 90 to State Loop 1604 west of San Antonio, southeast on State Loop 1604 to Interstate Highway 35, southwest on Interstate Highway 35 to TX 44; east along TX 44 to TX 16 at Freer; south along TX 16 to FM 649 in Randado; south on FM 649 to FM 2686; east on FM 2686 to FM 1017; southeast on FM 1017 to TX 186 at Linn; east along TX 186 to the Mansfield Channel at Port Mansfield; east along the Mansfield Channel to the Gulf of Mexico.

Central Zone—That portion of the State lying between the North and South Zones.

Band-Tailed Pigeons

California

North Zone—Alpine, Butte, Del Norte, Glenn, Humboldt, Lassen, Mendocino, Modoc, Plumas, Shasta, Sierra, Siskiyou, Tehama, and Trinity Counties.

South Zone—The remainder of the State.

New Mexico

North Zone—North of a line following U.S. 60 from the Arizona State line east to I–25 at Socorro and then south along I–25 from Socorro to the Texas State line.

South Zone—The remainder of the State.

Washington

Western Washington—The State of Washington excluding those portions lying east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.

Woodcock

New Jersey

North Zone—That portion of the State north of NJ 70.

South Zone—The remainder of the State.

Special September Canada Goose Seasons

Atlantic Flyway

Connecticut

North Zone—That portion of the State north of I–95.

South Zone—The remainder of the State.

Maryland

Eastern Unit—Calvert, Caroline, Cecil, Dorchester, Harford, Kent, Queen Anne's, St. Mary's, Somerset, Talbot, Wicomico, and Worcester Counties; and that part of Anne Arundel County east of Interstate 895, Interstate 97 and Route 3; that part of Prince George's County east of Route 3 and Route 301; and that part of Charles County east of Route 301 to the Virginia State line.

Western Unit—Allegany, Baltimore, Carroll, Frederick, Garrett, Howard, Montgomery, and Washington Counties and that part of Anne Arundel County west of Interstate 895, Interstate 97 and Route 3; that part of Prince George's County west of Route 3 and Route 301; and that part of Charles County west of Route 301 to the Virginia State line.

Massachusetts

Western Zone—That portion of the State west of a line extending south from the Vermont border on I–91 to MA 9, west on MA 9 to MA 10, south on MA 10 to U.S. 202, south on U.S. 202 to the Connecticut border.

Central Zone—That portion of the State east of the Berkshire Zone and west of a line extending south from the New Hampshire border on I–95 to U.S. 1, south on U.S. 1 to I–93, south on I–93 to MA 3, south on MA 3 to U.S. 6, west on U.S. 6 to MA 28, west on MA 28 to I–195, west to the Rhode Island border; except the waters, and the lands 150 yards inland from the high-water mark, of the Assonet River upstream to the MA 24 bridge, and the Taunton River upstream to the Center St.-Elm St. bridge will be in the Coastal Zone.

Coastal Zone—That portion of Massachusetts east and south of the Central Zone.

New York

Lake Champlain Zone—The U.S. portion of Lake Champlain and that area east and north of a line extending along NY 9B from the Canadian border to U.S. 9, south along U.S. 9 to NY 22 south of Keesville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast along NY 22 to U.S. 4, northeast along U.S. 4 to the Vermont border.

Eastern Long Island Goose Area (North Atlantic Population (NAP) High Harvest Area)—That area of Suffolk County lying east of a continuous line extending due south from the New York-Connecticut boundary to the northernmost end of Roanoke Avenue in the Town of Riverhead; then south on Roanoke Avenue (which becomes County Route 73) to State Route 25; then west on Route 25 to Peconic Avenue; then south on Peconic Avenue to County Route (CR) 104 (Riverleigh Avenue); then south on CR 104 to CR 31 (Old Riverhead Road); then south on CR 31 to Oak Street; then south on Oak Street to Potunk Lane; then west on Stevens Lane; then south on Jessup Avenue (in Westhampton Beach) to Dune Road (CR 89); then due south to international waters.

Western Long Island Goose Area (Resident Population (RP) Area)—That area of Westchester County and its tidal waters southeast of Interstate Route 95 and that area of Nassau and Suffolk Counties lying west of a continuous line extending due south from the New York-Connecticut boundary to the northernmost end of the Sunken Meadow State Parkway; then south on the Sunken Meadow Parkway to the Sagtikos State Parkway; then south on the Sagtikos Parkway to the Robert Moses State Parkway; then south on the Robert Moses Parkway to its southernmost end; then due south to international waters.

Central Long Island Goose Area (NAP Low Harvest Area)—That area of Suffolk County lying between the Western and Eastern Long Island Goose Areas, as defined above.

Western Zone—That area west of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, and south along I–81 to the Pennsylvania border.

Northeastern Zone—That area north of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, south along I–81 to NY 49, east along NY 49 to NY 365, east along NY 365 to NY 28, east along NY 28 to NY 29, east along NY 29 to I–87, north along I–87 to U.S. 9 (at Exit 20), north along U.S. 9 to NY 149, east along NY 149 to U.S. 4, north along U.S. 4 to the Vermont border, exclusive of the Lake Champlain Zone.

Southeastern Zone—The remaining portion of New York.

Pennsylvania

Southern James Bay Population (SJBP) Zone—The area north of I–80 and west of I–79, including in the city of Erie west of Bay Front Parkway to and including the Lake Erie Duck Zone (Lake Erie, Presque Isle, and the area within 150 yards of the Lake Erie Shoreline).

Vermont

Lake Champlain Zone—The U.S. portion of Lake Champlain and that area north and west of the line extending from the New York border along U.S. 4 to VT 22A at Fair Haven; VT 22A to U.S. 7 at Vergennes; U.S. 7 to VT 78 at Swanton; VT 78 to VT 36; VT 36 to Maquam Bay on Lake Champlain; along and around the shoreline of Maquam Bay and Hog Island to VT 78 at the West Swanton Bridge; VT 78 to VT 2 in Alburg; VT 2 to the Richelieu River in Alburg; along the east shore of the Richelieu River to the Canadian border.

Interior Zone—That portion of Vermont east of the Lake Champlain Zone and west of a line extending from the Massachusetts border at Interstate 91; north along Interstate 91 to US 2; east along US 2 to VT 102; north along VT 102 to VT 253; north along VT 253 to the Canadian border.

Connecticut River Zone—The remaining portion of Vermont east of the Interior Zone.

Mississippi Flyway

Arkansas

Early Canada Goose Area—Baxter, Benton, Boone, Carroll, Clark, Conway, Crawford, Faulkner, Franklin, Garland, Hempstead, Hot Springs, Howard, Johnson, Lafayette, Little River, Logan, Madison, Marion, Miller, Montgomery, Newton, Perry, Pike, Polk, Pope, Pulaski, Saline, Searcy, Sebastian, Sevier, Scott, Van Buren, Washington, and Yell Counties.

Illinois

North September Canada Goose Zone—That portion of the State north of a line extending west from the Indiana border along Interstate 80 to I–39, south along I–39 to Illinois Route 18, west along Illinois Route 18 to Illinois Route 29, south along Illinois Route 29 to Illinois Route 17, west along Illinois Route 17 to the Mississippi River, and due south across the Mississippi River to the Iowa border.

Central September Canada Goose Zone—That portion of the State south of the North September Canada Goose Zone line to a line extending west from the Indiana border along I–70 to Illinois Route 4, south along Illinois Route 4 to Illinois Route 161, west along Illinois Route 161 to Illinois Route 158, south and west along Illinois Route 158 to Illinois Route 159, south along Illinois Route 159 to Illinois Route 3, south along Illinois Route 3 to St. Leo's Road, south along St. Leo's road to Modoc Road, west along Modoc Road to Modoc Ferry Road, southwest along Modoc Ferry Road to Levee Road, southeast along Levee Road to County Route 12 (Modoc Ferry entrance Road), south along County Route 12 to the Modoc Ferry route and southwest on the Modoc Ferry route across the Mississippi River to the Missouri border.

South September Canada Goose Zone—That portion of the State south and east of a line extending west from the Indiana border along Interstate 70, south along U.S. Highway 45, to Illinois Route 13, west along Illinois Route 13 to Greenbriar Road, north on Greenbriar Road to Sycamore Road, west on Sycamore Road to N. Reed Station Road, south on N. Reed Station Road to Illinois Route 13, west along Illinois Route 13 to Illinois Route 127, south along Illinois Route 127 to State Forest Road (1025 N), west along State Forest Road to Illinois Route 3, north along Illinois Route 3 to the south bank of the Big Muddy River, west along the south bank of the Big Muddy River to the Mississippi River, west across the Mississippi River to the Missouri border.

South Central September Canada Goose Zone—The remainder of the State between the south border of the Central Zone and the North border of the South Zone

Iowa

North Zone—That portion of the State north of U.S. Highway 20.

South Zone—The remainder of Iowa.

Cedar Rapids/Iowa City Goose Zone—Includes portions of Linn and Johnson Counties bounded as follows: Beginning at the intersection of the west border of Linn County and Linn County Road E2W; then south and east along County Road E2W to Highway 920; then north along Highway 920 to County Road E16; then east along County Road E16 to County Road W58; then south along County Road W58 to County Road E34; then east along County Road E34 to Highway 13; then south along Highway 13 to Highway 30; then east along Highway 30 to Highway 1; then south along Highway 1 to Morse Road in Johnson County; then east along Morse Road to Wapsi Avenue; then south along Wapsi Avenue to Lower West Branch Road; then west along Lower West Branch Road to Taft Avenue; then south along Taft Avenue to County Road F62; then west along County Road F62 to Kansas Avenue; then north along Kansas Avenue to Black Diamond Road; then west on Black Diamond Road to Jasper Avenue; then north along Jasper Avenue to Rohert Road; then west along Rohert Road to Ivy Avenue; then north along Ivy Avenue to 340th Street; then west along 340th Street to Half Moon Avenue; then north along Half Moon Avenue to Highway 6; then west along Highway 6 to Echo Avenue; then north along Echo Avenue to 250th Street; then east on 250th Street to Green Castle Avenue; then north along Green Castle Avenue to County Road F12; then west along County Road F12 to County Road W30; then north along County Road W30 to Highway 151; then north along the Linn–Benton County line to the point of beginning.

Des Moines Goose Zone—Includes those portions of Polk, Warren, Madison and Dallas Counties bounded as follows: Beginning at the intersection of Northwest 158th Avenue and County Road R38 in Polk County; then south along R38 to Northwest 142nd Avenue; then east along Northwest 142nd Avenue to Northeast 126th Avenue; then east along Northeast 126th Avenue to Northeast 46th Street; then south along Northeast 46th Street to Highway 931; then east along Highway 931 to Northeast 80th Street; then south along Northeast 80th Street to Southeast 6th Avenue; then west along Southeast 6th

Avenue to Highway 65; then south and west along Highway 65 to Highway 69 in Warren County; then south along Highway 69 to County Road G24; then west along County Road G24 to Highway 28; then southwest along Highway 28 to 43rd Avenue; then north along 43rd Avenue to Ford Street; then west along Ford Street to Filmore Street; then west along Filmore Street to 10th Avenue; then south along 10th Avenue to 155th Street in Madison County; then west along 155th Street to Cumming Road; then north along Cumming Road to Badger Creek Avenue; then north along Badger Creek Avenue to County Road F90 in Dallas County; then east along County Road F90 to County Road R22; then north along County Road R22 to Highway 44; then east along Highway 44 to County Road R30; then north along County Road R30 to County Road F31; then east along County Road F31 to Highway 17; then north along Highway 17 to Highway 415 in Polk County; then east along Highway 415 to Northwest 158th Avenue; then east along Northwest 158th Avenue to the point of beginning.

Cedar Falls/Waterloo Goose Zone—Includes those portions of Black Hawk County bounded as follows: Beginning at the intersection of County Roads C66 and V49 in Black Hawk County, then south along County Road V49 to County Road D38, then west along County Road D38 to State Highway 21, then south along State Highway 21 to County Road D35, then west along County Road D35 to Grundy Road, then north along Grundy Road to County Road D19, then west along County Road D19 to Butler Road, then north along Butler Road to County Road C57, then north and east along County Road C57 to U.S. Highway 63, then south along U.S. Highway 63 to County Road C66, then east along County Road C66 to the point of beginning.

Michigan

(a) North Zone—Same as North duck zone.

(b) Middle Zone—Same as Middle duck zone.

(c) South Zone—Same as South duck zone.

Minnesota

Twin Cities Metropolitan Canada Goose Zone—

A. All of Hennepin and Ramsey Counties.

B. In Anoka County, all of Columbus Township lying south of County State Aid Highway (CSAH) 18, Anoka County; all of the cities of Ramsey, Andover, Anoka, Coon Rapids, Spring Lake Park, Fridley, Hilltop, Columbia Heights, Blaine, Lexington, Circle Pines, Lino Lakes, and Centerville; and all of the city of Ham Lake except that portion lying north of CSAH 18 and east of U.S. Highway 65.

C. That part of Carver County lying north and east of the following described line: Beginning at the northeast corner of San Francisco Township; then west along the north boundary of San Francisco Township to the east boundary of Dahlgren Township; then north along the east boundary of Dahlgren Township to U.S. Highway 212; then west along U.S. Highway 212 to State Trunk Highway (STH) 284; then north on STH 284 to County State Aid Highway (CSAH) 10; then north and west on CSAH 10 to CSAH 30; then north and west on CSAH 30 to STH 25; then east and north on STH 25 to CSAH 10; then north on CSAH 10 to the Carver County line.

D. In Scott County, all of the cities of Shakopee, Savage, Prior Lake, and Jordan, and all of the Townships of Jackson, Louisville, St. Lawrence, Sand Creek, Spring Lake, and Credit River.

E. In Dakota County, all of the cities of Burnsville, Eagan, Mendota Heights, Mendota, Sunfish Lake, Inver Grove Heights, Apple Valley, Lakeville, Rosemount, Farmington, Hastings, Lilydale, West St. Paul, and South St. Paul, and all of the Township of Nininger.

F. That portion of Washington County lying south of the following described line: Beginning at County State Aid Highway (CSAH) 2 on the west boundary of the county; then east on CSAH 2 to U.S. Highway 61; then south on U.S. Highway 61 to State Trunk Highway (STH) 97; then east on STH 97 to the intersection of STH 97 and STH 95; then due east to the east boundary of the State.

Northwest Goose Zone—That portion of the State encompassed by a line extending east from the North Dakota border along U.S. Highway 2 to State Trunk Highway (STH) 32, north along STH 32 to STH 92, east along STH 92 to County State Aid Highway (CSAH) 2 in Polk County, north along CSAH 2 to CSAH 27 in Pennington County, north along CSAH 27 to STH 1, east along STH 1 to CSAH 28 in Pennington County, north along CSAH 28 to CSAH 54 in Marshall County, north along CSAH 54 to CSAH 9 in Roseau County, north along CSAH 9 to STH 11, west along STH 11 to STH 310, and north along STH 310 to the Manitoba border.

Southeast Goose Zone—That part of the State within the following described boundaries: beginning at the intersection of U.S. Highway 52 and the south boundary of the Twin Cities Metro Canada Goose Zone; then along the U.S. Highway 52 to State Trunk Highway (STH) 57; then along STH 57 to the municipal boundary of Kasson; then along the municipal boundary of Kasson County State Aid Highway (CSAH) 13, Dodge County; then along CSAH 13 to STH 30; then along STH 30 to U.S. Highway 63; then along U.S. Highway 63 to the south boundary of the State; then along the south and east boundaries of the State to the south boundary of the Twin Cities Metro Canada Goose Zone; then along said boundary to the point of beginning.

Five Goose Zone—That portion of the State not included in the Twin Cities Metropolitan Canada Goose Zone, the Northwest Goose Zone, or the Southeast Goose Zone.

West Zone—That portion of the State encompassed by a line beginning at the junction of State Trunk Highway (STH) 60 and the Iowa border, then north and east along STH 60 to U.S. Highway 71, north along U.S. 71 to I–94, then north and west along I–94 to the North Dakota border.

Tennessee

Middle Tennessee Zone—Those portions of Houston, Humphreys, Montgomery, Perry, and Wayne Counties east of State Highway 13; and Bedford, Cannon, Cheatham, Coffee, Davidson, Dickson, Franklin, Giles, Hickman, Lawrence, Lewis, Lincoln, Macon, Marshall, Maury, Moore, Robertson, Rutherford, Smith, Sumner, Trousdale, Williamson, and Wilson Counties.

East Tennessee Zone—Anderson, Bledsoe, Bradley, Blount, Campbell, Carter, Claiborne, Clay, Cocke, Cumberland, DeKalb, Fentress, Grainger, Greene, Grundy, Hamblen, Hamilton, Hancock, Hawkins, Jackson, Jefferson, Johnson, Knox, Loudon, Marion, McMinn, Meigs, Monroe, Morgan, Overton, Pickett, Polk, Putnam, Rhea, Roane, Scott, Sequatchie, Sevier, Sullivan, Unicoi, Union, Van Buren, Warren, Washington, and White Counties.

Wisconsin

Early-Season Subzone A—That portion of the State encompassed by a line beginning at the intersection of U.S. Highway 141 and the Michigan border near Niagara, then south along U.S. 141 to State Highway 22, west and southwest along State 22 to U.S. 45, south along U.S. 45 to State 22, west and south along State 22 to State 110, south along State 110 to U.S. 10, south along U.S. 10 to State 49, south along State 49 to State 23, west along State 23 to State 73, south along State 73 to State

60, west along State 60 to State 23, south along State 23 to State 11, east along State 11 to State 78, then south along State 78 to the Illinois border.

Early-Season Subzone B—The remainder of the State.

Central Flyway

Nebraska

September Canada Goose Unit—That part of Nebraska bounded by a line from the Nebraska–Iowa State line west on U.S. Highway 30 to US Highway 81, then south on US Highway 81 to NE Highway 64, then east on NE Highway 64 to NE Highway 15, then south on NE Highway 15 to NE Highway 41, then east on NE Highway 41 to NE Highway 50, then north on NE Highway 50 to NE Highway 2, then east on NE Highway 2 to the Nebraska–Iowa State line.

North Dakota

Missouri River Canada Goose Zone—The area within and bounded by a line starting where ND Hwy 6 crosses the South Dakota border; then north on ND Hwy 6 to I–94; then west on I–94 to ND Hwy 49; then north on ND Hwy 49 to ND Hwy 200; then north on Mercer County Rd. 21 to the section line between sections 8 and 9 (T146N–R87W); then north on that section line to the southern shoreline to Lake Sakakawea; then east along the southern shoreline (including Mallard Island) of Lake Sakakawea to US Hwy 83; then south on US Hwy 83 to ND Hwy 200; then east on ND Hwy 200 to ND Hwy 41; then south on ND Hwy 41 to US Hwy 83; then south on US Hwy 83 to I–94; then east on I–94 to US Hwy 83; then south on US Hwy 83 to the South Dakota border; then west along the South Dakota border to ND Hwy 6.

Rest of State: Remainder of North Dakota.

South Dakota

Special Early Canada Goose Unit—Entire State of South Dakota *except* the Counties of Bennett, Gregory, Hughes, Lyman, Perkins, and Stanley; that portion of Potter County west of US Highway 83; that portion of Bon Homme, Brule, Buffalo, Charles Mix, and Hyde County south and west of a line beginning at the Hughes–Hyde County line of SD Highway 34, east to Lees Boulevard, southeast to SD 34, east 7 miles to 350th Avenue, south to I–90, south and east on SD Highway 50 to Geddes, east on 285th Street to US Highway 281, south on US Highway 281 to SD 50, east and south on SD 50 to the Bon Homme–Yankton County boundary; that portion of Fall River County east of SD Highway 71 and US Highway 385; that portion of Custer County east of SD Highway 79 and south of French Creek; that portion of Dewey County south of BIA Road 8, BIA Road 9, and the section of US 212 east of BIA Road 8 junction.

Pacific Flyway

Idaho

East Zone—Bonneville, Caribou, Fremont, and Teton Counties.

Oregon

Northwest Zone—Benton, Clackamas, Clatsop, Columbia, Lane, Lincoln, Linn, Marion, Polk, Multnomah, Tillamook, Washington, and Yamhill Counties.

Southwest Zone—Coos, Curry, Douglas, Jackson, Josephine, and Klamath Counties.

East Zone—Baker, Gilliam, Malheur, Morrow, Sherman, Umatilla, Union, and Wasco Counties.

Washington

Area 1—Skagit, Island, and Snohomish Counties.

Area 2A (SW Quota Zone)—Clark County, except portions south of the Washougal River; Cowlitz County; and Wahkiakum County.

Area 2B (SW Quota Zone)—Pacific County.

Area 3—All areas west of the Pacific Crest Trail and west of the Big White Salmon River that are not included in Areas 1, 2A, and 2B.

Area 4—Adams, Benton, Chelan, Douglas, Franklin, Grant, Kittitas, Lincoln, Okanogan, Spokane, and Walla Walla Counties.

Area 5—All areas east of the Pacific Crest Trail and east of the Big White Salmon River that are not included in Area 4.

Ducks

Atlantic Flyway

New York

Lake Champlain Zone—The U.S. portion of Lake Champlain and that area east and north of a line extending along NY 9B from the Canadian border to U.S. 9, south along U.S. 9 to NY 22 south of Keesville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast along NY 22 to U.S. 4, northeast along U.S. 4 to the Vermont border.

Long Island Zone—That area consisting of Nassau County, Suffolk County, that area of Westchester County southeast of I–95, and their tidal waters.

Western Zone—That area west of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, and south along I–81 to the Pennsylvania border.

Northeastern Zone—That area north of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, south along I–81 to NY 49, east along NY 49 to NY 365, east along NY 365 to NY 28, east along NY 28 to NY 29, east along NY 29 to I–87, north along I–87 to U.S. 9 (at Exit 20), north along U.S. 9 to NY 149, east along NY 149 to U.S. 4, north along U.S. 4 to the Vermont border, exclusive of the Lake Champlain Zone.

Southeastern Zone—The remaining portion of New York.

Maryland

Special Teal Season Area— Calvert, Caroline, Cecil, Dorchester, Harford, Kent, Queen Anne's, St. Mary's, Somerset, Talbot, Wicomico, and Worcester Counties; that part of Anne Arundel County east of Interstate 895, Interstate 97, and Route 3; that part of Prince Georges County east of Route 3 and Route 301; and that part of Charles County east of Route 301 to the Virginia State Line.

Mississippi Flyway

Indiana

North Zone—That part of Indiana north of a line extending east from the Illinois border along State Road 18 to U.S. 31; north along U.S. 31 to U.S. 24; east along U.S. 24 to Huntington; southeast along U.S. 224; south along State Road 5; and east along State Road 124 to the Ohio border.

Central Zone—That part of Indiana south of the North Zone boundary and north of the South Zone boundary.

South Zone—That part of Indiana south of a line extending east from the Illinois border along U.S. 40; south along U.S. 41; east along State Road 58; south along State Road 37 to Bedford; and east along U.S. 50 to the Ohio border.

Iowa

North Zone—That portion of Iowa north of a line beginning on the South Dakota-Iowa border at Interstate 29, southeast along Interstate 29 to State Highway 175, east along State Highway 175 to State Highway 37, southeast along State Highway 37 to State Highway 183, northeast along State Highway 183 to State Highway 141, east along State Highway 141 to U.S. Highway 30, and along U.S. Highway 30 to the Illinois border.

Missouri River Zone—That portion of Iowa west of a line beginning on the South Dakota-Iowa border at Interstate 29, southeast along Interstate 29 to State

Highway 175, and west along State Highway 175 to the Iowa-Nebraska border.

South Zone—The remainder of Iowa.

Michigan

North Zone: The Upper Peninsula.

Middle Zone: That portion of the Lower Peninsula north of a line beginning at the Wisconsin State line in Lake Michigan due west of the mouth of Stony Creek in Oceana County; then due east to, and easterly and southerly along the south shore of Stony Creek to Scenic Drive, easterly and southerly along Scenic Drive to Stony Lake Road, easterly along Stony Lake and Garfield Roads to Michigan Highway 20, east along Michigan 20 to U.S. Highway 10 Business Route (BR) in the city of Midland, easterly along U.S. 10 BR to U.S. 10, easterly along U.S. 10 to Interstate Highway 75/U.S. Highway 23, northerly along I–75/U.S. 23 to the U.S. 23 exit at Standish, easterly along U.S. 23 to the centerline of the Au Gres River, then southerly along the centerline of the Au Gres River to Saginaw Bay, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canadian border.

South Zone: The remainder of Michigan.

Central Flyway

Colorado

Special Teal Season Area—Lake and Chaffee Counties and that portion of the State east of Interstate Highway 25.

Kansas

High Plains Zone—That portion of the State west of U.S. 283.

Early Zone—That part of Kansas bounded by a line from the Nebraska–Kansas State line south on K–128 to its junction with US–36, then east on US–36 to its junction with K–199, then south on K–199 to its junction with Republic County 30 Rd, then south on Republic County 30 Rd to its junction with K–148, then east on K–148 to its junction with Republic County 50 Rd, then south on Republic County 50 Rd to its junction with Cloud County 40th Rd, then south on Cloud County 40th Rd to its junction with K–9, then west on K–9 to its junction with US–24, then west on US–24 to its junction with US–281, then north on US–281 to its junction with US–36, then west on US–36 to its junction with US–183, then south on US–183 to its junction with US–24, then west on US–24 to its junction with K–18, then southeast on K–18 to its junction with US–183, then south on US–183 to its junction with K–4, then east on K–4 to its junction with I–135, then south on I–135 to its junction with K–61, then southwest on K–61 to McPherson County 14th Avenue, then south on McPherson County 14th Avenue to its junction with Arapaho Rd, then west on Arapaho Rd to its junction with K–61, then southwest on K–61 to its junction with K–96, then northwest on K–96 to its junction with US–56, then southwest on US–56 to its junction with K–19, then east on K–19 to its junction with US–281, then south on US–281 to its junction with US–54, then west on US–54 to its junction with US–183, then north on US–183 to its junction with US–56, then southwest on US–56 to its junction with Ford County Rd 126, then south on Ford County Rd 126 to its junction with US–400, then northwest on US–400 to its junction with US–283, then north on US–283 to its junction with the Nebraska–Kansas State line, then east along the Nebraska–Kansas State line to its junction with K–128.

Late Zone—That part of Kansas bounded by a line from the Nebraska–Kansas State line south on K–128 to its junction with US–36, then east on US–36 to its junction with K–199, then south on K–199 to its junction with Republic County 30 Rd, then south on Republic County 30 Rd to its junction with K–148, then east on K–148 to its junction with Republic County 50 Rd, then south on Republic County 50 Rd to its junction with Cloud County 40th Rd, then south on Cloud County 40th Rd to its junction with K–9, then west on K–9 to its junction with US–24, then west on US–24 to its junction with US–281, then north on US–281 to its junction with US–36, then west on US–36 to its junction with US–183, then south on US–183 to its junction with US–24, then west on US–24 to its junction with K–18, then southeast on K–18 to its junction with US–183, then south on US–183 to its junction with K–4, then east on K–4 to its junction with I–135, then south on I–135 to its junction with K–61, then southwest on K–61 to 14th Avenue, then south on 14th Avenue to its junction with Arapaho Rd, then west on Arapaho Rd to its junction with K–61, then southwest on K–61 to its junction with K–96, then northwest on K–96 to its junction with US–56, then southwest on US–56 to its junction with K–19, then east on K–19 to its junction with US–281, then south on US–281 to its junction with US–54, then west on US–54 to its junction with US–183, then north on US–183 to its junction with US–56, then southwest on US–56 to its junction with Ford County Rd 126, then south on Ford County Rd 126 to its junction with US–400, then northwest on US–400 to its junction with US–283, then south on US–283 to its junction with the Oklahoma–Kansas State line, then east along the Oklahoma–Kansas State line to its junction with US–77, then north on US–77 to its junction with Butler County, NE 150th Street, then east on Butler County, NE 150th Street to its junction with US–35, then northeast on US–35 to its junction with K–68, then east on K–68 to the Kansas–Missouri State line, then north along the Kansas–Missouri State line to its junction with the Nebraska State line, then west along the Kansas–Nebraska State line to its junction with K–128.

Southeast Zone—That part of Kansas bounded by a line from the Missouri–Kansas State line west on K–68 to its junction with US–35, then southwest on US–35 to its junction with Butler County, NE 150th Street, then west on NE 150th Street until its junction with K–77, then south on K–77 to the Oklahoma–Kansas State line, then east along the Kansas–Oklahoma State line to its junction with the Missouri State line, then north along the Kansas–Missouri State line to its junction with K–68.

Nebraska

Special Teal Season Area—That portion of the State south of a line beginning at the Wyoming State line; east along U.S. 26 to Nebraska Highway L62A east to U.S. 385; south to U.S. 26; east to NE 92; east along NE 92 to NE 61; south along NE 61 to U.S. 30; east along U.S. 30 to the Iowa border.

High Plains—That portion of Nebraska lying west of a line beginning at the South Dakota–Nebraska border on U.S. Hwy. 183; south on U.S. Hwy. 183 to U.S. Hwy. 20; west on U.S. Hwy. 20 to NE Hwy. 7; south on NE Hwy. 7 to NE Hwy. 91; southwest on NE Hwy. 91 to NE Hwy. 2; southeast on NE Hwy. 2 to NE Hwy. 92; west on NE Hwy. 92 to NE Hwy. 40; south on NE Hwy. 40 to NE Hwy. 47; south on NE Hwy. 47 to NE Hwy. 23; east on NE Hwy. 23 to U.S. Hwy. 283; and south on U.S. Hwy. 283 to the Kansas–Nebraska border.

Zone 1—Area bounded by designated Federal and State highways and political boundaries beginning at the South Dakota–Nebraska border west of NE Hwy. 26E Spur and north of NE Hwy. 12; those portions of Dixon, Cedar and Knox Counties north of NE Hwy. 12; that portion of Keya Paha County east of U.S. Hwy. 183; and all of Boyd County. Both banks of the Niobrara River in Keya Paha and Boyd counties east of U.S. Hwy. 183 shall be included in Zone 1.

Zone 2—The area south of Zone 1 and north of Zone 3.

Zone 3—Area bounded by designated Federal and State highways, County Roads, and political boundaries beginning at the Wyoming–Nebraska border at the intersection of the Interstate Canal; east along northern borders of Scotts Bluff and Morrill Counties to Broadwater Road; south to Morrill County Rd 94; east to County Rd 135; south to County Rd 88; southeast to County Rd 151; south to County Rd 80; east to County Rd 161; south to County Rd 76; east to County Rd 165; south to County Rd 167; south to U.S. Hwy. 26; east to County Rd 171; north to County Rd 68; east to County Rd 183; south to County Rd 64; east to County Rd 189; north to County Rd 70; east to County Rd 201; south to County Rd 60A; east to County Rd 203; south to County Rd 52; east to Keith County Line; east along the northern boundaries of Keith and Lincoln Counties to NE Hwy. 97; south to U.S. Hwy 83; south to E Hall School Rd; east to N Airport Road; south to U.S. Hwy. 30; east to Merrick County Rd 13; north to County Rd O; east to NE Hwy. 14; north to NE Hwy. 52; west and north to NE Hwy. 91; west to U.S. Hwy. 281; south to NE Hwy. 22; west to NE Hwy. 11; northwest to NE Hwy. 91; west to U.S. Hwy. 183; south to Round Valley Rd; west to Sargent River Rd; west to Sargent Rd; west to Milburn Rd; north to Blaine County Line; east to Loup County Line; north to NE Hwy. 91; west to North Loup Spur Rd; north to North Loup River Rd; east to Pleasant Valley/Worth Rd; east to Loup County Line; north to Loup–Brown county line; east along northern boundaries of Loup and Garfield Counties to Cedar River Rd; south to NE Hwy. 70; east to U.S. Hwy. 281; north to NE Hwy. 70; east to NE Hwy. 14; south to NE Hwy. 39; southeast to NE Hwy. 22; east to U.S. Hwy. 81; southeast to U.S. Hwy. 30; east to U.S. Hwy. 75; north to the Washington County line; east to the Iowa–Nebraska border; south to the Missouri–Nebraska border; south to Kansas–Nebraska border; west along Kansas–Nebraska border to Colorado–Nebraska border; north and west to Wyoming–Nebraska border; north to intersection of Interstate Canal; and excluding that area in Zone 4.

Zone 4—Area encompassed by designated Federal and State highways and County Roads beginning at the intersection of NE Hwy. 8 and U.S. Hwy. 75; north to U.S. Hwy. 136; east to the intersection of U.S. Hwy. 136 and the Steamboat Trace (Trace); north along the Trace to the intersection with Federal Levee R–562; north along Federal Levee R–562 to the intersection with the Trace; north along the Trace/Burlington Northern Railroad right-of-way to NE Hwy. 2; west to U.S. Hwy. 75; north to NE Hwy. 2; west to NE Hwy. 43; north to U.S. Hwy. 34; east to NE Hwy. 63; north to NE Hwy. 66; north and west to U.S. Hwy. 77; north to NE Hwy. 92; west to NE Hwy. Spur 12F; south to Butler County Rd 30; east to County Rd X; south to County Rd 27; west to County Rd W; south to County Rd 26; east to County Rd X; south to County Rd 21 (Seward County Line); west to NE Hwy. 15; north to County Rd 34; west to County Rd J; south to NE Hwy. 92; west to U.S. Hwy. 81; south to NE Hwy. 66; west to Polk County Rd C; north to NE Hwy. 92; west to U.S. Hwy. 30; west to Merrick County Rd 17; south to Hordlake Road; southeast to Prairie Island Road; southeast to Hamilton County Rd T; south to NE Hwy. 66; west to NE Hwy. 14; south to County Rd 22; west to County Rd M; south to County Rd 21; west to County Rd K; south to U.S. Hwy. 34; west to NE Hwy. 2; south to U.S. Hwy. I–80; west to Gunbarrel Rd (Hall/Hamilton county line); south to Giltner Rd; west to U.S. Hwy. 281; south to U.S. Hwy. 34; west to NE Hwy. 10; north to Kearney County Rd R and Phelps County Rd 742; west to U.S. Hwy. 283; south to U.S. Hwy 34; east to U.S. Hwy. 136; east to U.S. Hwy. 183; north to NE Hwy. 4; east to NE Hwy. 10; south to U.S. Hwy. 136; east to NE Hwy. 14; south to NE Hwy. 8; east to U.S. Hwy. 81; north to NE Hwy. 4; east to NE Hwy. 15; south to U.S. Hwy. 136; east to NE Hwy. 103; south to NE Hwy. 8; east to U.S. Hwy. 75.

New Mexico (Central Flyway Portion)

North Zone—That portion of the State north of I–40 and U.S. 54.

South Zone—The remainder of New Mexico.

Pacific Flyway

California

Northeastern Zone—In that portion of California lying east and north of a line beginning at the intersection of Interstate 5 with the California–Oregon line; south along Interstate 5 to its junction with Walters Lane south of the town of Yreka; west along Walters Lane to its junction with Easy Street; south along Easy Street to the junction with Old Highway 99; south along Old Highway 99 to the point of intersection with Interstate 5 north of the town of Weed; south along Interstate 5 to its junction with Highway 89; east and south along Highway 89 to Main Street Greenville; north and east to its junction with North Valley Road; south to its junction of Diamond Mountain Road; north and east to its junction with North Arm Road; south and west to the junction of North Valley Road; south to the junction with Arlington Road (A22); west to the junction of Highway 89; south and west to the junction of Highway 70; east on Highway 70 to Highway 395; south and east on Highway 395 to the point of intersection with the California–Nevada State line; north along the California–Nevada State line to the junction of the California–Nevada–Oregon State lines west along the California–Oregon State line to the point of origin.

Colorado River Zone—Those portions of San Bernardino, Riverside, and Imperial Counties east of a line extending from the Nevada border south along U.S. 95 to Vidal Junction; south on a road known as ''Aqueduct Road'' in San Bernardino County through the town of Rice to the San Bernardino–Riverside County line; south on a road known in Riverside County as the ''Desert Center to Rice Road'' to the town of Desert Center; east 31 miles on I–10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army–Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe–Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east 7 miles on U.S. 80 to the Andrade–Algodones Road; south on this paved road to the Mexican border at Algodones, Mexico.

Southern Zone—That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I–15; east on I–15 to CA 127; north on CA 127 to the Nevada border.

Southern San Joaquin Valley Temporary Zone—All of Kings and Tulare Counties and that portion of Kern County north of the Southern Zone.

Balance-of-the-State Zone—The remainder of California not included in the Northeastern, Southern, and Colorado River Zones, and the Southern San Joaquin Valley Temporary Zone.

Canada Geese

Michigan

(a) North Zone—Same as North duck zone.

(b) Middle Zone—Same as Middle duck zone.

(c) South Zone—Same as South duck zone.

Sandhill Cranes

Mississippi Flyway

Minnesota

Northwest Goose Zone—That portion of the State encompassed by a line extending east from the North Dakota border along U.S. Highway 2 to State Trunk Highway (STH) 32, north along STH 32 to STH 92, east along STH 92 to County State Aid Highway (CSAH) 2 in Polk County, north along CSAH 2 to CSAH 27 in Pennington County, north along CSAH 27 to STH 1, east along STH 1 to CSAH 28 in Pennington County, north along CSAH 28 to CSAH 54 in Marshall County, north along CSAH 54 to CSAH 9 in Roseau County, north along CSAH 9 to STH 11, west along STH 11 to STH 310, and north along STH 310 to the Manitoba border.

Central Flyway

Colorado—The Central Flyway portion of the State except the San Luis Valley (Alamosa, Conejos, Costilla, Hinsdale, Mineral, Rio Grande, and Saguache Counties east of the Continental Divide) and North Park (Jackson County).

Kansas—That portion of the State west of a line beginning at the Oklahoma border, north on I–35 to Wichita, north on I–135 to Salina, and north on U.S. 81 to the Nebraska border.

Montana—The Central Flyway portion of the State except for that area south and west of Interstate 90, which is closed to sandhill crane hunting.

New Mexico

Regular-Season Open Area—Chaves, Curry, De Baca, Eddy, Lea, Quay, and Roosevelt Counties.

Middle Rio Grande Valley Area—The Central Flyway portion of New Mexico in Socorro and Valencia Counties.

Estancia Valley Area—Those portions of Santa Fe, Torrance and Bernallilo Counties within an area bounded on the west by New Mexico Highway 55 beginning at Mountainair north to NM 337, north to NM 14, north to I–25; on the north by I–25 east to U.S. 285; on the east by U.S. 285 south to U.S. 60; and on the south by U.S. 60 from U.S. 285 west to NM 55 in Mountainair.

Southwest Zone—Area bounded on the south by the New Mexico/Mexico border; on the west by the New Mexico/ Arizona border north to Interstate 10; on the north by Interstate 10 east to U.S. 180, north to N.M. 26, east to N.M. 27, north to N.M. 152, and east to Interstate 25; on the east by Interstate 25 south to Interstate 10, west to the Luna county line, and south to the New Mexico/ Mexico border.

North Dakota

Area 1—That portion of the State west of U.S. 281.

Area 2—That portion of the State east of U.S. 281.

Oklahoma—That portion of the State west of I–35.

South Dakota—That portion of the State west of U.S. 281.

Texas

Zone A—That portion of Texas lying west of a line beginning at the international toll bridge at Laredo, then northeast along U.S. Highway 81 to its junction with Interstate Highway 35 in Laredo, then north along Interstate Highway 35 to its junction with Interstate Highway 10 in San Antonio, then northwest along Interstate Highway 10 to its junction with U.S. Highway 83 at Junction, then north along U.S. Highway 83 to its junction with U.S. Highway 62, 16 miles north of Childress, then east along U.S. Highway 62 to the Texas–Oklahoma State line.

Zone B—That portion of Texas lying within boundaries beginning at the junction of U.S. Highway 81 and the Texas–Oklahoma State line, then southeast along U.S. Highway 81 to its junction with U.S. Highway 287 in Montague County, then southeast along U.S. Highway 287 to its junction with Interstate Highway 35W in Fort Worth, then southwest along Interstate Highway 35 to its junction with Interstate Highway 10 in San Antonio, then northwest along Interstate Highway 10 to its junction with U.S. Highway 83 in the town of Junction, then north along U.S. Highway 83 to its junction with U.S. Highway 62, 16 miles north of Childress, then east along U.S. Highway 62 to the Texas–Oklahoma State line, then south along the Texas–Oklahoma State line to the south bank of the Red River, then eastward along the vegetation line on the south bank of the Red River to U.S. Highway 81.

Zone C—The remainder of the State, except for the closed areas.

Closed areas—(A) That portion of the State lying east and north of a line beginning at the junction of U.S. Highway 81 and the Texas–Oklahoma State line, then southeast along U.S. Highway 81 to its junction with U.S. Highway 287 in Montague County, then southeast along U.S. Highway 287 to its junction with Interstate Highway 35W in Fort Worth, then southwest along Interstate Highway 35 to its junction with U.S. Highway 290 East in Austin, then east along U.S. Highway 290 to its junction with Interstate Loop 610 in Harris County, then south and east along Interstate Loop 610 to its junction with Interstate Highway 45 in Houston, then south on Interstate Highway 45 to State Highway 342, then to the shore of the Gulf of Mexico, and then north and east along the shore of the Gulf of Mexico to the Texas–Louisiana State line.

(B) That portion of the State lying within the boundaries of a line beginning at the Kleberg–Nueces County line and the shore of the Gulf of Mexico, then west along the County line to Park Road 22 in Nueces County, then north and west along Park Road 22 to its junction with State Highway 358 in Corpus Christi, then west and north along State Highway 358 to its junction with State Highway 286, then north along State Highway 286 to its junction with Interstate Highway 37, then east along Interstate Highway 37 to its junction with U.S. Highway 181, then north and west along U.S. Highway 181 to its junction with U.S. Highway 77 in Sinton, then north and east along U.S. Highway 77 to its junction with U.S. Highway 87 in Victoria, then south and east along U.S. Highway 87 to its junction with State Highway 35 at Port Lavaca, then north and east along State Highway 35 to the south end of the Lavaca Bay Causeway, then south and east along the shore of Lavaca Bay to its junction with the Port Lavaca Ship Channel, then south and east along the Lavaca Bay Ship Channel to the Gulf of Mexico, and then south and west along the shore of the Gulf of Mexico to the Kleberg–Nueces County line.

Wyoming

Regular Season Open Area—Campbell, Converse, Crook, Goshen, Laramie, Niobrara, Platte, and Weston Counties, and portions of Johnson and Sheridan Counties.

Riverton-Boysen Unit—Portions of Fremont County.

Park and Big Horn County Unit—All of Big Horn, Hot Springs, Park and Washakie Counties.

Pacific Flyway

Arizona

Special Season Area—Game Management Units 28, 30A, 30B, 31, and 32.

Idaho

Special Season Area—See State regulations.

Montana

Special Season Area—See State regulations.

Utah

Special Season Area—Rich, Cache, and Unitah Counties and that portion of Box Elder County beginning on the Utah–Idaho State line at the Box Elder-Cache County line; west on the State line to the Pocatello Valley County Road; south on the Pocatello Valley County Road to I–15; southeast on I–15 to SR–83; south on SR–83 to Lamp Junction; west and south on the Promontory Point County Road to the tip of Promontory Point; south from Promontory Point to the Box Elder-Weber County line; east on the Box Elder-Weber County line to the Box Elder-Cache County line; north on the Box Elder-Cache County line to the Utah–Idaho State line.

Wyoming

Bear River Area—That portion of Lincoln County described in State regulations.

Salt River Area—That portion of Lincoln County described in State regulations.

Farson-Eden Area—Those portions of Sweetwater and Sublette Counties described in State regulations.

Uinta County Area—That portion of Uinta County described in State regulations.

All Migratory Game Birds in Alaska

North Zone—State Game Management Units 11–13 and 17–26.

Gulf Coast Zone—State Game Management Units 5–7, 9, 14–16, and 10 (Unimak Island only).

Southeast Zone—State Game Management Units 1–4.

Pribilof and Aleutian Islands Zone—State Game Management Unit 10 (except Unimak Island).

Kodiak Zone—State Game Management Unit 8.

All Migratory Game Birds in the Virgin Islands

Ruth Cay Closure Area—The island of Ruth Cay, just south of St. Croix.

All Migratory Game Birds in Puerto Rico

Municipality of Culebra Closure Area—All of the municipality of Culebra.

Desecheo Island Closure Area—All of Desecheo Island.

Mona Island Closure Area—All of Mona Island.

El Verde Closure Area—Those areas of the municipalities of Rio Grande and Loiza delineated as follows: (1) All lands between Routes 956 on the west and 186 on the east, from Route 3 on the north to the juncture of Routes 956 and 186 (Km 13.2) in the south; (2) all lands between Routes 186 and 966 from the juncture of 186 and 966 on the north, to the Caribbean National Forest Boundary on the south; (3) all lands lying west of Route 186 for 1 kilometer from the juncture of Routes 186 and 956 south to Km 6 on Route 186; (4) all lands within Km 14 and Km 6 on the west and the Caribbean National Forest Boundary on the east; and (5) all lands within the Caribbean National Forest Boundary whether private or public.

Cidra Municipality and adjacent areas—All of Cidra Municipality and portions of Aguas Buenas, Caguas, Cayey, and Comerio Municipalities as encompassed within the following boundary: Beginning on Highway 172 as it leaves the municipality of Cidra on the west edge, north to Highway 156, east on Highway 156 to Highway 1, south on Highway 1 to Highway 765, south on Highway 765 to Highway 763, south on Highway 763 to the Rio Guavate, west along Rio Guavate to Highway 1, southwest on Highway 1 to Highway 14, west on Highway 14 to Highway 729, north on Highway 729 to Cidra Municipality boundary to the point of the beginning.

[FR Doc. 2012–21293 Filed 8–29–12; 8:45 am]

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FEDERAL REGISTER

Vol. 77 Thursday,
No. 169 August 30, 2012

Part VII

The President

Proclamation 8849—Death of Neil Armstrong

Federal Register

Vol. 77, No. 169

Thursday, August 30, 2012

Presidential Documents

Title 3—

The President

Proclamation 8849 of August 27, 2012

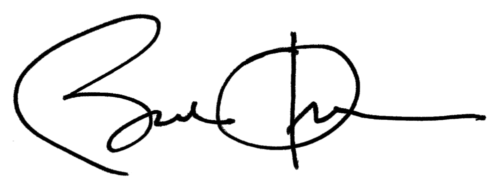
Death of Neil Armstrong

By the President of the United States of America

A Proclamation

As a mark of respect for the memory of Neil Armstrong, I hereby order, by the authority vested in me by the Constitution and the laws of the United States of America, that on the day of his interment, the flag of the United States shall be flown at half-staff at the White House and upon all public buildings and grounds, at all military posts and naval stations, and on all naval vessels of the Federal Government in the District of Columbia and throughout the United States and its Territories and possessions until sunset on such day. I also direct that the flag shall be flown at half-staff for the same length of time at all United States embassies, legations, consular offices, and other facilities abroad, including all military facilities and naval vessels and stations.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-seventh day of August, in the year of our Lord two thousand twelve, and of the Independence of the United States of America the two hundred and thirty-seventh.



[FR Doc. 2012–21638

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Thursday, August 30, 2012

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CFR PARTS AFFECTED DURING AUGUST

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws*.

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H.R. 1402/P.L. 112–170

To authorize the Architect of the Capitol to establish battery recharging stations for privately owned vehicles in parking areas under the jurisdiction of the House of Representatives at no net cost to the Federal Government. (Aug. 16, 2012; 126 Stat. 1303)

H.R. 3670/P.L. 112–171

To require the Transportation Security Administration to comply with the Uniformed Services Employment and Reemployment Rights Act. (Aug. 16, 2012; 126 Stat. 1306)

H.R. 4240/P.L. 112–172

Ambassador James R. Lilley and Congressman Stephen J. Solarz North Korea Human Rights Reauthorization Act of 2012 (Aug. 16, 2012; 126 Stat. 1307)

S. 3510/P.L. 112–173

To prevent harm to the national security or endangering the military officers and civilian employees to whom internet publication of certain information applies, and for other purposes. (Aug. 16, 2012; 126 Stat. 1310)

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